



MEMBER'S MANUAL

AMENDMENT PAGES

2010: No. 2 July

Highlights

Legal Profession Act: The Act is amended as a result of the new Civil and Family Supreme Court Rules, which take effect on July 1, 2010 (sections 44(2) and (4), 66(8), 68(9) and 70(13): pp. 30, 43, 45 and 46).

Law Society Rules: New and amended rules give effect to the Québec Mobility Agreement, which includes establishing a special category of membership called the Canadian legal advisor (Rules 2-1, 2-5, 2-22.1, 2-22.2, 2-49.3, 2-51 and 3-25: pp. 31, 40, 53, 54 and 70.2); the Law Society may suspend or impose conditions on a lawyer before a citation is issued if three or more Benchers are satisfied extraordinary action is necessary to protect the public (Rules 2-2, 3-7.1 and 4-17(1) and (1.111): pp. 31, 66 and 99); the application process for multi-disciplinary practice is clarified, and fees are set (Rule 2-23.3(1) and Schedule 1 L: pp. 42 and 130); hearing panels may impose a penalty based on the ungovernability of the respondent (Rule 4-35(5) to (7): p. 109); court and statutory references are updated (Rule 2-43(1): p. 50.1).

Professional Conduct Handbook: Chapter 11, Rules 16 to 21 are moved to Chapter 3, Rules 6 to 12 and are revised to take into consideration issues that may arise when a law firm changes its composition. In particular, Rule 6 expressly covers situations where a law firm is winding up or dividing, not just where a lawyer is leaving a firm, and Rule 10 places an obligation on lawyers to protect client information, files and other client property and to minimize any adverse effect on the interests of clients (pp. 8.1 to 8.3 and 59); a new rule recognizes that lawyers provide extensive pro bono services and that a lawyer's obligation to provide quality legal services to a client is not affected by the pro bono status of the case (Chapter 3, Rule 13 and footnote 7: pp. 8.3 and 8.4); language is altered for consistency with the professional liability insurance policy (Chapter 4, footnote 2: p. 10.1).

Insurance Policies: An Endorsement to Policy No. LPL 10-01-01 sets out the terms and conditions of coverage for multi-disciplinary practices and for BC members acting as Canadian legal advisor members of the Barreau du Québec.

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

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Law Society Rules	31 – 32 39 – 42 50.1 – 50.2 51 – 54 65 – 66 70.1 – 70.2 99 – 100 109 – 110 129 – 130	31 – 32 39 – 42 50.1 – 50.2 51 – 54 65 – 66, 66.1 – 66.2 70.1 – 70.2 99 – 100 109 – 110 129 – 130

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Manual section	Existing pages to be removed	Amendment pages to be inserted
Professional Conduct Handbook	8.1 – 8.2 10.1 – 10.2 33 – 34 59 – 60	8.1 – 8.4 10.1 – 10.2 33 – 34 59 – 60
Insurance Policies	–	2010 Endorsement (1 – 4): insert directly in front of Policy No. LPL 10-01-01

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

Updates: This amendment package updates the *Member's Manual* to **June 15, 2010**. The previous amendment package was 2010: No. 1 March.

To check that your copy of the *Manual* is up to date, consult the contents checklist on the next page. If you have further questions about updating your *Manual*, contact Kari Chow in the Law Society Communications Department: telephone 604-697-5838 or toll-free in BC 1-800-903-5300 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 June 15, 2010

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PART 5 – HEARINGS AND APPEALS

Panels

- 41** (1) The benchers may make rules providing for any of the following:
- (a) the appointment and composition of panels;
 - (b) the practice and procedure for proceedings before panels.
- (2) A panel may order an applicant or respondent, or a shareholder, director, officer or employee of a respondent law corporation, to do either or both of the following:
- (a) give evidence under oath or by affirmation;
 - (b) at any time before or during a hearing, produce all files and records that are in the possession of that person and that may be relevant to a matter under consideration.

Failure to attend

- 42** (1) This section applies if an applicant or respondent fails to attend or remain in attendance at
- (a) a hearing on an application for enrollment as an articulated student, call and admission, or reinstatement,
 - (b) a hearing on a citation, or
 - (c) a review by the benchers under section 47.
- (2) If satisfied that the applicant or respondent has been served with notice of the hearing or review, the panel or the benchers may proceed with the hearing or review in the absence of the applicant or respondent and make any order that the panel or the benchers could have made in the presence of the applicant or respondent.

Right to counsel

- 43** (1) An applicant or respondent may appear at any hearing with counsel.
- (2) The society may employ or retain legal or other assistance in conducting an investigation under Part 2, 3 or 4 or on the issue of a citation and may be represented by counsel at any hearing.

Witnesses

- 44** (1) For the purposes of a proceeding under Part 2, 3 or 4 of this Act, sections 34(3), 48, 49 and 56 of the *Administrative Tribunals Act* apply to the benchers, a panel, the special compensation fund committee and a member of any of these.

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- (2) The society, an applicant or a respondent may apply to the Supreme Court, without notice to anyone, for an order that a subpoena in the form set out in the Supreme Court Civil Rules be issued to compel the attendance of a person as a witness at a hearing under Part 2, 3 or 4.
- (3) If the person who is required as a witness is in the custody of another person or the custodian of a penal institution, in addition to making an order under subsection (2), the court may make an order directing the person having custody to ensure the witness attends the hearing.
- (4) The Supreme Court Civil Rules respecting the following apply to a person who is the subject of an order under subsection (2) or (3):
 - (a) the use of a subpoena to compel a person to attend at the trial of an action;
 - (b) failure to obey a subpoena or order of the court.

[2007-9-54; 2010-6-97]

Order for compliance

- 45** (1) If it appears that a person has failed to comply with an order, summons or subpoena of a person or body referred to in section 44 (1), a person or body referred to in section 44 (1) may apply to the Supreme Court for an order directing the person to comply with the order, summons or subpoena.
- (2) On an application under subsection (1), the court may make the order requested or another order it considers appropriate.

[2007-9-55]

Society request for evidence

- 45.1** (1) On application by the society, if it appears to the Supreme Court that a person outside British Columbia may have evidence that may be relevant to an investigation or a hearing under this Act, the Supreme Court may issue a letter of request directed to the judicial authority of the jurisdiction in which the person who may have evidence is believed to be located.
- (2) A letter of request issued under subsection (1) must be
- (a) signed by a judge of the Supreme Court, and
 - (b) provided to the society for use under subsection (5).
- (3) A letter of request issued under subsection (1) may request the judicial authority to which it is directed to do one or more of the following:
- (a) order the person referred to in the letter of request to be examined under oath in the manner, at the place and by the date referred to in the letter of request;

Contingent fee agreement

- 66 (1) Section 65 applies to contingent fee agreements.
- (2) The benchers may make rules respecting contingent fee agreements, including, but not limited to, rules that do any of the following:
- (a) limit the amount that lawyers may charge for services provided under contingent fee agreements;
 - (b) regulate the form and content of contingent fee agreements;
 - (c) set conditions to be met by lawyers and law firms making contingent fee agreements.
- (3) Rules under subsection (2) apply only to contingent fee agreements made after the rules come into force and, if those rules are amended, the amendments apply only to contingent fee agreements made after the amendments come into force.
- (4) A contingent fee agreement that exceeds the limits established by the rules is void unless approved by the court under subsection (6).
- (5) If a contingent fee agreement is void under subsection (4), the lawyer may charge the fees that could have been charged had there been no contingent fee agreement, but only if the event that would have allowed payment under the void agreement occurs.
- (6) A lawyer may apply to the court for approval of a fee higher than the rule permits, only
- (a) before entering into a contingent fee agreement, and
 - (b) after serving the client with at least 5 days’ written notice.
- (7) The court may approve an application under subsection (6) if
- (a) the lawyer and the client agree on the amount of the lawyer’s proposed fee, and
 - (b) the court is satisfied that the proposed fee is reasonable.
- (8) The following rules apply to an application under subsection (6) to preserve solicitor client privilege:
- (a) the hearing must be held in private;
 - (b) the style of proceeding must not disclose the identity of the lawyer or the client;
 - (c) if the lawyer or the client requests that the court records relating to the application be kept confidential,
 - (i) the records must be kept confidential, and
 - (ii) no person other than the lawyer or the client or a person authorized by either of them may search the records unless the court otherwise orders.
- (9) Despite subsection (8), reasons for judgment relating to an application under subsection (6) may be published if the names of the lawyer and client are not

disclosed and any information that may identify the lawyer or the client is not disclosed.

[2010-6-69]

Restrictions on contingent fee agreements

- 67**
- (1) This section does not apply to contingent fee agreements entered into before June 1, 1988.
 - (2) A contingent fee agreement must not provide that a lawyer is entitled to receive both a fee based on a proportion of the amount recovered and any portion of an amount awarded as costs in a proceeding or paid as costs in the settlement of a proceeding or an anticipated proceeding.
 - (3) A contingent fee agreement for services relating to a child custody or access matter is void.
 - (4) A contingent fee agreement for services relating to a matrimonial dispute is void unless approved by the court.
 - (5) A lawyer may apply to the court for approval of a contingent fee agreement for services relating to a matrimonial dispute and section 66 (7) to (9) applies.

Examination of an agreement

- 68**
- (1) This section does not apply to agreements entered into before June 1, 1988.
 - (2) A person who has entered into an agreement with a lawyer may apply to the registrar to have the agreement examined.
 - (3) An application under subsection (2) may only be made within 3 months after
 - (a) the agreement was made, or
 - (b) the termination of the solicitor client relationship.
 - (4) Subject to subsection (3), a person may make an application under subsection (2) even if the person has made payment under the agreement.
 - (5) On an application under subsection (2), the registrar must confirm the agreement unless the registrar considers that the agreement is unfair or unreasonable under the circumstances existing at the time the agreement was entered into.
 - (6) If the registrar considers that the agreement is unfair or unreasonable under the circumstances existing at the time the agreement was entered into, the registrar may modify or cancel the agreement.
 - (7) If an agreement is cancelled under subsection (6), a registrar
 - (a) may require the lawyer to prepare a bill for review, and
 - (b) must review the fees, charges and disbursements for the services provided as though there were no agreement.
 - (8) A party may appeal a decision of the registrar under subsection (5) or (6) to the court.

- (9) The procedure under the Supreme Court Civil Rules for the assessment of costs, review of bills and examination of agreements applies to the examination of an agreement.

[2010-6-97]

Lawyer’s bill

- 69**
- (1) A lawyer must deliver a bill to the person charged.
 - (2) A bill may be delivered under subsection (1) by mailing the bill to the last known business or residential address of the person charged.
 - (3) The bill must be signed by or on behalf of the lawyer or accompanied by a letter, signed by or on behalf of the lawyer, that refers to the bill.
 - (4) A bill under subsection (1) is sufficient in form if it contains a reasonably descriptive statement of the services with a lump sum charge and a detailed statement of disbursements.
 - (5) A lawyer must not sue to collect money owed on a bill until 30 days after the bill was delivered to the person charged.
 - (6) The court may permit a lawyer to sue to collect money owed on a bill before the end of the 30 day period if the court finds that
 - (a) the bill has been delivered as provided in subsection (1), and
 - (b) there is probable cause to believe that the person charged is about to leave British Columbia other than temporarily.

Review of a lawyer’s bill

- 70**
- (1) Subject to subsection (11), the person charged or a person who has agreed to indemnify that person may obtain an appointment to have a bill reviewed before
 - (a) 12 months after the bill was delivered under section 69, or
 - (b) 3 months after the bill was paid,whichever occurs first.
 - (2) The person who obtained an appointment under subsection (1) for a review of the bill must deliver a copy of the appointment to the lawyer at the address shown on the bill, at least 5 days before the date set for the review.
 - (3) Subject to subsection (11), a lawyer may obtain an appointment to have a bill reviewed 30 days or more after the bill was delivered under section 69.
 - (4) The lawyer must serve a copy of the appointment on the person charged at least 5 days before the date set for the review.
 - (5) The following people may obtain an appointment on behalf of a lawyer to have a bill reviewed:
 - (a) the lawyer’s agent;
 - (b) a deceased lawyer’s personal representative;

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- (c) the lawyer's assignee;
 - (d) in the case of a partnership, one of the partners or a partner's agent;
 - (e) the custodian of the lawyer's practice appointed under section 50.
- (6) If a lawyer has sued to collect on a bill, the court in which the action was commenced may order that the bill be referred to the registrar.
- (7) The court may make an order under subsection (6) whether or not any party has applied for an order.
- (8) On a referral under subsection (6), the registrar may
- (a) review the bill and issue a certificate, or
 - (b) make a report and recommendation to the court.
- (9) When making an order under subsection (6), the court may direct that the registrar take action under subsection (8) (a) or (b).
- (10) Section 73 applies to a certificate issued under subsection (8) (a).
- (11) In either of the following circumstances, the lawyer's bill must not be reviewed unless the court finds that special circumstances justify a review of the bill and orders that the bill be reviewed by the registrar:
- (a) the lawyer has sued and obtained judgment for the amount of the bill;
 - (b) application for the review was not made within the time allowed in subsection (1).
- (12) If a lawyer sues to collect money owed on a bill, the lawsuit must not proceed if an application for review is made before or after the lawsuit was commenced, until
- (a) the registrar has issued a certificate, or
 - (b) the application for review is withdrawn.
- (13) The procedure under the Supreme Court Civil Rules for the assessment of costs, review of bills and examination of agreements applies to the review of bills under this section.
- (14) The registrar may refer any question arising under this Part to the court for directions or a determination.

[2010-6-97]

Matters to be considered by the registrar on a review

- 71** (1) This section applies to a review or examination under section 68 (7), 70, 77 (3), 78 (2) or 79 (3).
- (2) Subject to subsections (4) and (5), the registrar must allow fees, charges and disbursements for the following services:
- (a) those reasonably necessary and proper to conduct the proceeding or business to which they relate;

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Categories of membership

2-1 The following are the categories of members of the Society:

- (a) practising lawyers, as defined in section 1 of the Act;
- (b) retired members;
- (c) non-practising members;
- (d) Canadian legal advisor.

[amended effective 07/2010]

Member in good standing

2-2 A member of the Society is a member in good standing unless suspended under section 38(5)(d) of the Act or under these Rules.

[amended 10/2006; 07/2008; 03/2010]

Non-practising members

2-3 (1) Any member of the Society in good standing may become a non-practising member by

- (a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and
- (b) paying the application fee specified in Schedule 1 and a prorated annual fee for non-practising members as provided in Schedule 3.

(2) Non-practising members must pay the annual fee specified in Schedule 1 by the preceding November 30.

[(2) amended 07/2004]

Retired members

2-4 (1) A member of the Society in good standing who has done one of the following qualifies to become a retired member:

- (a) reached the age of 55 years;
- (b) been a member of the Society in good standing for 20 of the previous 25 years;
- (c) engaged in the full-time active practice of law for 20 of the previous 25 years.

(2) A lawyer who qualifies under subrule (1) may become a retired member by

- (a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and
- (b) paying the application fee specified in Schedule 1 and the prorated annual fee for retired members as provided in Schedule 3.

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- (3) Retired members must pay the annual fee specified in Schedule 1 by the preceding November 30.
- (4) The Benchers may, by resolution, waive payment of the annual fee by a retired member or group of retired members.

[(1) and (3) amended, (4) added 07/2004]

Release from undertaking

- 2-4.1** (1) A retired or non-practising member may apply for release from an undertaking given under Rule 2-3 or 2-4 by delivering to the Executive Director an application in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society.
- (2) The Executive Director must not grant a release from undertaking under this Rule unless satisfied that the lawyer is not prohibited from practising law under Rule 2-57.

[added 06/2006]

Certificates and permits

- 2-5** The Executive Director may approve the form of
- (a) practising certificate issued under section 23 of the Act,
 - (b) retired membership certificate issued under Rule 2-4,
 - (c) non-practising membership certificate issued under Rule 2-3,
 - (d) practitioner of foreign law permit issued under Rule 2-18,
 - (e) inter-jurisdictional practice permit issued under Rule 2-12, and
 - (f) Canadian legal advisor certificate issued under Rule 2-51.

[amended 11/1999; amended effective 07/2010]

Member information

Annual practice declaration

- 2-6** (1) In this Rule, “**declaration**” means the Annual Practice Declaration in a form approved by the Executive Committee.
- (2) A practising lawyer must complete and deliver a declaration to the Executive Director in each calendar year.
- (2.1) A declaration is not delivered under this Rule unless it is
- (a) complete to the satisfaction of the Executive Director,
 - (b) received by the Executive Director by the date set by the Executive Director, and
 - (c) signed by the practising lawyer.
- (3) The Executive Director must not issue a practising certificate to a lawyer who fails to deliver a declaration as required under this Rule, unless the Credentials Committee directs otherwise.

[(2) and (3) amended, (2.1) added 09/2003]

- (5) A practitioner of foreign law must notify the Executive Director promptly if he or she
- (a) is the subject of criminal or professional discipline proceedings in any jurisdiction,
 - (b) ceases to be a member in good standing of the legal profession in any jurisdiction, or
 - (c) fails to complete satisfactorily any continuing legal education program required of the practitioner of foreign law as a member of the legal profession in a foreign jurisdiction.

Dual qualification

- 2-20** A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may act as a practitioner of foreign law in British Columbia without obtaining a permit, provided the lawyer holds liability insurance that
- (a) specifically extends to the lawyer’s activities as a practitioner of foreign law in British Columbia, and
 - (b) is in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-21(1).

Marketing of legal services by practitioners of foreign law

- 2-21** A practitioner of foreign law who is not a member of the Society must do all of the following when engaging in any marketing activity as defined in the *Professional Conduct Handbook*, Chapter 14, Rule 2:
- (a) use the term “practitioner of foreign law;”
 - (b) state the foreign jurisdiction in which he or she holds professional legal qualifications, and the professional title used in that jurisdiction;
 - (c) not use any designation or make any representation from which a recipient might reasonably conclude that the practitioner of foreign law is a member of the Society.

Renewal of permit

- 2-22** (1) In order to renew a practitioner of foreign law permit, a practitioner of foreign law must apply to the Executive Director for a renewal of the permit before his or her permit expires.
- (2) A renewal application must include
- (a) a completed permit renewal application in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society,
 - (b) evidence satisfactory to the Executive Director that the practitioner of foreign law continues to comply with the requirements set out in Rule 2-18(2), and
 - (c) the renewal fee specified in Schedule 1.
- (3) The Executive Director may renew the permit of a practitioner of foreign law who has complied with the Act and these Rules.
- (4) Subject to subrule (5), a permit renewed under subrule (3) is valid for one year.

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- (5) Rule 2-18(6) applies to a permit renewed under subrule (3).
- (6) A practitioner of foreign law who fails to pay when due the fee for renewal of a permit under subrule (2), including applicable taxes, or any part of it, must pay the late payment fee specified in Schedule 1.

Canadian legal advisors

Scope of practice

- 2-22.1** (1) A Canadian legal advisor may
- (a) give legal advice on
 - (i) the law of Québec and matters involving the law of Québec,
 - (ii) matters under federal jurisdiction, or
 - (iii) matters involving public international law,
 - (b) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or
 - (c) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.
- (2) A Canadian legal advisor must not engage in the practice of law except as permitted under subrule (1).

[added effective 07/2010]

Requirements

- 2-22.2** (1) A member in good standing who is admitted as a Canadian legal advisor has all the duties and responsibilities of a practising lawyer under the Act, these Rules and the *Professional Conduct Handbook*.
- (2) A Canadian legal advisor must
- (a) be a member in good standing of the Barreau du Québec authorized to practise law in that Province,
 - (b) undertake to comply with Rule 2-23.1, and
 - (c) immediately notify the Executive Director in writing if he or she ceases to be authorized to practise law in Québec.

[added effective 07/2010]

Non-resident partners

Inter-jurisdictional law firms

- 2-23** (1) A lawyer who practises law as a member of an inter-jurisdictional law firm must ensure that the firm does the following respecting the firm's practice of law in British Columbia:
- (a) complies with the Part 3, Division 7 of these Rules;
 - (b) makes its books, records and accounts, wherever they are located, available on demand by the Society or its designated agent.

- (2) An inter-jurisdictional law firm is subject to discipline under Part 4 in the same way as a law corporation, except that the penalties that a panel may impose are the following:
- (a) a reprimand of the firm;
 - (b) a fine in an amount not exceeding \$100,000;
 - (c) an order prohibiting members of the firm who are not members of the Society from practising in British Columbia.
- (3) On certification by a governing body that an inter-jurisdictional law firm has failed to pay, by the date on which it was due, a fine imposed under a provision similar to subrule (2), the Credentials Committee may make an order prohibiting lawyers from practising as members of the firm.

[(3) added 11/1999; (1) amended 12/2003]

Multi-disciplinary practice

Definition and application

2-23.1 (1) In Rules 2-23.1 to 2-23.12,

“**legal services**” means services that constitute the practice of law as defined in section 1 of the Act;

“**member of an MDP**” means a lawyer or non-lawyer who holds an ownership interest in the MDP.

- (2) The responsibilities imposed under Rules 2-23.1 to 2-23.12 are not affected by the fact that a member of an MDP is carrying on the practice of a profession, trade or occupation or participating in the MDP as an employee, shareholder, officer, director or contractor of a professional corporation or on its behalf.

[added 12/2009, effective 07/2010]

Conditions for multi-disciplinary practice

2-23.2 (1) A lawyer must not practise law in an MDP unless

- (a) the lawyer and all members of the MDP are in compliance with Rules 2-23.1 to 2-23.12 and the *Professional Conduct Handbook*,
- (b) all lawyers who are members of the MDP have obtained express permission under this Division to practise law in the MDP,
- (c) all non-lawyer members of the MDP are of good character and repute,
- (d) all members of the MDP agree in writing
 - (i) that practising lawyers who are members of the MDP will have actual control over the delivery of legal services by the MDP,
 - (ii) that non-lawyer members of the MDP will not interfere, directly or indirectly with the lawyer’s
 - (A) obligation to comply with the Act, these Rules and the *Professional Conduct Handbook*, and
 - (B) exercise of independent professional judgement,
 - (iii) to comply with the Act, these Rules and the *Professional Conduct Handbook*, and

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- (iv) to cooperate with and assist the Society or its agents in the conduct of a practice review, examination or investigation, and
 - (e) all members of the MDP who are governed by the regulatory body of another profession agree to report to the MDP any proceedings concerning their conduct or competence.
- (2) For the purposes of this Rule, a lawyer has actual control over the delivery of legal services of the MDP if, despite any partnership agreement or other contract, the lawyer is able, in all cases and without any further agreement of any member of the MDP, to
- (a) exercise independent professional judgement, and
 - (b) take any action necessary to ensure that the lawyer complies with the Act, these Rules and the *Professional Conduct Handbook*.

[added 12/2009, effective 07/2010]

Application to practise law in multi-disciplinary practice

2-23.3 (1) Before a lawyer may practise law as a member of an MDP that has not been granted permission under Rule 2-23.4, the lawyer must submit the following to the Executive Director:

- (a) an application in a form approved by the Credentials Committee;
 - (b) the application fee specified in Schedule 1;
 - (c) the investigation fee specified in Schedule 1 for each non-lawyer member of the proposed MDP;
 - (d) copies of all partnership agreements and other contracts that the lawyer proposes to enter into with other members of the proposed MDP.
- (2) In addition to any other requirement determined by the Credentials Committee, in the form referred to in subrule (1), the lawyer must report full details of the arrangements that the lawyer has made to ensure that
- (a) no non-lawyer member of the MDP provides services to the public, except
 - (i) those services that support or supplement the practice of law by the MDP, and
 - (ii) under the supervision of a practising lawyer,
 - (b) privileged and confidential information is protected under Rule 2-23.8,
 - (c) all members of the MDP comply with the rules respecting conflicts of interest as required under Rule 2-23.9,
 - (d) every member of the MDP obtains and maintains liability insurance as required under Rule 2-23.10,
 - (e) the lawyer and the MDP maintain trust accounts and trust accounting records in accordance with Rule 2-23.11, and
 - (f) all non-lawyer members of the MDP enter into the agreements required under Rules 2-23.2.
- (3) Any number of lawyers proposing to practise law together in an MDP may submit a joint application under this Rule.

[added 12/2009, effective 07/2010; (1) amended 06/2010]

Court and tribunal appearances by articulated students

- 2-43 (1) An articulated student may appear :
- (a) in the Federal Court of Canada as that Court permits,
 - (b) in Supreme Court of British Columbia in Chambers on any
 - (i) uncontested matter, or
 - (ii) contested application for
 - (A) time to plead,
 - (B) leave to amend pleadings, or
 - (C) discovery and production of documents, or
 - (iii) other procedural application relating to the conduct of a cause or matter,
 - (c) before a registrar or other officer exercising the power of a registrar of the Supreme Court of British Columbia or Court of Appeal for British Columbia,
 - (d) in the Provincial Court of British Columbia
 - (i) on any summary conviction offence or proceeding,
 - (ii) on any matter in the Family Division or the Small Claims Division, or
 - (iii) when the Crown is proceeding by indictment or under the *Youth Criminal Justice Act* (Canada) in respect of an indictable offence, for the purposes only of
 - (A) speaking to an application for an adjournment,
 - (B) setting a date for preliminary inquiry or trial,
 - (C) speaking to an application for judicial interim release or an application to vacate a release or detention order and to make a different order, or
 - (D) an election or entry of a plea of Not Guilty on a date before the trial date,
 - (e) on an examination of a debtor,
 - (f) on an examination for discovery in aid of execution, or
 - (g) before an administrative tribunal.
- (2) An articulated student is not permitted to do the following:
- (a) conduct an examination for discovery;
 - (b) represent a party who is being examined for discovery;
 - (c) represent a party at a pre-trial conference.
- (3) A person enrolled in temporary articles under Rule 2-42(2)(c) may appear in court only on a summary conviction matter and under the direct supervision of a practising lawyer.

[(1) amended 06/2010]

Training course

2-44 (1) The Executive Director may set the dates on which sessions of the training course will begin.

(2) The Credentials Committee may direct that an articled student be given priority in selection of the training course session that the student wishes to attend if the student is or will be

- (a) articling outside the Lower Mainland,
- (b) articling as the only student in a firm, or
- (c) employed as a law clerk.

(3) Before registering in the training course, an articled student or applicant must make application for enrolment under Rule 2-27(3).

(4) To register in a training course session, an articled student or applicant must

- (a) pay to the Society the fee for the training course specified in Schedule 1, and
- (b) deliver to the Executive Director
 - (i) an application for registration, and
 - (ii) the principal's consent to the training course session chosen.

(5) The Executive Director must deliver to each student who was registered in a training course session and to each student's principal, a transcript stating whether the student passed or failed the training course.

(5.1) If a student fails part of the training course, the Executive Director may allow the student one further attempt to pass the examinations, assignments or assessments concerned.

(6) An articled student may apply in writing to the Credentials Committee for exemption from all or a portion of the training course, and the Committee may, in its discretion, grant all or part of the exemption applied for with or without conditions, if the student has

- (a) successfully completed a bar admission course in another Canadian jurisdiction, or
- (b) engaged in the active practice of law in a common law jurisdiction outside Canada for at least 5 full years.

[(4), (5) and (6) amended 03/2003; (5.1) added 03/2004]

Tutorial program

2-44.1 (1) The Executive Director may establish a tutorial program to assist students participating in the training course.

(2) Priority for access to tutorial assistance must be as follows:

- (a) first priority to students of aboriginal heritage;
- (b) second priority to all other students.

[added 05/2001; (1) amended 03/2003]

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.
- (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,

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- (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
 - (b) completing the requirements under Rule 2-49.2(3), if the lawyer
 - (i) has practised law full-time in British Columbia for 2 years, or the equivalent in part-time practice, immediately preceding the application,
 - (ii) is entitled to practise law in the jurisdiction of a reciprocating governing body of which the applicant is a member, or
 - (iii) was, when called and admitted in British Columbia, entitled to practise law in the jurisdiction of a governing body that is now a reciprocating governing body, of which the applicant was a member.

[added 11/1999; (2) and (3) amended, (4) added 07/2004]

Transfer under National Mobility Agreement and Territorial Mobility Agreement

- 2-49.2** (1) This Rule applies to an applicant for transfer from another Canadian jurisdiction, provided that the applicant is entitled to practise law in the jurisdiction of a reciprocating governing body of which the applicant is a member.
- (2) An applicant under this Rule must fulfil all of the requirements in Rule 2-49 for call and admission on transfer from another Canadian jurisdiction, except that he or she need not pass any transfer examination.

- (3) To qualify for call and admission, an applicant under this Rule must certify in a prescribed form that he or she has reviewed and understands all of the materials reasonably required by the Executive Director.
- (4) A lawyer called and admitted under this Rule has no greater rights as a member of the Society than
 - (a) the lawyer has as a member of the governing body of his or her home jurisdiction, or
 - (b) any other member of the Society in similar circumstances.

[added effective 07/2003; heading amended 11/2006]

Transfer as Canadian legal advisor

- 2-49.3** (1) Subject to subrule (3), a member of the Barreau du Québec may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:
- (a) a completed application for call and admission as a Canadian legal adviser 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 the Barreau du Québec and each other 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) the following fees:
 - (i) the investigation fees and call and admission fees;
 - (ii) a prorated practice fee;
 - (iii) a prorated annual insurance fee, unless exempt under Rule 3-25;
 - (iv) a prorated Special Compensation Fund assessment;
 - (f) any other information and documents required by the Act or these Rules that are requested by the Credentials Committee or the Benchers.
- (2) Subject to subrule (1), Rules 2-49 to 2-51 apply, with any necessary changes, to an application for call and admission on transfer as a Canadian legal advisor.
- (3) This Rule does not apply to a member of the Barreau du Québec unless he or she has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Barreau.

[added effective 07/2010]

Consideration of application for call and admission

- 2-50** (1) The Executive Director must consider an application for call and admission by a person meeting the requirements under this division, and may conduct or authorize any person to conduct an investigation concerning the application.
- (2) On an application for call and admission, the Executive Director may
 - (a) authorize the call and admission of the applicant without conditions or limitations, or

- (b) refer the application to the Credentials Committee.
- (3) When an application is referred to the Credentials Committee under subrule (2), the Committee may
 - (a) authorize the call and admission of the applicant without conditions or limitations,
 - (b) authorize the call and admission of the applicant with conditions or limitations on the practice of the applicant, if the applicant consents in writing to those conditions or limitations, or
 - (c) order a hearing.

Barristers and solicitors' roll and oath

- 2-51** (1) The Executive Director must maintain the barristers and solicitors' roll in paper or electronic form, or a combination of both.
- (2) Every lawyer who is called to the Bar of British Columbia and admitted as a solicitor of the Supreme Court must,
 - (a) before beginning the practice of law, take the barristers and solicitors' oath in a form approved by the Benchers before a judge of the Provincial Court or a superior court in British Columbia or before a practising lawyer, and
 - (b) be presented in open court before one or more of the judges of the Supreme Court.
- (3) The Executive Director must enter in the barristers and solicitors' roll the full names of all persons who are called as barristers and admitted as solicitors.
- (4) On proof that an applicant who has otherwise qualified for call and admission has taken the oath required under subrule (2)(a), the Executive Director must issue to the applicant a practising certificate, a non-practising certificate or a Canadian legal advisor certificate, as the case may be.
- (5) The Executive Director must not renew a practising certificate or a Canadian legal advisor certificate issued under subrule (4) unless the lawyer has been presented in open court as required under subrule (2)(b).
- (6) As an exception to subrule (5), the Executive Director may renew a certificate issued under subrule (2)(b) within four months of its expiry date.

[(1) and (2) amended, (4) to (6) added 11/1999; (4) and (5) amended effective 07/2010]

Reinstatement

Reinstatement of a former lawyer

- 2-52** (1) A former lawyer may apply for reinstatement as a member of the Society by delivering the following to the Executive Director:
 - (a) an application for reinstatement in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;
 - (b) the appropriate reinstatement fee specified in Schedule 1.

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.
- (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]

Extraordinary action to protect public

- 3-7.1** (1) This Rule applies to a lawyer or articled student who is
- (a) the subject of an investigation or intended investigation under Rule 3-5, and
 - (b) not the subject of a citation in connection with the matter under investigation or intended to be under investigation.
- (2) If they are satisfied that extraordinary action is necessary to protect the public, 3 or more Benchers may
- (a) suspend a lawyer,
 - (b) impose conditions on the practice of a lawyer, or
 - (c) suspend the enrolment of an articled student.
- (3) The Benchers referred to in subrule (2) must not include a member of the Discipline Committee.
- (4) Before Benchers take action under this Rule, there must be a proceeding at which 3 or more Benchers and discipline counsel are present.
- (5) The proceeding referred to in subrule (4) may take place without notice to the lawyer or articled student if the majority of Benchers present are satisfied that notice would not be in the public interest.
- (6) The lawyer or articled student and his or her counsel may be present at a proceeding under this Rule.
- (7) All proceedings under this Rule must be recorded by a court reporter.
- (8) Subject to the Act and these Rules, the Benchers present at a proceeding may determine the practice and procedure to be followed.
- (9) Unless the Benchers present order otherwise, the proceeding is not open to the public.
- (10) The lawyer or articled student or discipline counsel may request an adjournment of a proceeding conducted under this Rule.
- (11) Rule 4-29 applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.

PART 3 – PROTECTION OF THE PUBLIC

- (12) Despite subrule (11), the Executive Director is not required to notify a complainant of a request made under subrule (10).
- (13) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, to a specified date, time and place.
- (14) An order made or varied under this Rule is effective until the first of
 - (a) final disposition of a citation, or
 - (b) rescission, variation or further variation under subrule (15).
- (15) An order made under this Rule may be rescinded or varied by the Benchers who made the order, or a majority of them, on the application of the lawyer or articulated student or discipline counsel.
- (16) On an application under subrule (15) to vary or rescind an order,
 - (a) both the lawyer or articulated student and discipline counsel must be given a reasonable opportunity to make submissions in writing, and
 - (b) the Benchers present may allow oral submissions if, in their discretion, it is appropriate to do so.
- (17) If, for any reason, any of the Benchers who made an order under this Rule is unable to participate in the decision on an application under subrule (15), the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate.

[added 03/2010]

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.

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- (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 Bench 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]

Annual insurance fee

- 3-22** (1) The insurance fee to be paid under section 23(1)(c) of the Act is calculated as follows:
- (a) the appropriate base assessment as specified in Schedule 1; plus
 - (b) any surcharge for which the lawyer is liable under Rule 3-26; minus
 - (c) any credit to which the lawyer is entitled under Rule 3-24.
- (2) If a lawyer undertakes, in a form approved by the Executive Committee, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time insurance fee specified in Schedule 1.
- (3) Subject to subrule (6), a lawyer is not eligible to pay the part-time insurance fee under subrule (2) for 5 years in practice after the Society pays an indemnity claim in respect of the lawyer.
- (4) For a lawyer who does not give the undertaking referred to in subrule (2), the appropriate base assessment is the full-time insurance fee specified in Schedule 1.
- (5) For the purpose of this Rule,
- (a) the average number of hours per week that a lawyer engages in the practice of law and associated activities is calculated over successive 6 months periods, beginning on the effective date of the undertaking referred to in subrule (2), and
 - (b) “**associated activities**” includes practice management, administration and promotion and voluntary activities associated with the practice of law.
- (6) The Executive Director may, in the Executive Director’s discretion, reduce the time that a lawyer is not eligible under subrule (3) to pay the part-time insurance fee or, in extraordinary circumstances, allow the lawyer to pay the part-time insurance fee despite subrule (3).

[(3) amended, (6) added 06/2003]

Payment of annual insurance fee by instalments

- 3-23** (1) A lawyer must pay the insurance fee in two equal annual instalments as follows:
- (a) the first instalment on or before November 30 of the year preceding the year for which it is paid;
 - (b) the second instalment on or before June 30 of the year for which it is paid.
- (2) A lawyer who fails to pay the second instalment by the date prescribed in subrule (1) must immediately cease the practice of law in accordance with section 30(7) of the Act and surrender to the Executive Director his or her practising certificate and any proof of professional liability insurance issued by the Society.

[(2) added 05/2000; (1) amended 07/2004]

Insurance fee credit

- 3-24** (1) The Benchers may approve an annual insurance fee credit and set the conditions that a lawyer must meet to be entitled to the credit.

- (2) When a lawyer is entitled to an annual insurance fee credit, the first instalment of the insurance fee payable by the lawyer is reduced by the amount of the credit.

Exemption from liability insurance

- 3-25** (1) A lawyer is exempt from the requirement to maintain professional liability insurance and pay the insurance fee if the lawyer is
- (a) not engaged in the practice of law anywhere in his or her capacity as a member of the Society, or
 - (b) employed by one of the following and is not engaged in the practice of law except in the course of that employment:
 - (i) a government department;
 - (ii) a corporation other than a law corporation;
 - (iii) a society, trade union or a similar organization.
- (2) A lawyer is not exempt under subrule (1)(b) if the lawyer engages in the practice of law in any way other than as described in those provisions.
- (3) Subrule (4) applies to a lawyer who is entitled to practise law in the jurisdiction of a reciprocating governing body of which the lawyer is a member.
- (4) A lawyer may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee, if, in another Canadian jurisdiction in which the governing body allows a similar exemption for members of the Society, the lawyer
- (a) is resident, and
 - (b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to that required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.
- (5) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee.
- (6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Barreau du Québec that extends to the Canadian legal advisor's practice in British Columbia.

[(3) and (4) added effective 07/2003; (5) and (6) added effective 07/2010]

Deductible, surcharge and reimbursement

- 3-26** (1) If a deductible amount has been paid under the Society's insurance program on behalf of a lawyer, the lawyer must reimburse the Society in full.
- (2) If indemnity has been paid under the Society's insurance program, the lawyer on whose behalf it is paid must
- (a) pay the insurance surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the insurance fee, and

PART 4 – DISCIPLINE

- (2) If it is impractical for any reason to serve a citation as set out in subrule (1)(a), the President may order substituted service, whether or not there is evidence that the citation will probably reach the respondent or will probably come to the respondent's attention or that the respondent is evading service.
- (3) The President may designate another Benchers to act under subrule (2).

[amended, (2) and (3) added 09/1999; (1) amended 09/2007]

Disclosure of citation

- 4-16** (1) Once the respondent has been notified of a direction to issue a citation, the Executive Director may disclose to the public the citation and its status.
- (2) The Executive Director may disclose the outcome of a citation, including dismissal by a panel, rescission by the Discipline Committee or the acceptance of a conditional admission.
 - (3) Disclosure under this Rule may be made by means of the Society's website.
 - (4) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[(2) amended, (3) rescinded 02/2003; (3) replaced, (4) added 05/2003]

Interim suspension, practice conditions or medical examination

4-17 (0.1) In Rules 4-17 to 4-18.1, "**proceeding**" means the proceeding required under subrule (1.11).

- (1) If there has been a direction under Rule 4-13(1) to issue a citation, any 3 Benchers may do one or more of the following:
 - (a) suspend the lawyer, if the 3 Benchers consider, on the balance of probabilities, that the continued practice of the lawyer will be dangerous or harmful to the public or the lawyer's clients;
 - (b) in any case not referred to in paragraph (a), place conditions on the practice of the lawyer;
 - (c) suspend the enrolment of an articulated student;
 - (d) require the respondent to
 - (i) submit to an examination by a qualified medical practitioner named by the 3 Benchers or to be named by the Chair or Vice-Chair of the Discipline Committee, and
 - (ii) instruct the qualified medical practitioner to report to the Discipline Committee on the respondent's ability to practise law or, in the case of an articulated student, the respondent's ability to complete his or her articles.
- (1.1) The 3 Benchers referred to in subrule (1) must not include the Chair of the Discipline Committee.
- (1.11) Before Benchers take action under this Rule, there must be a proceeding at which 3 or more Benchers and discipline counsel must be present.

LAW SOCIETY RULES

- (1.111) The proceeding referred to in subrule (1.11) may take place without notice to the respondent if the majority of Benchers present are satisfied that notice would not be in the public interest.
- (1.12) The respondent and respondent's counsel may be present at a proceeding.
- (1.13) All proceedings under this Rule must be recorded by a court reporter.
- (1.14) Subject to the Act and these Rules, the Benchers present may determine the practice and procedure to be followed at a proceeding.
- (1.15) Unless the Benchers present order otherwise, the proceeding is not open to the public.
- (1.16) The respondent or discipline counsel may request an adjournment of a proceeding.
- (1.17) Rule 4-29 applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.
- (1.18) Despite subrule (1.17), the Executive Director is not required to notify a complainant of a request made under subrule (1.16).
- (1.19) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, to a specified date, time and place.
- (2) An order made under subrule (1) or varied under subrule (3) is effective until the first of
 - (a) final disposition of the citation,
 - (a.1) variation or further variation under subrule (3), or
 - (b) a contrary order under Rule 4-19.
- (3) An order made under subrule (1)(b) or (d) may be varied by the 3 Benchers, or a majority of them, on the application of the respondent or discipline counsel.
- (4) On an application to vary an order under subrule (3),
 - (a) both the respondent and discipline counsel must be given a reasonable opportunity to make submissions in writing, and
 - (b) the 3 Benchers may allow oral submissions if, in their discretion, it is appropriate to do so.

[(1.1) added 10/2001; (1) and (2) amended, (0.1), (1.11) to (1.19), (3) and (4) added 10/2006; (1) amended, (1.111) added 03/2010]

Notification of respondent

- 4-18** When an order is made under Rule 4-17(1) without notice to the respondent, the Executive Director must immediately notify the respondent in writing, that
- (a) the action has been taken,
 - (b) the respondent is entitled, on request, to a transcript of the proceeding under Rule 4-17(1), and
 - (c) the respondent may apply under Rule 4-19 to have the order rescinded or varied.

PART 4 – DISCIPLINE

- (2) Despite subrule (1)(b), if the respondent is a member of another governing body and not a member of the Society, the panel may do one or more of the following:
 - (a) reprimand the respondent;
 - (b) fine the respondent an amount not exceeding \$20,000;
 - (c) prohibit the respondent from practising law in British Columbia permanently or for a specified period of time;
 - (d) declare that, had the respondent been a member of the Society, the panel would have
 - (i) disbarred the respondent,
 - (ii) suspended the respondent, or
 - (iii) imposed conditions on the practice of the respondent.
- (3) The Executive Director must promptly deliver a copy of the panel's reasons prepared under subrule (1)(d) to each party.
- (4) The panel may consider the professional conduct record of the respondent in determining a penalty under this Rule.
- (5) Regardless of the nature of the allegation in the citation, the panel may impose a penalty based on the ungovernability of the respondent by the Society.
- (6) The panel must not impose a penalty under subrule (5) unless the respondent has been given at least 30 days notice that ungovernability may be raised as an issue at the penalty hearing.
- (7) The panel may adjourn the penalty hearing to allow compliance with the notice period in subrule (6).

[(1) and (2) amended, (1.1) added 03/2005; (1) amended 07/2007; 04/2008;
(5) to (7) added 03/2010]

Discipline proceedings involving members of other governing bodies

- 4-36** (1) The Executive Director must send written notice of the action to every governing body of which the person is known to be a member when
- (a) a citation is authorized under Rule 4-13,
 - (b) action is taken under Rule 4-4(1)(b) or (c), or
 - (c) a penalty is imposed under Rule 4-35.
- (2) When a citation is authorized against a lawyer who is a member of a governing body or when another governing body initiates disciplinary proceedings against a member of the Society, the Discipline Committee must consult with the other governing body about the manner in which disciplinary proceedings are to be taken and the Society is bound by any agreement the Discipline Committee makes with the other governing body.
 - (3) The Discipline Committee may agree that the venue of disciplinary proceedings be changed to or from the Society, if it is in the public interest or if there is a substantial savings in cost or improvement in the convenience of any person without compromising the public interest.

- (4) The Discipline Committee may take action under Rule 4-4 against a lawyer who
 - (a) has failed or refused to pay to a governing body a fine or other monetary order arising out of the lawyer's inter-jurisdictional practice,
 - (b) has violated a prohibition against practice imposed by a governing body, or
 - (c) is the subject of a declaration by a governing body under a provision similar to Rule 4-35(2)(d).
- (5) The fact that a lawyer concerned is or has been the subject of disciplinary proceedings by a governing body does not preclude any disciplinary action for the same or related conduct under this Part.
- (6) In a proceeding under this Part, the filing of a duly certified copy of the disciplinary decision of a governing body against a lawyer found guilty of misconduct is proof of the lawyer's guilt.

[(1) amended 09/1999; (4) amended 06/2001]

Discipline involving lawyers practising in other jurisdictions

- 4-36.1** (1) If there is an allegation of misconduct against a member of the Society while practising temporarily in another Canadian jurisdiction under provisions of a governing body equivalent to Rules 2-10.1 to 2-17.1, the Discipline Committee will
- (a) consult with the governing body concerned respecting the manner in which disciplinary proceedings will be conducted, and
 - (b) subject to subrule (2), assume responsibility for the conduct of the disciplinary proceedings under this Part.
- (2) The Discipline Committee may agree to allow the other governing body concerned to assume responsibility for the conduct of disciplinary proceedings under subrule (1), including expenses of the proceeding.
 - (3) In deciding whether to agree under subrule (2), the primary considerations will be the public interest, convenience and cost.
 - (4) To the extent that is reasonable in the circumstances, the Executive Director must do the following on the request of a governing body that is investigating the conduct of a member or former member of the Society or a visiting lawyer who has provided legal services:
 - (a) provide all relevant information and documentation respecting the lawyer or visiting lawyer as is reasonable in the circumstances;
 - (b) cooperate fully in the investigation and any citation and hearing.
 - (5) Subrule (4) applies when the Society agrees with a governing body under subrule (2).
 - (6) When the Executive Director provides information or documentation to a governing body under subrule (4) or (5), the Executive Director may inform any person whose personal, confidential or privileged information may be included of that fact and the reasons for it.

[added effective 07/2003; (4) amended, (6) added 10/2003]

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

LAW SOCIETY RULES

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
 L. Multi-disciplinary practice fees	
1. Application fee (Rule 2-23.3(1)).....	300.00
2. Investigation fee per proposed non-lawyer member of MDP (Rules 2-23.3(1) and 2-23.5(2))	1,125.00

Note: The harmonized sales tax applies to Law Society fees and assessments.

COMPETENCE, QUALITY OF SERVICE AND RELATIONSHIP TO CLIENTS

- (k) discloses all relevant information to the client, and candidly advises the client about the position of a matter, whether such disclosure or advice might reveal neglect or error by the lawyer,
- (l) makes a prompt and complete report when the work is finished or, if a final report cannot be made, makes an interim report where one might reasonably be expected,
- (m) practises free of any self-induced disability, for example intoxicants or drugs, which would interfere with the member's services to the client.

Seeking assistance

- 4. A lawyer shall be alert to recognize any lack of competence for a particular task and, if consulted in such circumstances, shall either:
 - (a) decline to act, or
 - (b) obtain the client's instructions to retain, consult or collaborate with:
 - (i) a lawyer who is competent in that area of law, or
 - (ii) an expert in non-legal matters,as is appropriate in the circumstances.

Promptness

- 5. A lawyer shall make all reasonable efforts to provide prompt service to each client and, if the lawyer foresees undue delay, shall promptly inform the client.

Duty of lawyer and law firm when a change affects clients

- 6. When a lawyer leaves a law firm to practise alone or to join another law firm, the departing lawyer and the law firm have a duty to inform all clients for whom the departing lawyer is the responsible lawyer in a legal matter that the clients have a right to choose who will continue to represent them. The same duty may arise when a firm is winding up or dividing into smaller units.

[added 04/2010]

- 7. This duty does not arise if the lawyers affected by the changes, acting reasonably, conclude that the circumstances make it obvious that a client will continue as a client of a particular lawyer or law firm.

[added 04/2010]

PROFESSIONAL CONDUCT HANDBOOK

8. When this Chapter requires a notification to clients, each client must receive a letter as soon as practicable after the effective date of the changes is determined, informing the client of the right to choose his or her lawyer.

[added 04/2010]

9. It is preferable that this letter be sent jointly by the firm and any lawyers affected by the changes. However, in the absence of a joint announcement, the firm or any lawyers affected by the changes may send letters in substantially the form set out in Appendix 4.

[added 04/2010]

10. Lawyers whose clients are affected by changes in a law firm have a continuing obligation to protect client information and property, and must minimize any adverse effect on the interests of clients.⁶

[added 04/2010]

11. The right of a client to be informed of changes to a law firm and to choose his or her lawyer cannot be curtailed by any contractual or other arrangement.

[added 04/2010]

12. With respect to communication other than that required by these Rules, lawyers should be mindful of the common law restrictions upon uses of proprietary information, and interference with contractual and professional relations between the law firm and its clients.

[added 04/2010]

Pro bono

13. A lawyer's professional responsibility to provide quality legal services to all clients is not affected by the limited ability of some clients to pay for those services, or the fact that the services are provided wholly or partly on a pro bono basis.⁷

[added 06/2010]

FOOTNOTES:

1. For a discussion of the correct procedure in swearing an affidavit or taking a solemn declaration, see Appendix 1 to this *Handbook*.
2. Such as, but not limited to, minority or mental disability.

[added 03/2003]

COMPETENCE, QUALITY OF SERVICE AND RELATIONSHIP TO CLIENTS

3. A lawyer may have special duties of confidentiality to a client lacking capacity. See Chapter 5, Rule 16.

[added 03/2003]

4. A lawyer may not form a client-lawyer relationship with a person who has never been the lawyer's client and who lacks the capacity to instruct the lawyer, except if the lawyer is appointed to act by a court or tribunal, by operation of statute or in a proceeding in which some aspect of the client's mental capacity is in issue. However, a lawyer may act for a person of marginal capacity who is capable of giving instructions on some matters but not others.

[added 03/2003]

5. For example, such assistance might consist of appearing at a scheduled court appearance to protect the person's interests or advising the Public Guardian and Trustee, family members or others of the person's need for assistance. Lawyers must act with great care in these situations since the disclosure of confidential information could open a lawyer to a claim and an accusation of acting unlawfully.

[added 03/2003]

6. This obligation generally includes an obligation to ensure that files transferred to a new lawyer or law firm are properly transitioned, including, when necessary, describing the status of the file and noting any unfulfilled undertakings and other outstanding commitments.

[added 04/2010]

7. The provision of pro bono legal services has been a long tradition of the legal profession, which is consistent with Chapter 1, Canon 3(9). It is up to each lawyer to decide how much pro bono services he or she can provide.

[added 06/2010]

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Public representations

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

[moved from Chapter 14, Rule 6 05/2009]

FOOTNOTES:

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

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

[added 04/1996; amended 05/1996; 12/1999]

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

[amended 01/1994; renumbered 04/1996; amended 03/2010]

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

[renumbered 04/1996; amended 03/2005; 05/2005]

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Tape recording and monitoring conversations

14. Even if it is lawful to do so, a lawyer must not:

- (a) use, or permit another person to use, a tape recorder or other device to record, or
- (b) permit anyone to listen to,

the statements of another lawyer with whom the lawyer is having a conversation, without first informing the other lawyer of the intention to do so.

[amended 09/2007]

14.1 Rule 14 does not apply if the lawyer has reasonable grounds to believe that, during the conversation, the other lawyer will commit or indicate an intention to commit a criminal offence.

[added 09/2007]

Threatening to report another lawyer

15. A lawyer must not threaten to report another lawyer's past illegal or unprofessional conduct to the Law Society.²

[amended 09/2007]

16 to 21. [moved to Chapter 3, Rules 6 to 12 04/2010]

Restrictive covenants

22. A lawyer or a law firm must not require, as a condition of employment of an articulated student, agreement to a restrictive covenant limiting either in time or distance the freedom of the articulated student to engage in practice upon the termination of such employment.

[amended 09/2007]

FOOTNOTES:

- 1. Unless funds are to be paid under an agreement that specifically requires another form of payment or payment by another person, a lawyer must not refuse to accept another lawyer's uncertified cheque for the funds. It is not improper for a lawyer, at his or her own expense, to have another lawyer's cheque certified.

[added 09/2007]

PROFESSIONAL CONDUCT HANDBOOK

2. The duty to report another lawyer to the Law Society under Chapter 13 must be clearly distinguished from the situation where a lawyer threatens to report another lawyer. It is proper for a lawyer to forewarn another lawyer, where an illegality or a violation of a standard of professional responsibility contained in this *Handbook* has not yet occurred, that the other lawyer will be reported to the Law Society if the illegal or unprofessional conduct occurs. It is improper, however, for a lawyer to threaten to report another lawyer for the latter's past illegal or unprofessional conduct. There is a risk that the threatening lawyer will use the threat, or the threatened lawyer will perceive the threat being made, for the purpose of gaining an advantage for the threatening lawyer or his or her client. A lawyer must not use the Law Society's disciplinary machinery to coerce another lawyer into a course of conduct.

It is proper for a lawyer who reasonably believes that another lawyer has committed an illegality or unprofessional conduct, to draw to the latter's attention the specific provision of this *Handbook* or other authority proscribing such conduct.

[renumbered 09/1994; 09/2007]

APPENDIX 4

DUTY OF LAWYER ON TERMINATION OF EMPLOYMENT

[Chapter 3, Rule 9]

1. Letter from departing lawyer

Dear Client:

Re: [Matter]

On [date], I am leaving [or left] ABC law firm to join the law firm of XYZ [or to commence practice as a sole practitioner]. As I am presently the responsible lawyer on the above matter, I am required to inform you that you may retain me (in my new capacity) to continue to represent you in this matter or you may choose to have ABC law firm continue to represent you.

If you wish to retain me to continue in this matter, arrangements to secure your account with ABC law firm will have to be made before the file can be released to me.

Please advise ABC law firm or me in writing of your decision so that continuity in your representation is assured.

Yours very truly,

2. Letter from law firm

Dear Client:

Re: [Matter]

On [date], [departing lawyer] is leaving [or left] our firm to join the law firm of XYZ [or to commence practice as a sole practitioner].

As [departing lawyer] was the responsible lawyer on the above matter, we are required to inform you that you may choose to have [departing lawyer] continue (in his/her new capacity) to represent you in this matter, or you may have our firm continue to represent you, in which case, the file will be handled by [new lawyer].

If you wish to have [departing lawyer] continue to represent you, arrangements to secure your outstanding account with us will have to be made before the file can be released to [departing lawyer].

Please advise us or [departing lawyer] in writing of your decision so that continuity in your representation is assured.

Yours very truly,

ABC Law Firm

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**B.C. LAWYERS' COMPULSORY PROFESSIONAL LIABILITY INSURANCE
2010 ENDORSEMENT NO. 1
ATTACHED TO AND FORMING PART OF POLICY NO. LPL 10-01-01**

INSURER:
THE LSBC CAPTIVE INSURANCE COMPANY LTD.

In consideration of the premium paid, it is hereby understood and agreed that the following amendments are made to this policy effective July 1, 2010:

1. The following changes are made to the DEFINITIONS:

The definition of **Additional Insured** is amended by removing “and” at the end of paragraph (c), adding “and” at the end of paragraph (d), changing the period at the end of paragraph (d) to a semi-colon and adding the following as paragraph (e):

“(e) each present or former **MDP partner** who, at the time of the **error**, was insured by us and a partner in a **multi-disciplinary practice** in which all of the members were in compliance with **Law Society** Rules 2-23.1 through 2-23.12.”

The following definition of “Canadian legal advisor” is added:

“Canadian legal advisor means: a Canadian legal advisor under the **Law Society** Rules.”

The definition of **Damages** is amended by adding “former” after “Rule 57(37) of the” and before “Supreme Court Rules” and by adding “, Rule 14-1 (33) of the Supreme Court Civil Rules, Rule 16-1 (30) of the Supreme Court Family Rules” after “Supreme Court Rules” and before “or Rule 71 of the Court of Appeal Rules” in both paragraph (a) subparagraph (iv) and paragraph (b) subparagraph (ii).

The definition of **Error** is amended by replacing “including a **protocol error** or **personal injury**” in the first sentence of paragraph (a) with “including a **protocol error**, or a **personal injury**”.

The definition of **Individual Insured** is amended by adding “or, for the purposes of Part A of this policy only, each **MDP partner** or former **MDP partner** who made or allegedly made the **error**, provided that all of the members of the **multi-disciplinary practice** were in compliance with **Law Society** Rules 2-23.1 through 2-23.12 at the time of the **error**” after “made or allegedly made the **error**”.

The definition of **Law firm** is amended by adding “a **multi-disciplinary practice**” after “a combination thereof,” and before “or an **apparent partnership**”.

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The following definition of “MDP partner” is added:

“**MDP partner** means: a non-lawyer partner in a **multi-disciplinary practice** in which permission to practise law was granted under Rule 2-23.4 of the **Law Society Rules**.”

The definition of **Member** is amended by adding “, other than a **Canadian legal advisor**,” after “a member” and before “in good standing”.

The following definition of “Multi-disciplinary practice” is added:

“**Multi-disciplinary practice** means: a multi-disciplinary practice as defined in the **Law Society Rules**.”

The definition of **Professional services** is amended by removing “or” at the end of paragraph (d), adding “or” at the end of paragraph (e), changing the period at the end of paragraph (e) to a semi-colon and adding the following as paragraph (f):

“(f) acting as an **MDP partner**, provided that such services support or supplement the practice of law by the **law firm** and are provided under the supervision of a **member**.”

2. The following changes are made to the INSURING AGREEMENTS for Part A Professional Liability:

The second to last sentence of Insuring Agreement A 3.5 is amended by adding “either” after “the **Individual Insured** was practicing law” and before “in accordance with the inter-jurisdictional practice provisions” and by adding “or as a Canadian legal advisor member of the Barreau du Québec” after “and the **Reciprocal Jurisdiction’s** law society”.

The last sentence of Insuring Agreement A 3.5 is amended by adding “or 11” after “Exclusion 7” and before “to a **claim** or potential **claim**”.

3. The following change is made to the EXCLUSIONS:

The second sentence of Exclusion 8 is changed to: “For the purposes of Part B of this policy, this Exclusion 8 shall be read with the words “the Barreau du Québec” substituted for the words “a law society of another province or territory of Canada” and without the word “permanent”.”

4. The following changes are made to the CONDITIONS:

Condition 1.4.3 is amended by adding “either” after “**error** or **related errors** arise out of” and before “your temporary practice in or with respect to” and by adding “, or your practice as a Canadian legal advisor member of the Barreau du Québec,” after “of which you are not a member” and before “the limit of liability stated in Declaration 3(c)”.

The first sentence of Condition 1.6 is amended by adding “either” after “during the **policy period** arising out of” and before “your temporary practice in or with respect to” and by adding “, or your

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practice as a Canadian legal advisor member of the Barreau du Québec,” after “of which you are not a member” and before “is \$2,000,000”.

Condition 6.1 is amended by removing “and were **members** at the time of the act or **error**” after “comply with all conditions promptly”.

The first sentence of Condition 9.3 is amended by adding “or non-lawyer partner” after “If you or any non-**member** lawyer” and before “practising in your law firm”.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Dated this 8th day of June, 2010.

The LSBC Captive Insurance Company Ltd.



Susan I. Forbes, QC, Secretary

INSURANCE POLICIES

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