



MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2010: No. 3 December

Highlights

Law Society Rules:

Discipline: Extensive changes to the discipline rules are intended to make the process of ordering and issuing a citation and running a hearing more efficient and effective. The various changes, which are largely procedural in nature, include the following:

- summary hearing procedure is now available when breach of any order made under the Act or Rules is in issue (Rules 3-6(4), 3-12(3.1), 3-14(6.1) and 4-24.1(1): pp. 65, 68, 68.1 and 107);
- the Discipline Committee will authorize citations, and the chair may act alone in urgent situations (Rules 4-3(2), 4-4(1), 4-4.1(2), 4-9(6) and 4-13(1), (1.1) and (2): pp. 95, 96, 98 and 100);
- the confidentiality that applies to complaints considered by the Discipline Committee is extended to cover the chair's consideration (Rule 4-6(1): p. 96);
- terminology more closely reflects that used in the *Legal Profession Act*, rather than the language of criminal law (Rules 4-6(4), 4-24.1(4), 4-25(2) and (3), 4-34, 4-35, 4-38, 4-38.1, 5-9 and 5-13: pp. 97, 107, 108, 110.2, 110.6, 110.7, 114 and 116);
- issuing a citation will proceed before setting the date of the hearing, with a notice of hearing issued separately, usually to follow (Rules 4-15(1), 4-24 and 4-29(7): pp. 100, 107 and 110.1);
- before a hearing, a party may apply for severance of allegations in a single citation or joinder of two or more citations, or for the determination of other questions (Rules 4-16.1, 4-16.2, 4-17(1) and (1.19), 4-26.1, 4-27(6), 4-29(5), 4-31, 5-2(2) and 5-18(6): pp. 101, 102, 108, 109, 110.1, 111 and 116.2);
- notice must be given, but a respondent or his or her counsel are not required to attend a prehearing or prereview conference (Rules 4-24.1(2), 4-26(1), (2) and (5), 4-27, 4-29(1)-(5), 5-18 and 5-19: pp. 107-110 and 116.2);
- panels may review agreed facts in advance of hearing (Rules 4-30(3) and 4-32: p. 110.1);
- miscellaneous procedural updates (Rules 4-36(1) and (4), 4-43(1), 5-4, 5-5(2): pp. 110.3, 110.8 and 112);
- panel membership is open to non-lawyers (Rule 5-2(4)-(6): p. 111);
- the list of forms of evidence that a panel may consider expressly includes oral and affidavit evidence (Rule 5-5(6): p. 113);
- electronic service of documents is permitted (Rule 10-1: p. 128).

Miscellaneous: The Credentials Committee may require a returning lawyer to take a course such as the Small Firm Practice Course or the Practice Refresher course (Rule 2-59(1.1)-(1.3) and (2): p. 58); with the lawyer's consent, the Law Society may now disclose the complaints history of a lawyer for purposes other than judicial appointments (Rule 3-3(2): p. 63); 2011 fees and assessments are set out in Schedules 1, 2 and 3 (pp. 129-132).

Professional Conduct Handbook: The Handbook is revised to comply with the Supreme Court of Canada ruling in *R. v. Cunningham* that, in a criminal matter, a court has the authority to require counsel seeking to withdraw from a case to continue to represent an accused when the reason for withdrawal is non-payment of fees (Chapter 10, Rules 7, 8 and 9, and footnotes 2 and 3: pp. 28-30); a lawyer's obligation to submit to regulation by the Law Society is clarified (Chapter 13, Rule 3: p. 39).

[continued over]

Insurance Policies: Insurance Policy No. LPL 10-01-01 will be amended effective January 1, 2011 by the 2011 Renewal Endorsement. Minor revisions are made to: the definition of “damages”; Insuring Agreement 2.4; Exclusion 7 and Conditions 4.1, 5.11, 5.4 and 18. Further details will be provided in the *Insurance Issues: Program Report* published with the Spring 2011 newsletter.

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

Manual section	Existing pages to be removed	Amendment pages to be inserted
Law Society Rules	57 – 58, 58.1 – 58.2 63 – 66 [NB: 66.1 – 66.2 remain] 67 – 68, 68.1 – 68.2 95 – 98.2, 99 – 110.4 111 – 116.4 127 – 132	57 – 58, 58.1 – 58.2 63 – 66 67 – 68, 68.1 – 68.2 95 – 110.8 111 – 116.4 127 – 132
Professional Conduct Handbook	27 – 30 39 – 40	27 – 30 39 – 40
Insurance Policies	–	2011 Endorsement (1 – 2): insert directly in front of 2010 Endorsement

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

Updates: This amendment package updates the *Member’s Manual* to **November 18, 2010**. The previous amendment package was 2010: No. 2 July.

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 November 18, 2010

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

[(4) to (6) added 05/2009]

Returning to practice

Definitions

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

[heading and rule amended 06/2006]

2-56 [rescinded 06/2006]

Returning to the practice of law after an absence

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

[(1.1) added 11/1999; (2) amended, (3) to (5) added 05/2000; heading and rule amended, (1.1) rescinded 06/2006]

Qualification examination fee

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

[heading and rule amended, (1) rescinded 06/2006]

Conditions on returning to the practice of law

- 2-59** (1) A lawyer or applicant who has spent a period of 7 years or more not engaged in the practice of law must not practise law without the permission of the Credentials Committee.
- (1.1) Subrule (1) applies
- (a) despite any other Rule, and
 - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.
- (1.2) A lawyer or applicant must apply in writing to the Committee for permission to practise law under subrule (1).
- (1.3) An application under subrule (1.2) may be combined with an application under Rule 2-57(3).

- (2) As a condition of permission to practise law under subrule (1), the Credentials Committee may require one or more of the following in addition to passing the qualification examination:
- (a) successful completion of all or part of one or more of the following:
 - (i) the admission program;
 - (ii) another course offered by the Society or a provider approved by the Society;
 - (b) a written undertaking to do any or all of the following:
 - (i) practise law in British Columbia immediately on being granted permission;
 - (ii) not practise law as a sole practitioner;
 - (iii) practise law only in a situation approved by the Committee for a period set by the Committee, not exceeding 2 years;
 - (iv) [rescinded]
 - (v) practise only in specified areas of law;
 - (vi) not practise in specified areas of law.
- (3) Despite Rule 2-26(3), the Credentials Committee may vary a condition under subrule (2)(a) without the consent of the lawyer concerned.
- (4) On the written application of the lawyer, the Credentials Committee may allow a variation of an undertaking given under subrule (2)(b).

[heading and (1), (2) and (4) amended 06/2006; (1.1) to (1.3) added, (2) amended 11/2010]

2-60 [rescinded 06/2006]

Credentials hearings

Notice to applicant

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

Security for costs

- 2-62** (1) When a hearing is ordered under this Division, the Credentials Committee must set an amount to be deposited by the applicant as security for costs.
- (2) In setting the amount to be deposited as security for costs under this Rule, the Credentials Committee may take into account the circumstances of the matter, including but not limited to, the applicant's
- (a) ability to pay, and
 - (b) likelihood of success in the hearing.
- (3) The amount to be deposited as security for costs cannot exceed an amount that approximates the amount that the panel may order to be paid under Rule 5-9.
- (4) The Credentials Committee may vary the amount set to be deposited as security for costs under this Rule on application by the applicant or counsel for the Society.
- (5) If the amount set for security for costs under this Rule has not been deposited with the Executive Director 15 days before the date set for a hearing, the hearing is adjourned.
- (6) Before the time set for depositing security for costs under subrule (5), an applicant may apply to the Credentials Committee for extension of time, and the Committee may, in its discretion, grant all or part of the extension applied for.

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

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Application

3-1 This Division applies to the following as it does to a lawyer, with the necessary changes and so far as it is applicable:

- (a) a former lawyer;
- (b) an articulated student;
- (c) a visiting lawyer permitted to practise law in British Columbia under Rules 2-10.2 to 2-12;
- (d) a practitioner of foreign law;
- (e) a law corporation.

[amended 11/1999]

Complaints

3-2 Any person may deliver a written complaint against a lawyer to the Executive Director.

Confidentiality of complaints

3-3 (1) No one is permitted to disclose any information or records that form part of the Executive Director's investigation of a complaint or the Complainants' Review Committee's review of it except for the purpose of complying with the objectives of the Act or with these Rules.

(2) Despite subrule (1), the Executive Director may do any of the following:

- (a) disclose information referred to in subrule (1), with the consent of the lawyer who is the subject of the complaint;
- (b) if a complaint has become known to the public, disclose
 - (i) the existence of the complaint,
 - (ii) its subject matter,
 - (iii) its status, including, if the complaint is closed, the general basis on which it was closed, and
 - (iv) any additional information necessary to correct inaccurate information;
- (c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence;
- (d) if, in the course of the investigation of a complaint, a lawyer has given an undertaking to the Society that restricts, limits or prohibits the lawyer's practice in one or more areas of law, disclose the fact that the undertaking was given and its effect on the lawyer's practice.

- (3) For the purpose of subrule (2)(b), the status of a complaint is its stage of progress through the complaints handling process, including, but not limited to the following:
 - (a) opened;
 - (b) under investigation;
 - (c) referred to a Committee;
 - (d) closed.
- (3.1) If the Executive Director discloses the existence of an undertaking under subrule (2)(d) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the undertaking ceases to be in force.
- (4) This Division must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[(2) and (3) amended, (4) added 10/2003; (2) amended 02/2004; (2) amended, (3.1) added 06/2005; (2) amended 07/2007; (2) amended 09/2010]

Consideration of complaints and other information

- 3-4** (1) The Executive Director must consider every complaint received under Rule 3-2.
- (2) Information received from any source that indicates that a lawyer's conduct may constitute a discipline violation must be treated as a complaint under these Rules.

[heading and (2) amended 09/99]

Investigation of complaints

- 3-5** (1) Subject to subrule (2), the Executive Director may, and at the instruction of a member of the Discipline Committee must, investigate the complaint to determine its validity.
- (2) The Executive Director may decline to investigate a complaint or other matter, if the Executive Director is satisfied that the complaint or matter
- (a) is outside the jurisdiction of the Society,
 - (b) is frivolous, vexatious or an abuse of process, or
 - (c) does not allege facts that, if proved, would constitute a discipline violation.
- (3) The Executive Director must deliver to the lawyer a copy of the complaint or, if that is not practicable, a summary of it.
- (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.

PART 3 – PROTECTION OF THE PUBLIC

- (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;
 - (d) breached an order made under the Act or these Rules.

[(4) added 07/2007; (4) amended 10/2010]

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.

Division 2 – Practice Standards

Practice Standards Committee

- 3-10** (1) For each calendar year, the President must appoint a Practice Standards Committee consisting of
- (a) a chair and vice chair, both of whom must be Benchers, and
 - (b) other Benchers and lawyers.
- (2) The President may remove any person appointed under subrule (1).
- (3) At any time, the President may appoint a lawyer or Bencher to the Practice Standards Committee to replace a Committee member who resigns or otherwise ceases membership in the Committee, or to increase the number of members of the Committee.

Objectives

- 3-11** The objectives of the Practice Standards Committee are to
- (a) recommend standards of practice for lawyers,
 - (b) develop programs that will assist all lawyers to practise law competently, and
 - (c) identify lawyers who do not meet accepted standards in the practice of law, and recommend remedial measures to assist them to improve their legal practices.

Consideration of complaints

- 3-12** (1) The Practice Standards Committee must consider any complaint referred to it by the Executive Director, the Complainants' Review Committee or any other Committee, and may instruct the Executive Director to make or authorize any further investigation that the Practice Standards Committee considers desirable.
- (2) While considering a complaint under this Rule, the Practice Standards Committee may also consider any other matter arising out of the lawyer's practice of law.
- (3) When considering a complaint under this Rule, the Practice Standards Committee may do one or more of the following:
- (a) decide that no further action be taken on the complaint;
 - (b) make recommendations to the lawyer, if it considers that the carrying out of the recommendations will improve the lawyer's practice of law;
 - (c) require the lawyer to meet and discuss the circumstances of the complaint with a lawyer or Bencher designated by the Practice Standards Committee, who must then report to the Committee;
 - (d) find that there are reasonable grounds to believe that the lawyer is practising law in an incompetent manner and order a practice review in respect of the lawyer's practice;
 - (e) refer the complaint to the Discipline Committee.

LAW SOCIETY RULES

- (3.1) Despite subrule (3)(e), the Practice Standards Committee 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;
 - (d) breached an order made under the Act or these Rules.
- (4) The Practice Standards Committee is not precluded from taking any of the steps in subrule (3) or (3.1) because it has previously taken another of those steps in the same matter.

[(3.1) added, (4) amended 07/2007; (3.1) amended 10/2010]

Practice review

- 3-13** (1) The Practice Standards Committee may order a practice review of the practice of a lawyer under Rule 3-12(3)(d) or if the lawyer consents to the review.
- (2) When a practice review is ordered, the Executive Director must name one or more qualified persons to conduct the review.
- (3) After consultation with the lawyer and the practice reviewers, the Executive Director must set a date, time and place for the practice review.
- (4) A lawyer whose practice is being reviewed under subrule (1) must answer any inquiries and provide the practice reviewers with any information, files or records in the lawyer's possession or power as reasonably requested.
- (5) After completing a practice review, the practice reviewers must deliver to the Practice Standards Committee and to the lawyer a written report of their findings and recommendations.

Action by the Practice Standards Committee

- 3-14** (1) After its consideration of a report received under Rule 3-12(3)(c) or 3-13(5), the Practice Standards Committee must
- (a) decide that no further action be taken, or
 - (b) recommend that the lawyer do one or more of the following:
 - (i) undertake not to practise in specified areas of law;
 - (ii) satisfactorily complete a remedial program;
 - (iii) satisfactorily complete an examination approved by the Committee or its designate;
 - (iv) obtain a psychiatric or psychological assessment or counselling, or both, and, if the Committee requests, provide a report on that assessment or counselling to the Committee;

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- (v) obtain a medical assessment or assistance, or both, and if the Committee requests, provide a report on that assessment or assistance to the Committee;
 - (vi) practise in a setting approved by the Committee, including under the supervision of a lawyer approved by the Committee;
 - (vii) take other steps intended to improve the lawyer's practice of law or otherwise protect the public interest.
- (2) When making recommendations under subrule (1)(b), the Practice Standards Committee may set one or more dates by which the lawyer is to complete the recommendations.
- (3) On application by the lawyer or the Executive Director, the Practice Standards Committee may extend the date by which the lawyer is to complete a recommendation.
- (4) The Practice Standards Committee's recommendations under subrule (1)(b) form part of the lawyer's professional conduct record.
- (5) The Executive Director must reduce the Practice Standards Committee's recommendations to writing and deliver a copy to the lawyer.
- (6) The Practice Standards Committee may, at any stage, refer to the Discipline Committee
- (a) all or any part of a practice review report delivered under Rule 3-13(5),
 - (b) a report on the manner in which the lawyer has carried out or followed any recommendations or has failed or refused to do so,
 - (c) an order made under Rule 3-14.1, or
 - (d) a report on the failure to comply with an order made under Rule 3-14.1.
- (6.1) Despite subrule (6), the Practice Standards Committee may refer a report to the Chair of the Discipline Committee with respect to 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;
 - (d) breached an order made under the Act or these Rules.
- (7) The Practice Standards Committee is not precluded from making a recommendation under subrule (1) or a referral under subrule (6) or (6.1) because it has previously made a recommendation or a referral in the same matter.

[(6.1) added, (7) amended 07/2007; (1), (5) and (6) amended 09/2007; (6.1) amended 10/2010]

Conditions or limitations on practice

3-14.1 (1) If the lawyer refuses or fails to comply with a recommendation under Rule 3-14(1)(b) by the time set by the Practice Standards Committee under Rule 3-14(2), the Committee may make an order imposing conditions and limitations on the lawyer's practice, including but not limited to the following:

- (a) specifying areas of law in which the lawyer must not practise;
- (b) requiring that the lawyer satisfactorily complete a remedial program;
- (c) requiring that the lawyer satisfactorily complete an examination approved by the Committee or its designate;
- (d) requiring that the lawyer obtain a psychiatric or psychological assessment or counselling, or both, and, if the Committee requests, provide a report on that assessment or counselling to the Committee;
- (e) requiring that the lawyer obtain a medical assessment or assistance, or both, and if the Committee requests, provide a report on that assessment or assistance to the Committee;
- (f) requiring that the lawyer practise in a setting approved by the Committee, including under the supervision of a lawyer approved by the Committee;
- (g) requiring that the lawyer take other steps intended to improve the lawyer's practice of law or otherwise protect the public interest.

(2) At least 30 days before the Practice Standards Committee is to make an order under subrule (1), the Executive Director must deliver to the lawyer notice of the following:

- (a) the terms of the proposed order;
- (b) the date on which the proposed order is to take effect;
- (c) the reasons for the proposed order;
- (d) the means by which the lawyer may make submissions to the Practice Standards Committee concerning the proposed order and the deadline for making such submissions before the order is to be considered by the Committee.

(3) A lawyer must comply with an order made under this Rule.

[added 09/2007]

Remedial program

3-15 (1) A remedial program under this Division may include any program intended to improve the lawyer's knowledge and skill in the practice of law, including, but not limited to, one or more of the following:

- (a) a continuing legal education course;
- (b) a remedial course;
- (c) a course offered by an educational institution;
- (d) a program of mentoring or supervision by a practising lawyer approved by the Practice Standards Committee.

(2) To form part of a remedial program, a course or program must be approved by the Practice Standards Committee or its designate.

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Interpretation and application

- 4-1** (1) This Part applies to a former lawyer, an articled student, a visiting lawyer permitted to practise law under Rules 2-10.2 to 2-12 and a practitioner of foreign law as it does to a lawyer, with the necessary changes and so far as it is applicable.
- (2) This Part must be interpreted in a manner consistent with standards of simplicity, fairness and expediency, and so as to provide maximum protection to the public and to lawyers.
- (3) In this Part, “**conduct meeting**” means a meeting that a lawyer is required to attend under Rule 4-4(1)(a.2).

[(1) amended 11/1999; (3) added 07/2005]

Discipline Committee

- 4-2** (1) For each calendar year, the President must appoint a Discipline Committee consisting of
- (a) a chair and vice chair, both of whom must be Benchers, and
 - (b) other Benchers and lawyers.
- (2) The President may remove any person appointed under subrule (1).
- (3) At any time, the President may appoint a lawyer or Bencher to the Discipline Committee to replace a Committee member who resigns or otherwise ceases membership in the Committee, or to increase the number of members of the Committee.
- (4) Any function of the Chair of the Discipline Committee under this Part may be performed by the Vice Chair if the Chair is not available for any reason, or by another Bencher member of the Committee designated by the President if neither the Chair nor the Vice-Chair is available for any reason.

[(4) added 07/2007]

Consideration of complaints by Committee

- 4-3** (1) The Discipline Committee must consider any complaint referred to it under these Rules and may instruct the Executive Director to make or authorize further investigation that the Discipline Committee considers desirable.
- (2) If, in the view of the Executive Director and the Chair of the Discipline Committee, there is a need to act before a meeting of the Committee can be arranged, the Executive Director may refer a complaint to the Chair for consideration under Rule 4-4.1.

[heading and rule amended 07/2007; (2) added 10/2010]

Action on complaints

- 4-4** (1) After its consideration under Rule 4-3, the Discipline Committee must
- (a) decide that no further action be taken on the complaint,
 - (a.1) authorize the chair or other Bencher member of the Discipline Committee to send a letter to the lawyer concerning the lawyer’s conduct,

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- (a.2) require the lawyer to attend a meeting with one or more Benchers or lawyers to discuss the conduct of the lawyer,
 - (b) require the lawyer to appear before the Conduct Review Subcommittee, or
 - (c) direct that the Executive Director issue a citation against the lawyer under Rule 4-13(1).
- (2) In addition to the determination under subrule (1), the Discipline Committee may refer any matter or any lawyer to the Practice Standards Committee.
 - (3) In addition to any action taken under subrules (1) and (2), if a complaint discloses that there may be grounds for revoking a law corporation's permit under Rule 9-11, the Discipline Committee may order a hearing on the revocation of the law corporation's permit.
 - (4) At any time before the Discipline Committee makes a decision under Rule 4-9(6)(a) to (c), the Committee may resolve to rescind a decision made under subrule (1)(b) to require a lawyer to appear before the Conduct Review Subcommittee and substitute another decision under subrule (1).

[(1) amended, (4) added 07/2005; (1) amended 10/2010]

Consideration of complaints by Chair

- 4-4.1** (1) The Chair of the Discipline Committee must consider any complaint referred to him or her under these Rules and may instruct the Executive Director to make or authorize further investigation that the Chair considers desirable.
- (2) After considering a complaint under subrule (1), the Chair of the Discipline Committee must
- (a) direct that the Executive Director issue a citation against the lawyer under Rule 4-13(1), or
 - (b) refer the complaint to the Discipline Committee.

[added 07/2007; (2) amended 10/2010]

Notification

- 4-5** The Executive Director must notify the complainant and the lawyer or law corporation in writing of the determination of the Discipline Committee under Rule 4-4 or of the Chair under Rule 4-4.1.

[amended 07/2007]

Confidentiality of Discipline Committee deliberations

- 4-6** (1) No one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these Rules:
- (a) all of the information and documents that form part of the consideration of a complaint under Rule 4-4 or 4-4.1;
 - (b) the result of a consideration under Rule 4-4.

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- (2) As an exception to subrule (1), the Executive Director may disclose information referred to in that subrule, with the consent of the lawyer, in responding to an enquiry made for the purpose of a potential judicial appointment.
- (3) No one is permitted to disclose a direction to issue a citation until the respondent is notified.
- (4) Despite subrule (3), the Executive Director may disclose to the public a direction to issue a citation, its subject matter and its status before the respondent is notified if
 - (a) the identity of the respondent has already been disclosed to the public,
 - (b) the citation is in respect of an offence to which the respondent has pleaded guilty or of which the respondent has been found guilty, or
 - (c) the citation is based on a complaint that has become known to the public.
- (5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.
- (6) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[(4) amended 05/2003; (5) amended 02/2004; (1) and (4) amended 10/2010]

Conduct letter from the Chair

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

[added 07/2005]

Conduct meeting

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

[added 07/2005]

Conduct Review Subcommittee

- 4-7** (1) The Discipline Committee or the chair of the Discipline Committee may appoint a Conduct Review Subcommittee to consider the conduct of a lawyer referred to the Subcommittee under Rule 4-4(1)(b).

- (2) A Conduct Review Subcommittee
 - (a) must include at least one lawyer,
 - (b) may include one or more appointed Benchers, and
 - (c) must be chaired by a Bencher or a Life Bencher.

[(2) amended 09/2009]

Conduct review meeting

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

[(2) amended 09/1999]

Conduct Review Subcommittee report

- 4-9** (1) The Conduct Review Subcommittee must
- (a) prepare a written report of its findings of fact, conclusions and any recommendations, and
 - (b) deliver a copy of that report to the lawyer, together with written notice that the lawyer has 30 days from the date of the notice to notify the chair of the Subcommittee in writing of any dispute as to the contents of the report and the reasons he or she disputes the contents of the report.
- (2) If the Subcommittee considers it necessary for the effective consideration of the lawyer's dispute, it may order a further meeting.
- (3) If a further meeting is ordered under subrule (2), Rule 4-8 applies.
- (4) The Subcommittee must consider the lawyer's dispute and
- (a) amend its report as it considers appropriate, or
 - (b) forward its report to the Discipline Committee without amendment.
- (5) The Subcommittee must notify the lawyer in writing of its decision under subrule (4) and, if the report is amended, provide a copy of the amended report to
- (a) the lawyer, and
 - (b) the Discipline Committee.
- (6) After considering the Conduct Review Subcommittee's report, the Discipline Committee must do one or more of the following:
- (a) decide to take no further action on the complaint;
 - (b) refer the lawyer to the Practice Standards Committee;

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- (c) direct that a citation be issued against the lawyer under Rule 4-13(1);
 - (d) rescind the decision under Rule 4-4(1)(b) to require the lawyer to appear before the Conduct Review Subcommittee, and substitute another decision under Rule 4-4(1).
- (7) A member of the Discipline Committee who has participated in the Conduct Review Subcommittee is not, for that reason, precluded from participating in and voting on a decision under subrule (6).
- (8) After making its decision under subrule (6), the Discipline Committee must
- (a) notify the lawyer and the complainant of its decision, and
 - (b) subject to Rule 4-10, deliver a copy or summary of the report to the complainant.

[(6) amended 07/2005; (8) amended 10/2007; (6) amended 10/2010]

Privilege and confidentiality

- 4-10** In complying with Rule 4-9, the Discipline Committee and the Conduct Review Subcommittee must not disclose to the complainant information subject to the solicitor and client privilege of a client other than the complainant or other confidential information that the complainant is not entitled to receive.

[amended 07/05]

Publication and disclosure

- 4-11** (1) The Executive Director may publish and circulate to the profession a summary of the circumstances of a matter that has been the subject of a conduct review.
- (2) A summary published under subrule (1) must not identify the lawyer or complainant unless that person consents in writing to being identified.
- (3) If a complaint giving rise to a conduct review is known to the public or if a conduct review is ordered in a matter that was the subject of a citation that has been rescinded, the Executive Director may disclose
- (a) the fact that the lawyer is or was required to appear before the Conduct Review Subcommittee, and
 - (b) the decision of the Discipline Committee under Rule 4-9(6).
- (4) Subject to subrule (5), the Executive Director may disclose the report of a Conduct Review Subcommittee that has been considered by a hearing panel as part of a lawyer's professional conduct record under Rule 4-35(4).
- (5) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[heading amended, (3) to (5) added 10/03]

Evidence of conduct review at the hearing of a citation

- 4-12** If a hearing is held on a citation issued following a conduct review,
- (a) the Conduct Review Subcommittee's written report is not admissible at the hearing, and
 - (b) no member of the Conduct Review Subcommittee is permitted to testify as to any statement made by the lawyer during the conduct review, unless the matter is put in issue by the respondent.

Direction to issue, expand or rescind citation

- 4-13** (1) The Discipline Committee or the chair of the Committee may order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer.
- (1.1) After a hearing has been ordered under subrule (1), the Discipline Committee may direct the Executive Director to add an allegation to a citation.
 - (2) At any time before a panel makes a determination under Rule 4-35, the Discipline Committee may rescind a citation or an allegation in a citation and substitute another decision under Rule 4-4(1).

[(2) amended 04/2008; heading, (1) and (2) amended, (1.1) added 10/2010]

Contents of citation

- 4-14** (1) A citation may contain one or more allegations.
- (2) Each allegation in a citation must
 - (a) be clear and specific enough to give the respondent notice of the misconduct alleged, and
 - (b) contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proved against the respondent and to identify the transaction referred to.

Notice of citation

- 4-15** (1) A citation must be served on the respondent
- (a) personally, or by mailing it by registered mail to the respondent's last known address, and
 - (b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.
- (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 Benchler to act under subrule (2).

[amended, (2) and (3) added 09/1999; (1) amended 09/2007; heading and (1) amended 10/2010]

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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]

Amending an allegation in a citation

- 4-16.1** (1) Discipline counsel may amend an allegation contained in a citation
- (a) before the hearing begins, by giving written notice to the respondent and the Executive Director, and
- (b) after the hearing has begun, with the consent of the respondent.
- (2) The panel may amend a citation after the hearing has begun
- (a) on the application of a party, or
- (b) on its own motion.
- (3) The panel must not amend a citation under subrule (2) unless the respondent and discipline counsel have been given the opportunity to make submissions respecting the proposed amendment.

[added 10/2010]

Severance and joinder

- 4-16.2** (1) Before a hearing begins, the respondent or discipline counsel may apply in writing to the Executive Director for an order that
- (a) one or more allegations in a citation be determined in a separate hearing from one or more other allegations in the same citation, or
- (b) two or more citations be determined in one hearing.
- (2) An application under subrule (1) must
- (a) be copied to the party not making the application, and
- (b) state the grounds for the order sought.
- (3) The Executive Director must promptly notify the President of an application under subrule (1).
- (4) The President may
- (a) allow the application with or without conditions,
- (b) designate another Bencher to make a determination, or
- (c) refer an application to a prehearing conference.

[added 10/2010]

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 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.
- (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.

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- (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 begun, the Benchers present may adjourn the proceeding, with or without conditions, generally or 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; (1) and (1.19) amended 10/2010]

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.

Disclosure

- 4-18.1** (1) Unless an order has been made under Rule 4-17(1), no one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these Rules:
- (a) the fact that a Committee or an individual has referred a matter for consideration by 3 or more Benchers under Rule 4-17;
 - (b) the scheduling of a proceeding under Rule 4-17;
 - (c) the fact that a proceeding has taken place.
- (2) When an order has been made or refused under Rule 4-17(1), the Executive Director may, on request, disclose the fact of the order or refusal and the reasons for it.

[added 10/2006]

Review of interim suspension, practice conditions or medical examination order

- 4-19** (1) If an order has been made under Rule 4-17(1), the respondent may apply in writing to the President at any time for rescission or variation of the order.
- (2) An application under subrule (1) must be heard as soon as practicable and, if the respondent has been suspended without notice, in any event not later than 7 days after the date on which it is received by the Society, unless the respondent consents to a longer time.
- (3) [rescinded]
- (4) When application is made under subrule (1), the President must appoint a new panel under Rule 4-28.
- (5) A panel appointed under subrule (4) must not include a person who
- (a) participated in the decision that authorized the issue of the citation,
 - (b) was one of the Benchers who made the order under review, or
 - (c) is part of a panel assigned to hear the citation.
- (6) A hearing under this Rule is open to the public, but the panel may exclude some or all members of the public in any circumstances it considers appropriate.
- (6.1) On application by anyone, the panel may make the following orders to protect the interests of any person:
- (a) an order that specific information not be disclosed;
 - (b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).
- (7) All proceedings at a hearing under this Rule must be recorded by a court reporter, and any person may obtain, at his or her expense, a transcript of any part of the hearing that he or she was entitled to attend.
- (8) The respondent and discipline counsel may call witnesses to testify who
- (a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and
 - (b) are subject to cross-examination.
- (9) If the order under Rule 4-17(1) took effect without notice to the respondent, witnesses called by discipline counsel must testify first, followed by witnesses called by the respondent.
- (10) If subrule (9) does not apply, witnesses called by the respondent must testify first, followed by witnesses called by discipline counsel.
- (11) The panel may
- (a) accept an agreed statement of facts, and
 - (b) admit any other evidence it considers appropriate.

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- (12) Following completion of the evidence, the panel must
 - (a) invite the respondent and discipline counsel to make submissions on the issues to be decided by the panel,
 - (b) decide by majority vote whether cause has been shown by the appropriate party under subrule (13) or (14), as the case may be, and
 - (c) make an order if required under subrule (13) or (14).
- (13) If an order has been made under Rule 4-17(1) with notice to the respondent, the panel must, if cause is shown on the balance of probabilities by or on behalf of the respondent, rescind or vary the order.
- (14) If an order has been made under Rule 4-17(1) without notice to the respondent, the panel must rescind or vary the order, unless discipline counsel shows cause, on the balance of probabilities, why the order should not be rescinded or varied.

[(6) amended, (6.1) added 09/1999; (1), (4), (12) and (14) amended, (3) rescinded 10/2006;
(11) amended 04/2009]

Appointment of discipline counsel

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

Conditional admissions

- 4-21** (1) A respondent may, at least 14 days before the date set for a hearing under this Part, tender to the Discipline Committee a conditional admission of a discipline violation.
- (2) The chair of the Discipline Committee may waive the 14-day time limit in subrule (1).
 - (3) The Discipline Committee may, in its discretion,
 - (a) accept the conditional admission,
 - (b) accept the conditional admission subject to any undertaking that the Committee requires the respondent to give in order to protect the public interest, or
 - (c) reject the conditional admission.
 - (4) If the Discipline Committee accepts a conditional admission tendered under this Rule,
 - (a) those parts of the citation to which the conditional admission applies are resolved,

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- (b) the Executive Director must
 - (i) record the respondent's admission on the respondent's professional conduct record, and
 - (ii) notify the respondent and the complainant of the disposition, and
 - (c) subject to solicitor and client privilege and confidentiality, the Executive Director may disclose the reasons for the Committee's decision.
- (5) A respondent who undertakes under this Rule not to practise law is a person who has ceased to be a member of the Society as a result of disciplinary proceedings under section 15(3) of the Act.

[(3) and (4) amended, (5) added 02/2003; (4) amended 05/2003; 10/2007]

Consent to disciplinary action

- 4-22** (1) A respondent may, at least 14 days before the date set for a hearing under this Part, tender to the Discipline Committee a conditional admission of a discipline violation and the respondent's consent to a specified disciplinary action.
- (2) The chair of the Discipline Committee may waive the 14-day limit in subrule (1).
- (3) The Discipline Committee may, in its discretion, accept or reject a conditional admission and proposed disciplinary action.
- (4) If the Discipline Committee accepts the conditional admission and proposed disciplinary action, it must instruct discipline counsel to recommend its acceptance to the hearing panel.
- (5) If the panel accepts the respondent's proposed disciplinary action it must
 - (a) instruct the Executive Director to record the lawyer's admission on the lawyer's professional conduct record,
 - (b) impose the disciplinary action that the respondent has proposed, and
 - (c) notify the respondent and the complainant of the disposition.

[(5) amended 10/2007]

Rejection of admissions

- 4-23** (1) A conditional admission tendered under Rule 4-21 must not be used against the respondent in any proceeding under this Part or Part 5 unless the admission is accepted by the Discipline Committee.
- (2) A conditional admission tendered under Rule 4-22 must not be used against the respondent in any proceeding under this Part unless
 - (a) the admission is accepted by the Discipline Committee, and
 - (b) the admission and proposed disciplinary action is accepted by a hearing panel.
- (3) If a panel rejects the respondent's proposed disciplinary action tendered in accordance with Rule 4-22, it must advise the chair of the Discipline Committee of its decision and proceed no further with the hearing of the citation.

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- (4) On receipt of a notification under subrule (3), the chair of the Discipline Committee must instruct discipline counsel to proceed to set a date for the hearing of the citation.
- (5) When a panel rejects a proposed disciplinary action tendered in accordance with Rule 4-22, no member of that panel is permitted sit on the panel that subsequently hears the citation.

[(1) amended 02/2003]

Notice of hearing

- 4-24** (1) The date, time and place for the hearing to begin must be set
- (a) by agreement between discipline counsel and the respondent, or
 - (b) failing agreement, by the Executive Director or by the Benchers presiding at a prehearing conference.
- (2) When a date is set under subrule (1), the Executive Director must notify the respondent and the complainant in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the respondent consents to a shorter notice period.
- (3) Written notification under subrule (2) may be made at the same time that the citation is served under Rule 4-15, or at a later time.

[heading, (1) and (2) amended, (3) added 10/2010]

Summary hearing

- 4-24.1** (1) This Rule may be applied in respect of the hearing of a citation comprising only allegations that the respondent has done one or more of the following:
- (a) breached a Rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to a communication from the Society;
 - (d) breached an order made under the Act or these Rules.
- (2) [rescinded]
- (3) Unless the panel rules otherwise, the respondent and discipline counsel may adduce evidence by
- (a) affidavit, or
 - (b) an agreed statement of facts.
- (4) Despite Rules 4-34 and 4-35, the panel may consider facts, determination, disciplinary action and costs and issue a decision respecting all aspects of the proceeding.

[added 07/2007; (3) amended 04/2009; (1) amended 12/2009; (1) and (4) amended, (2) rescinded 10/2010]

Demand for disclosure of evidence

- 4-25** (1) In this Rule, “**evidence**” does not include any information or document about any discussion or other communication with the Ombudsperson in that capacity.
- (2) At any time after a citation has been issued and before the hearing begins, a respondent may demand in writing that discipline counsel disclose the evidence that the Society intends to introduce at the hearing.
- (3) On receipt of a demand for disclosure under subrule (2), discipline counsel must provide the following to the respondent by a reasonable time before the beginning of the hearing:
- (a) a copy of every document that the Society intends to tender in evidence;
 - (b) a copy of any statement made by a person whom the Society intends to call as a witness;
 - (c) if documents provided under paragraphs (a) and (b) do not provide enough information, a summary of the evidence that the Society intends to introduce;
 - (d) a summary of any other relevant evidence in discipline counsel’s possession or in a Society file available to discipline counsel, whether or not counsel intends to introduce that evidence at the hearing.

[(3) amended 09/1999; (2) and (3) amended 10/2010]

Application for details of the circumstances

- 4-26** (1) Before a hearing begins, the respondent may apply for disclosure of the details of the circumstances of misconduct alleged in a citation by delivering to the Executive Director and discipline counsel written notice setting out the substance of the application and the grounds for it.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
- (3) If the President is satisfied that an allegation in the citation does not contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proved, and to identify the transaction referred to, the President must order discipline counsel to disclose further details of the circumstances.
- (4) Details of the circumstances disclosed under subrule (3) must be
- (a) in writing, and
 - (b) delivered to the respondent or respondent’s counsel.
- (5) The President may designate
- (a) another Bencher to make a determination under subrule (3), or
 - (b) refer the application to a prehearing conference.

[(1), (2) and (5) amended 10/2010]

Preliminary questions

- 4-26.1** (1) Before a hearing begins, the respondent or discipline counsel may apply for the determination of a question relevant to the hearing by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it,

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- (2) The Executive Director must promptly notify the President of an application under subrule (1).
- (3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:
 - (a) appoint a panel to determine the question;
 - (b) refer the question to a prehearing conference;
 - (c) refer the question to the panel at the hearing of the citation.
- (4) The President may designate another Bencher to exercise the discretion under subrule (3).
- (5) A panel appointed under subrule (3)(a) is not seized of the citation or any question pertaining to the citation other than that referred under that provision.

[added 10/2010]

Pre-hearing conference

- 4-27** (1) The President may order a pre-hearing conference at any time before the hearing on a citation begins, at the request of the respondent or discipline counsel, or on the President's own initiative.
- (2) When a conference has been ordered under subrule (1), the President must
 - (a) set the date, time and place of the conference, and
 - (b) designate a Bencher to preside at the conference.
 - (2.1) The Executive Director must notify the respondent and discipline counsel of the time and place of the conference.
 - (3) Discipline counsel must be present at the conference.
 - (3.1) The respondent may attend the conference in person, through counsel or both.
 - (3.2) If the respondent fails to attend the conference, the Bencher presiding may proceed with the conference in the absence of the respondent and may make any order under this Rule, if the Bencher is satisfied that the respondent had notice of the conference.
 - (4) Any person may participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this Rule.
 - (5) The conference may consider
 - (a) the simplification of the issues,
 - (b) the necessity or desirability of amendments to the citation,
 - (c) the possibility of obtaining admissions that might facilitate the hearing,
 - (d) the discovery and production of documents,

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- (d.1) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public, or that exhibits and other evidence be excluded from public access,
 - (e) setting a date for the hearing to begin, and
 - (f) [rescinded]
 - (g) any other matters that may aid in the disposition of the citation.
- (5.1) The respondent or discipline counsel may apply to the Bencher presiding at the conference for an order
- (a) for discovery and production of documents,
 - (b) to withhold the identity or contact information of a witness,
 - (c) to adjourn the hearing of the citation,
 - (d) for severance of allegations or joinder of citations under Rule 4-16.2,
 - (e) for disclosure of the details of the circumstances of misconduct alleged in a citation under Rule 4-26, or
 - (f) concerning any other matters that may aid in the disposition of the citation.
- (6) The Bencher presiding at a pre-hearing conference may
- (a) adjourn the conference generally or to a specified date, time and place,
 - (b) [rescinded]
 - (c) set a date for the hearing to begin, and
 - (d) allow or dismiss an application made under subrule (5.1) or referred to the conference under this Part.

[(5) amended 05/2003; (1) and (3) to (6) amended, (2.1), (3.1), (3.2) and (5.1) added 10/2010]

Appointment of panel

- 4-28** When a citation is issued under Rule 4-13(1), the President must establish a panel to conduct a hearing, make a determination under Rule 4-34 and take action, if appropriate, under Rule 4-35.

Adjournment

- 4-29** (1) Before a hearing begins, the respondent or discipline counsel may apply for an order that the hearing be adjourned by delivering to the Executive Director and the other party written notice setting out the grounds for the application.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
- (3) Before the hearing begins, the President must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.
- (4) The President may
- (a) designate another Bencher to make a determination under subrule (3), or
 - (b) refer the application to a prehearing conference.

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- (5) After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.
- (6) When an adjournment is granted under this Rule, the Executive Director must notify the complainant.
- (7) Rule 4-24 does not apply when a hearing is adjourned and re-set for another date.

[(1) amended 09/1999; 10/2006; (2) and (3) amended 10/2007; (2) amended, (6) added 04/2009; (1) to (5) amended, (7) added 10/2010]

Preliminary procedures

- 4-30** (1) Before hearing any evidence on the allegations set out in the citation, the panel must determine whether
- (a) the citation was served in accordance with Rule 4-15, or
 - (b) the respondent waives any of the requirements of Rule 4-15.
- (2) If the requirements of Rule 4-15 have been met, or have been waived by the respondent, the citation or a copy of it must be filed as an exhibit at the hearing, and the hearing may proceed.
- (3) Despite subrule (1), before the hearing begins, the panel may receive and consider
- (a) the citation, and
 - (b) an agreed statement of facts.

[(3) added 10/2010]

4-31 [rescinded 10/2010]

Evidence of respondent

- 4-32** Discipline counsel must notify the respondent of an application for an order that the respondent give evidence at the hearing.

[heading and rule amended, (2) rescinded 10/2010]

Communication with Ombudsperson

- 4-33** (1) This Rule is to be interpreted in a way that will facilitate the Ombudsperson assisting in the resolution of disputes through communication without prejudice to the rights of any person.
- (2) Communication between the Ombudsperson acting in that capacity and any person receiving or seeking assistance from the Ombudsperson is confidential and must remain confidential in order to foster an effective relationship between the Ombudsperson and that individual.
- (3) The Ombudsperson must hold in strict confidence all information acquired in that capacity from participants.

- (4) In a proceeding under this Part or Part 2
 - (a) no one is permitted to give evidence about any discussion or other communication with the Ombudsperson in that capacity, and
 - (b) no record can be admitted in evidence or disclosed under Rule 4-25 or 4-26 if it was produced
 - (i) by or under the direction of the Ombudsperson in that capacity, or
 - (ii) by another person while receiving or seeking assistance from the Ombudsperson, unless the record would otherwise be admissible or subject to disclosure under Rule 4-25 or 4-26.

Submissions and determination

- 4-34** (1) Following completion of the evidence, the panel must invite submissions from discipline counsel and the respondent on each allegation in the citation.
- (2) After submissions under subrule (1), the panel must
 - (a) find the facts and make a determination on each allegation, and
 - (b) prepare written reasons for its findings on each allegation.
 - (3) The Executive Director must promptly deliver a copy of the panel's reasons prepared under subrule (2)(b) to each party.

[(2) amended 07/2007; heading, (1) and (2) amended 10/2010]

Disciplinary action

- 4-35** (1) Following a determination under Rule 4-34 adverse to the respondent, the panel must
- (a) invite the respondent and discipline counsel to make submissions as to disciplinary action,
 - (b) take one or more of the actions referred to in section 38(5) or (6) of the Act,
 - (c) include in its decision under this Rule
 - (i) any order, declaration or imposition of conditions under section 38(7) of the Act, and
 - (ii) any order under Rule 5-9 on the costs of the hearing, including any order respecting time to pay,
 - (d) prepare a written record, with reasons, of its action taken under subrule (b) and any action taken under subrule (c),
 - (e) if it imposes a fine, set the date by which payment to the Society must be completed, and
 - (f) if it imposes conditions on the respondent's practice, set the date by which the conditions must be fulfilled.
- (1.1) If a panel gives reasons orally for its decision under Rule 4-34(2)(a), the panel may proceed under subrule (1) before written reasons are prepared under Rule 4-34(2)(b).

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- (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 disciplinary action under this Rule.
- (5) Regardless of the nature of the allegation in the citation, the panel may take disciplinary action based on the ungovernability of the respondent by the Society.
- (6) The panel must not take disciplinary action under subrule (5) unless the respondent has been given at least 30 days notice that ungovernability may be raised as an issue at the hearing on disciplinary action.
- (7) The panel may adjourn the hearing on disciplinary action 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; heading, (1) and (4) to (7) amended 10/2010]

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) [rescinded]
 - (c) a disciplinary action is imposed under Rule 4-35, or
 - (d) a conditional admission tendered under Rule 4-21 is accepted by the Discipline Committee.
- (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.

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- (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) [rescinded]
 - (b) has violated a prohibition against practice imposed by a governing body,
 - (c) is the subject of a declaration by a governing body under a provision similar to Rule 4-35(2)(d), or
 - (d) made an admission that is accepted under a provision similar to Rule 4-21.
- (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; (1) and (4) amended 10/2010]

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.

PART 4 – DISCIPLINE

- (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]

Public notice of suspension or disbarment

- 4-37** (1) When a person is suspended under this Part or Part 5 or becomes a disbarred lawyer, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation by means including but not limited to the following:
- (a) publication of a notice in
 - (i) the *British Columbia Gazette*,
 - (ii) a newspaper of general circulation in each municipality and each district referred to in Rule 1-20, in which the person maintained a law office, and
 - (iii) the Society website;
 - (b) notifying the following:
 - (i) the Registrar of the Supreme Court;
 - (ii) the Public Guardian and Trustee.
- (2) When a person is suspended under Part 2 or 3, the Executive Director may take any of the steps referred to in subrule (1).
- (3) A lawyer who is suspended under this Part or Part 5 must inform all clients who reasonably expect the lawyer to attend to their affairs during the period of the suspension and clients or prospective clients who inquire about the availability of the lawyer's services during the suspension period of the following:
- (a) the period the lawyer will not be practising;
 - (b) the arrangements the lawyer has put in place to protect the clients' interests during the time the lawyer will not be practising;
 - (c) the fact that the lawyer is not practising during the relevant period because of the suspension.
- (4) A panel that suspends a lawyer may relieve the lawyer of any of the obligations set out in subrule (3) if the panel is satisfied that it is consistent with the public interest and imposing the obligation would be unreasonable in the circumstances.

[amended 03/1999; amended effective February 28, 2000; amended 10/2006;
(1) amended, (2) added 04/2007; (3) and (4) added 11/2007]

Publication of disciplinary action

- 4-38** (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken
- (a) at the conclusion of the facts and determination portion of a hearing on a citation,
 - (a.1) at the conclusion of the disciplinary action portion of a hearing on a citation,
 - (a.2) at the conclusion of a hearing on a citation under Rule 4-24.1.
 - (b) at the conclusion of a hearing before the Benchers under section 47 of the Act,
 - (c) at the conclusion of an appeal to the Court of Appeal under section 48 of the Act,
 - (d) when an order is made or refused under Rule 4-19(13) or (14),
 - (e) when a lawyer or former lawyer is suspended or disbarred under Rule 4-40, or
 - (f) when an admission is accepted under Rule 4-21 or 4-22.
- (2) The Executive Director may publish and circulate to the profession a summary of any decision, reasons and action taken not enumerated in subrule (1), other than
- (a) a decision not to accept a conditional admission under Rule 4-21 or 4-22, or
 - (b) any decision under Rule 4-17(1).
- (3) When a publication is required under subrule (1), the Executive Director may also publish generally
- (a) a summary of the circumstances of the decision, reasons and action taken,
 - (b) all or part of the report of the hearing panel, or
 - (c) in the case of a conditional admission that is accepted under Rule 4-21, all or part of an agreed statement of facts.
- (4) When the Executive Director publishes a document under this Rule by means of the Society's website, the Executive Director must remove the publication from the part of the website for current decisions and may relocate it to an archive part of the website when
- (a) 6 months have elapsed from the decision of the hearing panel, and
 - (b) all aspects of the disciplinary action imposed have been completed.
- (5) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[heading and (1) amended, (2) and (3) rescinded and replaced, (4) and (5) added 05/2003;
(1) and (2) amended 10/2006; (1) amended 07/2007; (1) and (2) amended 12/2009;
(1) and (4) amended 10/2010]

Anonymous publication

- 4-38.1** (1) Except as allowed under this Rule, a publication under Rule 4-38 must identify the respondent.
- (2) If all allegations in the citation are dismissed by a panel, the publication must not identify the respondent unless the respondent consents in writing.
- (3) On an application under subrule (4) or on its own motion, the panel may order that publication not identify the respondent if
- (a) the panel has imposed a disciplinary action that does not include a suspension or disbarment, and
 - (b) publication of the identity of the respondent could reasonably be expected to identify an individual, other than the respondent, and that individual would suffer serious prejudice as a result.
- (4) An individual affected, other than the respondent, may apply to the panel for an order under subrule (3) before the written report on findings of fact and determination is issued or oral reasons are delivered.
- (5) [rescinded]
- (6) If a panel orders that a respondent's identity not be disclosed under subrule (3), the panel must state in writing the specific reasons for that decision.
- (7) and (8) [rescinded]

[added 05/2003; (4) amended 02/2004; (8) added 10/2006; (2) to (4) amended, (5), (7) and (8) rescinded 12/2009; (3) and (4) amended 10/2010]

Disclosure of practice restrictions

- 4-38.2** (1) When, under this Part or Part 4 of the Act, a condition is imposed on the practice of a lawyer or a lawyer is suspended from the practice of law in one or more fields of law, the Executive Director may disclose the fact that the condition or suspension applies and the nature of the condition or suspension.
- (2) If a lawyer gives an undertaking that restricts, limits or prohibits the lawyer's practice in one or more areas of law, the Executive Director may disclose the fact that the undertaking was given and its effect on the lawyer's practice.
- (3) If the Executive Director discloses the existence of a condition or suspension under subrule (1) or an undertaking under subrule (2) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or suspension ceases to be in force.

[added 06/2005]

Disbarment

- 4-39** If a lawyer is disbarred, the Executive Director must strike the lawyer's name from the barristers and solicitors' roll.

Conviction

- 4-40** (1) On proof that a lawyer or former lawyer has been convicted of an offence that can only be prosecuted by way of indictment, the Benchers may, without following the procedure provided for in the Act or these Rules, summarily suspend or disbar the lawyer or former lawyer.
- (2) If the Discipline Committee is satisfied that a lawyer or former lawyer has been convicted of an offence that can only be prosecuted by way of indictment, the Committee may refer the matter to the Benchers under subrule (1).

Notice

- 4-41** (1) Before the Benchers proceed under Rule 4-40, the Executive Director must notify the lawyer or former lawyer in writing that
- (a) proceedings will be taken under that Rule, and
 - (b) the lawyer or former lawyer may, by a specified date, make written submissions to the Benchers.
- (2) The notice referred to in subrule (1) may be served by mailing it by registered mail to the last known address of the lawyer or former lawyer.
- (3) In extraordinary circumstances, the Benchers may proceed without notice to the lawyer or former lawyer under subrule (1).

Summary procedure

- 4-42** (1) This Rule applies to summary proceedings before the Benchers under Rule 4-40.
- (2) The Benchers may, in their discretion, hear oral submissions from the lawyer or former lawyer.
- (3) Subject to the Act and these Rules, the Benchers may determine practice and procedure.

Investigation of books and accounts

- 4-43** (1) If the chair of the Discipline Committee believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that an investigation be made of the books, records and accounts of the lawyer or former lawyer.
- (2) When an order is made under subrule (1),
- (a) the Executive Director must designate one or more persons to conduct the investigation, and
 - (b) the lawyer or former lawyer concerned must immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence and must provide any explanations that the persons designated by the Executive Director under paragraph (a) require for the purpose of the investigation.

[(1) amended 10/2010]

PART 5 – HEARINGS AND APPEALS

Application of Part

5-1 This Part applies to

- (a) a hearing on an application for enrolment, call and admission or reinstatement,
- (b) a hearing on a citation, and
- (c) unless the context indicates otherwise, a review by the Benchers of a hearing decision.

[amended 05/2002]

Hearing panels

- 5-2** (1) A panel must consist of an odd number of persons but, subject to subrule (2), must not consist of one person.
- (2) A panel may consist of one Bencher who is a lawyer when
- (a) no facts are in dispute,
 - (b) the hearing is to consider a conditional admission under Rule 4-22,
 - (b.1) the hearing proceeds under Rule 4-24.1,
 - (b.2) the hearing is to consider a preliminary question under Rule 4-26.1,
 - (c) it is not otherwise possible, in the opinion of the President, to convene a panel in a reasonable period of time, or
 - (d) one or more of the original panel members cannot complete a hearing that has begun.
- (3) A panel must be chaired by a Bencher who is a lawyer.
- (4) Panel members must be permanent residents of British Columbia over the age of majority.
- (5) The chair of a panel who ceases to be a Bencher may, with the consent of the President, continue to chair the panel, and the panel may complete any hearing or hearings already scheduled or begun.
- (6) [rescinded]
- (7) Two or more panels may proceed with separate matters at the same time.
- (8) The President may refer a matter that is before a panel to another panel, fill a vacancy on a panel and, on the advice of the Executive Committee, may terminate an appointment to a panel.
- (9) Unless otherwise provided in the Act and these Rules, a panel must decide any matter by a majority, and the decision of the majority is the decision of the panel.

[(1), (2) and (4) amended 09/2005; (2) amended 07/2007; (2), (4) and (5) amended, (6) rescinded 10/2010]

Disqualification

- 5-3** (1) The following persons must not participate in a panel hearing a citation:
- (a) a person who participated in the decision that authorized issuing the citation;
 - (b) one of the Benchers who made an order under Rule 4-17 regarding the respondent;
 - (c) a member of a panel that heard an application under Rule 4-19 to rescind or vary an interim suspension, practice condition or order for a medical examination in respect of the respondent.
- (2) A person who participated in the decision to order the hearing on an application for enrolment as an articulated student, for call and admission or for reinstatement must not participate in the panel on that hearing.
- (3) A Bencher who is disqualified from participation in a hearing panel under this Rule must not sit on a review by the Benchers under section 47 of the Act.
- (4) A person must not appear as counsel for any party for three years after
- (a) serving as a Bencher, or
 - (b) the completion of a hearing in which the person was a member of the panel.
- [(4) added 02/2002]

Compelling witnesses and production of documents

- 5-4** A panel may
- (a) compel the applicant or respondent to give evidence under oath, and
 - (b) at any time before or during a hearing, order the applicant or respondent to produce all files and records that are in the applicant's or respondent's possession or control that may be relevant to the matters raised in the citation.
- [heading amended 10/2010]

Procedure

- 5-5** (1) Subject to the Act and these Rules, the panel may determine the practice and procedure to be followed at a hearing.
- (2) Before a court reporter begins reporting the proceedings of a hearing, the chair of the panel must ensure that the reporter takes an oath or makes a solemn affirmation to faithfully and accurately report and transcribe the proceedings.
- (3) The applicant, respondent or counsel for the Society may call witnesses to testify.
- (4) All witnesses, including a respondent ordered to give evidence under section 41(2)(a) of the Act,
- (a) must take an oath or make a solemn affirmation, if competent to do so, before testifying, and
 - (b) are subject to cross-examination.

PART 5 – HEARINGS AND APPEALS

- (5) The panel may make inquiries of a witness as it considers desirable.
- (6) The hearing panel may accept any of the following as evidence:
 - (a) an agreed statement of facts;
 - (a.1) oral evidence;
 - (a.2) affidavit evidence;
 - (b) evidence tendered in a form agreed to by the respondent or applicant and Society counsel;
 - (c) any other evidence it considers appropriate.

[(6) amended 04/2009; (2) and (6) amended 10/2010]

Public hearing

- 5-6** (1) Every hearing is open to the public, but the panel may exclude some or all members of the public in any circumstances it considers appropriate.
- (2) On application by anyone, or on its own motion, the panel may make the following orders to protect the interests of any person:
- (a) an order that specific information not be disclosed;
 - (b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).
- (3) Despite the exclusion of the public under subrule (1) in a hearing on a citation, the complainant and one other person chosen by the complainant may remain in attendance during the hearing, unless the panel orders otherwise.
- (4) Except as required under Rule 5-7, when a hearing is proceeding, no one is permitted to possess or operate any device for photographing, recording or broadcasting in the hearing room without the permission of the panel, which the panel in its discretion may refuse or grant, with or without conditions or restrictions.

[(2) amended, (4) added 05/2003]

Transcript and exhibits

- 5-7** (1) All proceedings at a hearing must be recorded by a court reporter and any person may obtain, at his or her expense, a transcript pertaining to any part of the hearing that he or she was entitled to attend.
- (2) Subject to solicitor-client privilege or an order under Rule 5-6(2), any person may obtain, at his or her own expense, a copy of an exhibit entered in evidence when a hearing is open to the public.

[heading amended, (2) added 05/2003]

Decision

- 5-8** (1) A decision of a hearing panel is made by majority vote.
- (2) On request, the Executive Director must disclose a panel's written reasons for its decision, subject to the protection of solicitor and client privilege and confidentiality.
- (3) When a hearing panel gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

[(2) and (3) amended 05/2003]

Costs of hearings

- 5-9** (0.1) A panel may order that an applicant or respondent pay the costs of a hearing referred to in Rule 5-1, and may set a time for payment.
- (0.2) The Benchers may order that an applicant or respondent pay the costs of a review under section 47 of the Act, and may set a time for payment.
- (1) In calculating the costs payable by an applicant or respondent, the panel or the Benchers may include part or all of one or more of the following:
- (a) the cost of any investigation undertaken in relation to the applicant's application for enrolment, call and admission or reinstatement;
 - (b) the cost of an accounting, investigation or inspection of the respondent's practice, undertaken as part of the inquiry;
 - (c) a fee of \$25 per witness, multiplied by the number of days the witness was required to remain in attendance at the hearing;
 - (d) reasonable travel and living expenses of a witness;
 - (e) the court reporter's fee for attendance at the hearing;
 - (f) the cost of a transcript of a hearing held under Part 2 or 4, if the Society would otherwise be liable for its cost;
 - (g) a fee of \$750 for each part or full day of hearing;
 - (h) reasonable fees and disbursements of counsel appointed under Rule 2-63 or 4-20;
 - (i) any other amount, arising out of the investigation and hearing, for which the Society would otherwise be liable.
- (2) If the legal assistance used by the Society is provided by an employee of the Society, costs may be awarded for that legal assistance in the amount that would have been payable if the Society had retained outside counsel.
- (3) In the following circumstances, the panel or the Benchers have the discretion to direct that the applicant or respondent be awarded costs in a fixed amount or in accordance with subrule (1):
- (a) no adverse finding is made against the applicant;
 - (b) the citation is dismissed;
 - (c) the citation is rescinded after the hearing has begun.

- (4) Costs deposited under Rule 2-62 must be applied to costs ordered under this Rule.
- (5) An applicant must not be enrolled, called and admitted or reinstated until the costs ordered under this Rule or the Act are paid in full.
- (6) As an exception to subrule (5), the Credentials Committee may direct that an applicant be enrolled, called and admitted or reinstated even though costs ordered under this Rule have not been paid in full and may make the direction subject to any conditions that the Committee finds appropriate.

[(0.1) added 03/1999; (3) amended 06/1999; (0.2) added, (1) and (3) amended 09/1999;
(7) rescinded 06/2007; (3) amended 10/2010]

Time to pay a fine or costs, or to fulfil a practice condition

- 5-10** (1) An applicant or respondent may apply for
- (a) an extension of time
 - (i) to pay a fine or the amount owing under Rule 5-9, or
 - (ii) to fulfil a condition imposed under section 21, 22, 27, 32 or 38 of the Act or accepted under section 19 of the Act, or
 - (b) a variation of a condition referred to in paragraph (a)(ii).
- (2) An application under subrule (1) must be made to the President who must refer the application to one of the following, as may in the President's discretion appear appropriate:
- (a) the same panel that made the order;
 - (b) a new panel;
 - (c) the Discipline Committee;
 - (d) the Credentials Committee.
- (3) The panel or Committee that hears an application under subrule (1) must
- (a) dismiss it,
 - (b) extend to a specified date the time for payment, or
 - (c) vary the conditions imposed, or extend to a specified date the fulfilment of the conditions.
- (4) An applicant or respondent must do the following by the date set by the hearing panel or the Benchers or extended under this Rule:
- (a) pay in full a fine or the amount owing under Rule 5-9;
 - (b) fulfil a practice condition as established under section 21, 22, 27, 32 or 38 of the Act or accepted under section 19 of the Act, or varied under subrule (3)(c).
- (5) If, on December 31, an applicant or respondent is in breach of subrule (4), the Executive Director must not issue to the applicant or respondent a practising certificate or a non-practising or retired membership certificate, and the applicant or respondent is not permitted to engage in the practice of law.

[(1) and (4) amended, (5) added 06/2007; (1) and (4) amended 09/2007]

Recovery of money owed to the Society

5-11 (1) A lawyer or former lawyer who is liable to pay money under the following provisions must pay to the Society the full amount owing by the date set by the Discipline Committee:

- (a) costs of an audit or investigation ordered under Part 2 or Rule 4-43;
- (b) a fee or assessment under Rule 3-18.4 or 3-74;
- (c) recovery under Rule 3-42 of part or all of the amount paid out by the Society on that lawyer's behalf under section 31 of the Act.

(2) A lawyer who has not paid the full amount owing under subrule (1) by the date set or extended by the Discipline Committee is in breach of these Rules and, if any part of the amount owing remains unpaid by December 31 following the making of the order, the Executive Director must not issue a practising certificate to the lawyer unless the Benchers order otherwise.

[heading and (1) amended 12/2003; 07/2008]

Reviews and appeals

Review by Benchers

5-12 (1) In Rules 5-12 to 5-21, "**review**" means a review of a hearing panel decision by the Benchers under section 47 of the Act.

- (2) Subject to the Act and these Rules, the Benchers may determine the practice and procedure to be followed at a review.
- (3) Delivery of documents to a respondent or applicant under Rules 5-12 to 5-21 may be effected by delivery to counsel representing the respondent or the applicant.

[amended, (3) added 05/2002; (1) and (3) amended 07/2007; 10/2007]

Initiating a review

5-13 (1) An applicant may initiate a review by delivering a Notice of Review under Rule 5-15 to the Executive Director within 30 days after the applicant is notified of the decision of the panel.

- (1.1) A respondent may initiate a review by delivering a Notice of Review under Rule 5-15 to the Executive Director within 30 days after the respondent is notified of the decision of the panel with respect to disciplinary action.
- (2) The Credentials Committee may initiate a review by adopting a resolution within 30 days of a decision to refer the decision to the Benchers for a review.
- (3) The Discipline Committee may initiate a review by adopting a resolution within 30 days of a decision to refer the decision to the Benchers for a review.
- (4) When a review is initiated under subrule (2) or (3), the Executive Director must promptly deliver a Notice of Review under Rule 5-15 to the applicant or respondent concerned.

[(2.1) added, (4) and (5) amended 09/1999; rescinded and replaced 05/2002;
(1) amended 07/2007; (1) to (4) amended, (1.1) added 10/2007; (1.1) amended 10/2010]

Stay of order pending review

- 5-14** (1) When a review is initiated under Rule 5-13, the order of the panel with respect to costs is stayed.
- (2) When the Credentials Committee initiates a review under Rule 5-13(2), an order of the hearing panel to call and admit or reinstate the applicant is stayed.
- (3) A person or Committee initiating a review under Rule 5-13 may apply to the President for a stay of any order not referred to in subrule (1) or (2).
- (4) On an application under subrule (3), the President may designate another Benchers to make a determination.

[(5) amended 06/1999; (2.1) added, (4) and (5) amended 09/1999; rescinded and replaced 05/2002]

Notice of review

- 5-15** A Notice of Review must contain the following in summary form:
- (a) a clear indication of the decision to be reviewed by the Benchers;
- (b) the nature of the order sought;
- (c) the issues to be considered on the review.

[added 05/2002; amended 10/2007]

Record of credentials hearing

- 5-16** (1) Unless counsel for the applicant and for the Society agree otherwise, the record for a review of a credentials decision consists of the following:
- (a) the application;
- (b) a transcript of the proceedings before the panel;
- (c) exhibits admitted in evidence by the panel;
- (d) the panel's written reasons for any decision;
- (e) the Notice of Review under Rule 5-15.
- (2) If, in the opinion of the Benchers, there are special circumstances, the Benchers may admit evidence that is not part of the record.

[added 05/2002; (1) amended 07/2007; 10/2007]

Record of discipline hearing

- 5-17** (1) Unless counsel for the respondent and for the Society agree otherwise, the record for a review of a discipline decision consists of the following:
- (a) the citation;
- (b) a transcript of the proceedings before the panel;
- (c) exhibits admitted in evidence by the panel;
- (d) the panel's written reasons for any decision;
- (e) the Notice of Review under Rule 5-15.
- (2) If, in the opinion of the Benchers, there are special circumstances, the Benchers may admit evidence that is not part of the record.

[added 05/2002; (1) amended 07/2007; 10/2007]

Pre-review conference

5-18 (1) The President may order a pre-review conference at any time before the hearing on a review, at the request of the applicant, respondent or counsel for the Law Society, or on the President's own initiative.

(2) When a conference has been ordered under subrule (1), the President must

- (a) set the date, time and place of the conference, and
- (b) designate a Bencher to preside at the conference.

(3) Counsel representing the Society must be present at the conference.

(3.1) The Executive Director must notify the applicant or the respondent, as the case may be, or his or her counsel, of the time and place of the conference.

(3.2) The applicant or the respondent, as the case may be, may attend the conference, in person, through counsel or both.

(3.3) If the applicant or the respondent, as the case may be, fails to attend the conference, the Bencher presiding may proceed with the conference in the absence of that party and may make any order under this Rule, if the Bencher is satisfied that the party had been notified of the conference.

(4) If the Bencher presiding at a pre-review conference considers it appropriate, he or she may allow any person to participate in the conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this Rule.

(5) The conference may consider

- (a) the simplification of the issues,
- (b) any issues concerning the record to be reviewed,
- (c) the possibility of agreement on any issues in the review,
- (d) the exchange of written arguments or outlines of argument and of authorities,
- (d.1) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public or that exhibits and other evidence be excluded from public access,
- (e) setting a date for the review, and
- (f) any other matters that may aid in the disposition of the review.

(6) The Bencher presiding at a pre-review conference may

- (a) adjourn the conference generally or to a specified date, time and place,
- (b) order the exchange of written arguments or outlines of argument and of authorities, and set deadlines for that exchange,
- (c) set a date for the review, and
- (d) make any order or allow or dismiss any application consistent with this Rule.

[added 05/2002; (5) amended 05/2003; (3) amended 04/2009; (3) to (6) amended, (3.1) to (3.3) added 10/2010]

Adjournment

- 5-19** (1) Before a hearing on a review commences, the applicant, respondent or counsel for the Society may apply for an order that the hearing be adjourned by delivering to the Executive Director and to the other party written notice setting out the grounds for the application.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
- (3) Before the hearing begins, the President must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.
- (4) The President may
- (a) designate another Bencher to make a determination under subrule (3), or
 - (b) refer the application to a pre-review conference.
- (5) After a hearing has commenced, the President or other Bencher presiding may adjourn the hearing, with or without conditions, to a specified date, time and place.

[added 05/2002; (1) to (3) and (5) amended 10/2007; (1) to (4) amended 10/2010]

Decision on review

- 5-20** (1) The decision of the Benchers on a review is made by majority vote.
- (2) The Benchers must prepare written reasons for their decision on a review.
- (3) On request, the Executive Director must disclose the Benchers' written reasons for their decision, subject to the protection of solicitor and client privilege and confidentiality.
- (4) When the Benchers give written reasons for their decision, they must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.
- (5) The Executive Director must promptly deliver a copy of the Benchers' written reasons prepared under subrule (2) to the applicant or respondent and counsel for the Society.

[added 07/2007]

Inactive reviews

- 5-21** (1) If no steps have been taken for 6 months or more, a party may apply for an order dismissing a review by delivering to the Executive Director a notice in writing that sets out the basis for the application.
- (2) The Executive Director must promptly notify the following of an application under subrule (1):
- (a) the party not making the application;
 - (b) the President;
 - (c) anyone else who, in the Executive Director's opinion, should be notified.

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- (3) If it is in the public interest and not unfair to the respondent or applicant, the President may dismiss the review.
- (4) The President may designate another Bencher to make a determination under subrule (3).

[added 10/2007]

- (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.
- (6) The notice required under subrule (2) or (4) may be
 - (a) mailed by regular or registered mail to the client at the client's last known address,
 - (b) delivered personally to the client,
 - (c) transmitted by electronic facsimile to the client at the client's last known electronic facsimile number,
 - (d) transmitted by electronic mail to the client at the client's last known electronic mail address, or
 - (e) published in a newspaper distributed in the area in which the client resides or carries on business.

[added 09/2004, effective January 17, 2005; (3) amended 12/2004]

Change in LLP information and annual reports

9-18 A limited liability partnership must deliver to the Executive Director copies of the following at the same time that they are filed under Part 6 of the *Partnership Act*:

- (a) an annual report;
- (b) an amendment to the registration statement.

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

Disclosure of LLP information

9-19 (1) All information and documents received by the Society under this Division are confidential, and no person is permitted to disclose them to any person.

- (2) As an exception to subrule (1), the Society may
 - (a) use information and documents for a purpose consistent with the Act and these Rules,
 - (b) disclose information and documents to a governing body, and
 - (c) disclose to any person on request the name and place of business of a limited liability partnership.

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

Notification of non-compliance

9-20 With the consent of the Credentials Committee, the Executive Director may notify the Registrar of Companies if the Executive Director becomes aware of the failure of a limited liability partnership or one or more of its partners to maintain compliance with the requirements of Part 6 of the *Partnership Act*.

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

PART 10 – GENERAL

Service and notice

- 10-1** (1) A lawyer, former lawyer, articled student or applicant may be served with a notice or other document personally or by
- (a) sending it by registered mail or electronic mail to his or her last known address, or
 - (b) serving it as directed by the Supreme Court.

(1.1) In subrule (1), “**last known address**” includes an address given to discipline counsel for delivery of documents relating to a citation.

- (2) A document may be served on the Society or on the Benchers by
- (a) leaving it at or mailing it by registered mail to the principal offices of the Society, or
 - (b) personally serving it on an officer of the Society.

(3) A document served by registered mail is deemed to be served 7 days after it is mailed.

(4) A complainant or other person may be notified of any matter by ordinary mail to the person’s last known address.

[heading amended, (4) added 10/2007; (1) amended, (1.1) added 10/2010]

Duty not to disclose

10-2 A person performing any duty or fulfilling any function under the Act or these Rules who receives or becomes privy to any confidential information, including privileged information,

- (a) has the same duty that a lawyer has to a client not to disclose that information, and
- (b) must not disclose and cannot be required to disclose that information except as authorized by the Act, these Rules or an order of a court.

10-3 [rescinded 07/2008]

SCHEDULE 1 – 2011 LAW SOCIETY FEES AND ASSESSMENTS

A. Annual fee	\$
1. Practice fee set by members (Rule 2-70)	1,729.14
2. Special Compensation Fund assessment (Rule 2-70)	5.00
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	1,750.00
(b) member in part-time practice	875.00
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
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.

**SCHEDULE 2 – 2011 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	1,729.14	5.00	875.00	875.00
February	1,582.76	4.58	729.17	875.00
March	1,440.95	4.17	583.33	875.00
April	1,294.56	3.75	437.50	875.00
May	1,152.76	3.33	291.67	875.00
June	1,006.37	2.92	145.83	875.00
July	864.57	2.50	875.00	0.00
August	718.19	2.08	729.17	0.00
September	576.38	1.67	583.33	0.00
October	429.99	1.25	437.50	0.00
November	288.19	.83	291.67	0.00
December	141.80	.42	145.83	0.00
Part-time insurance				
January	1,729.14	5.00	437.50	437.50
February	1,582.76	4.58	364.58	437.50
March	1,440.95	4.17	291.67	437.50
April	1,294.56	3.75	218.75	437.50
May	1,152.76	3.33	145.83	437.50
June	1,006.37	2.92	100.00	437.50
July	864.57	2.50	437.50	0.00
August	718.19	2.08	364.58	0.00
September	576.38	1.67	291.67	0.00
October	429.99	1.25	218.75	0.00
November	288.19	.83	145.83	0.00
December	141.80	.42	100.00	0.00

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

LAW SOCIETY RULES

**SCHEDULE 3 – 2011 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 harmonized sales tax applies to Law Society fees and assessments.

CHAPTER 10

WITHDRAWAL

Definition

- 0.1 In this Chapter, to “**withdraw**” includes to
- (a) sever the solicitor-client relationship, or
 - (b) withdraw as counsel.

[added 03/2005]

Obligatory withdrawal

1. A lawyer is required to sever the solicitor-client relationship or withdraw as counsel if:
 - (a) discharged by the client,
 - (b) instructed by the client to do something inconsistent with the lawyer’s professional responsibility, including the duty to the court,
 - (c) the client takes a position solely to harass or maliciously injure another,
 - (d) the lawyer’s continued involvement will place the lawyer in a conflict of interest, or
 - (e) the lawyer is not competent to handle the matter.

[amended 03/2005]

Optional withdrawal

2. A lawyer is permitted, but is not required, to withdraw if there has been a serious loss of confidence between the lawyer and client.¹

[amended 03/2005]

PROFESSIONAL CONDUCT HANDBOOK

Residual right to withdraw

3. In situations not covered by Rules 1 and 2, a lawyer may withdraw only if the withdrawal is not:
 - (a) unfair to the client, or
 - (b) done for an improper purpose.

[amended 03/2005]

4. Unfairness to the client depends on the circumstances of each case, but normally includes consideration of whether the withdrawal would:
 - (a) occur at a stage in the proceedings requiring the client to retain another lawyer to do the same work, or part of it, again,
 - (b) leave the client with insufficient time to retain another lawyer, and
 - (c) give a replacement lawyer insufficient time to prepare to represent the client.

[amended 03/2005]

5. Impropriety depends on the circumstances of each case, but includes withdrawal in order to:
 - (a) delay court proceedings, or
 - (b) assist the client in effecting an improper purpose.

[amended 03/2005]

Withdrawal for non-payment of fee

6. If a lawyer and client agree that the lawyer will act only if the lawyer's fee is paid in advance, the lawyer must confirm that agreement in writing to the client, specifying a payment date.

[amended 03/2005]

7. A lawyer must not withdraw because the client has not paid the lawyer's fee when due unless there is sufficient time for the client to obtain the services of another lawyer and for that other lawyer to prepare adequately for a hearing or trial.

[amended 03/2005; 09/2010]

WITHDRAWAL

Procedure for withdrawal

8. Upon withdrawal, the lawyer must immediately:
 - (a) notify the client in writing, stating:
 - (i) the fact that the lawyer has withdrawn,
 - (ii) the reasons, if any, for the withdrawal, and
 - (iii) in the case of litigation, that the client should expect that the hearing or trial will proceed on the date scheduled and that the client should retain new counsel promptly,
 - (b) notify in writing the court registry where the lawyer's name appears as counsel for the client that the lawyer has withdrawn and, where applicable, comply with any other requirements of the tribunal,²
 - (c) notify in writing all other parties, including the Crown where appropriate, of the severance or withdrawal,
 - (d) account to the client for:
 - (i) any money received for fees or disbursements, and
 - (ii) any valuable property held on behalf of the client, and
 - (e) take all reasonable steps to assist in the transfer of the client's file.

[amended 03/2005; 09/2010]

Confidentiality

9. Subject to exceptions permitted by law,³ if the reason for withdrawal results from confidential communications between the lawyer and the client the lawyer must not disclose the reason for the withdrawal unless the client consents.

[amended 03/2005; 09/2010]

Limited retainer

10. A lawyer who acts for a client only in a limited capacity must promptly disclose the limited retainer to the court and to any other interested person in the proceeding, if failure to disclose would mislead the court or that other person.

[amended 03/2005]

PROFESSIONAL CONDUCT HANDBOOK

FOOTNOTES:

1. Examples of circumstances to which this rule may apply include circumstances in which a client has:
 - (a) deceived the lawyer,
 - (b) refused to give adequate instructions to the lawyer, or
 - (c) refused to accept and act upon the lawyer's advice on a significant point.

[added 03/2005]

2. In criminal matters, if withdrawal is a result of non-payment of the lawyer's fees, the court may exercise its discretion to refuse to allow the withdrawal. The court's order refusing counsel's withdrawal may be enforced by the court's contempt power. See *R. v. Cunningham*, 2010 SCC 10.

The relationship between a lawyer and client is contractual in nature, and the general rules respecting breach of contract and repudiation apply. Except in criminal matters involving non-payment of fees, if a lawyer decides to withdraw as counsel in a proceeding, the court has no jurisdiction to prevent the lawyer from doing so, and the decision to withdraw is not reviewable by the court, subject to its authority to cite a lawyer for contempt if there is evidence that the withdrawal was done for some improper purpose. Otherwise, the decision to withdraw is a matter of professional responsibility, and a lawyer who withdraws in contravention of this Chapter is subject to disciplinary action by the Benchers. See *Re Leask and Cronin* (1985), 66 BCLR 187 (SC). In civil proceedings the lawyer is not required to obtain the court's approval before withdrawing as counsel, but must comply with the Rules of Court before being relieved of the responsibilities that attach as "solicitor acting for the party." See *Luchka v. Zens* (1989), 37 BCLR (2d) 127 (CA).

[deleted 04/2004; footnote 1 renumbered footnote 2 03/2005; amended 09/2010]

3. One such exception is that set out in *R. v. Cunningham*, 2010 SCC 10, which establishes that, in a criminal case, if the disclosure of information related to the payment of the lawyer's fees is unrelated to the merits of the case and does not prejudice the accused, the lawyer may properly disclose such information to the court. See para. 31:

Disclosure of non-payment of fees in cases where it is unrelated to the merits and will not cause prejudice to the accused is not an exception to privilege, such as the innocence at stake or public safety exceptions (see generally *R. v. McClure*, 2001 SCC 14 and *Smith v. Jones*, [1999] 1 S.C.R. 455). Rather, non-payment of legal fees in this context does not attract the protection of solicitor-client privilege in the first place. However, nothing in these reasons, which address the application, or non-application, of solicitor-client privilege in disclosures to a court, should be taken as affecting counsel's ethical duty of confidentiality with respect to payment or non-payment of fees in other contexts.

[added 09/2010]

CHAPTER 13

RESPONSIBILITY TO THE LAW SOCIETY

Reporting another lawyer to the Law Society

1. Subject to Rule 2, a lawyer must report to the Law Society another lawyer's:
 - (a) breach of undertaking that has not been consented to or waived by the recipient of the undertaking,
 - (b) shortage of trust funds,¹ and
 - (c) other conduct that raises a substantial question as to the other lawyer's honesty or trustworthiness as a lawyer.

[amended 05/2004]

2. In making a report under Rule 1, a lawyer must not disclose any confidential information respecting the lawyer's client acquired in the course of the professional relationship or any privileged communications between them, unless the client expressly or implicitly consents.

[amended 05/2004]

Regulatory compliance

3. A lawyer must
 - (a) reply promptly to any communication from the Law Society;
 - (b) provide documents as required to the Law Society;
 - (c) not improperly obstruct or delay Law Society investigations, audits and inquiries;
 - (d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;
 - (e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and
 - (f) otherwise comply with the Law Society's regulation of the lawyer's practice.

[amended 05/2004; 11/2010]

The Law Society's disciplinary and competence procedures

4. A lawyer must not use the Law Society's disciplinary and competence procedures, or suggest to a client that such procedures be used, vexatiously or solely to further the client's civil claim against another lawyer.

[amended 05/2004]

Associating with a person whose character and fitness are in question

5. Except with the written approval of the Law Society, a lawyer must not employ, retain or otherwise associate in any capacity having to do with the practice of law with a person who, in any jurisdiction:
 - (a) is suspended from the practice of law,
 - (b) is disbarred,
 - (c) as a result of disciplinary proceedings, is no longer permitted to practise law,
 - (c.1) failed to complete a Bar admission program for reasons relating to lack of good character and repute or fitness to be a member of the Bar,
 - (d) has been the subject of a hearing ordered, whether commenced or not, with respect to an application for enrolment as an articulated student, call and admission or reinstatement, unless the person was subsequently enrolled, called and admitted or reinstated in the same jurisdiction, or
 - (e) was required to withdraw or was expelled from a Bar admission program.

[amended 07/1997; 05/2004; heading and rule amended 12/2009, effective 07/2010]

Apparent partnerships and associations

6. Any lawyer held out as practising in partnership or association with one or more lawyers has the same professional responsibilities to the general public, other lawyers and to the Law Society, for the actions of any lawyer or lawyers with whom he or she is practising in an apparent partnership or association, as the lawyer would have if carrying on practice with such lawyer or lawyers in a partnership.

[amended 05/2004]

FOOTNOTE:

1. Law Society Rule 3-66 imposes additional duties on lawyers respecting their own trust shortages or their inability to deliver up trust funds when due.

[updated 12/1999; amended 05/2004]

**B.C. LAWYERS' COMPULSORY PROFESSIONAL LIABILITY INSURANCE
2011 RENEWAL ENDORSEMENT
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 January 1, 2011:

1. The Policy Number is changed to LPL 11-01-01.
2. The following changes are made to the DECLARATIONS:
 2. **Policy Period** From January 1, 2011 to January 1, 2012
(12:01 a.m. standard time).
3. In the bolded sentence at the end of the DECLARATIONS and before the DEFINITIONS, "**2010**" is changed to "**2011**".
4. The following changes are made to the DEFINITIONS:

The definition of **Damages** is amended by replacing "any costs ordered as special costs or ordered pursuant to Rule 57(37) of the former Supreme Court Rules, Rule 14-1(33) of the Supreme Court Civil Rules, Rule 16-1(30) of the Supreme Court Family Rules or Rule 71 of the Court of Appeal Rules or their equivalents as amended from time to time" in both paragraph (a) subparagraph (iv) and paragraph (b) subparagraph (ii) with "any order for costs or indemnification for costs made against you in litigation in which you are not a party, or any order for special costs".
5. The following change is made to the INSURING AGREEMENTS for Part A Professional Liability:

Insuring Agreement A 2.4 is amended by replacing "action" with "arbitration".
6. The following changes are made to the EXCLUSIONS:

Exclusion 7.1 is amended by adding "or" after "a **law firm**;" .

Exclusions 7.2 and 7.3 are deleted in their entirety.

Exclusion 7.4 is renumbered "7.2" and amended by adding "trade union, society or" after "a" and before "not-for-profit **organization** that provides".

Exclusion 7.4.1 is renumbered “7.2.1”.

Exclusion 7.4.2 is renumbered “7.2.2” and amended by adding “trade union, society or not-for-profit” after “on behalf of such” and before “**organization**”.

7. The following changes are made to the CONDITIONS:

Condition 4.1 is amended by replacing “Susan I. Forbes, QC, Director of Insurance” with “Kate Jenkins, Claims Manager”.

Condition 5.1.1 is amended by adding “, information and documents” after “give written statements” and before “to and meet with us”, and by adding “or reviewing” after “for the purpose of determining” and before “coverage”.

The second sentence of Condition 5.4 is changed to: “You agree that any disclosure does not constitute a waiver of privilege with respect to any third parties or, if it does, constitutes a limited waiver of privilege only for the purpose for which it is disclosed.”

Condition 18 is amended first by adding “. Except as provided in Insuring Agreement A 2.4” after “any applicable federal laws of Canada” and before “, and all disputes arising”, and second by deleting “and” before “all disputes arising”.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Dated this 4th day of November, 2010.

The LSBC Captive Insurance Company Ltd.



Susan I. Forbes, QC, Secretary