

MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2011: No. 1 March

Highlights

Law Society Rules: Rule 4-43 (Investigation of books and accounts) is updated to specifically refer to electronic records and require that an order provide for the protection of the privacy of any person in records unrelated to the investigation (p. 110.8); the procedure for initiating a Bencher review of a hearing panel decision is made consistent with that for prehearing questions in the citation rules (Rule 5-13: p. 116); the Table of Contents is updated (pp. 3-8).

Professional Conduct Handbook: The Table of Contents is updated (pp. i-ii).

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

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Professional Conduct Handbook	i – iv	i – iv

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

Updates: This amendment package updates the *Member's Manual* to **February 4, 2011**. The previous amendment package was 2010: No. 3 December.

To check that your copy of the *Manual* is up to date, consult the contents checklist on the back of this filing page. If you have further questions about updating your *Manual*, contact 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 February 4, 2011

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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 reasonably 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, including, if considered desirable in the opinion of the chair, all electronic records in the possession of the lawyer or former lawyer.
- (1.1) An order under this Rule must provide for
- (a) the protection of the privacy interests of any person in electronic records produced or copied under this Rule that are not related to the matter under investigation, and
 - (b) a method of resolving disputes related to an order made under this Rule.

PART 4 – DISCIPLINE

- (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
 - (i) immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence regardless of the form in which they are kept,
 - (ii) provide any explanations that the persons designated under paragraph (a) require for the purpose of the investigation,
 - (iii) assist the persons designated under paragraph (a) to access, in a comprehensible form, records in the lawyer's possession or control that may contain information related to the lawyer's practice by providing all information necessary for that purpose, including but not limited to
 - (A) passwords, and
 - (B) encryption keys, and
 - (iv) not alter, delete, destroy, remove or otherwise interfere with any book, record or account within the scope of the investigation without the written consent of the Executive Director.

[(1) amended 10/2010; (1) and (2) amended, (1.1) added 12/2010]

LAW SOCIETY RULES

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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.

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- (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;

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- (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) Within 30 days after the decision of the panel in a credentials hearing, the applicant may deliver a Notice of Review under Rule 5-15 to the Executive Director and counsel representing the Society.

(1.1) [rescinded]

- (2) Within 30 days of a decision of the panel in a credentials hearing, the Credentials Committee may adopt a resolution to refer the decision to the Benchers for a review.
- (2.1) When a review is initiated under subrule (2), counsel representing the Society must promptly deliver a Notice of Review under Rule 5-15 to the Executive Director and the applicant.
- (2.2) Within 30 days after the decision of the panel under Rule 4-35, the respondent may deliver a Notice of Review under Rule 5-15 to the Executive Director and discipline counsel.
- (3) Within 30 days of a decision of the panel in a hearing on a citation, the Discipline Committee may resolve to refer the decision to the Benchers for a review.
- (4) When a review is initiated under subrule (3), discipline counsel must promptly deliver a Notice of Review under Rule 5-15 to the Executive Director and the respondent.

[(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;
(1) to (4) amended, (1.1) rescinded, (2.1) and (2.2) added 12/2010]

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