



# MEMBER'S MANUAL

The Law Society  
of British Columbia



## AMENDMENT PAGES

2012: No. 3 September

### Highlights

**Legal Profession Act:** The *Legal Profession Amendment Act, 2012* SBC 2012, c. 16, was passed by the BC Legislature on May 9, 2012 and has received Royal Assent. Many amendments made by the new Act are now in effect; others will come into effect on proclamation, which will take place over the next several months. For the time being, lawyers should refer to the Law Society website for the current version of the Act (see Publications and Resources / Legal Profession Act); amendment pages will be mailed to print subscribers later this year. Also see the Law Society website for highlights of the amendments.

#### Law Society Rules:

A lawyer may not supervise more than 2 “designated paralegals” at one time (Rule 2-9.2: p. 33); the language around “conditions and limitations” on a lawyer’s practice is made consistent throughout the Rules (Rules 2-15(7), 2-18(3) and (4), 2-23.4(3), (5) and (6), 2-23.6(4) and (9), 2-26.1(2), 2-38(3), 2-54(2) and (3), 2-69.2(3), 3-18.31(1), 4-35(2) and 4-38.2(1) and (3): pp. 38.1, 38.3, 42.1, 42.2, 42.6, 48, 57, 60.2, 70, 110.3 and 110.7); the Executive Director may approve the form of certificate for a fine or costs (Rule 2-77(3): p. 62.2); lawyers must comply with the terms of the professional liability insurance policy (Rule 3-21(2): p. 70.02); the Discipline Committee, or its chair, may assign individuals to meet with a lawyer required to attend a conduct meeting (Rule 4-6.2(1.1): p. 98); for the purposes of a review, the record of a credentials or discipline hearing includes any written submissions received by a panel (Rules 5-16(1) and 5-17(1): p. 116.1); a panel must give written reasons for a decision to close a hearing (Rule 5-6(5): p. 113)

Further, many of the provisions of the *Legal Profession Amendment Act, 2012*, SBC 2012 require amendments to the Rules before they take effect. These include the following:

- pro bono by non-practising and retired members (Rule 1, definition of “pro bono legal services” and Rules 2-4.2 and 2-4.3: pp. 14 and 32);
- setting the annual fees (Rule 1-6(5), (7) and (8) and Schedule 1: pp. 15 and 129);
- resignation when facing discipline (Rules 2-2, 3-13(6)-(9) and 4-4.2: pp. 31, 67 and 96);
- the Special Compensation Fund fee (Rules 2-48(1), 2-49.3(1), 2-52(3), 2,70, 2-74(1) and 5-11(1) and Schedules 1 and 2: pp. 50.5, 53, 55, 60.3, 62.1, 115, 129 and 131);
- appointment of investigators (Rule 3-5(1.1): p. 64);
- an order made with respect to a lawyer or student under investigation continues in effect when a citation is issued (Rule 3-7.1: p. 66.1);
- a new rule applies to medical examinations (Rule 3-7.2: p. 66.1);
- most of the procedural provisions that were in Rule 3-7.1 are moved to new Rule 3-7.3 (p. 66.2);
- insurance exemption and pro bono (Rules 3.25(1) and (2) and 3-25.1: pp. 70.1-70.2);
- references to medical exams are removed and inconsistencies corrected (Rules 4-17(1), (1.1), (3) and (4), 4-19 heading and 5-3(1): pp. 102, 104 and 112);
- maximum fine (Rule 4-35(2): p. 110.3);
- summary disbarment or suspension on conviction of a serious offence (Rule 4-40: p. 110.7).

**Professional Conduct Handbook:** A lawyer will be permitted to supervise two “designated paralegals” who will be entitled to perform a number of additional legal services, including giving legal advice and appearing in court on certain matters (Chapter 12, Rules 1 to 6, and Appendix 7: pp. 35-38 and 71-74).

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

Manual section	Existing pages to be removed	Amendment pages to be inserted
Legal Profession Act	<i>[See above note]</i>	
Law Society Rules	13 – 14 <i>[Note: 14.1 – 14.6 remain]</i> 15 – 16 31 – 32, 32.1 – 32.2, 33 – 34 38.1 – 38.4 42.1 – 42.6 47 – 48 50.5 – 50.6 53 – 58 60.1 – 60.4 62.1 – 62.2, 63 – 66, 66.1 – 66.2, 67 – 68 <i>[Note: 68.1 – 68.4 remain]</i> 69 – 70, 70.01 – 70.02, 70.1 – 70.2 95 – 104 110.3 – 110.8 <i>[Note: 110.9 – 110.10 remain]</i> 111 – 116, 116.1 – 116.2 129 – 132	13 – 14 15 – 16 31 – 32, 32.1 – 32.2, 33 – 34 38.1 – 38.4 42.1 – 42.6 47 – 48 50.5 – 50.6 53 – 58 60.1 – 60.4 62.1 – 62.2, 63 – 66, 66.1 – 66.4, 67 – 68 69 – 70, 70.01 – 70.02, 70.1 – 70.2 95 – 104 110.3 – 110.8 111 – 116, 116.1 – 116.2 129 – 132
Professional Conduct Handbook	35 – 38 –	35 – 38 71 – 74

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

**Updates:** This amendment package updates the *Member’s Manual* to **September 10, 2012**. The previous amendment package was 2012: No. 2 June.

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 Rody van Vianen in the Communications department: telephone 604.697.5838 or toll-free 1.800.903.5300 or email [communications@lsbc.org](mailto:communications@lsbc.org).

**Website:** The *Legal Profession Act*, Law Society Rules and *Professional Conduct Handbook* can be accessed in the Publications and Resources section of the Law Society website at [lawsociety.bc.ca](http://lawsociety.bc.ca) in both HTML (for online use) and in PDF (for printout, including printout of *Member’s Manual* replacement pages).

Refer to the Law Society website for the most current version of the Act, Rules and Handbook.

## MEMBER'S MANUAL CONTENTS CHECKLIST

*Updated to September 10, 2012*

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## DEFINITIONS

**“insolvent lawyer”** means a lawyer who

- (a) is the respondent of a petition for a receiving order under section 43,
  - (b) has made an assignment of all his or her property for the general benefit of the lawyer’s creditors under section 49,
  - (c) has made a proposal under section 50 or 66.11,
  - (d) has filed a notice of intention to make a proposal under section 50.4, or
  - (e) has applied for a consolidation order under section 219
- of the *Bankruptcy and Insolvency Act*, S.C. 1992, c. 27;

**“inter-jurisdictional law firm”** means a firm carrying on the practice of law in British Columbia and in one or more other Canadian or foreign jurisdictions, unless all lawyers in all offices of the firm are practising lawyers;

**“inter-jurisdictional practice”** includes practice by a member of the Society in another Canadian jurisdiction;

**“investigate”** includes authorizing an investigation and continuing an investigation in progress;

**“law clerk”** means a law clerk employed by a judge appointed under section 96 of the *Constitution Act, 1867*, or a judge of the Supreme Court of Canada, the Federal Court of Canada or the Tax Court of Canada;

**“lawyer”** means a member of the Society;

**“limited liability partnership”** or **“LLP”** means a limited liability partnership under Part 6 of the *Partnership Act*, including an extraprovincial limited liability partnership registered under that Part;

**“multi-disciplinary practice”** or **“MDP”** means a partnership, including a limited liability partnership or a partnership of law corporations, that is owned by at least one lawyer or law corporation and at least one individual non-lawyer or professional corporation that is not a law corporation, and that provides to the public legal services supported or supplemented by the services of another profession, trade or occupation;

**“National Mobility Agreement”** means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;

**“net interest”** means the total interest earned on a pooled trust account, minus any service charges and transmittal fee that the savings institution charges to that account;

**“officer”** means the Executive Director, a Deputy Executive Director or other person appointed as an officer by the Benchers;

**“Ombudsperson”** means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articled students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age, and includes anyone employed by the Ombudsperson to assist in that capacity;

**“panel”** means a panel established in accordance with Part 5;

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**“practice review”** means an investigation into a lawyer’s competence to practise law ordered under Rule 3-12(3)(d) or 3-13(1);

**“practice year”** means the period beginning on January 1 and ending on December 31 in a year;

**“practitioner of foreign law”** means a person qualified to practise law in a country other than Canada or in an internal jurisdiction of that country, who gives legal advice in British Columbia respecting the laws of that country or of the internal jurisdiction in which that person is qualified;

**“principal”** means a lawyer who is qualified to employ and employs an articulated student;

**“pro bono legal services”** means the practice of law not performed for or in the expectation of a fee, gain or reward;

[added 06/2012]

**“professional conduct record”** means a record of all or some of the following information respecting a lawyer:

- (a) an order under Rule 2-30(4), prohibiting the lawyer from acting as a principal for an articulated student;
- (b) any conditions or limitations of practice or articles accepted or imposed under the Act or these Rules;
- (c) a decision by a panel or the Benchers to reject an application for enrolment, call and admission or reinstatement;
- (c.1) a decision by the Credentials Committee to reject an application for an inter-jurisdictional practice permit;
- (c.2) any suspension or disbarment under the Act or these Rules;
- (d) recommendations made by the Practice Standards Committee under Rule 3-14;
- (d.1) to (f) [rescinded 11/08]
- (g) an admission accepted by the Discipline Committee under Rule 4-21;
- (h) an admission and consent to disciplinary action accepted by a hearing panel under Rule 4-22;
- (i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-9, and any written dispute of that report considered by the Committee;
- (j) a decision made under section 38(4)(b) or (c) of the Act;
- (k) an action taken under section 38(5), (6) or (7) of the Act;
- (l) an action taken by the Benchers under section 47 of the Act;
- (m) and (n) [rescinded 11/08]
- (o) a payment made under section 31 of the Act on account of misappropriation or wrongful conversion by the lawyer;
- (p) an order for costs made against the lawyer under Part 5;
- (p.1) any failure to pay any fine, costs or penalty imposed under the Act or these Rules by the time that it is to be paid;

## Meetings

### Annual general meeting

- 1-6** (1) The Benchers must hold an annual general meeting of the members of the Society each year.
- (2) Subject to subrule (3) and Rule 1-7, the Executive Committee may determine the place and time of the annual general meeting.
- (3) Unless the Benchers direct otherwise, the President must preside at the annual general meeting from a location in the City of Vancouver.
- (4) At the annual general meeting, the Benchers must present a report of their proceedings since the last annual general meeting.
- (5) At least 60 days before an annual general meeting, the Executive Director must distribute to members of the Society by mail a notice of the date and time of the meeting.
- (6) In order to be considered at the annual general meeting, a resolution must be
- (a) signed by at least 2 members of the Society in good standing, and
  - (b) received by the Executive Director at least 40 days before the annual general meeting.
- (7) [rescinded]
- (8) At least 21 days before an annual general meeting, the Executive Director must make available to members of the Society,
- (a) by mail, a notice containing the following information:
    - (i) the locations at which the meeting is to be held, and
    - (ii) each resolution and amendment received in accordance with subrule (6), and
  - (b) by electronic or other means, the audited financial statement of the Society for the previous calendar year.
- (9) The accidental failure to comply with any requirement under subrule (5) or (8) does not invalidate anything done at the annual general meeting.

[(5), (8) and (9) amended 03/2011; (5) and (8) amended, (7) rescinded 06/2012]

### Telephone connections

- 1-7** (1) The Benchers may conduct a general meeting by joining any number of locations by telephone or by any other means of communication that allows all persons participating in and entitled to vote at the meeting to hear each other.
- (2) The Executive Director may appoint a member of the Society in good standing to act as local chair of a location where the President is not present.
- (3) The local chair must record the names of those in attendance and, unless the Executive Director directs otherwise, may dispense with registration and voting and student cards under Rule 1-11.

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- (4) A person participating in a general meeting at any location connected under subrule (1) is present at the meeting for the purpose of Rule 1-11 and the calculation of a quorum.
- (5) The Executive Committee must designate locations to be joined to the annual general meeting , including at least the following locations:
  - (a) one in District No. 1, County of Vancouver, or District No. 4, County of Westminster;
  - (b) one in District No. 2, County of Victoria;
  - (c) one in District No. 3, County of Nanaimo;
  - (d) one in District No. 5, County of Kootenay;
  - (e) one in District No. 6, Okanagan;
  - (f) 2 in District No. 7, County of Cariboo;
  - (g) one in District No. 8, County of Prince Rupert;
  - (h) one in District No. 9, Kamloops.
- (6) As an exception to subrule (5), if, 7 days before an annual general meeting, fewer than 15 members of the Society have indicated to the Executive Director an intention to attend the meeting at any location announced under Rule 1-6(8), the Executive Committee may cancel that location.
- (7) A technical failure that prevents any member from participating in or voting at a general meeting does not invalidate anything done at the general meeting, and the meeting may continue if the members continuing to participate and vote adopt a resolution to that effect.

[ (7) added 09/2009 ]

### **Auditors**

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



## **PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW**

### **Division 1 – Practice of Law**

#### **Members**

##### **Categories of membership**

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

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

[amended effective 07/2010]

##### **Member in good standing**

**2-2** Subject to Rules 3-13(7) and 4-4.2(2), a member of the Society is a member in good standing unless suspended under section 38(5)(d) of the Act or under these Rules.

[amended 10/2006; 07/2008; 03/2010; 06/2012]

##### **Non-practising members**

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

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

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

[(2) amended 07/2004]

##### **Retired members**

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

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

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

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

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

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

### **Release from undertaking**

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

[added 06/2006]

### **Pro bono legal services by non-practising and retired members**

- 2-4.2** Despite an undertaking given under Rule 2-3(1)(a) or 2-4(2)(a), a non-practising or retired member may provide pro bono legal services.

[added 06/2012]

### **Transition**

- 2-4.3** A retired or non-practising member who has provided pro bono legal services between May 14, 2012 and June 16, 2012 is deemed not to be in breach of section 15 nor the undertaking given under Rule 2-3(1)(a) or 2-4(2)(a) for that reason alone.

[added 06/2012]

### **Certificates and permits**

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

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

## Member information

### Annual practice declaration

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

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

### Definition

- 2-7** In Rules 2-8 and 2-9, “**address**” includes
- (a) the name under which a lawyer’s firm carries on business, and
  - (b) the street address, including suite number if applicable, and mailing address, if that is different from the street address.

### Business address

- 2-8** (1) A lawyer must advise the Executive Director of the address of all of the lawyer’s places of business and inform the Executive Director immediately of a change of any of the lawyer’s places of business.
- (2) For the purpose of this Rule, a lawyer’s place of business includes the place of business and registered and records office of a law corporation of which the lawyer is a voting shareholder.

[(2) added 09/2003]

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**Residential address**

**2-9** A lawyer who ceases to have a place of business separate from the lawyer’s residence must provide the following information to the Executive Director immediately:

- (a) the address of the lawyer’s residence;
- (b) any change in the address of the lawyer’s residence;
- (c) on return to practice, employment or other business, the address of the lawyer’s place of business.

**Practice history**

**2-9.1** (1) In this Rule “**practice history**” means a record of

- (a) the dates and places that a lawyer or former lawyer has practised law or been enrolled in the admission program, including the name of the firms through which the lawyer or former lawyer practised law, and
- (b) dates of any periods since call and admission during which the lawyer or former lawyer has been a non-practising or retired member or a former member.

(2) On request by any person, the Executive Director may disclose all or part of the practice history of any member or former member of the Society.

[added 10/2004]

**Paralegals**

**Supervision of limited number of designated paralegals**

**2-9.2** (1) In this Rule, “**designated paralegal**” means an individual permitted under Chapter 12 of the *Professional Conduct Handbook* to give legal advice and represent clients before a court or tribunal.

(2) A lawyer must not supervise more than 2 designated paralegals at one time.

[added 07/2012]

**Unauthorized practice**

**Unauthorized practice of law**

**2-10** (1) A lawyer must not knowingly facilitate by any means the practice of law by a person who is not a practising lawyer or otherwise permitted to practise law under sections 15 to 17 of the Act or Rule 2-23.2.

(2) Without limiting subrule (1), a lawyer must not knowingly do any of the following:

- (a) act as an agent or permit his or her name to be used or held out in any way that enables a person to engage in the unauthorized practice of law;
- (b) send a process or other document to a person or do any other act that enables a person to engage in the unauthorized practice of law;
- (c) open or maintain an office for the practice of law unless the office is under the personal and actual control and management of a practising lawyer.

- (3) When the Society obtains a court order or an agreement restraining a person who is not a practising lawyer from the practice of law, the Executive Director may publish generally a summary of the circumstances and of the order or agreement, in a form that appears appropriate to the Executive Director.

[(3) amended 02/2006; (1) amended 12/2009, effective 07/2010]

### **Inter-jurisdictional practice**

#### **Definitions**

**2-10.1** In Rules 2-10.1 to 2-17.1,

**“business day”** means any calendar day or part of a calendar day in which a lawyer provides legal services;

**“disciplinary record”** includes any of the following, unless reversed on appeal or review:

- (a) any action taken by a governing body as a result of
  - (i) professional misconduct,
  - (ii) incompetence,
  - (iii) conduct unbecoming a lawyer,
  - (iv) lack of physical or mental capacity to engage in the practice of law,
  - (v) any other breach of a lawyer’s professional responsibilities;
- (b) disbarment;
- (c) a lawyer’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;
- (d) restrictions or limits on a lawyer’s entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;
- (e) any interim suspension or restriction or limits on a lawyer’s entitlement to practise imposed pending the outcome of a disciplinary hearing.

**“entitled to practise law”** means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction;

**“legal matter”** includes any activity or transaction that constitutes the practice of law and any other activity or transaction ordinarily conducted by lawyers in British Columbia in the course of practising law, whether or not persons other than lawyers are legally capable of conducting it;

**“National Registry”** means the National Registry of Practising Lawyers established under the National Mobility Agreement;

**“permit”** means an inter-jurisdictional practice permit issued under Rule 2-11;

**“provide legal services”** means to engage in the practice of law

- (a) physically in British Columbia, except with respect to the law of a home jurisdiction, or
- (b) with respect to the law of British Columbia physically in any jurisdiction, and includes to provide legal services respecting federal jurisdiction in British Columbia;

**Responsibilities of visiting lawyer**

- 2-14.1** (1) The Act, these Rules and the *Professional Conduct Handbook* apply to and bind a visiting lawyer providing legal services.
- (2) It is the responsibility of a visiting lawyer providing legal services to
- (a) record and verify the number of business days in which he or she provides legal services, and
  - (b) prove that he or she has complied with these Rules.

[added effective 07/2003]

**Enforcement**

- 2-15** (1) On the request of a governing body that is investigating the conduct of a lawyer, former lawyer or visiting lawyer or has initiated disciplinary proceedings against a lawyer, former lawyer or visiting lawyer, the Executive Director must provide all relevant information.
- (1.1) When the Executive Director provides information to a governing body under subrule (1), the Executive Director may inform any person whose personal, confidential or privileged information may be included of that fact and the reasons for it.
- (2) A fine imposed on a lawyer or former lawyer by a governing body may be enforced under Rule 4-36(4).
- (3) [rescinded]
- (4) A lawyer who practises law in another Canadian jurisdiction must comply with the applicable legislation, regulations, rules and *Professional Conduct Handbook* of that jurisdiction.
- (5) The Executive Director may require a visiting lawyer to
- (a) account for and verify the number of business days spent providing legal services, and
  - (b) verify compliance with any Rules specified by the Executive Director.
- (6) If a visiting lawyer fails or refuses to comply with a requirement under subrule (5) within 20 days, or such longer time that the Executive Director may allow in writing,
- (a) the visiting lawyer is prohibited from providing legal services without a permit,
  - (b) any permit issued to the visiting lawyer under Rule 2-11 is rescinded, and
  - (c) the Executive Director must advise each of the governing bodies of which the visiting lawyer is or has been a member, of the visiting lawyer's failure to comply and the consequences.
- (7) A visiting lawyer who is affected by subrule (6) may apply to the Credentials Committee for restoration of any or all rights lost under that subrule and the Committee may, in its discretion, grant the application, subject to any conditions or limitations it considers to be in the public interest.

[(3) and (4) added 11/1999; (1) and (2) amended 06/2001; (3) rescinded, (5) to (7) added effective 07/2003; (1) and (2) amended, (1.1) added 10/2003; (7) amended 07/2012]

**Trust funds and compensation fund**

- 2-16** (1) A visiting lawyer providing legal services must not maintain a trust account in British Columbia, and must
- (a) promptly remit funds received in trust to the visiting lawyer's trust account in the home jurisdiction, or
  - (b) ensure that trust funds received are handled
    - (i) by a practising lawyer in a trust account controlled by the practising lawyer, and
    - (ii) in accordance with the Act and these Rules.
- (2) The provisions of the Protocol concerning claims for compensation for misappropriation apply to a claim under Rule 3-30 involving inter-jurisdictional practice.

[amended, (1) added 11/1999; (1) amended 06/2001; effective 07/2003]

**Dispute resolution**

- 2-17** If a dispute arises with a governing body concerning any matter under the Protocol, the Credentials Committee may do one or both of the following:
- (a) agree with a governing body to refer the matter to a single mediator;
  - (b) submit the dispute to arbitration under Appendix 5 of the Protocol.

**National Registry of Practising Lawyers**

- 2-17.1** (1) The Executive Director must provide to the National Registry the current and accurate information about practising lawyers required under the National Mobility Agreement.
- (2) No one may use or disclose information obtained from the National Registry except for a purpose related to enforcement of the Act and these Rules.

[added effective 07/2003]

**Practitioners of foreign law**

**Practitioners of foreign law**

- 2-18** (1) A person who qualifies under section 17 of the Act may apply to the Executive Director for a permit to act as a practitioner of foreign law in British Columbia by delivering to the Executive Director
- (a) a completed permit application in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society, and
  - (b) the application fee specified in Schedule 1.



- (2) The Executive Director may issue to a person applying under subrule (1) a permit to act as a practitioner of foreign law if satisfied that the person
  - (a) is a member of the legal profession in one or more foreign jurisdictions,
  - (b) is not suspended or disbarred and has not otherwise ceased, for disciplinary reasons, to be a member of a governing body or of the legal profession in any foreign jurisdiction,
  - (c) is a person of good character and repute,
  - (d) has practised the law of a foreign jurisdiction for at least 3 of the past 5 years, or undertakes in writing to act as a practitioner of foreign law in British Columbia only under the direct supervision of a practitioner of foreign law who has practised law in that foreign jurisdiction for at least 3 of the past 5 years,
  - (e) carries professional liability insurance or a bond, indemnity or other security
    - (i) in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-21(1), and
    - (ii) that specifically extends to services rendered by the practitioner of foreign law while acting as such in British Columbia.
- (3) Subject to subrule (4), the Executive Director may attach conditions or limitations to a permit issued or renewed under this Rule.
- (4) The Executive Director may only attach under subrule (3) conditions or limitations that are authorized by the Credentials Committee.
- (5) A permit issued under subrule (2) is valid for one year from the issue date shown on it.
- (6) Despite subrule (5), a practitioner of foreign law permit ceases to be valid if the practitioner of foreign law
  - (a) is suspended as a result of proceedings taken under Part 4, or
  - (b) ceases to comply with any of the requirements of this Part.

[ (1) amended 12/2011; (3) and (4) amended 07/2012 ]

**Restrictions and limitations**

- 2-19** (1) No one may practise the law of a foreign jurisdiction or market a foreign legal practice in British Columbia without a permit issued under Rule 2-18(2).
- (2) A practitioner of foreign law who holds a current permit issued under Rule 2-18(2) may provide legal services in British Columbia respecting
- (a) the law of the jurisdiction in which the practitioner of foreign law is fully licensed to practise law, and
  - (b) trans-jurisdictional or international legal transactions.

## LAW SOCIETY RULES

- (3) A practitioner of foreign law must not
  - (a) provide advice respecting the law of British Columbia or another Canadian jurisdiction, or
  - (b) deal in any way with funds that would, if accepted, held, transferred or otherwise dealt with by a lawyer, constitute trust funds, except money received on deposit for fees to be earned in the future by the practitioner of foreign law.
- (4) The Act, these Rules and the *Professional Conduct Handbook* apply to and bind a practitioner of foreign law.
- (5) A practitioner of foreign law must notify the Executive Director promptly if he or she
  - (a) is the subject of criminal or professional discipline proceedings in any jurisdiction,
  - (b) ceases to be a member in good standing of the legal profession in any jurisdiction, or
  - (c) fails to complete satisfactorily any continuing legal education program required of the practitioner of foreign law as a member of the legal profession in a foreign jurisdiction.

### **Dual qualification**

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

**Consideration of application to engage in multi-disciplinary practice**

- 2-23.4** (1) On receipt of an application under Rule 2-23.3, the Executive Director must
- (a) grant permission to practise law in the MDP,
  - (b) if the requirements for permission to practise law in an MDP have not been met, refuse permission, or
  - (c) refer the application to the Credentials Committee.
- (2) The Executive Director must not grant permission under subrule (1) unless the Executive Director is satisfied of the following:
- (a) all of the conditions set out in Rule 2-23.2 have been satisfied;
  - (b) the lawyer has made arrangements that will enable the lawyer and the MDP to comply with Rules 2-23.1 to 2-23.12.
- (3) If the lawyer applying for permission under Rule 2-23.3 agrees, the Executive Director may impose conditions or limitations on permission granted under subrule (1).
- (4) Within 30 days after being notified of the decision of the Executive Director under subrule (1)(b), the lawyer may, by written notice, request a review by the Credentials Committee.
- (5) If an application is referred to the Credentials Committee under subrule (1)(c) or a review is requested under subrule (4), the Credentials Committee must direct the Executive Director to
- (a) grant permission to practise law in an MDP, with or without conditions or limitations, or
  - (b) reject the application.
- (6) If an application is rejected or if conditions or limitations are imposed, the Credentials Committee must, on the written request of the lawyer applying, give written reasons for the decision.

[added 12/2009, effective 07/2010; (3), (5) and (6) amended 07/2012]

**Changes in MDP**

- 2-23.5** (1) A lawyer practising in an MDP must immediately notify the Executive Director when
- (a) ceasing to practise law in the MDP for any reason,
  - (b) any new person proposes to become a member of the MDP,
  - (c) any member of the MDP ceases to be a member of the MDP or to be actively involved in the MDP's delivery of services to clients or in the management of the MDP, or
  - (d) there is any change in the terms of the partnership agreement or other contract affecting the conditions under which members of the MDP participate in the MDP.

## LAW SOCIETY RULES

- (2) When a new non-lawyer proposes to become a member of an MDP, the lawyer practising in the MDP must do the following at least 60 days before the proposed membership takes effect:
  - (a) notify the Executive Director in a form approved by the Credentials Committee;
  - (b) pay the application fee specified in Schedule 1.
- (3) Any number of lawyers practising law in an MDP may notify the Executive Director jointly under subrule (1) or (2).

[added 12/2009, effective 07/2010; (2) amended 12/2011]

### **Cancellation of permission to practise law in an MDP**

- 2-23.6** (1) If for any reason the Executive Director, in his or her sole discretion, is not satisfied that the lawyer is complying and will continue to comply with Rules 2-23.1 to 2-23.12, the Executive Director must cancel the permission granted under Rule 2-23.4.
- (2) A cancellation under subrule (1) takes effect
    - (a) after 30 days notice to all lawyers who are current members of the MDP affected by the cancellation, or
    - (b) without notice or on notice less than 30 days on the order of the Credentials Committee.
  - (3) A lawyer who is notified of a cancellation under this Rule may apply within 30 days to the Credentials Committee for a review of the Executive Director's decision.
  - (4) When a lawyer applies for a review under subrule (3), the Credentials Committee must consider all the information available to the Executive Director, as well as submissions from or on behalf of the lawyer applying and the Executive Director and must
    - (a) confirm the decision of the Executive Director,
    - (b) direct the Executive Director to reinstate the permission, with or without conditions or limitations specified by the Credentials Committee, or
    - (c) order a hearing before a panel under Part 5.
  - (5) The lawyer applying under subrule (3) or the Executive Director may initiate a review by the Benchers on the record of a decision under subrule (4) by delivering to the President and the other party a notice of review.
  - (6) Rules 5-15 and 5-17 to 5-21 apply to a review under this Rule, insofar as they are applicable and with the necessary changes.
  - (7) A lawyer who has applied for a review under subrule (3) may apply to the President for a stay of the cancellation pending the decision of the Credentials Committee on the review.
  - (8) The person who applies for a review under subrule (5) may apply to the President for a stay of the cancellation pending the decision of the Benchers on the review.

- (9) When considering an application for a stay under subrule (8), the President must consider all the information available to the Executive Director, as well as submissions from or on behalf of the Executive Director and the lawyer concerned and must
  - (a) refuse the stay, or
  - (b) grant the stay, with or without conditions or limitations.
- (10) On an application under subrule (7) or (8), the President may designate another Benchler to make a determination under subrule (9).
- (11) When a lawyer's permission to practise law in an MDP is cancelled under this Rule, the lawyer must immediately cease practising law in the MDP.

[added 12/2009, effective 07/2010; (4) and (9) amended 07/2012]

#### **Lawyer's professional duties**

- 2-23.7** (1) Except as provided in Rules 2-23.1 to 2-23.12, the *Act*, these Rules and the *Professional Conduct Handbook* apply to lawyers who practise in an MDP.
- (2) A lawyer practising law in the MDP must take all steps reasonable in the circumstances to ensure that the non-lawyer members of the MDP
  - (a) practise their profession, trade or occupation with appropriate skill, judgement and competence,
  - (b) comply with the Act, these Rules and the *Professional Conduct Handbook*, and
  - (c) provide no services to the public except
    - (i) those services that support or supplement the practice of law by the MDP, and
    - (ii) under the supervision of a practising lawyer, as required under Chapter 12 of the *Professional Conduct Handbook*.
- (3) A lawyer practising in an MDP must not permit any member or employee of the MDP to direct or control the professional judgement of the lawyer or to cause the lawyer or other members of the MDP to compromise their duties under the Act, these Rules or the *Professional Conduct Handbook*.

[added 12/2009, effective 07/2010]

#### **Privilege and confidentiality**

- 2-23.8** A lawyer practising law in an MDP must take all steps reasonable in the circumstances, including the implementation of screening measures if necessary, to ensure that no improper disclosure of privileged or confidential information is made to any person, including a person appointed by the regulatory body of another profession in relation to the practice of another member or employee of the MDP.

[added 12/2009, effective 07/2010]

**Conflicts of interest**

- 2-23.9** (1) A lawyer practising law in an MDP must take all steps reasonable in the circumstances to ensure that the other members of the MDP will comply with the provisions of the Act, these Rules and the *Professional Conduct Handbook* respecting conflicts of interest as they apply to lawyers.
- (2) This Rule applies when the MDP has provided legal services to a client or when a potential client has sought legal services from the MDP.

[added 12/2009, effective 07/2010]

**Liability insurance**

- 2-23.10** (1) A lawyer practising law in an MDP must ensure that every non-lawyer member of the MDP providing services directly or indirectly to the public on behalf of the MDP
- (a) maintains professional liability insurance
    - (i) on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pays the insurance fee, and
    - (ii) in an amount equivalent to the total amount of coverage that the MDP maintains in excess of that required under Rule 3-21(1), and
  - (b) complies with the provisions of Part 3, Division 4 of these Rules as if the non-lawyer were a lawyer.
- (2) If a non-lawyer member of an MDP agrees in writing, in a form approved by the Executive Committee, to engage in activities on behalf of the MDP for an average of 25 hours or less per week, the applicable insurance base assessment is the part-time insurance fee specified in Schedule 1.

[added 12/2009, effective 07/2010]

**Trust funds**

- 2-23.11** (1) A lawyer practising law in an MDP that accepts any funds in trust from any person must maintain a trust account and a trust accounting system
- (a) in accordance with Part 3, Division 7 of these Rules, and
  - (b) that are within the exclusive control of lawyers practising law in the MDP.
- (2) A lawyer practising law in an MDP must ensure that all funds received by the MDP that would, if received by a lawyer, constitute trust funds, are handled through a trust account and accounting system that complies with these Rules.

[added 12/2009, effective 07/2010]

**Notifying the Law Society**

- 2-23.12** (1) Each lawyer who practises law in an MDP must report to the Executive Director in a form approved by the Credentials Committee concerning the following:
- (a) non-lawyer members of the MDP providing services to the public;
  - (b) the reasonable steps taken to protect privileged and confidential information under Rule 2-23.8;
  - (c) compliance with the rules respecting conflicts of interest;
  - (d) liability insurance maintained by non-lawyers under Rule 2-23.10;
  - (e) trust accounts and trust accounting records maintained under Rule 2-23.11;
  - (f) the agreements required under Rule 2-23.2 between the lawyer and all non-lawyer members of the MDP;
  - (g) any other matter required by the Credentials Committee.
- (2) The report required under this rule must be made annually on a date determined by the Executive Director, or more frequently as determined by the Credentials Committee.

[added 12/2009, effective 07/2010]

**Division 2 – Admission and Reinstatement**

**Credentials Committee**

**Credentials Committee**

- 2-24** (1) For each calendar year, the President must appoint a Credentials Committee, including a chair and vice chair, both of whom must be Benchers.
- (2) The President may remove any person appointed under subrule (1).
- (3) At any time, the President may appoint a person to the Credentials 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.

[(1) and (3) amended 06/2011]

**Referral to Credentials Committee**

- 2-25** (1) The Executive Director may refer any matter for decision under this Division to the Credentials Committee.
- (2) On the written request of a lawyer, former lawyer, articled student or applicant affected by a decision made by the Executive Director under this Division, the Executive Director must refer the matter to the Credentials Committee.
- (3) When a matter is referred to the Credentials Committee under this Rule, the Committee may make any decision open to the Executive Director under this Division and may substitute its decision for that of the Executive Director.

**Powers of the Credentials Committee**

- 2-26** (1) The Credentials Committee may
- (a) and (b) [rescinded]
  - (c) exercise the authority of the Benchers to call and admit barristers and solicitors,
  - (d) implement, administer and evaluate a training course and examinations, assignments and assessments for all articulated students,
  - (e) establish standards for passing the training course and examinations, assignments and assessment,
  - (f) establish procedures to be applied by the Executive Director and faculty of the training course for
    - (i) the deferral, review or appeal of failed examinations, assignments and assessments, and
    - (ii) remedial work in the training course or examinations, assignments and assessments, and
  - (g) review, investigate and report to the Benchers on all aspects of legal education leading to call and admission.
- (2) When the Credentials Committee is empowered to order a hearing under this Division, it may do so even though the application has been withdrawn.
- (3) The Credentials Committee may, with the consent of the person concerned, vary or remove practice conditions or limitations made under this Division or imposed by the Benchers on a review under Rule 5-13.

[(1) amended 11/1999; 03/2003]

**Application for enrolment, admission or reinstatement**

**Disclosure of information**

- 2-26.1** (1) When an application has been made under this Division, the Executive Director may
- (a) disclose the fact that the application has been made and the status of the application, and
  - (b) on the request of a governing body, provide to the governing body copies of all or part of the contents of the application and related material.
- (2) For the purpose of subrule (1)(a), the status of an application is its stage of progress in processing the application, including, but not limited to the following:
- (a) received and under review;
  - (b) granted, with or without conditions or limitations;
  - (c) referred to the Credentials Committee;
  - (d) hearing ordered, whether or not a hearing has been scheduled;
  - (e) withdrawn;
  - (f) refused.

[(2) amended 07/2012]



PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

- (c) an articling agreement that includes all of the following:
  - (i) the prospective principal's express approval of the part-time arrangements;
  - (ii) the type of experience to be provided to the applicant;
  - (iii) the hours per day to be worked by the applicant;
  - (iv) the length of the proposed articling term.
- (2) An articulated student may apply to change his or her articles to part-time articles by submitting to the Executive Director the articling agreement referred to in subrule (1)(c).
- (3) The Executive Director may approve an application made under subrule (1) or (2) if
  - (a) the proposed articling term is a continuous period that would give work experience in the office of the principal equivalent to that required under Rule 2-32(1), and
  - (b) the student or applicant's articles will be completed within 2 years of the articling start date.
- (4) The part-time equivalent of the articling period is calculated on the following basis:
  - (a) 8 hours of scheduled work equals one day of articles;
  - (b) no additional credit is allowed for more than 8 hours per day.
- (5) If the Executive Director refers an application under this Rule to the Credentials Committee, the Committee must consider the applicant's submissions and may
  - (a) approve the application without conditions or limitations,
  - (b) approve the application, subject to any conditions or limitations it considers appropriate, or
  - (c) reject the application.

[(1) amended 03/2003; (1) amended 12/2011]

**Law clerks**

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

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

**Articles in another Canadian jurisdiction**

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

**Practice experience in a common law jurisdiction outside Canada**

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

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

**Secondment of articles**

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

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

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

[(3) amended 07/2012]

**Assignment of articles**

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

- (a) an assignment of articles in a form approved by the Credentials Committee,
- (b) a declaration of principal in a form approved by the Credentials Committee, and
- (c) statements from the previous principal and from the articled student setting out the reasons for the assignment.

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

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

**First call and admission**

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

[(2) amended 11/1999; (4) added 05/2002; (1) amended 03/2003, 06/2012]

## LAW SOCIETY RULES

### **Law school faculty**

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

[added 11/2009]

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

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

**Transfer as Canadian legal advisor**

- 2-49.3** (1) Subject to subrule (3), a member of the Barreau du Québec or of the Chambre des notaires du Québec may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:
- (a) a completed application for call and admission as a Canadian legal advisor in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;
  - (b) a certificate of character;
  - (c) a certificate of standing from the Barreau du Québec or from the Chambre des notaires du Québec and each other body regulating the legal profession, in any jurisdiction, in which the applicant is or has been a member of the legal profession;
  - (d) an errors and omissions insurance application or exemption form;
  - (e) the following fees:
    - (i) the application fee and call and admission fees;
    - (ii) a prorated practice fee;
    - (iii) a prorated annual insurance fee, unless exempt under Rule 3-25;
  - (f) any other information and documents required by the Act or these Rules that are requested by the Credentials Committee or the Benchers.
- (2) Subject to subrule (1), Rules 2-49 to 2-51 apply, with any necessary changes, to an application for call and admission on transfer as a Canadian legal advisor.
- (3) This Rule does not apply to a member of the Barreau du Québec or of the Chambre des notaires du Québec unless he or she has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Barreau or from the Chambre, as the case may be.

[added effective 07/2010; (1) amended 12/2011; (1) and (3) amended 03/2012;  
(1) amended 06/2012]

**Consideration of application for call and admission**

- 2-50** (1) The Executive Director must consider an application for call and admission by a person meeting the requirements under this division, and may conduct or authorize any person to conduct an investigation concerning the application.
- (2) On an application for call and admission, the Executive Director may

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

### **Barristers and solicitors' roll and oath**

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

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

## **Reinstatement**

### **Reinstatement of a former lawyer**

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

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- (2) An applicant for reinstatement may apply for the following status on reinstatement:
  - (a) practising lawyer, only if the applicant has met the conditions for practising law under Rule 2-57;
  - (b) non-practising member on compliance with Rule 2-3;
  - (c) retired member if the lawyer is qualified under Rule 2-4(1) and on compliance with Rule 2-4(2) and (3).
- (2.1) On an application under subrule (2)(c), the Credentials Committee may waive payment of all or part of the application fee on any conditions that the Committee considers appropriate.
- (3) On reinstatement, an applicant under subrule (2)(a) may be issued a practising certificate on payment of the following:
  - (a) the prorated practice fee specified in Schedule 2;
  - (b) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-25;
  - (c) [rescinded]
  - (d) any surcharge for which the lawyer is liable under Rule 3-26(2).
- (4) On reinstatement, an applicant under subrule (2)(b) or (c) may be issued a non-practising or retired member certificate on payment of the appropriate prorated fee specified in Schedule 3.
- (5) Subject to subrule (5.1), the Executive Director must consider an application for reinstatement of a former lawyer and may conduct or authorize any person to conduct an investigation concerning the application.
- (5.1) The Executive Director must not consider the application of a former lawyer for reinstatement unless the former lawyer has
  - (a) submitted all trust reports required under Rules 3-72 and 3-78(1),
  - (b) [rescinded]
  - (c) paid all assessments accrued under Rule 3-74 before and after the former lawyer ceased to be a member of the Society unless the Discipline Committee orders the assessments need not be paid under Rule 3-74(3), and
  - (d) paid all costs of trust reports ordered under Rule 3-74.1(6).
- (6) If an applicant for reinstatement is a disbarred lawyer, the Executive Director must refer the application to the Credentials Committee.
- (7) On any application for reinstatement to which subrules (5.1) and (6) do not apply, the Executive Director may
  - (a) reinstate the applicant without conditions or limitations, or
  - (b) refer the application to the Credentials Committee for consideration.

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- (8) Subject to subrule (9), when an application for reinstatement is referred to the Credentials Committee under subrule (7), the Committee may
  - (a) reinstate the applicant without conditions or limitations,
  - (b) reinstate the applicant with conditions or limitations on the practice of the applicant if the applicant consents in writing to those conditions or limitations, or
  - (c) order a hearing.
- (9) The Credentials Committee must order a hearing in the following circumstances:
  - (a) section 19(3) of the Act requires that a hearing be ordered;
  - (b) the Committee cannot reach another disposition of the matter under subrule (8);
  - (c) the Committee resolves by simple majority to order a hearing.
- (10) An applicant for reinstatement must give written notice of the application to those persons that the Executive Director may direct, and the persons notified may appear in person or by counsel at the hearing and be heard on the application.
- (11) If a disbarred lawyer is reinstated after a hearing, the Executive Director must publish and circulate to the profession a summary of the circumstances and the panel's reasons for the reinstatement.

[(5) and (7) amended, (5.1) added effective 08/2003; (5.1) amended 12/2003; (2.1) added 07/2004; (5.1) amended 02/2006; (2) amended 06/2006; (1) and (2.1) amended 12/2011; (3) amended 06/2012]

### **Subsequent application for reinstatement**

**2-53** A person whose application for reinstatement is rejected under section 22(3) of the Act may not make a new application for reinstatement until the earlier of the following:

- (a) 2 years after the date on which the application was rejected;
- (b) the date set by the panel when the application was rejected or by the Benchers on a review under Part 5.

### **Reinstatement of former judge or master**

**2-54** (1) Subject to subrules (2) and (3) a reinstated lawyer who was a judge or a master must restrict his or her practice of law as follows:

- (a) a former judge of a federally appointed court in British Columbia, the Supreme Court of Canada or the Federal Court of Canada must not appear as counsel in any court in British Columbia without first obtaining the approval of the Credentials Committee;
- (b) a former judge of the Provincial Court of British Columbia must not appear as counsel in that Court for 3 years after ceasing to be a judge;
- (c) a former master of the Supreme Court of British Columbia must not appear as counsel before a master, a registrar, a district registrar or a deputy district registrar of the Supreme Court of British Columbia for 3 years after ceasing to be a master.



- (2) The Credentials Committee may impose conditions or limitations 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 or limitations 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; (2) and (3) amended 07/2012]

### 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.
- (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; (1) amended 12/2011]

**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).

- (3) After submissions under subrule (1), the panel must determine the facts and decide whether to
  - (a) grant the application
  - (b) grant the application subject to conditions or limitations that the panel considers appropriate, or
  - (c) reject the application.
- (4) The panel must prepare written reasons for its findings.
- (5) The Executive Director must promptly deliver a copy of the panel's reasons prepared under subrule (4) to the applicant and counsel for the Society.

[(3) to (5) added 07/2007]

#### **Inactive applications**

- 2-68.1** (1) When the Credentials Committee has ordered a hearing under this Division and the applicant has taken no steps to bring the application to a hearing for one year, the application is deemed abandoned.
- (2) When an application is abandoned under this Rule, Law Society counsel may apply for an order that some or all of the funds paid under Rule 2-62 as security for costs be retained by the Society.
  - (3) An application under subrule (2) is made by notifying the following:
    - (a) the applicant;
    - (b) the Executive Director.
  - (4) On an application under subrule (3), the President may order that some or all of the funds deposited as security for costs be retained by the Society, and the remainder, if any, be refunded to the applicant.
  - (5) The President may designate another Bencher to make a determination under subrule (4).

[added 01/2012]

#### **Variation or removal of conditions or limitations**

- 2-69** (1) A lawyer or articled student on whom conditions or limitations have been imposed by a panel under this Division may apply to the President to have them varied or removed.
- (2) The President must refer an application under subrule (1) to the same panel that conducted the hearing or to the Credentials Committee, as the President considers appropriate.

#### **Publication of credentials decision**

- 2-69.1** (1) Subject to Rule 2-69.2, the Executive Director may publish and circulate to the profession a summary of the circumstances and of any decision of a hearing panel on an application under this Division and the reasons given for the decision.

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- (2) When a publication is allowed under subrule (1), the Executive Director may also publish generally
  - (a) a summary of the circumstances of the decision of the hearing panel and the reasons given for the decision, or
  - (b) all or part of the report of the hearing panel.
- (3) 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 6 months have elapsed from the decision of the hearing panel.
- (4) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[added 02/2004]

### **Anonymous publication**

- 2-69.2** (1) Except as required or allowed under this Rule, a publication under Rule 2-69.1 must identify the applicant.
- (2) If the application that is the subject of the hearing is rejected, the publication must not identify the applicant unless the applicant consents in writing.
  - (3) The panel may order that publication not identify the applicant if
    - (a) the application is approved without conditions or limitations on the practice or articles of the applicant, and
    - (b) publication will cause grievous harm to the applicant or another identifiable individual that outweighs the interest of the public and the Society in full publication.
  - (4) An applicant may apply to the panel for an order under subrule (3)
    - (a) in writing or on the record in the course of a hearing, and
    - (b) no later than 7 days after the written hearing report is issued or oral reasons delivered.
  - (5) The Executive Director must not publish under Rule 2-69.1 until
    - (a) 7 days after a hearing report is issued or oral reasons given, unless the applicant waives the right to apply under subrule (4), or
    - (b) an application under subrule (4) is resolved or withdrawn.
  - (6) If a panel orders that an applicant's identity not be disclosed under subrule (3), the panel must state in writing the specific reasons for that decision.
  - (7) If, on a review of a panel decision rejecting an application, the Benchers approve the application, the applicant may apply to the Benchers under subrule (4), and subrules (3) to (6) apply as if the Benchers were a panel.

[added 02/2004; (3) amended 07/2012]

### Division 3 – Fees and Assessments

#### Annual practising fees

- 2-70** (1) The annual practising fee and insurance fee are payable in respect of each calendar year.
- (2) The date for payment of the annual practising fee and first insurance fee instalment is November 30 of the year preceding the year for which they are payable.

[(2) amended 05/2004; (1) and (2) amended 06/2012]

#### Assessments

- 2-71** (1) The Benchers may, by resolution, set a special assessment of all
- (a) practising lawyers,
  - (b) practising lawyers and applicants,
  - (c) members of the Society, or
  - (d) members of the Society and applicants.
- (2) A resolution under subrule (1) must set a date by which the assessment must be paid.

#### Application fees

- 2-71.1** On application from a person who has paid an application fee under these Rules, the Executive Director may refund all or part of the fee if, in the view of the Executive Director, it is fair to make the refund in all the circumstances, including the extent to which Society resources have been expended to process the application for which the fee was paid.

[added 12/2011]

#### Late payment

- 2-72** (1) A lawyer who fails to pay fees by the date required under Rule 2-70 but pays all required fees before December 31 of the year preceding the year for which they are payable, together with the late payment fee under this Rule, continues to be a member of the Society.
- (2) The Executive Director may extend the time for a lawyer or class of lawyers to pay fees or a special assessment and, if the lawyer pays
- (a) the annual fee or special assessment by the date to which the time is extended, and
  - (b) the late payment fee under this Rule,
- the lawyer is deemed to be a member of the Society in good standing and to have been in good standing during the period of time that the lawyer's fee or special assessment was unpaid.

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**Refund when lawyer does not practise law**

- 2-74** (1) A lawyer who has paid the annual fee for a practice year but who satisfies the Executive Director that the lawyer has totally abstained from practice in British Columbia during that year through disability other than a suspension is entitled to a refund of
- (a) the difference between the practice fee set by the members of the Society under section 23(1)(a) of the Act and the non-practising member fee specified in Schedule 1, and
  - (b) [rescinded]
  - (c) a portion of the annual insurance fee set under section 30(3)(a) of the Act, in an amount determined by the Executive Director.
- (2) On payment of the refund under subrule (1), the lawyer
- (a) immediately ceases to be qualified to practise law, and
  - (b) on compliance with Rule 2-3, becomes a non-practising member.
- (3) A lawyer who qualifies under Rule 2-4 to be a retired member and complies with that Rule, may elect to become a retired member rather than a non-practising member under subrule (2)(b) and receive a refund of the difference between the non-practising member fee and the retired member fee specified in Schedule 1, in addition to the refund under subrule (1).

[(1) amended 06/2012]

**Refund on exemption during practice year**

- 2-75** (1) A lawyer who has paid the annual fee for a practice year and ceases to practise for any reason other than suspension or becomes exempt under Rule 3-25 during that year, is entitled to a refund of a portion of the annual insurance fee in an amount determined by the Executive Director.
- (2) If a lawyer becomes a non-practising or retired member during a year for which the lawyer has paid the practice fee, the Executive Director must apply a prorated portion of the practice fee, excluding any portion of the practice fee collected on behalf of the Canadian Bar Association, to the prorated non-practising or retired member fee and refund the difference, if any, to the lawyer.
- (3) A lawyer who ceases practising law under any of the following circumstances is entitled to a refund of the unused portion of the practice fee, excluding any portion of the practice fee collected on behalf of the Canadian Bar Association, less the administration fee specified in Schedule 1:
- (a) judicial appointment;
  - (b) death;
  - (c) total incapacity such that the lawyer is incapable of applying for non-practising status.

[(2) and (3) amended 05/2004]

**2-76** [rescinded 11/1999]

**Failure to pay fine, costs or penalty**

**2-77** (1) The Executive Director must apply any money received from or on behalf of a lawyer or former lawyer to payment of the following due and owing by the lawyer or former lawyer before any fees or assessments:

- (a) a fine;
- (b) costs;
- (c) a penalty;
- (d) a deductible amount paid under the Society's insurance program on behalf of the lawyer;
- (e) reimbursement for payment made on behalf of the lawyer or former lawyer under Part B of the policy of professional liability insurance.

(2) If a lawyer fails to pay, by the time that it is required to be paid, any of the amounts referred to in subrule (1), the Credentials Committee may suspend the lawyer until the amount is paid.

(3) The Executive Director may approve the form of certificate to be filed in the Supreme Court under section 27, 38 or 46 of the Act.

[amended 12/2003; (1) amended 03/2005; 07/2006; (3) added 07/2012]

**No refund on suspension**

**2-78** A lawyer who is suspended

- (a) is not entitled to a refund of any part of the annual fee for the period of the suspension or any special assessment that the lawyer has paid, and
- (b) must pay the annual fee or special assessment when it is due.



## **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 09/1999]

#### **Investigation of complaints**

- 3-5** (1) Subject to subrule (2), the Executive Director may, and on the instruction of the Discipline Committee must, investigate a complaint to determine its validity.
- (1.1) For the purpose of conducting an investigation under this Division and section 26 of the Act, the Executive Director may designate an employee of the Society or appoint a practising lawyer or a person whose qualifications are satisfactory to the Executive Director.
- (2) The Executive Director may decline to investigate a complaint if the Executive Director is satisfied that the complaint
- (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 who is the subject of a complaint 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.

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- (5) When acting under subrule (3), the Executive Director may decline to identify the complainant or the source of the complaint.
- (6) A lawyer must cooperate fully in an investigation under this Division by all available means including, but not limited to, responding fully and substantively, in the form specified by the Executive Director
  - (a) to the complaint, and
  - (b) to all requests made by the Executive Director in the course of an investigation.
- (6.1) When conducting an investigation of a complaint, the Executive Director may
  - (a) require production of files, documents and other records for examination or copying,
  - (b) require a lawyer to
    - (i) attend an interview,
    - (ii) answer questions and provide information relating to matters under investigation, or
    - (iii) cause an employee or agent of the lawyer to answer questions and provide information relating to the investigation,
  - (c) enter the business premises of a lawyer
    - (i) during business hours, or
    - (ii) at another time by agreement with the lawyer.
- (7) Any written response under subrule (6) must be signed by
  - (a) the lawyer personally, or
  - (b) a director of the law corporation, if the complaint is about a law corporation.
- (8) The Executive Director may deliver to the complainant a copy or a summary of a response received from the lawyer, subject to solicitor and client privilege and confidentiality.
- (9) [moved to Rule 3-5.1 06/2011]
- (10) A lawyer who is required to produce files, documents and other records, provide information or attend an interview under this Rule must comply with the requirement
  - (a) even if the information or files, documents and other records are privileged or confidential, and
  - (b) as soon as practicable and, in any event, by the time and date set by the Executive Director.

[(1) to (3) and (6) to (8) amended, (9) rescinded, (6.1) and (10) added 06/2011;  
(1.1) added 06/2012]

**Resolution by informal means**

**3-5.1** The Executive Director may, at any time, attempt to resolve a complaint through mediation or other informal means.

[added 06/2011]

**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) An order may be made under this Rule with respect to a lawyer or articulated 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, on reasonable grounds, that extraordinary action is necessary to protect the public, 3 or more Benchers may
- (a) [rescinded]
  - (b) impose conditions or limitations on the practice of a lawyer or on the enrolment of an articulated student, or
  - (c) suspend a lawyer or the enrolment of an articulated student.
- (3) to (13) [rescinded]
- (14) An order made under this Rule or varied under Rule 3-7.3 is effective until the first of
- (a) final disposition of any citation authorized under Part 4 arising from the investigation, or
  - (b) rescission, variation or further variation under Rule 3-7.3.
- (15) to (17) [rescinded]
- [(1), (2) and (14) amended, (3) to (13) and (15) to (17) rescinded 09/2012]

**Medical examination**

- 3-7.2** (1) This Rule applies to a lawyer or articulated student who is the subject of
- (a) an investigation or intended investigation under Rule 3-5, or
  - (b) a citation under Part 4.
- (2) If they are of the opinion, on reasonable grounds, that the order is likely necessary to protect the public, 3 or more Benchers may make an order requiring a lawyer or articulated student to
- (a) submit to an examination by a medical practitioner specified by those Benchers, and
  - (b) instruct the medical practitioner to report to the Executive Director on the ability of the lawyer to practise law or, in the case of an articulated student, the ability of the student to complete his or her articles.
- (3) The Executive Director may deliver a copy of the report of a medical practitioner under this Rule to the Discipline Committee or the Practice Standards Committee.
- (4) The report of a medical practitioner under this Rule
- (a) may be used for any purpose consistent with the Act and these Rules, and
  - (b) is admissible in any hearing or proceeding under the Act and these Rules.
- [added 09/2012]

## LAW SOCIETY RULES

### Procedure

- 3-7.3** (1) The Benchers referred to in Rules 3-7.1 to 3-7.3 must not include a member of the Discipline Committee.
- (2) Before Benchers take action under Rule 3-7.1 or 3-7.2, there must be a proceeding at which 3 or more Benchers and discipline counsel are present.
- (3) The proceeding referred to in subrule (2)
- (a) must be initiated by the Discipline Committee, the Practice Standards Committee or the Executive Director, and
  - (b) may take place without notice to the lawyer or articled student if the majority of Benchers present are satisfied, on reasonable grounds, that notice would not be in the public interest.
- (4) The lawyer or articled student and his or her counsel may be present at a proceeding under this Rule.
- (5) All proceedings under this Rule must be recorded by a court reporter.
- (6) Subject to the Act and these Rules, the Benchers present at a proceeding may determine the practice and procedure to be followed.
- (7) Unless the Benchers present order otherwise, the proceeding is not open to the public.
- (8) The lawyer or articled student or discipline counsel may request an adjournment of a proceeding conducted under this Rule.
- (9) Rule 4-29 applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.
- (10) Despite subrule (9), the Executive Director is not required to notify a complainant of a request made under subrule (8).
- (11) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.
- (12) An order made or varied under this Rule may be rescinded or varied by the Benchers who made the order, or a majority of them, on the application of the lawyer or articled student or discipline counsel.
- (13) On an application under subrule (12) to vary or rescind an order,
- (a) both the lawyer or articled student and discipline counsel must be given a reasonable opportunity to make submissions in writing, and
  - (b) the Benchers present may allow oral submissions if, in their discretion, it is appropriate to do so.
- (14) If, for any reason, any of the Benchers who made an order under this Rule is unable to participate in the decision on an application under subrule (12), the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate.

[added 09/2012]

**Appointment of Complainants' Review Committee**

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

[(2) amended 09/2009]

**Review by Complainants' Review Committee**

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

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

## **Division 2 – Practice Standards**

### **Practice Standards Committee**

- 3-10** (1) For each calendar year, the President must appoint a Practice Standards Committee, including a chair and vice chair, both of whom must be Benchers.
- (2) The President may remove any person appointed under subrule (1).
- (3) At any time, the President may appoint a person 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.

[(1) and (3) amended 06/2011]

### **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 Benchers 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.



## PART 3 – PROTECTION OF THE PUBLIC

- (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.
- (6) A lawyer who is the subject of a practice review may not resign from membership in the Society without the consent of the Practice Standards Committee.
- (7) The Practice Standards Committee may, by resolution, direct that a lawyer who is subject to a practice review and would otherwise cease to be a member of the Society under Rule 2-70 continue as a member not in good standing and not permitted to practise law.
- (8) A direction under subrule (7) may be made to continue in effect until stated conditions are fulfilled.
- (9) When a direction under subrule (7) expires on the fulfillment of all stated conditions or if the Practice Standards Committee rescinds the direction,
- (a) the lawyer concerned ceases to be a member of the Society,
  - (b) if the rescission is in response to a request of the lawyer concerned, the Committee may impose conditions on the rescission.

[(6) to (9) added 06/2012]

**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;

[Rule 3-14 continues on page 68.1]

**Small firm course**

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

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

**Professional development**

- 3-18.3** (1) The Benchers may determine by resolution the minimum number of hours of continuing education that is required of a practising lawyer in each calendar year.
- (2) The Benchers may prescribe circumstances in which a class of practising lawyer may be excused from completing all or part of the required professional development.
- (3) In each calendar year, a practising lawyer must
- (a) complete the required professional development, and
  - (b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has completed the required professional development.
- (4) Despite subrule (3), a practising lawyer need not complete the required professional development in a calendar year in which the lawyer has successfully completed the admission program or the equivalent in another Canadian jurisdiction.
- (5) On written application by a practising lawyer who has refrained from the practice of law for a minimum of 60 consecutive days in a calendar year, the Executive Director may reduce the required professional development for that lawyer.
- (6) The Executive Director must not reduce the amount of required professional development under subrule (5)
- (a) by an amount greater than that proportionate to the part of the calendar year in which the lawyer refrained from the practice of law, or
  - (b) by any amount if the lawyer refrained from the practice of law as a result of suspension, disbarment or other disciplinary proceedings.
- (6.1) A lawyer who ceases to be a practising lawyer without completing all required professional development must complete the uncompleted portion in the next calendar year in which the lawyer is a practising lawyer, in addition to the required professional development for that calendar year.

- (7) A practising lawyer who is in breach of this Rule has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the Chair of the Discipline Committee.

[added 07/2008; (6.1) added, (7) amended 12/2009; (1) and (2) amended 12/2011]

### **Mentoring**

- 3-18.31** (1) The Benchers may allow credit as a mentor, subject to any conditions or limitations that the Benchers consider appropriate.

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

[added 11/2009; (1) amended 07/2012]

### **Late completion of professional development**

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

## PART 3 – PROTECTION OF THE PUBLIC

- (2) Required professional development completed before April 1 that is applied to the requirement for the previous year cannot be applied to the requirement for the calendar year in which it is completed.
- (3) A practising lawyer who complies with Rule 3-18.3(3)(a) by December 31 but fails to comply with Rule 3-18.3(3)(b) by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does both of the following before April 1 of the following year:
  - (a) certifies the completion of the required professional development as required in Rule 3-18.3(3)(b);
  - (b) pays the late reporting fee specified in Schedule 1.

[added 07/2008; (1) amended, (3) added 12/2011]

### **Failure to complete professional development**

- 3-18.5** (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-18.3 by April 1 of the following year is suspended until all required professional development is completed and completion is certified to the Executive Director as required by Rule 3-18.3.
- (2) When there are special circumstances, the Practice Standards Committee may, in its discretion, order that
    - (a) the lawyer not be suspended under subrule (1), or
    - (b) a suspension under subrule (1) be delayed for a specified period of time.
  - (3) At least 60 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:
    - (a) the date on which the suspension will take effect;
    - (b) the reasons for the suspension;
    - (c) the means by which the lawyer may apply to the Practice Standards Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

[added 07/2008]

## **Division 3 – Specialization and Restricted Practice**

### **Advertising**

- 3-19** A lawyer must not advertise any specialization, restricted practice or preferred area of practice except as permitted in the *Professional Conduct Handbook*, Chapter 14, Rules 16 to 18.

### **Family law mediation**

- 3-20** (1) A lawyer may act as a family law mediator only if the lawyer has
  - (a) engaged in the full-time practice of law for at least 3 years or the equivalent in part-time practice, and
  - (b) completed a course of study in family law mediation approved by the Practice Standards Committee.

## LAW SOCIETY RULES

- (2) The Practice Standards Committee may allow a lawyer with special qualifications or experience to act as a family law mediator without qualifying under subrule (1)(a).
- (3) A lawyer who has been accredited by the Society as a family law mediator may so state in any marketing activity.

[(3) added 05/2009]

### **Division 4 – Professional Liability Insurance**

#### **Compulsory liability insurance**

- 3-21** (1) A lawyer must maintain professional liability insurance on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pay the insurance fee under Rule 3-22, unless the lawyer is exempt or ineligible under Rule 3-25.
- (2) A lawyer is bound by and must comply with the terms and conditions of professional liability insurance maintained under subrule (1).
  - (3) As soon as practicable, the Executive Director must notify all governing bodies of any change to compulsory professional liability insurance under this Division that affects the limits of liability or scope of coverage.

[(3) added 11/1999; (2) amended 07/2012]

#### **Annual insurance fee**

- 3-22** (1) The insurance fee to be paid under section 23(1)(c) of the Act is calculated as follows:
- (a) the appropriate base assessment as specified in Schedule 1; plus
  - (b) any surcharge for which the lawyer is liable under Rule 3-26; minus
  - (c) any credit to which the lawyer is entitled under Rule 3-24.
- (2) If a lawyer undertakes, in a form approved by the Executive Committee, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time insurance fee specified in Schedule 1.
  - (3) Subject to subrule (6), a lawyer is not eligible to pay the part-time insurance fee under subrule (2) for 5 years in practice after the Society pays an indemnity claim in respect of the lawyer.
  - (4) For a lawyer who does not give the undertaking referred to in subrule (2), the appropriate base assessment is the full-time insurance fee specified in Schedule 1.

- (5) For the purpose of this Rule,
- (a) the average number of hours per week that a lawyer engages in the practice of law and associated activities is calculated over successive 6 months periods, beginning on the effective date of the undertaking referred to in subrule (2), and
  - (b) “**associated activities**” includes practice management, administration and promotion and voluntary activities associated with the practice of law.
- (6) The Executive Director may, in the Executive Director’s discretion, reduce the time that a lawyer is not eligible under subrule (3) to pay the part-time insurance fee or, in extraordinary circumstances, allow the lawyer to pay the part-time insurance fee despite subrule (3).

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

**Payment of annual insurance fee by instalments**

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

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

**Insurance fee credit**

- 3-24** (1) The Benchers may approve an annual insurance fee credit and set the conditions that a lawyer must meet to be entitled to the credit.
- (2) When a lawyer is entitled to an annual insurance fee credit, the first instalment of the insurance fee payable by the lawyer is reduced by the amount of the credit.

**Exemption from liability insurance**

- 3-25** (1) A lawyer is exempt from the requirement to maintain professional liability insurance and pay the insurance fee if the lawyer is
- (a) not engaged in the practice of law, other than pro bono legal services, anywhere in his or her capacity as a member of the Society, or
  - (b) employed by one of the following and is not engaged in the practice of law, other than pro bono legal services, except in the course of that employment:
    - (i) a government department;
    - (ii) a corporation other than a law corporation;
    - (iii) a society, trade union or a similar organization.
- (2) A lawyer is not exempt under subrule (1)(b) if the lawyer engages in the practice of law, other than pro bono legal services, in any way other than as described in those provisions.

## LAW SOCIETY RULES

- (3) Subrule (4) applies to a lawyer who is entitled to practise law in the jurisdiction of a reciprocating governing body of which the lawyer is a member.
- (4) A lawyer may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee, if, in another Canadian jurisdiction in which the governing body allows a similar exemption for members of the Society, the lawyer
  - (a) is resident, and
  - (b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to that required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.
- (5) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee.
- (6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Barreau du Québec or by the Chambre des notaires du Québec that extends to the Canadian legal advisor's practice in British Columbia.

[(3) and (4) added effective 07/2003; (5) and (6) added effective 07/2010; (6) amended 03/2012; (1) and (2) amended 06/2012]

### **Transition**

**3-25.1** A lawyer who has provided pro bono legal services between May 14, 2012 and June 16, 2012 does not lose the exemption under Rule 3-25(1) for that reason alone.

[added 06/2012]

### **Deductible, surcharge and reimbursement**

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



## **PART 4 – DISCIPLINE**

### **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, including a chair and vice chair, both of whom must be Benchers.
- (2) The President may remove any person appointed under subrule (1).
- (3) At any time, the President may appoint a person 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; (1) and (3) amended 06/2011]

### **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,
  - (a.2) require the lawyer to attend a meeting with one or more Benchers or lawyers to discuss the conduct of the lawyer,

## LAW SOCIETY RULES

- (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]

### **Continuation of membership under investigation or disciplinary proceedings**

- 4-4.2** (1) In this Rule, "**investigated lawyer**" means a lawyer who is the subject of
- (a) an investigation under Part 3, Division 1, or
  - (b) a decision of the Discipline Committee under Rule 4-4(1)(a.2) or (b).
- (2) An investigated lawyer may not resign from membership in the Society without the consent of the Executive Director.
  - (3) A respondent may not resign from membership in the Society without the consent of the Discipline Committee.
  - (4) The Executive Director may direct that an investigated lawyer who would otherwise have ceased to be a member of the Society under Rule 2-70 continue as a member not in good standing and not permitted to engage in the practice of law.
  - (5) The Discipline Committee may, by resolution, direct that a respondent who would otherwise have ceased to be a member of the Society under Rule 2-70 continue as a member not in good standing and not permitted to engage in the practice of law.
  - (6) A direction under subrule (4) or (5) may be made to continue in effect until stated conditions are fulfilled.

## PART 4 – DISCIPLINE

- (7) When a direction under subrule (4) or (5) expires on the fulfillment of all stated conditions or is rescinded by the Executive Director or Discipline Committee,
- (a) the lawyer concerned ceases to be a member of the Society,
  - (b) if the rescission is in response to a request of the lawyer concerned, the Committee may impose conditions on the rescission.

[added 06/2012]

### **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.
- (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.

- (1.1) The Discipline Committee or the chair of the Discipline Committee may appoint one or more individuals who are Benchers, Life Benchers or lawyers to meet with a lawyer required to attend a conduct meeting under Rule 4-4(1)(a.2).
- (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; (1.1) added 07/2012]

**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 the factual background, the Subcommittee's conclusions and any recommendations, and

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- (b) deliver a copy of that report to the lawyer, together with written notice that the lawyer has 30 days from the date of the notice to notify the chair of the Subcommittee in writing of any dispute as to the contents of the report and the reasons he or she disputes the contents of the report.
- (2) If the Subcommittee considers it necessary for the effective consideration of the lawyer's dispute, it may order a further meeting.
- (3) If a further meeting is ordered under subrule (2), Rule 4-8 applies.
- (4) The Subcommittee must consider the lawyer's dispute and
  - (a) amend its report as it considers appropriate, or
  - (b) forward its report to the Discipline Committee without amendment.
- (5) The Subcommittee must notify the lawyer in writing of its decision under subrule (4) and, if the report is amended, provide a copy of the amended report to
  - (a) the lawyer, and
  - (b) the Discipline Committee.
- (6) After considering the Conduct Review Subcommittee's report, the Discipline Committee must do one or more of the following:
  - (a) decide to take no further action on the complaint;
  - (b) refer the lawyer to the Practice Standards Committee;
  - (c) 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; (1) amended 10/2011]

### **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.

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- (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 Benchers to act under subrule (2).
- [amended, (2) and (3) added 09/1999; (1) amended 09/2007; heading and (1) amended 10/2010]

**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 Benchers to make a determination, or
  - (c) refer an application to a prehearing conference.

[added 10/2010]

**Interim suspension or practice conditions**

**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, 3 or more Benchers may do any of the following:
  - (a) [rescinded]
  - (b) in any case not referred to in paragraph (b.1), impose conditions or limitations on the practice of a respondent who is a lawyer or on the enrolment of a respondent who is an articled student;
  - (b.1) suspend a respondent who is a lawyer, if the Benchers present consider, on the balance of probabilities, that the continued practice of the respondent will be dangerous to the public or the respondent’s clients;
  - (c) suspend the enrolment of a respondent who is an articled student if the Benchers present consider, on the balance of probabilities, that the continuation of the student’s articles will be dangerous to the public or a lawyer’s clients.
- (1.1) The Benchers referred to in subrule (1) must not include a member 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.



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- (1.17) Rule 4-29 applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.
- (1.18) Despite subrule (1.17), the Executive Director is not required to notify a complainant of a request made under subrule (1.16).
- (1.19) After a proceeding has 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) may be varied by the Benchers who made it, 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,
    - (b) the Benchers considering an application under subrule (3) may allow oral submissions if, in their discretion, it is appropriate to do so, and
    - (c) if, for any reason, any of the Benchers who made the order is unable to participate in the decision, the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate.

[(1.1) added 10/2001; (1) and (2) amended, (0.1), (1.11) to (1.19), (3) and (4) added 10/2006; (1) amended, (1.11) added 03/2010; (1) and (1.19) amended 10/2010; heading, (1), (1.1), (3) and (4) amended 09/2012]

### **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 or practice conditions**

- 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.

[heading amended 09/2012]

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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 \$50,000;
  - (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 or limitations 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; (2) amended 06/2012, 07/2012]

### **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.
  - (5) Subrule (4) applies when the Society agrees with a governing body under subrule (2).

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- (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,

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- (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.

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- (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 or limitation 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, limitation or suspension applies and the nature of the condition, limitation 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, limitation 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, limitation or suspension ceases to be in force.

[added 06/2005; (1) and (3) amended 07/2012]

### 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) [rescinded]
- (1.1) In this Rule, "**offence**" means
- (a) an offence that was proceeded with by way of indictment, or
  - (b) an offence in another jurisdiction that, in the opinion of the Benchers, is equivalent to an offence that may be proceeded with by way of indictment.
- (2) If the Discipline Committee is satisfied that a lawyer or former lawyer has been convicted of an offence, the Committee may refer the matter to the Benchers under subrule (3).
- (3) Without following the procedure provided for in the Act or these Rules, the Benchers may summarily suspend or disbar a lawyer or former lawyer on proof that the lawyer or former lawyer has been convicted of an offence.

[(1) rescinded, (2) amended, (1.1) and (3) added 06/2012]

**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 of the lawyer or former lawyer.
- (1.1) When electronic records have been produced or copied pursuant to an order under this Rule, the lawyer concerned may request that a specific record be excluded from the investigation on the basis that it contains personal information that is not relevant to the investigation.
- (1.2) The lawyer must make a request under subrule (1.1) in writing to a person designated under subrule (2) within 7 days of receiving a copy of the order under this Rule.
- (1.3) An order under this Rule that permits the production or copying of electronic records must provide for a method of evaluating and adjudicating exclusion requests made under subrule (1.1).

[(1) amended 10/2010; (1) and (2) amended, (1.1) added 12/2010; (1) and (1.1) amended, (1.2) and (1.3) added 07/2011]

[Rule 4-43 continues on next page]



## 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 Rules 3-7.1 to 3-7.3 or 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 or practice condition or limitation 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; (1) amended 09/2012]

**Compelling witnesses and production of documents**

- 5-4** (1) In this Rule, “**respondent**” includes a shareholder, director, officer or employee of a respondent law corporation.
- (2) 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 by the application or in the citation.
- (3) A person who is the subject of an order under subrule (2)(a) may be cross-examined by counsel representing the Society.

[heading amended 10/2010; rule amended, (1) and (3) added 07/2011]

**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.
- (5) When a panel makes an order under this Rule or declines to make an order on an application, the panel must give written reasons for its decision.

[(2) amended, (4) added 05/2003; (5) added 06/2012]

### **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) [rescinded]
- (1.1) Subject to subrule (1.2), the panel or the Benchers must have regard to the tariff of costs in Schedule 4 to these Rules in calculating the costs payable by a respondent or the Society in respect of a hearing on a citation or a review of a decision in a hearing on a citation.
- (1.2) If, in the judgment of the panel or the Benchers, it is reasonable and appropriate for the Society or a respondent to recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4, the panel or the Benchers may so order.
- (1.3) The cost of disbursements that are reasonably incurred may be added to costs payable under this Rule.
- (1.4) In the tariff in Schedule 4,
- (a) one day of hearing includes a day in which the hearing or proceeding takes 2 and one-half hours or more, and
- (b) for a day that includes less than 2 and one-half hours of hearing, one-half the number of units applies.
- (2) [rescinded]
- (3) If no adverse finding is made against the applicant, the panel or the Benchers have the discretion to direct that the applicant be awarded costs.
- (3.1) If the citation is dismissed or rescinded after the hearing has begun, the panel or the Benchers have the discretion to direct that the respondent be awarded costs in accordance with subrules (1.1) to (1.4).
- (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; (1.1) to (1.4) and (3.1) added, (1) and (2) rescinded, (3) amended 04/2012]

**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:

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- (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.
- (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; (1) amended 07/2008, 06/2012]

### 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]

**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;
- (c.1) any written arguments or submissions received 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; 07/2012]

**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;
- (c.1) any written arguments or submissions received by the panel;
- (d) the panel's written reasons for any decision;
- (e) the notice of review under Rule 5-15.

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- (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; 07/2012]

### **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]



## SCHEDULE 1 – 2012 LAW SOCIETY FEES AND ASSESSMENTS

<b>A. Annual fee</b>	<b>\$</b>
1. Practice fee (Rule 2-70) .....	1,840.41
2. [rescinded 06/2012]	
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
 <b>A.1 Trust administration fee</b>	
1. Each client matter subject to fee (Rule 2-72.2(1)) .....	10.00
 <b>B. Special assessments</b>	
 <b>C. Articled student fees</b>	
1. Application fee for enrolment in admission program (Rules 2-27(3)(e) and 2-33(1)(b)) .....	250.00
2. Application fee for temporary articles (Rule 2-42(1)(c)) .....	125.00
3. Application fee for temporary articles (legal clinic) (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
 <b>D. Transfer fees</b>	
1. Application fee for 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
 <b>E. Call and admission fees</b>	
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

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<b>F. Reinstatement fees</b>	<b>\$</b>
1. Application fee following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-52(1)(b)) .....	600.00
1.1 Application fee following 3 years or more as a former member (Rule 2-52(1)(b)) .....	500.00
2. Application fee in all other cases (Rule 2-52(1)(b)) .....	415.00
<b>G. Change of status fees</b>	
1. Application fee to become retired member (Rule 2-4(2)(b)) .....	30.00
2. Application fee to become non-practising member (Rule 2-3(1)(b)) .....	60.00
3. Application fee for non-practising or retired member applying for practising certificate (Rule 2-56(b)) .....	60.00
<b>H. Inter-jurisdictional practice fees</b>	
1. Application fee (Rule 2-11(2)(b)) .....	500.00
2. Renewal of permit (Rule 2-11(2)(b)) .....	100.00
<b>I. Corporation and limited liability partnership fees</b>	
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
<b>J. Practitioners of foreign law</b>	
1. Application fee for practitioners of foreign law (Rule 2-18(1)(b)) .....	600.00
2. Permit renewal fee for practitioners of foreign law (Rules 2-18(1)(b) and 2-22(2)(c)) .....	125.00
3. Late payment fee (Rule 2-22(6)) .....	100.00
<b>K. Late fees</b>	
1. Trust report late filing fee (Rule 3-74(2)) .....	200.00
2. Professional development late completion fee (Rule 3-18.4(1)(c)) .....	500.00
2. Professional development late reporting fee (Rule 3-18.4(3)(b)) .....	200.00
<b>L. Multi-disciplinary practice fees</b>	
1. Application fee (Rule 2-23.3(1)).....	300.00
2. Application 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.

SCHEDULES – LAW SOCIETY FEES AND ASSESSMENTS

**SCHEDULE 2 – 2012 PRORATED FEES AND ASSESSMENTS  
FOR PRACTISING MEMBERS**

	Law Society fee	Liability insurance assessment	
		Payable prior to call	Payable by June 30
<b>Full-time insurance</b>			
January	1,840.41	875.00	875.00
February	1,684.76	729.17	875.00
March	1,533.67	583.33	875.00
April	1,378.01	437.50	875.00
May	1,226.94	291.67	875.00
June	1,071.27	145.83	875.00
July	920.21	875.00	0.00
August	764.56	729.17	0.00
September	613.47	583.33	0.00
October	547.81	437.50	0.00
November	306.74	291.67	0.00
December	151.07	145.83	0.00
<b>Part-time insurance</b>			
January	1,840.41	437.50	437.50
February	1,684.76	364.58	437.50
March	1,533.67	291.67	437.50
April	1,378.01	218.75	437.50
May	1,226.94	145.83	437.50
June	1,071.27	100.00	437.50
July	920.21	437.50	0.00
August	764.56	364.58	0.00
September	613.47	291.67	0.00
October	547.81	218.75	0.00
November	306.74	145.83	0.00
December	151.07	100.00	0.00

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

LAW SOCIETY RULES

**SCHEDULE 3 – 2012 PRORATED FEES  
FOR NON-PRACTISING AND RETIRED MEMBERS**

	<b>Non-practising members fee</b>	<b>Retired members fee</b>
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 12

### SUPERVISION

#### Direct supervision required

1. A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.<sup>1</sup>

[rescinded and replaced 06/2012]

#### Definitions

2. In this Chapter,

**“designated paralegal”** means an individual permitted under rule 6 to give legal advice and represent clients before a court or tribunal

**“non-lawyer”** means an individual who is neither a lawyer nor an articulated student;

**“paralegal”** means a non-lawyer who is a trained professional working under the supervision of a lawyer.

[rescinded and replaced 06/2012]

#### Delegation

3. A lawyer must not permit a non-lawyer to:
  - (a) accept new matters on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;
  - (b) give legal advice;
  - (c) give or accept undertakings or accept trust conditions;
  - (d) act finally without reference to the lawyer in matters involving professional legal judgment;
  - (e) be held out as a lawyer;
  - (f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a supporting role to the lawyer appearing in such proceedings;
  - (g) be named in association with the lawyer in any pleading, written argument or other like document submitted to a court;

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- (h) be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer's law firm, unless the non-lawyer is an employee of the lawyer or the law firm;
- (i) conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;
- (j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;
- (k) sign correspondence containing a legal opinion;
- (l) sign correspondence, unless
  - (i) it is of a routine administrative nature,
  - (ii) the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,
  - (iii) the fact the person is a non-lawyer is disclosed, and
  - (iv) the capacity in which the person signs the correspondence is indicated;
- (m) forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction;
- (n) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or
- (o) issue statements of account.

[rescinded and replaced 06/2012]

4. The limitations imposed by subrule (3) do not apply when a non-lawyer is
- (a) a community advocate funded and designated by the Law Foundation;
  - (b) a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and
  - (c) with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.

[rescinded and replaced 06/2012]

5. A lawyer may employ as a paralegal a person who
- (a) possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;

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- (b) possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and
- (c) carries out his or her work in a competent and ethical manner.<sup>2</sup>

[rescinded and replaced 06/2012]

5.1 [rescinded 06/2012]

6. Despite Rule 3 and subject to the Law Society Rules, where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal

- (a) to give legal advice; or
- (b) to represent clients before a court or tribunal, as permitted by the court or tribunal.

[rescinded and replaced 06/2012]

7 to 9. [rescinded 06/2012]

### **Real estate assistants**

10. In Rules 10 to 12,

“**purchaser**” includes a lessee or person otherwise acquiring an interest in a property;

“**sale**” includes lease and any other form of acquisition or disposition;

“**show,**” in relation to marketing real property for sale, includes:

- (a) attending at the property for the purpose of exhibiting it to members of the public;
- (b) providing information about the property, other than preprinted information prepared or approved by the lawyer; and
- (c) conducting an open house at the property.

[added 10/2004]

11. A lawyer may employ an assistant in the marketing of real property for sale in accordance with this chapter, provided:

- (a) the assistant is employed in the office of the lawyer; and
- (b) the lawyer personally shows the property.

[added 10/2004]

12. A real estate marketing assistant may:

- (a) arrange for maintenance and repairs of any property in the lawyer’s care and control;
- (b) place or remove signs relating to the sale of a property;

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- (c) attend at a property without showing it, in order to unlock it and let members of the public, real estate licensees or other lawyers enter; and
- (d) provide members of the public with preprinted information about the property prepared or approved by the lawyer.

[added 10/2004]

### FOOTNOTES:

1. A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion. A lawyer must limit the number of non-lawyers that he or she supervises to ensure that there is sufficient time available for adequate supervision of each non-lawyer.

If a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

A lawyer in private practice may permit a non-lawyer to perform tasks delegated and supervised by a lawyer, so long as the lawyer maintains a direct relationship with the client. A lawyer in a community legal clinic funded by a provincial legal aid plan may do so, so long as the lawyer maintains direct supervision of the client's case in accordance with the supervision requirements of the legal aid plan and assumes full professional responsibility for the work.

Subject to the provisions of any statute, rule or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer generally turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which, in the public interest, must be exercised by the lawyer whenever it is required.

[rescinded and replaced 06/2012]

2. A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner.

In arriving at this determination, lawyers should be guided by Appendix 7.

Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

[added 06/2012]



## APPENDIX 7

### SUPERVISION OF PARALEGALS

[Chapter 12]

#### Key concepts

1. Lawyers who use paralegals need to be aware of several key concepts:
  - (a) The lawyer maintains ultimate responsibility for the supervision of the paralegal and oversight of the file;
  - (b) Although a paralegal may be given operational carriage of a file, the retainer remains one between the lawyer and the client and the lawyer continues to be bound by his or her professional, contractual and fiduciary obligations to the client;
  - (c) The Society will protect the public by regulating the lawyer who is responsible for supervising the paralegal in the event of misconduct or a breach of the *Legal Profession Act* or Law Society Rules committed by the paralegal;
  - (d) A lawyer must limit the number of persons that he or she supervises to ensure that there is sufficient time available for adequate supervision of each person;
  - (e) A paralegal must be identified as such in correspondence and documents he or she signs and in any appearance before a court of tribunal;
  - (f) A lawyer must not delegate any matter to a paralegal that the lawyer would not be competent to conduct himself or herself.

#### Best practices for supervising paralegals

2. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:
  - (a) Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?
  - (b) Does the paralegal have relevant work experience and or education relating to the matter being delegated?
  - (c) How complex is the matter being delegated?
  - (d) What is the risk of harm to the client with respect to the matter being delegated?

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3. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:
  - (a) Train the paralegal as if he or she were training an articulated student. A lawyer must be satisfied the paralegal is competent to engage in the work assigned;
  - (b) Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;
  - (c) Gradually increasing the paralegal's responsibilities;
  - (d) A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:
    - (i) testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;
    - (ii) engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;
    - (iii) ensuring the paralegal follows best practices regarding client communication and file management.
4. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.
5. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and deal with the mistake.
6. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

### **Best practices for training paralegals**

7. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.
8. Review the guidelines for supervising articulated students and adopt concepts that are appropriate to the scope of responsibility being entrusted to the paralegal.
9. Facilitate continuing legal education for the paralegal.

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10. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.
11. Have their paralegals “junior” the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal’s training.
12. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

### **A checklist for assessing the competence of paralegals**

13. Does the paralegal have a legal education? If so, consider the following:
  - (a) What is the reputation of the institution?
  - (b) Review the paralegal’s transcript;
  - (c) Review the courses that the paralegal took and consider reviewing the course outline for relevant subject matters to assess what would have been covered in the course, consider total number of credit hours, etc.
  - (d) Ask the paralegal about the education experience.
14. Does the paralegal have other post-secondary education that may provide useful skills? Consider the reputation of the institution and review the paralegal’s transcripts.
15. What work experience does the paralegal have, with particular importance being placed on legal work experience?
  - (a) Preference/weight should be given to work experience with the supervising lawyer and/or firm;
  - (b) If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;
  - (c) Does the paralegal have experience in the relevant area of law?
  - (d) What responsibilities has the paralegal undertaken in the past in dealing with legal matters?
16. What personal qualities does the paralegal possess that make him or her well-suited to take on enhanced roles:
  - (a) How responsible, trustworthy and mature is the paralegal?
  - (b) Does the paralegal have good interpersonal and language skills?

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- (c) Is the paralegal efficient and well organized?
- (d) Does the paralegal possess good interviewing and diagnostic skills?
- (e) Does the paralegal display a strong understanding of both the substantive and procedural law governing the matter to be delegated?
- (f) Does the paralegal strive for continuous self-improvement, rise to challenges, etc.?

[Appendix 7 added 06/2012]