



# MEMBER'S MANUAL

## AMENDMENT PAGES

2013: No. 2 June

### Highlights

**Law Society Rules:** The means of serving documents and notifying persons of Law Society proceedings are made more consistent and provide more practical alternatives (Rules 4-15, 4-41(2) and 10-1: pp. 101, 110.8 and 128); a new rule establishes a procedure for a party to a citation to require the other party to respond to a notice to admit specified facts (Rules 4-20.1, 4-24.1(3), 4-30(3) and 5-5(6): pp. 105, 108, 110.1 and 113); any party to a review may make an application for a stay of the order under review, not just the party initiating the review (Rule 5-14(3): p. 116.2); unlimited liability companies may act as law corporations (Rule 9-1: p. 121); the tariff of costs is updated (Schedule 4: p. 133).

**Code of Professional Conduct:** The rule prohibiting dishonesty, crime or fraud applies, whether or not that conduct takes place in the context of a lawyer-client relationship (rule 3.2-7: p. 16); an inconsistency with the *Legal Profession Act* provisions covering contingent fee agreements is corrected (rule 3.6-2, commentary [1]: p. 46); the rule on disbursements and “other charges” is rescinded for further study and consultation (rule 3.6-3, commentary [1]: p. 46); the list of circumstances that requires a lawyer to obtain approval from the Law Society before professionally associating with a person is expanded (rule 6.1-4: p. 76); before proceeding by default in a matter, a lawyer must give notice to another lawyer who has been consulted (rule 7.2-1, commentary [5]: p. 83); typographical errors are corrected (rules 3.4-29 and 3.4-42: pp. 40 and 43).

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

Manual section	Existing pages to be removed	Amendment pages to be inserted
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After filing, insert this sheet at the front of the *Manual* for reference.

[continued over]

**Updates:** This amendment package updates the *Member's Manual* to **May 31, 2013**. The previous amendment package was 2013: No. 1 March.

To check that your copy of the *Manual* is up to date, consult the contents checklist on the next page. If you have further questions about updating your *Manual*, contact Jenna Kirouac 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 the *Code of Professional Conduct for British Columbia* 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 versions of the Act, Rules and Code.

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## PART 4 – DISCIPLINE

### Notice of citation

**4-15** The Executive Director must serve a citation on the respondent

- (a) in accordance with Rule 10-1, 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.

[amended, (2) and (3) added 09/1999; (1) amended 09/2007; heading and (1) amended 10/2010; (1) amended, (2) and (3) rescinded 04/2013]

### 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 articulated 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 articulated 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.

## PART 4 – DISCIPLINE

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

[(6) amended, (6.1) added 09/1999; (1), (4), (12) and (14) amended, (3) rescinded 10/2006; (11) amended 04/2009; heading amended 09/2012]

### **Appointment of discipline counsel**

**4-20** The Executive Director must appoint a lawyer employed by the Society or retain another lawyer to represent the Society when

- (a) a direction to issue a citation is made under Rule 4-13,
- (a.1) a review is initiated under section 47 of the Act,
- (b) a person appeals a decision to the Court of Appeal under section 48 of the Act, or
- (c) the Society is a respondent in any other action involving the investigation of a complaint against a lawyer or the discipline of a lawyer.

[amended 09/2012, effective 01/2013]

### **Notice to admit**

- 4-20.1** (1) At any time, but not less than 45 days before a date set for the hearing of a citation, the respondent or discipline counsel may request the other party to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document.
- (2) A request made under subrule (1) must
    - (a) be made in writing in a document clearly marked “Notice to Admit” and served in accordance with Rule 10-1, and
    - (b) include a complete description of the fact the truth of which is to be admitted or attach a copy of the document the authenticity of which is to be admitted.
  - (3) A request may be made under subrule (1) by a party that has made a previous request under that subrule.
  - (4) A respondent or discipline counsel who receives a request made under subrule (1) must respond within 21 days by serving a response on the other party in accordance with Rule 10-1.

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- (5) The time for response under subrule (4) may be extended by agreement of the parties or by an order under Rule 4-26.1 or 4-27.
- (6) A response under subrule (4) must contain one of the following in respect of each fact described in the request and each document attached to the request:
  - (a) an admission of the truth of the fact or the authenticity of the document attached to the request;
  - (b) a statement that the party making the response does not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.
- (7) If a party who has been served with a request does not respond in accordance with this Rule, the party is deemed, for the purposes of the hearing only, to admit the truth of the fact described in the request or the authenticity of the document attached to the request.
- (8) If a party does not admit the truth of a fact or the authenticity of a document under this Rule, and the truth of the fact or authenticity of the document is proven in the hearing, the panel may consider the refusal when exercising its discretion respecting costs under Rule 5-9.
- (9) A party who has admitted or is deemed to have admitted the truth of a fact or the authenticity of a document under this Rule may withdraw the admission with the consent of the other party or with leave granted on an application
  - (a) before the hearing has begun, under Rule 4-26.1 or 4-27, or
  - (b) after the hearing has begun, to the hearing panel.

[added 04/2013]

### **Conditional admissions**

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



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

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

### **Consent to disciplinary action**

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

[(5) amended 10/2007]

### **Rejection of admissions**

- 4-23** (1) A conditional admission tendered under Rule 4-21 must not be used against the respondent in any proceeding under this Part or Part 5 unless the admission is accepted by the Discipline Committee.
- (2) A conditional admission tendered under Rule 4-22 must not be used against the respondent in any proceeding under this Part unless
    - (a) the admission is accepted by the Discipline Committee, and
    - (b) the admission and proposed disciplinary action is accepted by a hearing panel.

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

[(1) amended 02/2003]

### Notice of hearing

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

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

### Summary hearing

- 4-24.1** (1) This Rule may be applied in respect of the hearing of a citation comprising only allegations that the respondent has done one or more of the following:
- (a) breached a Rule;
  - (b) breached an undertaking given to the Society;
  - (c) failed to respond to a communication from the Society;
  - (d) breached an order made under the Act or these Rules.
- (2) [rescinded]
- (3) Unless the panel rules otherwise, the respondent and discipline counsel may adduce evidence by
- (a) affidavit,
  - (b) an agreed statement of facts, or
  - (c) an admission made or deemed to be made under Rule 4-20.1.
- (4) Despite Rules 4-34 and 4-35, the panel may consider facts, determination, disciplinary action and costs and issue a decision respecting all aspects of the proceeding.

[added 07/2007; (3) amended 04/2009; (1) amended 12/2009; (1) and (4) amended, (2) rescinded 10/2010; (3) amended 04/2013]

**Demand for disclosure of evidence**

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

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

**Application for details of the circumstances**

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

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

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### **Preliminary questions**

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

[Rule 4-26.1 continues on next page]

## PART 4 – DISCIPLINE

- (5) After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.
- (6) When an adjournment is granted under this Rule, the Executive Director must notify the complainant.
- (7) Rule 4-24 does not apply when a hearing is adjourned and re-set for another date.  
[(1) amended 09/1999; 10/2006; (2) and (3) amended 10/2007; (2) amended, (6) added 04/2009; (1) to (5) amended, (7) added 10/2010]

### **Preliminary procedures**

- 4-30** (1) Before hearing any evidence on the allegations set out in the citation, the panel must determine whether
- (a) the citation was served in accordance with Rule 4-15, or
  - (b) the respondent waives any of the requirements of Rule 4-15.
- (2) If the requirements of Rule 4-15 have been met, or have been waived by the respondent, the citation or a copy of it must be filed as an exhibit at the hearing, and the hearing may proceed.
- (3) Despite subrule (1), before the hearing begins, the panel may receive and consider
- (a) the citation,
  - (b) an agreed statement of facts, and
  - (c) an admission made or deemed to be made under Rule 4-20.1.  
[(3) added 10/2010; (3) amended 04/2013]

**4-31** [rescinded 10/2010]

### **Evidence of respondent**

- 4-32** Discipline counsel must notify the respondent of an application for an order that the respondent give evidence at the hearing.  
[heading and rule amended, (2) rescinded 10/2010]

### **Communication with Ombudsperson**

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

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

**Submissions and determination**

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

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

**Disciplinary action**

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

## PART 4 – DISCIPLINE

- (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) must be served in accordance with Rule 10-1.
- (3) In extraordinary circumstances, the Benchers may proceed without notice to the lawyer or former lawyer under subrule (1).

[(2) amended 04/2013]

**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

- (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.
- (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;
    - (b.1) an admission made or deemed to be made under Rule 4-20.1;
  - (c) any other evidence it considers appropriate.

[ (6) amended 04/2009; (2) and (6) amended 10/2010; (6) amended 04/2013 ]

### Public hearing

- 5-6** (1) Every hearing is open to the public, but the panel or review board 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 or review board 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 or review board, which the panel or review board in its discretion may refuse or grant, with or without conditions or restrictions.
- (5) When a panel or review board makes an order under this Rule or declines to make an order on an application, the panel or review board must give written reasons for its decision.

[ (2) amended, (4) added 05/2003; (5) added 06/2012; (1), (2), (4) and (5) amended effective 01/2013 ]

### 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) A review board 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 review board must have regard to the tariff of costs in Schedule 4 to these Rules in calculating the costs payable by an applicant, a respondent or the Society in respect of a hearing on an application or a citation or a review of a decision in a hearing on an application or a citation.
- (1.2) If, in the judgment of the panel or review board, it is reasonable and appropriate for the Society, an applicant 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 review board 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 or amount payable applies.
- (2) [rescinded]
- (3) If no adverse finding is made against the applicant, the panel or review board has the discretion to direct that the applicant be awarded costs.

[(1.1), (1.2) and (1.4) amended 01/2013]

## PART 5 – HEARINGS AND APPEALS

- (4) The chair of a review board who ceases to be a Bencher may, with the consent of the President, continue to chair the review board, and the review board may complete any hearing or hearings already scheduled or begun.
- (5) Two or more review boards may proceed with separate matters at the same time.
- (6) The President may refer a matter that is before a review board to another review board, fill a vacancy on a review board or terminate an appointment to a review board.
- (7) Unless otherwise provided in the Act and these Rules, a review board must decide any matter by a majority, and the decision of the majority is the decision of the review board.

[added 09/2012, effective 01/2013]

### **Disqualification**

**5-12.2** The following must not participate in a review board reviewing the decision of a hearing panel:

- (a) a member of the hearing panel;
- (b) a person who was disqualified under Rule 5-3 from participation in the hearing panel.

[added 09/2012, effective 01/2013]

### **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 after a decision of the panel in a credentials hearing, the Credentials Committee may, by resolution, refer the decision for a review on the record by a review board.
  - (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 after a decision of the panel in a hearing on a citation, the Discipline Committee may, by resolution, refer the decision for a review on the record by a review board.
- (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.

## LAW SOCIETY RULES

- (5) Within 30 days after the order of the Practice Standards Committee under Rule 3-18(1), the lawyer concerned may deliver a notice of review under Rule 5-15 to the Executive Director.

[(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; (2) and (3) amended, (5) added 09/2012, effective 01/2013]

### Stay of order pending review

- 5-14** (1) When a review is initiated under Rule 5-13, the order of the panel or the Practice Standards Committee 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) When a review has been initiated under Rule 5-13, any party to the review 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 Benchler to make a determination.

[(5) amended 06/1999; (2.1) added, (4) and (5) amended 09/1999; rescinded and replaced 05/2002; (1) amended 09/2012, effective 01/2013; (3) amended 04/2013]

### 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 review board;
- (b) the nature of the order sought;
- (c) the issues to be considered on the review.

[added 05/2002; amended 10/2007; amended 09/2012, effective 01/2013]

### 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 review board, there are special circumstances, the review board may admit evidence that is not part of the record.

[added 05/2002; (1) amended 07/2007; 10/2007; 07/2012; (2) amended 09/2012, effective 01/2013]

## PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

### Division 1 – Law Corporations

#### Corporate name

**9-1** A law corporation must use a name

- (a) under which no other corporation holds a valid law corporation permit under this Division,
- (b) that does not so nearly resemble the name of another corporation holding a valid law corporation permit under this Division that it is likely to confuse or mislead the public,
- (c) that complies with the *Code of Professional Conduct*, section 4.2, and
- (d) that includes one of the following phrases:
  - (i) “law corporation”;
  - (ii) “law ULC”;
  - (iii) “law unlimited liability company.”

[amended 09/2004, effective January 17, 2005; amended 11/2009; amended effective 01/2013; amended 04/2013]

#### Corporate name certificate

- 9-2** (1) A lawyer may apply to the Executive Director, in a form approved by the Executive Committee, for a certificate that the Society does not object to the incorporation of a company as a law corporation under a proposed name.
- (2) On receipt of an application under subrule (1), the Executive Director must either
- (a) issue a certificate to the lawyer if the Executive Director is satisfied that the intended name complies with Rule 9-1, or
  - (b) reject the application.
- (3) The Executive Director must notify the lawyer in writing of his or her decision under subrule (2).

#### Review of Executive Director’s decision

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

**Law corporation permit**

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

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

[(2) rescinded 09/1999]

**Issuance of permit**

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

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

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

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

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

**Change of corporate name**

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

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

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

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

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

- (4) When a firm is registered as an extraprovincial limited liability partnership under Part 6 of the *Partnership Act*, the firm must promptly take reasonable steps to notify in writing each existing client of the firm in British Columbia of the registration and any change, resulting from the registration, in the liability of the partners.
- (5) Subrule (4) does not apply to a client outside of British Columbia if the firm provides legal services to the client primarily through lawyers outside of British Columbia.
- (6) The notice required under subrule (2) or (4) may be
  - (a) mailed by regular or registered mail to the client at the client's last known address,
  - (b) delivered personally to the client,
  - (c) transmitted by electronic facsimile to the client at the client's last known electronic facsimile number,
  - (d) transmitted by electronic mail to the client at the client's last known electronic mail address, or
  - (e) published in a newspaper distributed in the area in which the client resides or carries on business.

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

#### **Change in LLP information and annual reports**

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

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

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

#### **Disclosure of LLP information**

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

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

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

#### **Notification of non-compliance**

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

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

**PART 10 – GENERAL**

**Service and notice**

- 10-1** (1) A lawyer, former lawyer, articled student or applicant may be served with a notice or other document personally or by sending it by
- (a) registered mail, ordinary mail or courier to his or her last known business or residential address,
  - (b) electronic facsimile to his or her last known electronic facsimile number,
  - (c) electronic mail to his or her last known electronic mail address, or
  - (d) any of the means referred to in paragraphs (a) to (c) to the place of business of his or her counsel or personal representative or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation.

(1.1) [rescinded 04/2013]

(1.2) If it is impractical for any reason to serve a notice or other document as set out in subrule (1), the President may order substituted service, whether or not there is evidence that

- (a) the notice or other document will probably
  - (i) reach the intended recipient, or
  - (ii) come to the intended recipient's attention, or
- (b) the intended recipient is evading service.

(1.3) The President may designate another Benchers to make a determination under subrule (1.2).

(2) A document may be served on the Society or on the Benchers by

- (a) leaving it at or sending it by registered mail or courier to the principal offices of the Society, or
- (b) personally serving it on an officer of the Society.

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

(4) Any person may be notified of any matter by ordinary mail, electronic facsimile or electronic mail to the person's last known address.

[heading amended, (4) added 10/2007; (1) amended, (1.1) added 10/2010; (1) and (2) to (4) amended, (1.1) rescinded, (1.2) and (1.3) added 04/2013]

**Duty not to disclose**

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

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

**10-3** [rescinded 07/2008]



## SCHEDULE 4 – TARIFF FOR HEARING AND REVIEW COSTS

Item no.	Description	Number of units
<b>Citation hearing</b>		
1.	Preparation/amendment of citation, correspondence, conferences, instructions, investigations or negotiations after the authorization of the citation to the completion of the discipline hearing, for which provision is not made elsewhere	Minimum 1 Maximum 10
2.	Proceeding under s. 26.01, 26.02 or 39 and any application to rescind or vary an order under the Rules, for each day of hearing	30
3.	Disclosure under Rule 4-25	Minimum 5 Maximum 20
4.	Application for particulars/preparation of particulars under Rule 4-26	Minimum 1 Maximum 5
5.	Application to adjourn under Rule 4-29 <ul style="list-style-type: none"> <li>• if made more than 14 days prior to the scheduled hearing date</li> <li>• if made less than 14 days prior to the scheduled hearing date</li> </ul>	1 3
6.	Pre-hearing conference	Minimum 1 Maximum 5
7.	Preparation of agreed statement of facts <ul style="list-style-type: none"> <li>• if signed more than 21 days prior to hearing date</li> <li>• if signed less than 21 days prior to hearing date</li> <li>• delivered to Respondent and not signed</li> </ul>	Min. 5 to max. 15 Min. 10 to max. 20 Min. 10 to max. 20
8.	Preparation of affidavits	Minimum 5 Maximum 20
9.	All process and correspondence associated with retaining and consulting an expert for the purpose of obtaining opinion(s) for use in the proceeding	Minimum 2 Maximum 10
10.	All process and communication associated with contacting, interviewing and issuing summons to all witnesses	Minimum 2 Maximum 10
11.	Interlocutory or preliminary motion for which provision is not made elsewhere, for each day of hearing	10
12.	Preparation for interlocutory or preliminary motion, per day of hearing	20
13.	Attendance at hearing, for each day of hearing, including preparation not otherwise provided for in tariff	30
14.	Written submissions, where no oral hearing held	Minimum 5 Maximum 15

LAW SOCIETY RULES

Item no.	Description	Number of units
<b>S. 47 review</b>		
15.	Giving or receiving notice under Rule 5-15, correspondence, conferences, instructions, investigations or negotiations after review initiated, for which provision is not made elsewhere	Minimum 1 Maximum 3
16.	Preparation and settlement of hearing record under Rule 5-17	Minimum 5 Maximum 10
17.	Pre-review conference	Minimum 1 Maximum 5
18.	Application to adjourn under Rule 5-19 <ul style="list-style-type: none"> <li>• If made more than 14 days prior to the scheduled hearing date</li> <li>• If made less than 14 days prior to the scheduled hearing date</li> </ul>	1 3
19.	Procedural or preliminary issues, including an application to admit evidence under Rule 5-19(2), per day of hearing	10
20.	Preparation and delivery of written submissions	Minimum 5 Maximum 15
21.	Attendance at hearing, per day of hearing, including preparation not otherwise provided for in the tariff	30
<b>Summary hearings</b>		
22.	Each day of hearing	\$2,000
<b>Hearings under Rule 4-22</b>		
23.	Complete hearing, based on the following factors: <ul style="list-style-type: none"> <li>(a) complexity of matter;</li> <li>(b) number and nature of allegations; and</li> <li>(c) the time at which respondent elected to make conditional admission relative to scheduled hearing and amount of pre-hearing preparation required.</li> </ul>	\$1,000 to \$3,500
<b>Credentials hearings</b>		
24.	Each day of hearing	\$2,000

**Value of units:**

Scale A, for matters of ordinary difficulty: \$100 per unit  
Scale B, for matters of more than ordinary difficulty: \$150 per unit

### **Encouraging compromise or settlement**

**3.2-4** A lawyer must advise and encourage a client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and must discourage the client from commencing or continuing useless legal proceedings.

#### **Commentary**

[1] A lawyer should consider the use of alternative dispute resolution (ADR) when appropriate, inform the client of ADR options and, if so instructed, take steps to pursue those options.

### **Threatening criminal or regulatory proceedings**

**3.2-5** A lawyer must not, in an attempt to gain a benefit for a client, threaten, or advise a client to threaten:

- (a) to initiate or proceed with a criminal or quasi-criminal charge; or
- (b) to make a complaint to a regulatory authority.

#### **Commentary**

[1] It is an abuse of the court or regulatory authority's process to threaten to make or advance a complaint in order to secure the satisfaction of a private grievance. Even if a client has a legitimate entitlement to be paid monies, threats to take criminal or quasi-criminal action are not appropriate.

[2] It is not improper, however, to notify the appropriate authority of criminal or quasi-criminal activities while also taking steps through the civil system.

### **Inducement for withdrawal of criminal or regulatory proceedings**

**3.2-6** A lawyer must not:

- (a) give or offer to give, or advise an accused or any other person to give or offer to give, any valuable consideration to another person in exchange for influencing the Crown or a regulatory authority's conduct of a criminal or quasi-criminal charge or a complaint, unless the lawyer obtains the consent of the Crown or the regulatory authority to enter into such discussions;
- (b) accept or offer to accept, or advise a person to accept or offer to accept, any valuable consideration in exchange for influencing the Crown or a regulatory authority's conduct of a criminal or quasi-criminal charge or a complaint, unless the lawyer obtains the consent of the Crown or regulatory authority to enter such discussions; or

- (c) wrongfully influence any person to prevent the Crown or regulatory authority from proceeding with charges or a complaint or to cause the Crown or regulatory authority to withdraw the complaint or stay charges in a criminal or quasi-criminal proceeding.

**Commentary**

[1] “Regulatory authority” includes professional and other regulatory bodies.

[2] A lawyer for an accused or potential accused must never influence a complainant or potential complainant not to communicate or cooperate with the Crown. However, this rule does not prevent a lawyer for an accused or potential accused from communicating with a complainant or potential complainant to obtain factual information, arrange for restitution or an apology from an accused, or defend or settle any civil matters between the accused and the complainant. When a proposed resolution involves valuable consideration being exchanged in return for influencing the Crown or regulatory authority not to proceed with a charge or to seek a reduced sentence or penalty, the lawyer for the accused must obtain the consent of the Crown or regulatory authority prior to discussing such proposal with the complainant or potential complainant. Similarly, lawyers advising a complainant or potential complainant with respect to any such negotiations can do so only with the consent of the Crown or regulatory authority.

[3] A lawyer cannot provide an assurance that the settlement of a related civil matter will result in the withdrawal of criminal or quasi-criminal charges, absent the consent of the Crown or regulatory authority.

[4] When the complainant or potential complainant is unrepresented, the lawyer should have regard to the rules respecting unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused. If the complainant or potential complainant is vulnerable, the lawyer should take care not to take unfair or improper advantage of the circumstances. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

**Dishonesty, fraud by client**

**3.2-7** A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.

[amended 04/2013]

## Doing business with a client

### Independent legal advice

**3.4-27** In rules 3.4-27 to 3.4-43, when a client is required or advised to obtain independent legal advice concerning a matter, that advice may only be obtained by retaining a lawyer who has no conflicting interest in the matter.

**3.4-27.1** A lawyer giving independent legal advice under this section must:

- (a) advise the client that the client has the right to independent legal representation;
- (b) explain the legal aspects of the matter to the client, who appears to understand the advice given; and
- (c) inform the client of the availability of qualified advisers in other fields who would be in a position to advise the client on the matter from a business point of view.

#### Commentary

**[0.1]** A client is entitled to obtain independent legal representation by retaining a lawyer who has no conflicting interest in the matter to act for the client in relation to the matter.

**[1]** If a client elects to waive independent legal representation and to rely on independent legal advice only, the lawyer retained has a responsibility that should not be lightly assumed or perfunctorily discharged.

**[2]** Either independent legal representation or independent legal advice may be provided by a lawyer employed by the client as in-house counsel.

**3.4-28** Subject to this rule, a lawyer must not enter into a transaction with a client unless the transaction is fair and reasonable to the client, the client consents to the transaction and the client has independent legal representation with respect to the transaction.

#### Commentary

**[1]** This provision applies to any transaction with a client, including:

- (a) lending or borrowing money;
- (b) buying or selling property;
- (c) accepting a gift, including a testamentary gift;
- (d) giving or acquiring ownership, security or other pecuniary interest in a company or other entity;
- (e) recommending an investment; and
- (f) entering into a common business venture.

[2] The relationship between lawyer and client is a fiduciary one, and no conflict between the lawyer's own interest and the lawyer's duty to the client can be permitted. The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client does not give rise to a conflicting interest.

### **Investment by client when lawyer has an interest**

**3.4-29** Subject to rule 3.4-30, if a client intends to enter into a transaction with his or her lawyer or with a corporation or other entity in which the lawyer has an interest other than a corporation or other entity whose securities are publicly traded, before accepting any retainer, the lawyer must

- (a) disclose and explain the nature of the conflicting interest to the client or, in the case of a potential conflict, how and why it might develop later;
- (b) recommend and require that the client receive independent legal advice; and
- (c) if the client requests the lawyer to act, obtain the client's consent.

### **Commentary**

[1] If the lawyer does not choose to disclose the conflicting interest or cannot do so without breaching confidence, the lawyer must decline the retainer.

[2] A lawyer should not uncritically accept a client's decision to have the lawyer act. It should be borne in mind that, if the lawyer accepts the retainer, the lawyer's first duty will be to the client. If the lawyer has any misgivings about being able to place the client's interests first, the retainer should be declined.

[3] Generally, in disciplinary proceedings under this rule, the burden will rest upon the lawyer to show good faith, that adequate disclosure was made in the matter, and that the client's consent was obtained

[4] If the investment is by borrowing from the client, the transaction may fall within the requirements of rule 3.4-32.

**3.4-30** When a client intends to pay for legal services by issuing or causing to be transferred to a lawyer a share, participation or other interest in property or in an enterprise, other than a non-material interest in a publicly traded enterprise, the lawyer must recommend but need not require that the client receive independent legal advice before accepting a retainer.

**3.4-41** A lawyer may act as a surety for, deposit money or other valuable security for or act in a supervisory capacity to an accused who is in a family relationship with the lawyer when the accused is represented by the lawyer's partner or associate.

### **Space-sharing arrangements**

**3.4-42** Rule 3.4-43 applies to lawyers sharing office space with one or more other lawyers, but not practising or being held out to be practising in partnership or association with the other lawyer or lawyers.

**3.4-43** Unless all lawyers sharing space together agree that they will not act for clients adverse in interest to the client of any of the others, each lawyer who is sharing space must disclose in writing to all of the lawyer's clients:

- (a) that an arrangement for sharing space exists,
- (b) the identity of the lawyers who make up the firm acting for the client, and
- (c) that lawyers sharing space with the firm are free to act for other clients who are adverse in interest to the client.

#### **Commentary**

[1] Like other lawyers, those who share space must take all reasonable measures to ensure client confidentiality. Lawyers who do not wish to act for clients adverse in interest to clients of lawyers with whom they share space should establish an adequate conflicts check system.

[2] In order both to ensure confidentiality and to avoid conflicts, a lawyer must have the consent of each client before disclosing any information about the client for the purpose of conflicts checks. Consent may be implied in some cases but, if there is any doubt, the best course is to obtain express consent.

### **3.5 Preservation of clients' property**

**3.5-1** In this section, "**property**" includes a client's money, securities as defined in the *Securities Act*, original documents such as wills, title deeds, minute books, licences, certificates and the like, and all other papers such as client's correspondence, files, reports, invoices and other such documents, as well as personal property including precious and semi-precious metals, jewellery and the like.

**3.5-2** A lawyer must:

- (a) care for a client's property as a careful and prudent owner would when dealing with like property; and
- (b) observe all relevant rules and law about the preservation of a client's property entrusted to a lawyer.

**Commentary**

[1] The duties concerning safekeeping, preserving, and accounting for clients' monies and other property are set out in the Law Society Rules.

[2] These duties are closely related to those regarding confidential information. A lawyer is responsible for maintaining the safety and confidentiality of the files of the client in the possession of the lawyer and should take all reasonable steps to ensure the privacy and safekeeping of a client's confidential information. A lawyer should keep the client's papers and other property out of sight as well as out of reach of those not entitled to see them.

[3] Subject to any rights of lien, the lawyer should promptly return a client's property to the client on request or at the conclusion of the lawyer's retainer.

[4] If the lawyer withdraws from representing a client, the lawyer is required to comply with section 3.7 (Withdrawal from Representation).

**Notification of receipt of property**

**3.5-3** A lawyer must promptly notify a client of the receipt of any money or other property of the client, unless satisfied that the client is aware that they have come into the lawyer's custody.

**Identifying clients' property**

**3.5-4** A lawyer must clearly label and identify clients' property and place it in safekeeping distinguishable from the lawyer's own property.

**3.5-5** A lawyer must maintain such records as necessary to identify clients' property that is in the lawyer's custody.

**Accounting and delivery**

**3.5-6** A lawyer must account promptly for clients' property that is in the lawyer's custody and deliver it to the order of the client on request or, if appropriate, at the conclusion of the retainer.

**3.6 Fees and disbursements**

**Reasonable fees and disbursements**

**3.6-1** A lawyer must not charge or accept a fee or disbursement, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion.



**Commentary**

[1] What is a fair and reasonable fee depends on such factors as:

- (a) the time and effort required and spent;
- (b) the difficulty of the matter and the importance of the matter to the client;
- (c) whether special skill or service has been required and provided;
- (d) the results obtained;
- (e) fees authorized by statute or regulation;
- (f) special circumstances, such as the postponement of payment, uncertainty of reward, or urgency;
- (g) the likelihood, if made known to the client, that acceptance of the retainer will result in the lawyer's inability to accept other employment;
- (h) any relevant agreement between the lawyer and the client;
- (i) the experience and ability of the lawyer;
- (j) any estimate or range of fees given by the lawyer; and
- (k) the client's prior consent to the fee.

[2] The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. No fee, extra fees, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where the lawyer's fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such agency or other person.

[3] A lawyer should provide to the client in writing, before or within a reasonable time after commencing a representation, as much information regarding fees and disbursements, and interest, as is reasonable and practical in the circumstances, including the basis on which fees will be determined.

[4] A lawyer should be ready to explain the basis of the fees and disbursement charged to the client. This is particularly important concerning fee charges or disbursements that the client might not reasonably be expected to anticipate. When something unusual or unforeseen occurs that may substantially affect the amount of a fee or disbursement, the lawyer should give to the client an immediate explanation. A lawyer should confirm with the client in writing the substance of all fee discussions that occur as a matter progresses, and a lawyer may revise an initial estimate of fees and disbursements.

### **Contingent fees and contingent fee agreements**

**3.6-2** Subject to rule 3.6-1, a lawyer may enter into a written agreement in accordance with governing legislation that provides that the lawyer's fee is contingent, in whole or in part, on the outcome of the matter for which the lawyer's services are to be provided.

#### **Commentary**

[1] In determining the appropriate percentage or other basis of a contingency fee, a lawyer and client should consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. The test is whether the fee, in all of the circumstances, is fair and reasonable.

[2] Although a lawyer is generally permitted to terminate the professional relationship with a client and withdraw services if there is justifiable cause as set out in rule 3.7-1, special circumstances apply when the retainer is pursuant to a contingency agreement. In such circumstances, the lawyer has impliedly undertaken the risk of not being paid in the event the suit is unsuccessful. Accordingly, a lawyer cannot withdraw from representation for reasons other than those set out in Rule 3.7-7 (Obligatory withdrawal) unless the written contingency contract specifically states that the lawyer has a right to do so and sets out the circumstances under which this may occur.

[[1] amended 04/2013]

### **Statement of account**

**3. 6-3** In a statement of an account delivered to a client, a lawyer must clearly and separately detail the amounts charged as fees and disbursements.

#### **Commentary**

[1] [rescinded 04/2013]

## Chapter 6 – Relationship to Students, Employees, and Others

- (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.

### **Commentary**

[1] A lawyer is responsible for any undertaking given or accepted and any trust condition accepted by a non-lawyer acting under his or her supervision.

[2] A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers or public officials or with the public generally, whether within or outside the offices of the law firm of employment.

[3] In real estate transactions using a system for the electronic submission or registration of documents, a lawyer who approves the electronic registration of documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

**6.1-3.1** The limitations imposed by rule 6.1-3 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.

**6.1-3.2** 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;
- (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.

**Commentary**

[1] 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.

[2] In arriving at this determination, lawyers should be guided by Appendix E.

[3] 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.

**6.1-3.3** Despite rule 6.1-3, 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.

**Commentary**

[1] Law Society Rule 2-9.2 limits the number of designated paralegals performing the enhanced duties of giving legal advice and appearing in court or before a tribunal.

**Suspended or disbarred lawyers**

**6.1-4** Without the express approval of the lawyer's governing body, a lawyer must not retain, occupy office space with, use the services of, partner or associate with or employ in any capacity having to do with the practice of law any person who, in any jurisdiction,

- (a) has been disbarred and struck off the Rolls,
- (b) is suspended,
- (c) has undertaken not to practise,
- (d) has been involved in disciplinary action and been permitted to resign and has not been reinstated or readmitted,
- (e) has failed to complete a Bar admission program for reasons relating to lack of good character and repute or fitness to be a member of the Bar,

## Chapter 6 – Relationship to Students, Employees, and Others

- (f) has been the subject of a hearing ordered, whether commenced or not, with respect to an application for enrolment as an articulated student, call and admission, or reinstatement, unless the person was subsequently enrolled, called and admitted or reinstated in the same jurisdiction, or
- (g) was required to withdraw or was expelled from a Bar admission program.

[amended 04/2013]

### **Electronic registration of documents**

**6.1-5** A lawyer who has personalized encrypted electronic access to any system for the electronic submission or registration of documents must not

- (a) permit others, including a non-lawyer employee, to use such access; or
- (b) disclose his or her password or access phrase or number to others.

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### **Encouraging client to report dishonest conduct**

**7.1-4** A lawyer must encourage a client who has a claim or complaint against an apparently dishonest lawyer to report the facts to the Society as soon as reasonably practicable.

### **7.2 Responsibility to lawyers and others**

#### **Courtesy and good faith**

**7.2-1** A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

#### **Commentary**

[1] The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their functions properly.

[2] Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.

[3] A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.

[4] A lawyer should agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities and similar matters that do not prejudice the rights of the client.

[5] A lawyer who knows that another lawyer has been consulted in a matter must not proceed by default in the matter without inquiry and reasonable notice.

[[5] added 04/2013]

**7.2-2** A lawyer must avoid sharp practice and must not take advantage of or act without fair warning upon slips, irregularities or mistakes on the part of other lawyers not going to the merits or involving the sacrifice of a client's rights.

**7.2-3** A lawyer must not use any device to record a conversation between the lawyer and a client or another lawyer, even if lawful, without first informing the other person of the intention to do so.

## Communications

**7.2-4** A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

**7.2-5** A lawyer must answer with reasonable promptness all professional letters and communications from other lawyers that require an answer, and a lawyer must be punctual in fulfilling all commitments.

**7.2-6** Subject to rule 7.2-7, if a person is represented by a lawyer in respect of a matter, another lawyer must not, except through or with the consent of the person's lawyer:

- (a) approach, communicate or deal with the person on the matter; or
- (b) attempt to negotiate or compromise the matter directly with the person.

**7.2-7** A lawyer who is not otherwise interested in a matter may give a second opinion to a person who is represented by a lawyer with respect to that matter.

### Commentary

[1] Rule 7.2-6 applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract or negotiation, who is represented by a lawyer concerning the matter to which the communication relates. A lawyer may communicate with a represented person concerning matters outside the representation. This rule does not prevent parties to a matter from communicating directly with each other.

[2] The prohibition on communications with a represented person applies only where the lawyer knows that the person is represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but actual knowledge may be inferred from the circumstances. This inference may arise when there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of the other lawyer by closing his or her eyes to the obvious.

[3] Rule 7.2-7 deals with circumstances in which a client may wish to obtain a second opinion from another lawyer. While a lawyer should not hesitate to provide a second opinion, the obligation to be competent and to render competent services requires that the opinion be based on sufficient information. In the case of a second opinion, such information may include facts that can be obtained only through consultation with the first lawyer involved. The lawyer should advise the client accordingly and, if necessary, consult the first lawyer unless the client instructs otherwise.