

MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2014: No. 2 September

Highlights

Legal Profession Act: Section 51 of the *Legal Profession Amendment Act 2012* was repealed as spent.

Law Society Rules: The procedures by which lawyers can apply to have decisions that affect them varied or rescinded are improved and made consistent (Rules 2-26(3), 2-69, 3-14.1(4), 5-10 and 5-10.1: pp. 42.6, 68.2, 115 and 116); in a conditional admission hearing, the hearing panel may consider the conditional admission and proposed disciplinary action before the hearing begins; in any disciplinary hearing, the panel may consider material agreed to by the parties in advance of the hearing (Rule 4-30 heading and (3): p. 110.1); transition provisions involving non-practising and retired members and insurance exemption are rescinded (Rules 2-4.3 and 3-25.1).

Code of Professional Conduct for British Columbia: As a result of recommendations made by the Alternative Dispute Resolution Task Force, a preamble is added to the *BC Code* to guide lawyers in their conduct outside the practice of law, and amendments are adopted that recognize the difficulty of distinguishing between legal advice and legal information and to allow a lawyer, in certain circumstances, to act for both spouses in a divorce action (section 5.7, commentary [1], [1.1] and [5]: title page and p. 72).

Filing: File the amended pages in your *Member's Manual* as follows:

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Code of Professional Conduct for British Columbia	Title page 71 – 72	Title page 71 – 72

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 **September 26, 2014**. The previous amendment package was 2014: 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 Meaghan Lien in the Communications department: telephone 604.697.5838 or toll-free 1.800.903.5300 or email communications@lsbc.org.

Website: The *Legal Profession Act*, Law Society Rules and *Code of Professional Conduct for British Columbia* can be accessed in the Publications section of the Law Society website at **lawsociety.bc.ca** in both HTML (for online use) and 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.

MEMBER'S MANUAL CONTENTS CHECKLIST

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PART 11 – TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

93 [repealed 2012-16-49]

94 – 109 [spent]

LEGAL PROFESSION AMENDMENT ACT, 2012

Transitional Provisions

Transition – special compensation fund

- 50** On repeal of section 31 of the *Legal Profession Act* by this Act, the benchers
- (a) must promptly deposit any monies remaining in the “fund,” as it was defined in section 31 (1) of the *Legal Profession Act* before its repeal by this Act, to the account of the insurance fund established under section 30 (6) of the *Legal Profession Act*, and
 - (b) may use the monies for the purposes of the insurance programs referred to in sections 30 (2) of the *Legal Profession Act* and 30 (2.1) of the *Legal Profession Act* as enacted by this Act.

[2012-16-50]

51 [2012-16-51 – spent May 14, 2014]

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
- (a) an application in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society, and
 - (b) the application fee specified in Schedule 1.
- (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; (1) amended 07/2013]

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
- (a) provide pro bono legal services, or
 - (b) act as a designated paralegal under Rule 2-9.2.

[added 06/2012; heading and rule amended 01/2013]

2-4.3 [rescinded 06/2014 – *Legal Profession Amendment Act, 2012*, s. 51]

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]

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 imposed by the Committee under this Division.

[(1) amended 11/1999; 03/2003; (3) amended 09/2012, effective 01/2013; (3) amended 09/2014]

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.

Adjournment of hearing

- 2-65** (1) Before a hearing commences, the applicant or counsel for the Society may request that the hearing be adjourned by delivering to the Executive Director a notice in writing that sets out the reasons for the request.
- (2) The Executive Director must promptly notify the following of a request under subrule (1) and the reasons for it:
- (a) the party not making the request;
 - (b) a person given written notice of the application under Rule 2-52(10);
 - (c) the President;
 - (d) anyone else who, in the Executive Director's opinion, should be notified.
- (3) Before a hearing commences, the President must decide whether to grant the adjournment, with or without conditions, and advise the parties accordingly.
- (4) The President may designate another Bencher to make a determination under subrule (3).
- (5) After a hearing has commenced, the chair of the panel may adjourn the hearing, with or without conditions, to a specified date, time and place.

[(2) amended 10/2007]

Attendance at the hearing

- 2-66** Unless the chair of the panel otherwise orders, the applicant must personally attend the entire hearing.

Onus and burden of proof

- 2-67** (1) At a hearing under this Division, the onus is on the applicant to satisfy the panel on the balance of probabilities that the applicant has met the requirements of section 19(1) of the Act and this Division.
- (2) A panel must reject an application for enrolment if it considers that the applicant's qualifications referred to in Rule 2-27(4) are deficient.

Procedure

- 2-68** (1) Following completion of the evidence, the panel must invite the applicant and counsel for the Society to make submissions on the issues to be decided by the panel.
- (2) If the circumstances of the applicant have changed so as to make the outcome of the hearing moot, the panel may do one of the following after hearing submissions on behalf of the Society and the applicant:
- (a) adjourn the hearing generally;
 - (b) reject the application;
 - (c) commence or continue with the hearing.

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- (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]

2-69 [rescinded 09/2014]

PART 3 – PROTECTION OF THE PUBLIC

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

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

Conditions or limitations on practice

- 3-14.1** (1) If the lawyer refuses or fails to comply with a recommendation under Rule 3-14(1)(b) by the time set by the Practice Standards Committee under Rule 3-14(2), the Committee may make an order imposing conditions and limitations on the lawyer's practice, including but not limited to the following:
- (a) specifying areas of law in which the lawyer must not practise;
 - (b) requiring that the lawyer satisfactorily complete a remedial program;

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- (c) requiring that the lawyer satisfactorily complete an examination approved by the Committee or its designate;
 - (d) requiring that the lawyer obtain a psychiatric or psychological assessment or counselling, or both, and, if the Committee requests, provide a report on that assessment or counselling to the Committee;
 - (e) requiring that the lawyer obtain a medical assessment or assistance, or both, and if the Committee requests, provide a report on that assessment or assistance to the Committee;
 - (f) requiring that the lawyer practise in a setting approved by the Committee, including under the supervision of a lawyer approved by the Committee;
 - (g) requiring that the lawyer take other steps intended to improve the lawyer's practice of law or otherwise protect the public interest.
- (2) At least 30 days before the Practice Standards Committee is to make an order under subrule (1), the Executive Director must deliver to the lawyer notice of the following:
- (a) the terms of the proposed order;
 - (b) the date on which the proposed order is to take effect;
 - (c) the reasons for the proposed order;
 - (d) the means by which the lawyer may make submissions to the Practice Standards Committee concerning the proposed order and the deadline for making such submissions before the order is to be considered by the Committee.
- (3) A lawyer must comply with an order made under this Rule.
- (4) On the written application of the lawyer, the Practice Standards Committee may vary or rescind an order made under this Rule.

[added 09/2007; (4) added 09/2014]

Remedial program

- 3-15** (1) A remedial program under this Division may include any program intended to improve the lawyer's knowledge and skill in the practice of law, including, but not limited to, one or more of the following:
- (a) a continuing legal education course;
 - (b) a remedial course;
 - (c) a course offered by an educational institution;
 - (d) a program of mentoring or supervision by a practising lawyer approved by the Practice Standards Committee.
- (2) To form part of a remedial program, a course or program must be approved by the Practice Standards Committee or its designate.

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- (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.

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- (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 or is deemed resident under the National Mobility Agreement, 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 Chambre 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; (4) and (6) amended 12/2013]

3-25.1 [rescinded 06/2014 – *Legal Profession Amendment Act, 2012*, s. 51]

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

- (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 matters

- 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,
 - (c) an admission made or deemed to be made under Rule 4-20.1,
 - (d) a conditional admission and consent to a specified disciplinary action tendered by the respondent and accepted by the Discipline Committee under Rule 4-22, and
 - (e) any other document or evidence by agreement of the parties.
- [(3) added 10/2010; (3) amended 04/2013; heading and (3) amended 06/2014]

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.

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- (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 5 – HEARINGS AND APPEALS

- (3.1) If the citation is dismissed or rescinded after the hearing has begun, the panel or review board has 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; (0.2), (1.1), (1.2), (3) and (3.1) amended 09/2012, effective 01/2013; (1.1), (1.2) and (1.4) amended 01/2013]

Application to vary certain orders

- 5-10** (1) An applicant or respondent may apply in writing to the Executive Director for
- (a) an extension of time
 - (i) to pay a fine or the amount owing under Rule 5-9, or
 - (ii) to fulfill a condition imposed under section 22, 38 or 47,
 - (b) a variation of a condition referred to in paragraph (a)(ii), or
 - (c) a change in the start date for a suspension imposed under section 38 or 47.
- (1.1) An application under subrule (1)(c) must be made at least 7 days before the start date set for the suspension.
- (1.2) The Executive Director must promptly notify the President of an application under subrule (1).
- (2) The President must refer an application under subrule (1) 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,
 - (c) vary the conditions imposed, or extend to a specified date the fulfillment of the conditions, or
 - (d) specify a new date for the start of a period of suspension imposed under section 38 or 47.

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- (3.1) If, in the view of the President and the chair of the Committee to which an application is referred under subrule (2)(c) or (d), there is a need to act on the application before a meeting of the Committee can be arranged, the chair of the Committee may hear the application and make the determination under subrule (3).

(4) and (5) [moved to Rule 5-10.1 – 09/2014]

- (6) An application under this Rule does not stay the order that the applicant seeks to vary.

[(1) and (4) amended, (5) added 06/2007; (1) and (4) amended 09/2007; (4) amended 09/2012, effective 01/2013; heading amended 12/2012; heading, (1), (2) and (3) amended, (1.1), (1.2), (3.1) and (6) added, (4) and (5) rescinded 09/2014]

Failure to pay costs or fulfill practice condition

- 5-10.1** (1) An applicant or respondent must do the following by the date set by a hearing panel, review board or Committee or extended under Rule 5-10:

- (a) pay in full a fine or the amount owing under Rule 5-9;
- (b) fulfill a practice condition as imposed under section 21, 22, 27, 32, 38 or 47, as accepted under section 19, or as varied under these Rules.

- (2) If, on December 31, an applicant or respondent is in breach of subrule (1), 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.

[added 09/2014]

Recovery of money owed to the Society

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

- (a) costs of an audit or investigation ordered under Part 2 or Rule 4-43;
- (b) a fee or assessment under Rule 3-18.4 or 3-74.

- (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 review board

- 5-12** (1) In Rules 5-12 to 5-21, “**review**” means a review of a hearing panel decision by a review board under section 47 of the Act.
- (2) Subject to the Act and these Rules, a review board 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.
- (4) If the review board finds that there are special circumstances and hears evidence under section 47(4) of the Act, the Rules that apply to the hearing of evidence before a hearing panel apply.

[amended, (3) added 05/2002; (1) and (3) amended 07/2007, 10/2007; heading, (1) and (2) amended 09/2012, effective 01/2013; (4) added effective 01/2013]

Review boards

- 5-12.1** (1) A review board must consist of
- (a) an odd number of persons, and
 - (b) more persons than the hearing panel that made the decision under review.
- (2) A review board must be chaired by a Benchler who is a lawyer.
- (3) Review board members must be permanent residents of British Columbia over the age of majority.

LAW SOCIETY RULES

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Code of Professional Conduct for British Columbia

(the BC Code)

**Published under the authority of the Benchers
for the guidance of BC lawyers**

**The rules in this Code should guide the conduct of lawyers,
not only in the practice of law, but also in other activities.**

Published by the Law Society of British Columbia
Effective date: January 1, 2013

Commentary

[1] The lawyer may advocate legislative or administrative changes on behalf of a client although not personally agreeing with them, but the lawyer who purports to act in the public interest should espouse only those changes that the lawyer conscientiously believes to be in the public interest.

Security of court facilities

5.6-3 A lawyer who has reasonable grounds for believing that a dangerous situation is likely to develop at a court facility must inform the persons having responsibility for security at the facility and give particulars.

Commentary

[1] If possible, the lawyer should suggest solutions to the anticipated problem such as:

- (a) further security, or
- (b) reserving judgment.

[2] If possible, the lawyer should also notify other lawyers who are known to be involved in proceedings at the court facility where the dangerous situation is likely to develop. Beyond providing a warning of danger, this notice is desirable because it may allow them to suggest security measures that do not interfere with an accused's or a party's right to a fair trial.

[3] If client information is involved in those situations, the lawyer should be guided by the provisions of section 3.3 (Confidentiality).

5.7 Lawyers and mediators

Role of mediator

5.7 A lawyer who acts as a mediator must, at the outset of the mediation, ensure that the parties to it understand fully that:

- (a) the lawyer is not acting as a lawyer for either party but, as mediator, is acting to assist the parties to resolve the matters in issue; and
- (b) although communications pertaining to and arising out of the mediation process may be covered by some other common law privilege, they will not be covered by solicitor-client privilege.

Commentary

[1] [rescinded]

[1.1] Appendix B contains additional rules that govern the conduct of family law mediation.

[2] Generally, neither the lawyer-mediator nor a partner or associate of the lawyer-mediator should render legal representation or give legal advice to either party to the mediation, bearing in mind the provisions of section 3.4 (Conflicts) and its commentaries and the common law authorities.

[3] If the parties have not already done so, a lawyer-mediator generally should suggest that they seek the advice of separate counsel before and during the mediation process, and encourage them to do so.

[4] If, in the mediation process, the lawyer-mediator prepares a draft contract for the consideration of the parties, the lawyer-mediator should expressly advise and encourage them to seek separate independent legal representation concerning the draft contract.

[5] A lawyer who has acted as a mediator in a family law matter may act for both spouses in a divorce action provided that all relief is sought by consent and both parties have received independent legal advice in relation to the matter.

[[1] rescinded, [1.1] and [5] added 07/2014]