

MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2015: No. 1 March

Highlights

Law Society Rules: Lawyers acting as personal representatives and trustees outside the practice of law, where the appointment derives from practice, are relieved of some, but not all, of the responsibilities to the Law Society in that regard, while maintaining the Society's ability to regulate and audit lawyers' compliance (definitions of "fiduciary property," "general funds," "trust funds" and "valuables" and Rules 3-47, 3-48.1, 3-68(1) and (2) and 3-80(1) and (2): pp. 11, 79, 80, 88.2 and 92.1); a client must agree in writing to receiving a bill by any means other than that specifically addressed in Rule 3-57(3) (p. 85); the language around unclaimed trust money is made consistent with the statutes (Rules 3-82 heading, (1), (4) and (5), 3-84(9), 3-85(2), 3-86 heading and rule, and 3-87: pp. 92.3, 92.4 and 93); new rules allow a hearing panel or review board to continue without all members (Rules 5-2.1 and 5-12.3: pp. 111 and 116.1).

Code of Professional Conduct for British Columbia: In December 2014, the Benchers amended the meaning of "institutional lender;" that amendment is now rescinded, while a consultation with the profession takes place (Appendix C, paragraph 4, commentary [1] and [2]: p. 104).

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

Manual section	Existing pages to be removed	Amendment pages to be inserted
Law Society Rules	9 – 14, 14.1 – 14.2 79 – 80, 80.1 – 80.2 85 – 86 88.1 – 88.2 92.1 – 92.4, 93 – 94 111 – 114 116.1 – 116.2	9 – 14, 14.1 – 14.2 79 – 80, 80.1 – 80.2 85 – 86 88.1 – 88.2 92.1 – 92.4, 93 – 94 111 – 114 116.1 – 116.2
Code of Professional Conduct for British Columbia	103 – 106	103 – 106

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

Updates: This amendment package updates the *Member's Manual* to **March 9, 2015**. The previous amendment package was 2014: No. 3 December.

[continued over]

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

2015: No. 1 March

The following list of pages and tabs can be used to verify that your *Member's Manual* is complete and up to date.

Section of Manual	Pages	Dated	Section of Manual	Pages	Dated
Divider tab: LEGAL PROFESSION ACT			Text (<i>continued</i>)	79 – 80, 80.1 – 80.2	[03/2015]
Title page	—	—		81 – 84	[12/2009]
Table of Contents	1 – 4	[12/2012]		85 – 86	[03/2015]
Text	5 – 8	[03/2014]		87 – 88	[12/2014]
	9 – 34, 34.1 – 34.6	[12/2012]		88.1 – 88.2	[03/2015]
	35 – 36	[09/2011]		89 – 92	[12/06]
	36.1 – 36.2	[07/07]		92.1 – 92.4, 93 – 94	[03/2015]
	37 – 38	[12/98]		94.1 – 94.8	[04/09]
	39 – 42	[12/2012]		95 – 96	[09/2013]
	43 – 44	[03/2013]		97 – 100	[09/2012]
	45 – 46	[07/2010]		101 – 102	[06/2013]
	47 – 50	[12/98]		103 – 104	[09/2012]
	51 – 58	[12/2012]		105 – 108	[06/2013]
	59 – 60	[09/2014]		108.1 – 108.2, 109 – 110	[03/2014]
Divider tab: LAW SOCIETY RULES				110.1 – 110.2	[09/2014]
Title page	—	—		110.3 – 110.4	[09/2012]
Table of Contents	1 – 8	[03/2014]		110.5 – 110.6	[03/2014]
Text	9 – 14, 14.1 – 14.2	[03/2015]		110.7 – 110.8	[12/2014]
	14.3 – 14.4	[12/2012]		110.9 – 110.10	[03/2011]
	14.5 – 14.6	[12/2013]		111 – 114	[03/2015]
	15 – 16	[09/2012]		115 – 116, 116.01 – 116.02	[09/2014]
	17 – 18	[01/04]		116.1 – 116.2	[03/2015]
	19 – 20	[12/2013]		116.3 – 116.6	[12/2012]
	21 – 22	[03/2010]		117 – 118	[06/05]
	23 – 26	[10/2009]		119 – 120	[05/07]
	27 – 28	[09/2011]		121 – 122	[06/2013]
	29 – 30, 30.1 – 30.2	[12/2013]		123 – 124	[06/05]
	31 – 32	[09/2014]		125 – 126	[12/2012]
	32.1 – 32.2	[09/2012]		127 – 128	[03/2014]
	33 – 34	[09/2013]		128.1 – 128.2, 129 – 132	[12/2014]
	35 – 36	[06/03]		133 – 134	[12/2013]
	37 – 38	[12/2011]		135 – 136	[12/2012]
	38.1 – 38.2	[03/2014]	Divider tab: CODE OF PROFESSIONAL CONDUCT / PROFESSIONAL CONDUCT HANDBOOK		
	38.3 – 38.6	[09/2013]	Title page	—	—
	39 – 40	[03/2014]	Table of Contents	i – vi	[03/2014]
	41 – 42, 42.1 – 42.4	[12/2012]	Text	1 – 2	[12/2013]
	42.5 – 42.6	[09/2014]		3 – 10	[12/2012]
	42.7 – 42.8	[12/2013]		11 – 14, 14.1 – 14.2	[12/2013]
	43 – 44	[04/05]		15 – 16	[06/2013]
	45 – 46	[12/2011]		17 – 36	[12/2012]
	47 – 48	[09/2012]		37 – 38	[12/2013]
	49 – 50	[12/2011]		39 – 40	[06/2013]
	50.1 – 50.2	[06/2011]		41 – 42	[12/2012]
	50.3 – 50.4	[07/07]		43 – 46	[06/2013]
	50.5 – 50.6	[03/2014]		47 – 56	[12/2012]
	51 – 52	[12/2012]		57 – 58	[12/2014]
	53 – 54	[03/2014]		59 – 70	[12/2012]
	55 – 56	[12/2012]		71 – 72	[09/2014]
	57 – 58	[09/2012]		73 – 74	[12/2012]
	58.1 – 58.2	[12/2010]		75 – 76, 76.1 – 76.2	[06/2013]
	59 – 60	[03/2014]		77 – 82	[12/2012]
	60.1 – 60.2	[09/2014]		83 – 84, 84.1 – 84.2	[12/2013]
	60.3 – 60.4	[03/2014]		85 – 100	[12/2012]
	61 – 62	[12/04]		101 – 102, 102.1 – 102.2	[03/2013]
	62.1 – 62.2, 63 – 64	[09/2012]		103 – 106	[03/2015]
	65 – 66	[12/2014]		107 – 116	[12/2012]
	66.1 – 66.4	[09/2012]	Divider tab: INSURANCE POLICIES		
	67 – 68	[09/2013]	Policy No. LPL 15-01-01	1 – 28	[12/2014]
	68.1 – 68.2	[09/2014]	Divider tab: ARTICLING		
	68.3 – 68.4	[12/2009]	Text	1 – 2	[06/03]
	69 – 70	[09/2012]		3 – 4	[07/09]
	70.01 – 70.04	[03/2013]		5 – 8	[06/03]
	70.1 – 70.2	[09/2014]			
	70.3 – 70.4	[12/06]			
	71 – 72	[12/2014]			
	73 – 74	[12/2012]			
	75 – 78	deleted			

CONTENTS

PART 6 – CUSTODIANSHIPS	
6-1 Cooperation in conduct of custodianship	117
6-2 Report of possible claim	117
6-3 Acting for lawyer’s clients	117
6-4 Acquiring lawyer’s practice	117
6-5 Notice of custodianship order.....	117
PART 7 – LAW FOUNDATION	
[no rules]	
PART 8 – LAWYERS’ FEES	
8-1 Reasonable remuneration	119
8-2 Maximum remuneration in personal injury actions	119
8-3 Form and content of contingent fee agreements	119
8-4 Statement of Rules in contingent fee agreements	120
PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS	
Division 1 – Law Corporations	
9-1 Corporate name	121
9-2 Corporate name certificate	121
9-3 Review of Executive Director’s decision	121
9-4 Law corporation permit	122
9-5 Issuance of permit	122
9-6 Change of corporate name	122
9-7 Public disclosure of corporate status	123
9-8 Corporate information	123
9-9 Disclosure of corporate information	123
9-10 Notice of change in corporate information	123
9-11 Revocation of permits	124
Division 2 – Limited Liability Partnerships	
9-12 Definition and application	125
9-13 Practice through a limited liability partnership	125
9-14 LLP name	125
9-15 Notice of application for registration	125
9-16 Review of Executive Director’s decision	126
9-17 Disclosure of LLP status.....	126
9-18 Change in LLP information and annual reports	127
9-19 Disclosure of LLP information	127
9-20 Notification of non-compliance	127
PART 10 – GENERAL	
10-1 Service and notice	128
10-2 Duty not to disclose	128.1
10-3 Records	128.1
10-4 Security of records	128.2
SCHEDULES	
Schedule 1 – Law Society Fees and Assessments	129
Schedule 2 – Prorated Fees and Assessments for Practising Members	131
Schedule 3 – Prorated Fees for Non-Practising and Retired Members	132
Schedule 4 – Tariff for Hearing and Review Costs	133
Schedule 5 – Form of Summons	135

Definitions

1 In these Rules, unless the context indicates otherwise:

“**Act**” means the *Legal Profession Act*, S.B.C. 1998, c. 9;

“**admission program**” means the training program for articulated students administered by the Society or its agents, commencing on an articulated student’s enrolment start date and including the period during which the student is

(a) articulated to a principal, or

(b) registered in the training course;

“**advertising**” includes letterhead, business cards and the use of paid space or time in a public medium, or the use of a commercial publication such as a brochure or handbill, to communicate with the general public or a group of people, for the purpose of promoting professional services or enhancing the image of the advertiser;

“**agreed statement of facts**” means a written statement of facts signed by discipline counsel and by or on behalf of the respondent;

“**applicant**” means a person who has applied under Part 2 for enrolment as an articulated student, for call and admission or for reinstatement;

“**appointed Benchers**” means a person appointed as a Benchers under section 5;

“**articled student**” means a person who is enrolled in the admission program;

“**articling agreement**” means a contract in a form approved by the Credentials Committee executed by an applicant for enrolment and his or her prospective principal;

“**articling start date**” means the date on which an articulated student begins employment with his or her principal;

“**articling term**” means the 9 month period referred to in Rule 2-32;

“**Barreau**” means the Barreau du Québec;

“**Benchers**” does not include the Attorney General unless expressly stated;

“**chair**” means a person appointed to preside at meetings of a committee or panel;

“**Chambre**” means the Chambre des notaires du Québec;

“**company**” means a company as defined in the *Business Corporations Act*;

“**complainant**” means a person who has delivered a complaint about a lawyer or a law corporation to the Society under Rule 3-2;

“**complaint**” means an allegation that a lawyer or a law corporation has committed a discipline violation;

“**conduct unbecoming a lawyer**” includes any matter, conduct or thing that is considered, in the judgment of the Benchers, a panel or a review board,

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession;

“**costs**” includes costs assessed under Rule 3-18 or 3-74.1 or Part 5;

“**disbarred lawyer**” means a person to whom section 15(3) of the Act applies;

DEFINITIONS

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

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

“discipline violation” means any of the following:

- (a) professional misconduct;
- (b) conduct unbecoming a lawyer;
- (c) a breach of the Act or these Rules;
- (d) incompetent performance of duties undertaken by a lawyer in the capacity of a lawyer;
- (e) conduct that would constitute professional misconduct, conduct unbecoming a lawyer or a contravention of the Act or these Rules if done by a lawyer;

“enrolment start date” means the date on which an articulated student’s enrolment in the admission program becomes effective;

“Executive Committee” means the Committee elected under Rule 1-39;

“Executive Director” includes a person designated by the Executive Director to perform any of the duties assigned to the Executive Director in these Rules;

“fiduciary property” means

- (a) funds, other than trust funds, and valuables for which a lawyer is responsible in a representative capacity or as a trustee, if the lawyer’s appointment is derived from a solicitor-client relationship,
but does not include
- (b) any funds and valuables that are subject to a power of attorney granted to the lawyer if the lawyer has not taken control of or otherwise dealt with the funds or valuables;

LAW SOCIETY RULES

“firm” includes one lawyer or two or more lawyers practising together, including in the following arrangements:

- (a) a sole proprietorship;
- (b) a partnership, including a limited liability partnership or a partnership of law corporations;
- (c) an arrangement for lawyers to share certain common expenses but otherwise practise as independent practitioners;
- (d) a law corporation;
- (e) a public body such as government or a Crown corporation;
- (f) a corporation that is not a law corporation, or other private body;
- (g) a multi-disciplinary practice;

“foreign jurisdiction” means a country other than Canada or an internal jurisdiction of a country other than Canada;

“Foundation” means the Law Foundation of British Columbia continued under section 58 (1) of the Act;

“funds” includes current coin, government or bank notes, bills of exchange, cheques, drafts, money orders, charge card sales slips, credit slips and electronic transfers;

“general” in relation to accounts, books, records and transactions means those pertaining to general funds;

“general funds” means funds received by a lawyer in relation to the practice of law, but does not include

- (a) trust funds, or
- (b) fiduciary property;

“governing body” means the governing body of the legal profession in another province or territory of Canada;

“insolvent lawyer” means a lawyer who

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

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

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

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

DEFINITIONS

- “law clerk”** means a law clerk employed by a judge appointed under section 96 of the *Constitution Act, 1867*, or a judge of the Supreme Court of Canada, the Federal Court of Canada or the Tax Court of Canada;
- “lawyer”** means a member of the Society;
- “limited liability partnership”** or **“LLP”** means a limited liability partnership under Part 6 of the *Partnership Act*, including an extraprovincial limited liability partnership registered under that Part;
- “metadata”** includes the following information generated in respect of an electronic record:
- (a) creation date;
 - (b) modification dates;
 - (c) printing information;
 - (d) pre-edit data from earlier drafts;
 - (e) identity of an individual responsible for creating, modifying or printing the record;
- “multi-disciplinary practice”** or **“MDP”** means a partnership, including a limited liability partnership or a partnership of law corporations, that is owned by at least one lawyer or law corporation and at least one individual non-lawyer or professional corporation that is not a law corporation, and that provides to the public legal services supported or supplemented by the services of another profession, trade or occupation;
- “National Mobility Agreement”** means the National Mobility Agreement, 2013, of the Federation of Law Societies of Canada, as amended from time to time;
- “net interest”** means the total interest earned on a pooled trust account, minus any service charges and transmittal fee that the savings institution charges to that account;
- “officer”** means the Executive Director, a Deputy Executive Director or other person appointed as an officer by the Benchers;
- “Ombudsperson”** means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articulated students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age, and includes anyone employed by the Ombudsperson to assist in that capacity;
- “panel”** means a panel established in accordance with Part 5;
- “practice review”** means an investigation into a lawyer’s competence to practise law ordered under Rule 3-12(3)(d) or 3-13(1);
- “practice year”** means the period beginning on January 1 and ending on December 31 in a year;
- “practitioner of foreign law”** means a person qualified to practise law in a foreign jurisdiction who provides foreign legal services in British Columbia respecting the laws of that foreign jurisdiction;

LAW SOCIETY RULES

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

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

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

- (a) an order under Rule 2-30(4), prohibiting the lawyer from acting as a principal for an articulated student;
- (b) any conditions or limitations of practice or articles accepted or imposed under the Act or these Rules;
- (c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;
- (c.1) a decision by the Credentials Committee to reject an application for an inter-jurisdictional practice permit;
- (c.2) any suspension or disbarment under the Act or these Rules;
- (d) recommendations made by the Practice Standards Committee under Rule 3-14;
- (d.1) to (f) [rescinded 11/2008]
- (g) an admission accepted by the Discipline Committee under Rule 4-21;
- (h) an admission and consent to disciplinary action accepted by a hearing panel under Rule 4-22;
- (i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-9, and any written dispute of that report considered by the Committee;
- (j) a decision made under section 38(4)(b) of the Act;
- (k) an action taken under section 38(5), (6) or (7) of the Act;
- (l) an action taken by a review board under section 47 of the Act;
- (m) and (n) [rescinded 11/2008]
- (o) a payment made under section 31 of the Act on account of misappropriation or wrongful conversion by the lawyer;
- (p) an order for costs made against the lawyer under Part 5;
- (p.1) any failure to pay any fine, costs or penalty imposed under the Act or these Rules by the time that it is to be paid;
- (q) the outcome of an application made by the lawyer under the Judicial Review Procedure Act concerning a decision taken under the Act or these Rules, including a predecessor of either;
- (r) the outcome of an appeal under section 48 of the Act;
- (s) any disciplinary or remedial action taken by a governing body or body regulating the legal profession in any other jurisdiction;
- (t) a decision of or action taken by the Benchers on a review of a decision of a hearing panel;

DEFINITIONS

- “professional corporation”** includes a law corporation and means a corporation that is a company, as defined in the *Business Corporations Act*, and that is in good standing under that Act or that is registered under Part 10 of the *Business Corporations Act*, through which a member of a profession, trade or occupation is authorized under a statute governing the profession, trade or occupation to carry on the business of providing services to the public;
- “Protocol”** means the Inter-Jurisdictional Practice Protocol signed on behalf of the Society on February 18, 1994, as amended from time to time;
- “provide foreign legal services”** means give legal advice in British Columbia respecting the laws of a foreign jurisdiction in which the person giving the advice is qualified;
- “qualification examination”** means an examination set by the Executive Director for the purposes of Rule 2-57;
- “reciprocating governing body”**
- (a) means a governing body that has signed the National Mobility Agreement, and adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement, and
 - (b) includes a governing body that has signed the Territorial Mobility Agreement and adopted regulatory provisions giving effect to the requirements of the Territorial Mobility Agreement;
- “record”** includes metadata associated with an electronic record;
- “remedial program”** includes anything that may be recommended by the Practice Standards Committee under Rule 3-14(1)(b);
- “respondent”** means a person whose conduct or competence is
- (a) the subject of a citation directed to be issued under Rule 4-13(1), or
 - (b) under review by a review board under section 47 of the Act;
- “review board”** means a review board established in accordance with Part 5;
- “Rule”** or **“subrule”** means a rule or subrule contained in these Rules;
- “Second Vice-President-elect”** means the Benchler elected under Rule 1-18, from the time of the election until he or she takes office as Second Vice-President;
- “section”** means a section of the *Legal Profession Act*;
- “Society”** means the Law Society of British Columbia continued under section 2(1) of the Act;
- “suspension”** means temporary disqualification from the practice of law;
- “Territorial Mobility Agreement”** means the 2006 Territorial Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time.
- “training course”** includes any assessments, examinations and remedial work taken during or after the training course, or an educational program required by the Credentials Committee;

LAW SOCIETY RULES

“trust funds” includes funds received in trust by a lawyer acting in the capacity of a lawyer, including funds

- (a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or
- (b) belonging partly to a client and partly to the lawyer if it is not practicable to split the funds;

“valuables” means anything of value that can be negotiated or transferred, including but not limited to

- (a) securities,
- (b) bonds,
- (c) treasury bills, and
- (d) personal or real property;

“vice chair” means a person appointed to preside at meetings of a committee in the absence of the chair;

“visiting lawyer” means a member of a governing body who is qualified to practise law in another Canadian jurisdiction.

[amended 09/1999; 11/1999; 05/2000; 06/2001; 03/2003; effective 08/2003; 12/2003; 05/2004; 09/2004; “firm” amended and “limited liability partnership” added effective January 17, 2005; amended 02/2006; 06/2006; 10/2006; 09/2007; 04/2008; “professional conduct record” amended 11/2008; “statement of agreed facts” deleted and “agreed statement of facts” added 04/2009; “appointed Bencher” added 09/2009; “firm” amended and “multi-disciplinary practice” and “professional corporation” added 12/2009, effective 07/2010; “National Mobility Agreement,” “reciprocating governing body” and “Territorial Mobility Agreement” added 12/2011; “pro bono legal services” added 06/2012; “conduct unbecoming a lawyer,” “professional conduct record” and “respondent” amended, “review board” added 09/2012, effective 01/2013; “professional conduct record” amended 10/2012; “practitioner of foreign law” amended, “disciplinary record” and “provide foreign legal services” added 06/2013; “Barreau” and “Chambre” added, “National Mobility Agreement” amended 12/2013; “metadata” and “record” added 10/2014; “general funds” and “trust funds” amended, “fiduciary property” and “valuables” added 03/2015]

PART 3 – PROTECTION OF THE PUBLIC

- (5) Any lawyer who becomes an undischarged bankrupt must resign any directorships in corporations, including law corporations, in accordance with section 124 of the *Business Corporations Act*.

[(2) and (3) amended 12/2003; (5) amended 05/04; (1) rescinded 09/2006]

Consideration by Discipline Committee

- 3-46** (1) After receiving the information and material required under Rule 3-45(2), the Executive Director may refer an insolvent lawyer to the Discipline Committee.
- (2) The Executive Director may refer any matter for decision under this Division to the Discipline Committee.
- (3) When a matter is referred to the Discipline Committee under this Division, the Committee may make or authorize any investigations it considers desirable.
- (4) The Discipline Committee may suspend or impose conditions and limitations on the practice of a lawyer that it considers does not meet the standards of financial responsibility established under section 32 of the Act.
- (5) The Discipline Committee may remove the suspension or vary or remove conditions and limitations imposed under subrule (4).
- (6) The Discipline Committee must not suspend a lawyer or impose conditions and limitations on the practice of a lawyer under subrule (4) until it has notified the lawyer of the reasons for the proposed action and given the lawyer a reasonable opportunity to make representations about those reasons.
- (7) When conditions or limitations are imposed on the practice of a lawyer under subrule (4), the Executive Director may disclose the fact that the conditions or limitations apply and the nature of the conditions or limitations.
- (8) If the Executive Director discloses the existence of conditions or limitations under subrule (7) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the conditions or limitations cease to be in force.

[(1) amended 12/2003; heading, (1), (3) and (6) amended 05/2005; (7) and (8) added 06/2005]

Division 7 – Trust Accounts and Other Client Property

Definitions

3-47 In this Division,

“cash” means

- (a) coins referred to in section 7 of the *Currency Act* (Canada),
- (b) notes intended for circulation in Canada issued by the Bank of Canada under the *Bank of Canada Act*, and
- (c) coins or bank notes of countries other than Canada;

“cash receipt book” means the book of duplicate receipts referred to in Rule 3-61.1(1);

“client” includes any beneficial owner of funds or valuables received by a lawyer in connection with the lawyer's practice;

“compliance audit” means an examination of a lawyer’s books, records and accounts and the answering of questions by lawyers ordered under Rule 3-79;

“public body” means

- (a) a ministry or department of the government of Canada or of a province or territory, or
- (b) a local public body as defined in paragraphs (a) to (c) of the definition in Schedule 1 to the *Freedom of Information and Protection of Privacy Act*.

[heading and rule amended 12/2003; amended effective 05/2004; amended 06/2005; 09/2006; 03/2015]

Personal responsibility

- 3-48** (1) A lawyer must account in writing to a client for all funds and valuables received on behalf of the client.
- (2) In this Division, the responsibilities of a lawyer may be fulfilled by the lawyer’s firm.
- (3) A lawyer is personally responsible to ensure that the duties and responsibilities under this Division are carried out, including when the lawyer
- (a) is authorized by the firm or lawyer through which the lawyer practises law to open, maintain, or deal with funds in a trust or general account, or
 - (b) delegates to another person any of the duties or responsibilities assigned to a lawyer under this Division.

[(1) amended 12/2003]

Fiduciary property

- 3-48.1** (1) In addition to any other obligations required by law and equity, this rule applies to lawyers who are responsible for fiduciary property.
- (2) A lawyer must make all reasonable efforts to determine the extent of the fiduciary property for which the lawyer is responsible and must maintain a list of that fiduciary property.
- (3) A lawyer must produce on demand the following records for any period for which the lawyer is responsible for fiduciary property:
- (a) a current list of valuables, with a reasonable estimate of the value of each;
 - (b) accounts and other records respecting the fiduciary property;
 - (c) all invoices, bank statements, cancelled cheques or images, and other records necessary to create a full accounting of the receipt or disbursement of the fiduciary property and any capital or income associated with the fiduciary property.
- (4) The records required under subrule (3) form part of the books, records and accounts of a lawyer, and the lawyer must produce them and permit them to be copied as required under these Rules.
- (5) Subrules (3) and (4) continue to apply for 10 years from the final accounting transaction or disposition of valuables.

[added 03/2015]

Designated savings institutions

3-49 Subject to Rule 3-50, a savings institution is a designated savings institution within the meaning of section 33(3)(b) of the Act if it has an office in British Columbia accepting demand deposits and is insured by

- (a) the Canada Deposit Insurance Corporation, or
- (b) the Credit Union Deposit Insurance Corporation of British Columbia.

[amended, (2) and (3) rescinded 12/2003]

Removal of designation

3-50 (1) The Executive Committee may declare, by resolution, that a savings institution is not or ceases to be a designated savings institution within the meaning of section 33(3)(b) of the Act.

(2) A lawyer who holds trust funds in a savings institution that is not or ceases to be a designated savings institution must immediately transfer those funds into a designated savings institution.

(3) Subrule (2) does not apply if the lawyer has written instructions from the client to the contrary.

Deposit of trust funds

3-51 (1) Subject to subrule (3) and Rule 3-54, a lawyer who receives trust funds must deposit the funds in a pooled trust account as soon as practicable.

(2) [rescinded]

(3) Despite subrule (1), a lawyer who receives trust funds with instructions to place the funds otherwise than in a pooled trust account may place the funds in a separate trust account in accordance with section 62(5) of the Act and Rule 3-53.

(4) Unless the client instructs otherwise in writing, a lawyer must deposit all trust funds in an account in a designated savings institution.

(5) As soon as it is practicable, a lawyer who deposits into a trust account funds that belong partly to a client and partly to the lawyer or the lawyer's firm must withdraw the lawyer's or firm's funds from the trust account.

[(4) rescinded and replaced 12/2003; (1) and (3) amended, (2) rescinded 02/2006]

Cash transactions

3-51.1 (1) This Rule applies to a lawyer when engaged in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:

- (a) receiving or paying funds;
- (b) purchasing or selling securities, real property or business assets or entities;
- (c) transferring funds or securities by any means.

LAW SOCIETY RULES

- (2) This Rule does not apply to a lawyer when
 - (a) engaged in activities referred to in subrule (1) on behalf of his or her employer, or
 - (b) receiving or accepting cash
 - (i) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
 - (ii) pursuant to the order of a court or other tribunal,
 - (iii) to pay a fine or penalty, or
 - (iv) from a savings institution or public body.
- (3) While engaged in an activity referred to in subrule (1), a lawyer must not accept an aggregate amount in cash of \$7,500 or more in respect of any one client matter or transaction.
- (3.1) Despite subrule (3), a lawyer may accept an aggregate amount in cash of \$7,500 or more in respect of a client matter or transaction for professional fees, disbursements, expenses or bail.
- (3.2) A lawyer who accepts an aggregate amount in cash of \$7,500 or more under subrule (3.1), must make any refund greater than \$1,000 out of such money in cash.
- (3.3) A lawyer who receives cash, unless permitted under this Rule to accept it, must
 - (a) make no use of the cash,
 - (b) return the cash, or if that is not possible, the same amount in cash, to the payor immediately,
 - (c) make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash, and
 - (d) comply with all other Rules pertaining to the receipt of trust funds.
- (4) For the purposes of this Rule, foreign currency is to be converted into Canadian dollars based on
 - (a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Memorandum of Exchange Rates in effect at the relevant time, or
 - (b) if no official conversion rate is published as set out in paragraph (a), the conversion rate that the client would use for that currency in the normal course of business at the relevant time.

[added effective 05/2004; (1) to (4) amended, (3.1) added 06/2005; (3) and (3.1) amended, (3.2) and (3.3) added 11/2009]

PART 3 – PROTECTION OF THE PUBLIC

- (5) A transfer of funds from a pooled trust account to a separate trust account must be authorized by the client and approved in writing signed by a lawyer.

[(1), (2) and (5) amended, (1.1), (1.2) and (3.1) added 02/2003; (2) and (4) amended, (1.3) and (3.2) added 03/2004; (3.2) amended 05/2004; (1.3) amended 06/2005; (3.1) amended 07/2009; (1.3) amended 11/2009]

Payment of fees from trust

- 3-57** (1) In this Rule, “fees” means fees for services performed by a lawyer or a non-lawyer member of the lawyer’s MDP, and taxes on those fees.
- (2) A lawyer who withdraws or authorizes the withdrawal of trust funds under Rule 3-56 in payment for the lawyer’s fees must first prepare a bill for those fees and immediately deliver the bill to the client.
- (3) A bill or letter is delivered within the meaning of this Rule if it is
- (a) mailed 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) made available to the client by other means agreed to in writing by the client.
- (4) As an exception to subrule (2), a lawyer need not deliver a bill if the client instructs the lawyer otherwise in writing.
- (5) A lawyer must not take fees from trust funds when the lawyer knows that the client disputes the right of the lawyer to receive payment from trust funds, unless
- (a) the client has agreed that the lawyer may take funds from trust to satisfy the lawyer’s account and the client has acknowledged that agreement in writing or the lawyer has confirmed the client’s agreement in a letter delivered to the client,
 - (b) a bill has been delivered under subrule (3), whether or not the client has directed otherwise under subrule (4),
 - (c) the lawyer has given the client written notice that the fees will be taken from trust unless, within one month, the client commences a fee review under section 70 of the Act or an action disputing the lawyer’s right to the funds, and
 - (d) the client has not commenced a fee review under section 70 of the Act or an action at least one month after written notice is given under paragraph (c).
- (6) Despite subrule (5), if a lawyer knows that the client disputes a part of the lawyer’s account, the lawyer may take from trust funds fees that are not disputed.
- (7) A lawyer must not take fees from trust funds impressed with a specific purpose, if the object of the trust has not been fulfilled, without the express consent of the client or another person authorized to give direction on the application of the trust funds.

[(3) amended 03/2002; (1) amended 12/2009, effective 07/2010; (3) amended 04/2011; 03/2015]

Withdrawal from separate trust account

- 3-58** (1) A lawyer who makes or authorizes the withdrawal of funds from a separate trust account in respect of which cancelled cheques and bank statements are not received from the savings institution monthly and kept in the lawyer's records must first transfer the funds into his or her pooled trust account.
- (2) Rules 3-56 and 3-57 apply to funds that have been transferred into a pooled trust account in accordance with subrule (1).
- (3) A lawyer who disburses trust funds received with instructions under Rule 3-51(3) must keep a written record of the transaction.

[(3) amended 02/2006]

Accounting records

3-59 (0.1) In this Rule, "supporting document" includes

- (a) validated deposit receipts,
 - (b) periodic bank statements,
 - (c) passbooks,
 - (d) cancelled and voided cheques,
 - (e) bank vouchers and similar documents,
 - (f) vendor invoices, and
 - (g) bills for fees, charges and disbursements.
- (1) A lawyer must record all funds received and disbursed in connection with his or her law practice by maintaining the records required under this Division.
- (2) A lawyer must maintain accounting records, including supporting documents, in
- (a) legibly handwritten form, in ink or other duplicated or permanent form,
 - (b) printed form, or
 - (c) an electronic form in compliance with subrule (2.1).
- (2.1) A lawyer who maintains accounting records, including supporting documents, in electronic form, must ensure that
- (a) all records and documents are maintained in a way that will allow compliance with Rule 10-4(2),
 - (b) copies of both sides of all paper records and documents, including any blank pages, are retained in a manner that indicates that they are two sides of the same document, and
 - (c) there is a clear indication, with respect to each financial transaction, of
 - (i) the date of the transaction,
 - (ii) the individual who performed the transaction, and
 - (iii) all additions, deletions or modifications to the accounting record and the individual who made each of them.
- (3) A lawyer must record transactions in accounting records in chronological order and in an easily traceable form.

PART 3 – PROTECTION OF THE PUBLIC

- (c) filed in chronological, alphabetical or numerical order.
- (2) For the purpose of subrule (1), a bill includes a receipt issued under Rule 3-63(3).
[amended 12/2003; (1) amended 10/2014]

Recording transactions

- 3-63** (1) A lawyer must record each trust or general transaction promptly, and in any event not more than
- (a) 7 days after a trust transaction, or
 - (b) 30 days after a general transaction.
- (2) A lawyer must record in his or her general account records all funds
- (a) received by the lawyer expressly on account of fees earned and billed or disbursements made by the day the funds are received,
 - (b) subject to a specific agreement with the client allowing the lawyer to treat them as his or her own funds, or
 - (c) that the lawyer is entitled to keep whether or not the lawyer renders any services to or makes any disbursements on behalf of that client.
- (3) A lawyer who receives funds to which subrule (2) applies must immediately deliver a bill or issue to the client a receipt for the funds received, containing sufficient particulars to identify the services performed and disbursements incurred.
- (4) As an exception to subrule (1), a lawyer must record the receipt of interest on a separate trust account within 30 days of payment or of notice that funds have been credited to the account.
[(3) amended, (4) added 12/2003; (2) amended 05/2004]

3-64 [rescinded 12/2003]

Monthly trust reconciliation

- 3-65** (1) A lawyer must prepare a monthly trust reconciliation of the total of all unexpended balances of funds held in trust for clients as they appear in the trust ledgers, with the total of balances held in the trust bank account or accounts, together with the reasons for any differences between the totals.
- (2) The monthly trust reconciliation must be supported by
- (a) a detailed monthly listing showing the unexpended balance of trust funds held for each client, and identifying each client for whom trust funds are held,
 - (b) a detailed monthly bank reconciliation for each pooled trust account,
 - (c) a listing of balances of each separate trust account or savings, deposit, investment or similar form of account, identifying the client for whom each is held,
 - (d) a listing of balances of all other trust funds received pursuant to Rule 3-51(3), and
 - (e) a listing of valuables received and delivered and the undelivered portion of valuables held for each client.

LAW SOCIETY RULES

- (2.1) Each monthly trust reconciliation prepared under subrule (1) must include the date on which it was prepared.
- (3) A lawyer must retain for at least 10 years
 - (a) each monthly trust reconciliation prepared under subrule (1), and
 - (b) the detailed listings described in subrule (2) as records supporting the monthly trust reconciliations.
- (4) A lawyer must make the trust reconciliation required by this Rule not more than 30 days after the effective date of the reconciliation.

[(2) amended 12/2003; 04/2006; (2.1) added, (3) amended 10/2014]

Trust shortage

- 3-66** (1) A lawyer who discovers a trust shortage must immediately pay enough funds into the account to eliminate the shortage.
- (2) A lawyer must immediately make a written report to the Executive Director, including all relevant facts and circumstances, if the lawyer
 - (a) discovers a trust shortage greater than \$2,500, or
 - (b) is or will be unable to deliver up, when due, any trust funds held by the lawyer.
 - (3) A trust shortage referred to in this Rule includes a shortage caused by service charges, credit card discounts and bank errors.

[(2) amended, (3) added 12/2003]

3-67 [rescinded 12/2003]

Retention of records

- 3-68** (0.1) This Rule applies to records referred to in Rules 3-59 to 3-62.
- (1) A lawyer must keep his or her records for as long as the records apply to money held as trust funds or to valuables held in trust for a client and for at least 10 years from the final accounting transaction or disposition of valuables.
 - (2) A lawyer must keep his or her records, other than electronic records, at his or her chief place of practice in British Columbia for at least 3 years from the final accounting transaction or disposition of valuables.

(3) and (4) [rescinded 10/2014]

[heading and rule amended, (0.1), (3) and (4) added 12/2003; heading and (0.1), (1) and (2) amended, (3) and (4) rescinded 10/2014; (1) and (2) amended 03/2015]

Executive Director's modification

- 3-69** (1) Having regard to the accounting and storage systems employed by a specific lawyer, the Executive Director may modify the requirements of that lawyer under Rules 3-60 to 3-62 or 3-68.
- (2) The Executive Director may, at any time, cancel or amend a modification under subrule (1).

Compliance audit of books, records and accounts

- 3-79** (1) The Executive Director may at any time order a compliance audit of the books, records and accounts of a lawyer for the purpose of determining whether the lawyer meets standards of financial responsibility established under this Part, including but not limited to maintaining books, records and accounts in accordance with this Division.
- (2) When an order is made under subrule (1),
- (a) the Executive Director must designate one or more persons to conduct the compliance audit, and
 - (b) on notification of the order, the lawyer concerned must immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence and must provide any explanations required by the person designated under paragraph (a) for the purpose of completing the compliance audit.

[heading and rule amended 09/2006]

Failure to produce records on compliance audit

- 3-79.1** (1) Subject to subrules (2) and (3), a lawyer who does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-79(2)(b) is suspended until the records are produced, copying permitted and explanations provided to the satisfaction of the Executive Director.
- (2) When there are special circumstances, the Discipline Committee may, in its discretion, order that
- (a) a lawyer not be suspended under subrule (1), or
 - (b) a suspension under this Rule be delayed for a specified period of time.
- (3) At least 7 days before a suspension under this Rule can take effect, the Executive Director must deliver to the lawyer notice of the following:
- (a) the date on which the suspension will take effect;
 - (b) the reasons for the suspension;
 - (c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

[added 09/2006]

Disposition of files, trust money and other documents and valuables

- 3-80** (1) Before leaving a firm in British Columbia, a lawyer must advise the Executive Director in writing of his or her intended disposition of all of the following that relate to the lawyer's practice in British Columbia and are in the lawyer's possession or control:
- (a) open and closed files;
 - (b) wills and wills indices;

LAW SOCIETY RULES

- (c) titles and other important documents and records;
 - (d) other valuables;
 - (e) trust accounts and trust funds;
 - (f) fiduciary property.
- (2) Within 30 days after withdrawing from the practice of law in British Columbia, a lawyer or former lawyer must confirm to the Executive Director in writing that
- (a) the documents and property referred to in subrule (1)(a) to (d) have been disposed of, and any way in which the disposition differs from that reported under subrule (1),
 - (b) all trust accounts referred to in subrule (1)(e) have been closed and that
 - (i) all the balances have been
 - (A) remitted to the clients or other persons on whose behalf they were held,
 - (B) transferred to another lawyer with written instructions concerning the conditions attaching to them, or
 - (C) paid to the Society under Rule 3-82, and
 - (ii) any net interest earned on a pooled trust account has been remitted to the Foundation in accordance with this Division, and
 - (c) the lawyer or former lawyer has notified all clients and other persons for whom the lawyer is or potentially may become a personal representative, executor, trustee or other fiduciary regarding the lawyer or former lawyer's withdrawal from practice and any change in his or her membership status.
- (2.1) A law corporation must confirm to the Executive Director as required under subrule (2) within 30 days of
- (a) cancellation of its permit under Part 9, and
 - (b) ceasing to provide legal services.
- (3) The Executive Director may, on application in writing by the lawyer, former lawyer or law corporation, extend the time limit referred to in subrule (1), (2) or (2.1) or, if in the opinion of the Executive Director it is in the public interest, relieve the lawyer, former lawyer or law corporation of any of the requirements of those subrules.
- (4) [rescinded 12/03]
- (5) On an enquiry, the Executive Director may disclose information collected under this Rule if satisfied that
- (a) the person enquiring has a bona fide reason to obtain the information, and
 - (b) disclosure of the information would not be an unreasonable invasion of anyone's privacy.

[(2) and (3) amended, (2.1) added, (4) rescinded 12/2003; (2) amended 02/2006;
(1) and (2) amended 03/2015]

Division 8 – Unclaimed Trust Money

Definition

3-81 In this Division, “efforts to locate” means steps that are reasonable and adequate in all the circumstances, including the amount of money involved.

Payment of unclaimed money to the Society

- 3-82** (1) A lawyer who has held money in trust on behalf of a person whom the lawyer has been unable to locate for 2 years may apply to the Executive Director to pay those funds to the Society under section 34 of the Act.
- (2) A lawyer must make the application referred to in subrule (1) in writing containing all of the following information that is available to the lawyer:
- (a) the full name and last known mailing address of each person on whose behalf the funds were held;
 - (b) the exact amount to be paid to the Society in respect of each such person;
 - (c) the efforts made by the lawyer to locate each such person;
 - (d) any unfulfilled undertakings given by the lawyer in relation to the funds;
 - (e) the details of the transaction in respect of which the funds were deposited with the lawyer.
- (3) A lawyer who cannot provide all the information described in subrule (2) must advise the Executive Director of the reasons why the lawyer does not have that information and deliver to the Executive Director copies of all records in the lawyer’s power or possession that relate to the ownership and source of the funds.
- (4) If the Executive Director is satisfied that the lawyer has made appropriate efforts to locate the owner of the money, the Executive Director may accept the money under section 34 of the Act.
- (5) The Executive Director must account for money received by the Society under subrule (4) separately from the other funds of the Society.

[heading, (1), (4) and (5) amended 03/2015]

Investigation of claims

- 3-83** (1) A person may make a claim under section 34 of the Act in writing, in the form approved by the Executive Committee by delivering it to the Executive Director.
- (2) A claimant must provide the Executive Director with information and documents that the Executive Director reasonably requires.
- (3) In order to determine the validity of a claim, the Executive Director may make or authorize inquiries or further investigations that he or she considers desirable.

[(3) amended 05/2004]

Adjudication of claims

- 3-84** (1) The Executive Director may
- (a) approve a claim if satisfied that the claim is valid, or
 - (b) refer the claim to the Executive Committee.
- (2) When the Executive Director refers a claim to the Executive Committee, it may, in its discretion
- (a) approve or reject a claim based on the information received under Rule 3-83, or
 - (b) order a hearing to determine the validity of a claim.
- (3) If a hearing is ordered, the Executive Director must give the claimant reasonable notice in writing of the date, time and place of the hearing.
- (4) The Executive Director must serve the notice referred to in subrule (3) in accordance with Rule 10-1.
- (5) The Executive Committee must conduct every hearing under this Rule in private unless the Committee determines, in the public interest, that a specific individual or the public generally may be present at part or all of the hearing.
- (6) Subject to the Act and these Rules, the Executive Committee may determine the practice and procedure to be followed at a hearing.
- (7) The claimant or the Society may call a witness to testify, who
- (a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and
 - (b) is subject to cross-examination.
- (8) Following completion of the evidence, the Executive Committee must invite the claimant and the Society to make submissions on the issues to be decided by the Committee.
- (9) Following the hearing of the evidence and submissions, the Executive Committee must determine whether the claimant is entitled to the money held in trust by the Society.
- (10) If the claim is approved under subrule (1)(a) or (9), the Executive Director must
- (a) calculate the exact amount owing to the claimant,
 - (b) calculate, in accordance with Rule 3-85, the interest owing to the claimant on that amount, and
 - (c) pay to the claimant the total of the amounts calculated under paragraphs (a) and (b).

[(9) amended 03/2015]

PART 3 – PROTECTION OF THE PUBLIC

Calculation of interest

- 3-85** (1) In calculating the interest owing to a claimant under Rule 3-84, the Executive Committee must allow interest, for each 3-month period, at 2% below the prime lending rate of the Society's banker on March 31, June 30, September 30 and December 31 respectively, in each year, with interest to be compounded on June 30 and December 31 in each year.
- (2) Interest calculated under subrule (1) is payable from the first day of the month following receipt of the unclaimed money by the Society, until the last day of the month before payment out by the Society.

[(2) amended 03/2015]

Efforts to locate the owner of money

- 3-86** From time to time, the Executive Director must conduct or authorize efforts to locate the owner of money held under this Part.

[heading and rule amended 03/2015]

Payment to the Law Foundation

- 3-87** Before paying the principal amount received under Rule 3-82 to the Foundation under section 34 of the Act, the Executive Director must be satisfied that the owner of the money cannot be located following efforts to locate the owner.

[amended 03/2015]

Division 9 – Real Estate Practice

Definitions

- 3-88** In this Division,

“closing date” means the date upon which the documents to effect a transaction are filed as a pending application in the appropriate land title office;

“discharge of mortgage” means any discharge of mortgage that releases any portion of the land or interest in land charged by the mortgage;

“mortgage” means one of the following registered in a land title office in British Columbia:

- (a) a mortgage of land or an interest in land;
- (b) a debenture or trust deed containing a fixed charge on land or an interest in land;

“mortgagee” includes the holder of a fixed charge under a debenture or trust deed that is a mortgage;

“notary” means a member of the Society of Notaries Public of British Columbia.

[added effective 03/2003]

Report of failure to cancel mortgage

3-89 A lawyer must deliver to the Executive Director within 5 business days a report in a form approved by the Executive Committee when

- (a) the lawyer delivers funds to
 - (i) a mortgagee to obtain a registrable discharge of mortgage, or
 - (ii) another lawyer or a notary on the undertaking of the other lawyer or notary to obtain and register a discharge of mortgage, and
- (b) 60 days after the closing date of the transaction giving rise to the delivery of such funds, the lawyer has not received
 - (i) a registrable discharge of mortgage from the mortgagee, or
 - (ii) satisfactory evidence of the filing of a registrable discharge of mortgage as a pending application in the appropriate land title office from the other lawyer or notary.

[added effective 03/2003]

Division 10 – Criminal charges

Reporting criminal charges

3-90(0.1) This Rule applies to lawyers, articled students, practitioners of foreign law and applicants.

- (1) Subject to subrule (2), a person who is charged with an offence under a federal or provincial statute must provide to the Executive Director written notice containing all relevant information as soon as practicable after each of the following events:
 - (a) laying of the charge;
 - (b) disposition of the charge;
 - (c) sentencing in respect of the charge;
 - (d) commencement of an appeal of the verdict or sentence;
 - (e) disposition of the appeal.
- (1.1) A person charged with an offence must provide the Executive Director with a copy of any statement of the particulars of the charge immediately on receipt.
- (2) No notification is required under subrule (1) if a person is issued or served with a ticket as defined in the *Contraventions Act* (Canada) or a violation ticket as defined in the *Offence Act*.

[added effective 07/2003; (0.1) and (1.1) added, (1) and (2) amended 06/2007]

PART 5 – HEARINGS AND APPEALS

Application of Part

5-1 This Part applies to

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

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

Hearing panels

5-2 (1) A panel must consist of an odd number of persons but, subject to subrule (2), must not consist of one person.

(2) A panel may consist of one Bencher who is a lawyer when

- (a) no facts are in dispute,
- (b) the hearing is to consider a conditional admission under Rule 4-22,
 - (b.1) the hearing proceeds under Rule 4-24.1,
 - (b.2) the hearing is to consider a preliminary question under Rule 4-26.1,
- (c) it is not otherwise possible, in the opinion of the President, to convene a panel in a reasonable period of time, or
- (d) one or more of the original panel members cannot complete a hearing that has begun.

(3) A panel must be chaired by a Bencher who is a lawyer.

(4) Panel members must be permanent residents of British Columbia over the age of majority.

(5) The chair of a panel who ceases to be a Bencher may, with the consent of the President, continue to chair the panel, and the panel may complete any hearing or hearings already scheduled or begun.

(6) [rescinded]

(7) Two or more panels may proceed with separate matters at the same time.

(8) The President may refer a matter that is before a panel to another panel, fill a vacancy on a panel or terminate an appointment to a panel.

(9) Unless otherwise provided in the Act and these Rules, a panel must decide any matter by a majority, and the decision of the majority is the decision of the panel.

[(1), (2) and (4) amended 09/2005; (2) amended 07/2007; (2), (4) and (5) amended, (6) rescinded 10/2010; (8) amended 09/2012, effective 01/2013]

Panel member unable to continue

5-2.1 (1) Despite Rule 5-2, if a member of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may order that the panel continue with the remaining members.

LAW SOCIETY RULES

- (2) Despite Rule 5-2, if the chair of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may appoint another member of the hearing panel who is a lawyer as chair of the hearing panel, whether or not the lawyer is a current Bencher.

[added 03/2015]

Disqualification

- 5-3** (1) The following persons must not participate in a panel hearing a citation:
- (a) a person who participated in the decision that authorized issuing the citation;
 - (b) one of the Benchers who made an order under Rules 3-7.1 to 3-7.3 or Rule 4-17 regarding the respondent;
 - (c) a member of a panel that heard an application under Rule 4-19 to rescind or vary an interim suspension or practice condition or limitation in respect of the respondent.
- (2) A person who participated in the decision to order the hearing on an application for enrolment as an articled student, for call and admission or for reinstatement must not participate in the panel on that hearing.
- (3) [rescinded]
- (4) A person must not appear as counsel for any party for three years after
- (a) serving as a Bencher, or
 - (b) the completion of a hearing in which the person was a member of the panel.

[(4) added 02/2002; (1) amended 09/2012; (3) rescinded 09/2012, effective 01/2013]

Compelling witnesses and production of documents

- 5-4** (1) In this Rule, “**respondent**” includes a shareholder, director, officer or employee of a respondent law corporation.
- (2) At any time during a hearing, a panel may
- (a) compel the applicant or respondent to give evidence under oath,
 - (b) order the applicant or respondent to produce all files and records that are in the applicant’s or respondent’s possession or control that may be relevant to the matters raised by the application or in the citation, or
 - (c) make an order under section 44(4) or an application under section 44(5) of the Act.
- (3) A person who is the subject of an order under subrule (2)(a) may be cross-examined by counsel representing the Society.
- (4) A party to a proceeding under the Act and these Rules may prepare and serve a summons requiring a person to attend an oral or electronic hearing to give evidence in the form prescribed in Schedule 5.

[heading amended 10/2010; rule amended, (1) and (3) added 07/2011; (4) added 07/2012, effective 01/2013; (2) amended 12/2013]

Procedure

- 5-5** (1) Subject to the Act and these Rules, the panel may determine the practice and procedure to be followed at a hearing.

PART 5 – HEARINGS AND APPEALS

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

- (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]

Review board member unable to continue

- 5-12.3** (1) Despite Rule 5-12.1, if a member of a review board cannot, for any reason, complete a review that has begun, the President may order that the review board continue with the remaining members, whether or not the board consists of an odd number of persons.
- (2) Despite Rule 5-12.1, if the chair of a review board cannot, for any reason, complete a review that has begun, the President may appoint another member of the review board who is a lawyer as chair of the hearing panel, whether or not the lawyer is a current Bencher.

[added 03/2015]

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.

LAW SOCIETY RULES

- (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.
- (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]

Appendix C – Real Property Transactions

Application

1. This Appendix does not apply to a real property transaction between corporations, societies, partnerships, trusts, or any of them, that are effectively controlled by the same person or persons or between any of them and such person or persons.

Acting for parties with different interests

2. A lawyer must not act for more than one party with different interests in a real property transaction unless:

- (a) because of the remoteness of the location of the lawyer's practice, it is impracticable for the parties to be separately represented,
- (b) the transaction is a simple conveyance, or
- (c) paragraph 9 applies.

[amended 12/2014]

3. When a lawyer acts jointly for more than one client in a real property transaction, the lawyer must comply with the obligations set out in rule 3.4-5 to 3.4-9.

Simple conveyance

4. In determining whether or not a transaction is a simple conveyance, a lawyer should consider:

- (a) the value of the property or the amount of money involved,
- (b) the existence of non-financial charges, and
- (c) the existence of liens, holdbacks for uncompleted construction and vendor's obligations to complete construction.

Commentary

[1] The following are examples of transactions that may be treated as simple conveyances when this commentary does not apply to exclude them:

- (a) the payment of all cash for clear title,
- (b) the discharge of one or more encumbrances and payment of the balance, if any, in cash,
- (c) the assumption of one or more existing mortgages or agreements for sale and the payment of the balance, if any, in cash,

Code of Professional Conduct for British Columbia

- (d) a mortgage that does not contain any commercial element, given by a mortgagor to an institutional lender to be registered against the mortgagor's residence, including a mortgage that is
 - (i) a revolving mortgage that can be advanced and re-advanced,
 - (ii) to be advanced in stages, or
 - (iii) given to secure a line of credit,
- (e) transfer of a leasehold interest if there are no changes to the terms of the lease,
- (f) the sale by a developer of a completed residential building lot at any time after the statutory time period for filing claims of builders' liens has expired, or
- (g) any combination of the foregoing.

[2] The following are examples of transactions that must not be treated as simple conveyances:

- (h) a transaction in which there is any commercial element, such as:
 - (i) a conveyance included in a sale and purchase of a business,
 - (ii) a transaction involving a building containing more than three residential units, or
 - (iii) a transaction for a commercial purpose involving either a revolving mortgage that can be advanced and re-advanced or a mortgage given to secure a line of credit,
- (i) a lease or transfer of a lease, other than as set out in subparagraph (e),
- (j) a transaction in which there is a mortgage back from the purchaser to the vendor,
- (k) an agreement for sale,
- (l) a transaction in which the lawyer's client is a vendor who:
 - (i) advertises or holds out directly or by inference through representations of sales staff or otherwise as an inducement to purchasers that a registered transfer or other legal services are included in the purchase price of the property,
 - (ii) is or was the developer of property being sold, unless subparagraph (f) applies,
- (m) a conveyance of residential property with substantial improvements under construction at the time the agreement for purchase and sale was signed, unless the lawyer's clients are a purchaser and a mortgagee and construction is completed before funds are advanced under the mortgage, or
- (n) the drafting of a contract of purchase and sale.

[3] A transaction is not considered to have a commercial element merely because one of the parties is a corporation.

[[1] and [2] amended 12/2014; 01/2015]

Advice and consent

5. If a lawyer acts for more than one party in the circumstances as set out in paragraph 2 of this Appendix, then the lawyer must, as soon as is practicable,

- (a) advise each party in writing that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned and that, if a conflict of interest arises, the lawyer cannot continue to act for any of them in the transaction,
- (b) obtain the consent in writing of all such parties, and
- (c) raise and explain the legal effect of issues relevant to the transaction that may be of importance to each such party.

Commentary

[1] If a written communication is not practicable at the beginning of the transaction, the advice may be given and the consent obtained orally, but the lawyer must confirm that advice to the parties in writing as soon as possible, and the lawyer must obtain consent in writing prior to completion.

[2] The consent in writing may be set out in the documentation of the transaction or may be a blanket consent covering an indefinite number of transactions.

Foreclosure proceedings

6. In this paragraph, “mortgagor” includes “purchaser,” and “mortgagee” includes “vendor” under an agreement for sale, and “foreclosure proceeding” includes a proceeding for cancellation of an agreement for sale.

If a lawyer acts for both a mortgagor and a mortgagee in the circumstances set out in paragraph 2, the lawyer must not act in any foreclosure proceeding relating to that transaction for either the mortgagor or the mortgagee.

This prohibition does not apply if

- (a) the lawyer acted for a mortgagee and attended on the mortgagor only for the purposes of executing the mortgage documentation,
- (b) the mortgagor for whom the lawyer acted is not made a party to the foreclosure proceeding, or
- (c) the mortgagor has no beneficial interest in the mortgaged property and no claim is being made against the mortgagor personally.

Unrepresented parties in a real property transaction

7. If one party to a real property transaction does not want or refuses to obtain independent legal representation, the lawyer acting for the other party may allow the unrepresented party to execute the necessary documents in the lawyer's presence as a witness if the lawyer advises that party in writing that:

- (a) the party is entitled to obtain independent legal representation but has chosen not to do so,
- (b) the lawyer does not act for or represent the party with respect to the transaction, and
- (c) the lawyer has not advised that party with respect to the transaction but has only attended to the execution and attestation of documents.

8. If the lawyer witnesses the execution of the necessary documents as set out in paragraph 7, it is not necessary for the lawyer to obtain the consent of the party or parties for whom the lawyer acts.

9. If one party to the real property transaction is otherwise unrepresented but wants the lawyer representing another party to the transaction to act for him or her to remove existing encumbrances, the lawyer may act for that party for those purposes only and may allow that party to execute the necessary documents in the lawyer's presence as witness if the lawyer advises the party in writing that:

- (a) the lawyer's engagement is of a limited nature, and
- (b) if a conflict arises between the parties, the lawyer will be unable to continue to act for that party.