

MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2016: No. 1 June

Highlights

Legal Profession Act: Minor amendments were enacted to correct spelling errors (definition of “applicant” and sections 19(2), 20(1), 26.01(1), 30(4) and (8), 38(6), 39(1), 42(1) and 73(1): pp. 5, 15, 16, 21, 25, 32-34 and 47); the table of contents is updated (pp. 1-4).

Law Society Rules 2015:* The rules governing the adjournment of credentials and review hearings are amended to allow a panel or the president to adjourn a hearing generally (Rules 2-96(6), 2-98(5), 5-25(9) and 5-26(5): pp. 92-93 and 198-199); a lawyer may be required to repay the Law Society for certain amounts paid under the insurance program on the lawyer’s behalf (Rule 3-44(1): p. 123); procedural changes are made to the rules covering hearings and reviews, including that the chair of a hearing panel or a review board may be a lawyer who is not currently a Bencher (Rules 5-2(2), (3), (5) and (5.1), 5-3(2), 5-4(1), 5-16(4) and 5-18(2): pp. 187-188 and 194); the party initiating a review of a hearing decision is responsible for producing the record on which the review is based, and the procedure for doing so is set out in a new rule (Rules 5-15(3), 5-24.1 and 5-25(9): pp. 193 and 197-198); the table of contents is updated (pp. 1-2 and 9-10).

**Historical notes are now only published in the website version of the Rules.*

Code of Professional Conduct for British Columbia: References to the Supreme Court Civil Rules have been updated (Appendix A, paragraph 1, commentaries [11], [16] and [20]: pp. 97-98); the table of contents is updated (pp. iii-vi).

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

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

Updates: This amendment package updates the *Member's Manual* to **May 25, 2016**. The previous amendment package was 2015: No. 3 December.

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

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Definitions

1 (1) In this Act:

“**applicant**” means a person who has applied for

- (a) enrolment as an articulated student,
- (b) call and admission, or
- (c) reinstatement;

“**articled student**” means a person enrolled in the society’s admission program;

“**bencher**” means a person elected or appointed under Part 1 to serve as a member of the governing body of the society;

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

“**conduct unbecoming a lawyer**” includes a 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;

“**disbar**” means to declare that a lawyer or former lawyer is unsuitable to practise law and to terminate the lawyer’s membership in the society;

“**executive committee**” means the committee established under section 10;

“**executive director**” means the executive director or acting executive director of the society;

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

“**law corporation**” means a corporation that holds a valid permit under Part 9;

“**law firm**” means a legal entity or combination of legal entities carrying on the practice of law;

“**lawyer**” means a member of the society, and

- (a) in Part 2, Division 1, includes a member of the governing body of the legal profession in another province or territory of Canada who is authorized to practise law in that province or territory,
- (b) in Parts 4 to 6 and 10 includes a former member of the society, and
- (c) in Part 10 includes an articulated student;

“**member**” means a member of the society;

“**officer**” means the executive director, deputy executive director or other person appointed as an officer of the society by the benchers;

“**panel**” means a panel appointed in accordance with section 41;

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“practice of law” includes

- (a) appearing as counsel or advocate,
- (b) drawing, revising or settling
 - (i) a petition, memorandum, notice of articles or articles under the *Business Corporations Act*, or an application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body,
 - (ii) a document for use in a proceeding, judicial or extrajudicial,
 - (iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or a grant of administration or the estate of a deceased person,
 - (iv) a document relating in any way to a proceeding under a statute of Canada or British Columbia, or
 - (v) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office,
- (c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages,
- (d) agreeing to place at the disposal of another person the services of a lawyer,
- (e) giving legal advice,
- (f) making an offer to do anything referred to in paragraphs (a) to (e), and
- (g) making a representation by a person that he or she is qualified or entitled to do anything referred to in paragraphs (a) to (e),

but does not include

- (h) any of those acts if performed by a person who is not a lawyer and not for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed,
- (i) the drawing, revising or settling of an instrument by a public officer in the course of the officer’s duty,
- (j) the lawful practice of a notary public,
- (k) the usual business carried on by an insurance adjuster who is licensed under Division 2 of Part 6 of the *Financial Institutions Act*, or
- (l) agreeing to do something referred to in paragraph (d), if the agreement is made under a prepaid legal services plan or other liability insurance program;

“practising lawyer” means a member in good standing who holds or is entitled to hold a practising certificate;

“president” means the chief elected official of the society;

DEFINITIONS

“**resolution**” means a motion passed by a majority of those voting at a meeting;

“**respondent**” means a person whose conduct or competence is the subject of a hearing or an appeal under this Act;

“**review board**” means a review board appointed in accordance with section 47;

“**rules**” means rules enacted by the benchers under this Act;

“**society**” means the Law Society of British Columbia continued under section 2;

“**suspension**” means temporary disqualification from the practice of law;

“**written**” or “**in writing**” includes written messages communicated electronically.

(2) In Parts 1 to 5, “**costs**” means costs assessed under a rule made under section 27 (2) (e) or 46.

[2003-70-209; 2007-14-216; 2012-16-1; 2009-13-235, effective March 31, 2014; 2016-5-41]

Application

1.1 This Act does not apply to a person who is both a lawyer and a part time judicial justice, as that term is defined in section 1 of the *Provincial Court Act*, in the person’s capacity as a part time judicial justice under that Act.

[2008-42-33]

PART 1 – ORGANIZATION

Division 1 – Law Society

Incorporation

- 2** (1) The Law Society of British Columbia is continued.
- (2) For the purposes of this Act, the society has all the powers and capacity of a natural person.

Object and duty of society

- 3** It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
- (a) preserving and protecting the rights and freedoms of all persons,
 - (b) ensuring the independence, integrity, honour and competence of lawyers,
 - (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
 - (d) regulating the practice of law, and
 - (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

[2012-16-2]

Benchers

- 4** (1) The following are benchers:
- (a) the Attorney General;
 - (b) the persons appointed under section 5;
 - (c) the lawyers elected under section 7;
 - (d) the president, first vice-president and second vice-president.
- (2) The benchers govern and administer the affairs of the society and may take any action they consider necessary for the promotion, protection, interest or welfare of the society.
- (3) The benchers may take any action consistent with this Act by resolution.
- (4) Subsections (2) and (3) are not limited by any specific power or responsibility given to the benchers by this Act.

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- (iii) allowing release of information about a lawyer to a governing body, including information about practice restrictions, complaints, competency and discipline.
- (3) Parts 3 to 8 and 10 apply to a lawyer or class of lawyers given permission under this section.

Practitioners of foreign law

- 17** (1) The benchers may do any or all of the following:
- (a) permit a person holding professional legal qualifications obtained in a country other than Canada to practise law in British Columbia;
 - (b) attach conditions or limitations to a permission granted under paragraph (a);
 - (c) make rules establishing conditions or limitations under which permission may be granted under paragraph (a), including payment of a fee.
- (2) Parts 3 to 8 and 10 apply to a person given permission under this section.

[2012-16-9]

Association with non-resident lawyers or law firms

- 18** The benchers may make rules concerning the association of members of the society or law firms in British Columbia with lawyers or law firms in other jurisdictions.

[2012-16-10]

Division 2 – Admission and Reinstatement

Applications for enrolment, call and admission, or reinstatement

- 19** (1) No person may be enrolled as an articled student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.
- (2) On receiving an application for enrolment, call and admission or reinstatement, the benchers may
- (a) grant the application,
 - (b) grant the application subject to any conditions or limitations to which the applicant consents in writing, or
 - (c) order a hearing.
- (3) If an applicant for reinstatement is a person referred to in section 15 (3) (a) or (b), the benchers must order a hearing.
- (4) A hearing may be ordered, commenced or completed despite the applicant's withdrawal of the application.
- (5) The benchers may vary conditions or limitations made under subsection (2) (b) if the applicant consents in writing to the variation.

[2016-5-41]

Articled students

- 20** (1) The benchers may make rules to do any of the following:
- (a) establish requirements, including academic requirements, and procedures for enrolment of articled students;
 - (b) set fees for enrolment;
 - (c) establish requirements for lawyers to serve as principals to articled students;
 - (d) limit the number of articled students who may be articled to a principal;
 - (e) stipulate the duties of principals and articled students;
 - (f) permit the investigation and consideration of the fitness of a lawyer to act as a principal to an articled student.
- (2) The benchers may establish and maintain an educational program for articled students.

[2016-5-41]

Admission, reinstatement and requalification

- 21** (1) The benchers may make rules to do any of the following:
- (a) establish a credentials committee and delegate any or all authority and responsibility under this Part, other than rule-making authority, to that committee;
 - (b) establish requirements, including academic requirements, and procedures for call to the Bar of British Columbia and admission as a solicitor of the Supreme Court;
 - (c) set a fee for call and admission;
 - (d) establish requirements and procedures for the reinstatement of former members of the society;
 - (e) set a fee for reinstatement;
 - (f) establish conditions under which a member in good standing of the society who is not permitted to practise law, may apply to become a practising lawyer.
- (2) The fee set under subsection (1) (c) must not exceed 1/6 of the practice fee set under section 23 (1) (a).
- (3) The benchers may impose conditions or limitations on the practice of a lawyer who, for a cumulative period of 3 years of the 5 years preceding the imposition of the conditions, has not engaged in the practice of law.

[2012-16-11]

Suspension during investigation

- 26.01** (1) The benchers may make rules permitting 3 or more benchers to make the following orders during an investigation, if those benchers are satisfied it is necessary to protect the public:
- (a) suspend a lawyer who is the subject of the investigation;
 - (b) impose conditions or limitations on the practice of a lawyer who is the subject of the investigation;
 - (c) suspend the enrolment of an articulated student who is the subject of the investigation;
 - (d) impose conditions or limitations on the enrolment of an articulated student who is the subject of the investigation.
- (2) Rules made under subsection (1) must
- (a) provide for a proceeding to take place before an order is made,
 - (b) set out the term of a suspension, condition or limitation, and
 - (c) provide for review of an order made under subsection (1) and for confirmation, variance or rescission of the order.
- (3) Rules made under this section and section 26.02 may provide for practice and procedure for a matter referred to in subsection (2) (a) and (c) or section 26.02 (3) and may specify that some or all practices and procedures in those proceedings may be determined by the benchers who are present at the proceeding.

[2012-16-16; 2016-5-41]

Medical examination

- 26.02** (1) The benchers may make rules permitting 3 or more benchers to make an order requiring a lawyer or an articulated student to
- (a) submit to an examination by a medical practitioner specified by the benchers, and
 - (b) instruct the medical practitioner to report to the benchers on the ability of the lawyer to practise law or, in the case of an articulated student, the ability of the student to complete his or her articles.
- (2) Before making an order under subsection (1), the benchers making the order must be of the opinion that the order is likely necessary to protect the public.
- (3) Rules made under subsection (1) must
- (a) provide for a proceeding to take place before an order is made, and
 - (b) provide for review of an order under subsection (1) and for confirmation, variation or rescission of the order.

[2012-16-16]

Written notification to chief judge

26.1 If an investigation is conducted in accordance with the rules established under section 26 (2) of this Act respecting a lawyer or former lawyer who is also a “part time judicial justice”, as that term is defined in section 1 of the *Provincial Court Act*, the society must, as soon as practicable, provide a written notification to the chief judge designated under section 10 of the *Provincial Court Act* that includes the following information:

- (a) the name of the lawyer or former lawyer;
- (b) confirmation that an investigation is being conducted with respect to that lawyer or former lawyer.

[2008-42-34]

Practice standards

- 27** (1) The benchers may
- (a) set standards of practice for lawyers,
 - (b) establish and maintain a program to assist lawyers in handling or avoiding personal, emotional, medical or substance abuse problems, and
 - (c) establish and maintain a program to assist lawyers on issues arising from the practice of law.
- (2) The benchers may make rules to do any of the following:
- (a) establish a practice standards committee and delegate any or all authority and responsibility under this section, other than rule-making authority, to that committee;
 - (b) permit an investigation into a lawyer’s competence to practise law if
 - (i) there are reasonable grounds to believe that the lawyer is practising law in an incompetent manner, or
 - (ii) the lawyer consents;
 - (c) require a lawyer whose competence to practise law is under investigation to answer questions and provide access to information, files or records in the lawyer’s possession or control;
 - (d) provide for a report to the benchers of the findings of an investigation into the competence of a lawyer to practise law;
 - (d.1) permit the practice standards committee established under paragraph (a) to make orders imposing conditions and limitations on lawyers’ practices, and to require lawyers whose competence to practise law has been investigated to comply with those orders;
 - (e) permit the benchers to order that a lawyer, a former lawyer, an articled student or a law firm pay to the society the costs of an investigation or remedial program under this Part and set and extend the time for payment;

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- (c) may place limitations on the amounts that may be paid out of the insurance fund established under subsection (6) in respect of a claim against a lawyer under the trust protection insurance program.
- (3) The benchers may, by resolution, set
 - (a) the insurance fee, and
 - (b) the amount to be paid for each class of transaction under subsection (4) (c).
- (4) The benchers may make rules to do any of the following:
 - (a) permit lawyers to pay the insurance fee by instalments on or before the date by which each instalment of that fee is due;
 - (b) establish classes of membership for insurance purposes and exempt a class of lawyers from the requirement to maintain professional liability insurance or trust protection insurance or from payment of all or part of the insurance fee;
 - (c) designate classes of transactions for which the lawyer must pay a fee to fund the professional liability or trust protection insurance program.
- (5) The benchers may use fees set under this section to act as the agent for the members in obtaining professional liability or trust protection insurance.
- (6) The benchers must establish an insurance fund, comprising fees set under this section and other income of the professional liability and trust protection insurance programs, and the fund
 - (a) must be accounted for separately from other funds,
 - (b) is not subject to any process of seizure or attachment by a creditor of the society and
 - (c) is not subject to a trust in favour of a person who has sustained a loss.
- (7) Subject to rules made under section 23 (7), a lawyer must not practise law unless the lawyer has paid the insurance fee when it is due, or is exempted from payment of the fee.
- (8) A lawyer must immediately surrender to the executive director his or her practising certificate and any proof of professional liability or trust protection insurance issued by the society, if
 - (a) the society has, on behalf of the lawyer,
 - (i) paid a deductible amount under the professional liability insurance program in respect of a claim or potential claim under that program, or
 - (ii) made an indemnity payment under the trust protection insurance program in respect of a claim under that program, and
 - (b) the lawyer has not reimbursed the society, at the date that the insurance fee or an instalment of that fee is due.

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- (9) The benchers may waive or extend the time
 - (a) to pay all or part of the insurance fee, or
 - (b) to repay all or part of a deductible amount paid under the professional liability insurance program or an indemnity payment made under the trust protection program on behalf of a lawyer.
- (10) If the benchers extend the time for a payment under subsection (9), the later date for payment is the date when payment is due for the purposes of subsections (7) and (8).
- (11) A payment made from the insurance fund established under subsection (6) in respect of a claim against a lawyer under the trust protection insurance program
 - (a) may be recovered from the lawyer or former lawyer on whose account it was paid, or from the estate of that person, as a debt owing to the society, and
 - (b) if collected, is the property of the society and must be accounted for as part of the fund.

[2012-16-19; 2016-5-44]

31 [repealed 2012-16-20]

Financial responsibility

- 32** (1) The benchers may establish standards of financial responsibility relating to the integrity and financial viability of the professional practice of a lawyer or law firm.
- (2) The benchers may make rules to do any of the following:
 - (a) provide for the examination of lawyers' books, records and accounts of lawyers and law firms and the answering of questions by lawyers and representatives of law firms to determine whether standards established under this section are being met;
 - (b) permit the suspension of a lawyer who does not meet the standards established under subsection (1);
 - (c) permit the imposition of conditions and limitations on a law firm that, or the practice of a lawyer who, does not meet the standards established under subsection (1).
- (3) Rules made under subsection (2) (b) and (c) must not permit the suspension of a lawyer or imposition of conditions and limitations on the practice of a lawyer or the imposition of conditions and limitations on a law firm before the lawyer or law firm, as the case may be, has been notified of the reasons for the proposed action and given a reasonable opportunity to make representations respecting those reasons.

[2012-16-21]

Discipline hearings

- 38** (1) This section applies to the hearing of a citation.
- (2) A hearing must be conducted before a panel.
- (3) A panel must
- (a) make a determination and take action according to this section,
 - (b) give written reasons for its determination about the conduct or competence of the respondent and any action taken against the respondent, and
 - (c) record in writing any order for costs.
- (4) After a hearing, a panel must do one of the following:
- (a) dismiss the citation;
 - (b) determine that the respondent has committed one or more of the following:
 - (i) professional misconduct;
 - (ii) conduct unbecoming a lawyer;
 - (iii) a breach of this Act or the rules;
 - (iv) incompetent performance of duties undertaken in the capacity of a lawyer;
 - (v) if the respondent is not a member, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming a lawyer, or a breach of this Act or the rules.
 - (c) [repealed]
- (5) If an adverse determination is made against a respondent other than an articulated student, under subsection (4), the panel must do one or more of the following:
- (a) reprimand the respondent;
 - (b) fine the respondent an amount not exceeding \$50 000;
 - (c) impose conditions or limitations on the respondent's practice;
 - (d) suspend the respondent from the practice of law or from practice in one or more fields of law
 - (i) for a specified period of time,
 - (ii) until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection,
 - (iii) from a specified date until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection, or
 - (iv) for a specific minimum period of time and until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection;

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- (e) disbar the respondent;
 - (f) require the respondent to do one or more of the following:
 - (i) complete a remedial program to the satisfaction of the practice standards committee;
 - (ii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent is competent to practise law or to practise in one or more fields of law;
 - (iii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent's competence to practise law is not adversely affected by a physical or mental disability, or dependency on alcohol or drugs;
 - (iv) practise law only as a partner, employee or associate of one or more other lawyers;
 - (g) prohibit a respondent who is not a member but who is permitted to practise law under a rule made under section 16 (2) (a) or 17 (1) (a) from practising law in British Columbia indefinitely or for a specified period of time.
- (6) If an adverse determination is made under subsection (4) against an articulated student, the panel may do one or more of the following:
- (a) reprimand the articulated student;
 - (b) fine the articulated student an amount not exceeding \$5 000;
 - (c) extend the period that the articulated student is required to serve under articles;
 - (d) set aside the enrolment of the articulated student.
- (7) In addition to its powers under subsections (5) and (6), a panel may make any other orders and declarations and impose any conditions it considers appropriate.
- (8) A fine imposed under this Act may be recovered as a debt owing to the society and, when collected, it is the property of the society.
- (9) For the purpose of recovering a debt under subsection (8), the executive director may
- (a) issue a certificate stating that the fine is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and
 - (b) file the certificate with the Supreme Court.
- (10) A certificate filed under subsection (9) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it.

[2012-16-27; 2016-5-41]

Suspension

- 39** (1) The benchers may make rules permitting 3 or more benchers to do any of the following until the decision of a hearing panel or other disposition of the subject matter of the hearing:
- (a) suspend a respondent who is an individual, if the respondent's continued practice would be dangerous to the public or the respondent's clients;
 - (b) impose conditions or limitations on the practice of a respondent who is an individual;
 - (c) suspend the enrolment of a respondent who is an articulated student;
 - (d) impose conditions or limitations on the enrolment of a respondent who is an articulated student.
- (2) Rules made under subsection (1) must
- (a) provide for a proceeding to take place before an order is made,
 - (b) set out the term of a suspension, condition or limitation, and
 - (c) provide for review of an order made under subsection (1) and for confirmation, variation or rescission of the order.
- (3) Rules made under this section may provide for practice and procedure for a matter referred to in subsection (2) (a) and (c) and may specify that some or all practices and procedures in those proceedings may be determined by the benchers who are present at the proceeding.

[2012-16-28; 2016-5-41]

40 [repealed 2012-16-29]

PART 5 – HEARINGS AND APPEALS

Panels

- 41** (1) The benchers may make rules providing for any of the following:
- (a) the appointment and composition of panels;
 - (b) the practice and procedure for proceedings before panels.
- (2) A panel may order an applicant or respondent, or a shareholder, director, officer or employee of a respondent law corporation, to do either or both of the following:
- (a) give evidence under oath or by affirmation;
 - (b) at any time before or during a hearing, produce all files and records that are in the possession of that person and that may be relevant to a matter under consideration.

Failure to attend

- 42** (1) This section applies if an applicant or respondent fails to attend or remain in attendance at
- (a) a hearing on an application for enrolment as an articulated student, call and admission, or reinstatement,
 - (b) a hearing on a citation, or
 - (c) a review by a review board under section 47.
- (2) If satisfied that the applicant or respondent has been served with notice of the hearing or review, the panel or the review board may proceed with the hearing or review in the absence of the applicant or respondent and make any order that the panel or the review board could have made in the presence of the applicant or respondent.

[2012-16-31; 2016-5-41]

Right to counsel

- 43** (1) An applicant, a respondent or a person who is the subject of a proceeding may appear at any hearing with counsel.
- (2) The society may employ or retain legal or other assistance in conducting an investigation under Part 2, 3 or 4 or on the issue of a citation and may be represented by counsel at any hearing.

[2012-16-32]

PART 8 – LAWYERS’ FEES

- (b) those authorized by the client or subsequently approved by the client, whether or not the services were reasonably necessary and proper to conduct the proceeding or business to which they relate.
- (3) Subject to subsections (4) and (5), the registrar may allow fees, charges and disbursements for the following services, even if unnecessary for the proper conduct of the proceeding or business to which they relate:
 - (a) those reasonably intended by the lawyer to advance the interests of the client at the time the services were provided;
 - (b) those requested by the client after being informed by the lawyer that they were unnecessary and not likely to advance the interests of the client.
- (4) At a review of a lawyer’s bill, the registrar must consider all of the circumstances, including
 - (a) the complexity, difficulty or novelty of the issues involved,
 - (b) the skill, specialized knowledge and responsibility required of the lawyer,
 - (c) the lawyer’s character and standing in the profession,
 - (d) the amount involved,
 - (e) the time reasonably spent,
 - (f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
 - (g) the importance of the matter to the client whose bill is being reviewed, and
 - (h) the result obtained.
- (5) The discretion of the registrar under subsection (4) is not limited by the terms of an agreement between the lawyer and the lawyer’s client.

Costs of a review of a lawyer’s bill

- 72** (1) Costs of a review of a lawyer’s bill must be paid by the following:
- (a) the lawyer whose bill is reviewed, if 1/6 or more of the total amount of the bill is subtracted from it;
 - (b) the person charged, if less than 1/6 of the total amount of the bill is subtracted from it;
 - (c) a person who applies for a review of a bill and then withdraws the application for a review.
- (2) Despite subsection (1), the registrar has the discretion, in special circumstances, to order the payment of costs other than as provided in that subsection.

Remedies that may be ordered by the registrar

- 73** (1) On the application of a party to a review under this Part, the registrar may order that a party
- (a) be permitted to pay money in instalments on the terms the registrar considers appropriate, or

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- (b) not be permitted to collect money on the certificate for a period the registrar specifies.
- (2) On a review under this Part, the registrar may
 - (a) give a certificate for the amount the registrar has allowed the lawyer for fees, charges and disbursements, and
 - (b) summarily determine the amount of the costs of the review and add it to or subtract it from the amount shown on the certificate.
- (3) If a registrar gives a certificate under subsection (2), the registrar must add to the amount certified an amount of interest calculated
 - (a) on the amount the registrar has allowed the lawyer for fees, charges and disbursements, exclusive of the costs of the review,
 - (b) from the date the lawyer delivered the bill to the date on which the certificate is given, and
 - (c) at the rate agreed to by the parties at the time the lawyer was retained or, if there was no agreement, at the same rate the registrar would allow under the *Court Order Interest Act* on an order obtained by default.
- (4) If a registrar gives a certificate under subsection (2) that requires that the lawyer refund money to another person, the registrar must add to the amount to be refunded an amount of interest calculated
 - (a) on the amount the lawyer is required to refund to the other person,
 - (b) from the date the money to be refunded was paid to the lawyer to the date on which the certificate is given, and
 - (c) at the same rate the registrar would allow under the *Court Order Interest Act* on an order obtained by default.

[2016-5-44]

Refund of fee overpayment

- 74** A lawyer must, on demand,
- (a) refund fees, charges and disbursements received or retained in excess of the amount allowed under this Part or the rules, and
 - (b) pay any interest added under section 73 (4).

Appeal

- 75** (1) A party to a review may appeal to the court, within
- (a) 14 days from the date the certificate of the registrar was entered,
 - (b) the period the court may permit, or
 - (c) the period the registrar specifies at the time of signing the certificate.
- (2) On the appeal, the court may make any order it considers appropriate.
- (3) If the terms of an order of the court require it, the registrar must amend the certificate.

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Law Society counsel

- 2-93** The Executive Director must appoint an employee of the Society or retain another lawyer to represent the Society when
- (a) a hearing is ordered under this division,
 - (b) a review is initiated under section 47 [*Review on the record*],
 - (c) an applicant appeals a decision to the Court of Appeal under section 48 [*Appeal*], or
 - (d) the Society is a respondent in any other action involving an application relating to sections 19 to 22 or this division.

Preliminary questions

- 2-94** (1) Before a hearing begins, the applicant or counsel for the Society may apply for the determination of a question relevant to the hearing by delivering to the Executive Director, and to the other party, written notice setting out the substance of the application and the grounds for it.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
- (3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:
- (a) appoint a panel to determine the question;
 - (b) refer the question to a prehearing conference;
 - (c) refer the question to the panel at the hearing of the application.
- (4) The President may designate another Bencher to exercise the discretion under subrule (3).
- (5) A panel appointed under subrule (3) (a) is not seized of the application or any question pertaining to the application other than that referred under that provision.

Compelling witnesses and production of documents

- 2-95** (1) Before a hearing begins, the applicant or counsel for the Society may apply for an order under section 44 (4) [*Witnesses*] by delivering written notice setting out the substance of the application and the grounds for it to the Executive Director and to the other party.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
- (3) When an application is made under subrule (1), after considering any submissions of counsel, the President must
- (a) make the order requested or another order consistent with section 44 (4) [*Witnesses*], or
 - (b) refuse the application.

- (4) The President may designate another Bencher to make a decision under subrule (3).
- (5) On the motion of the applicant or counsel for the Society, the President or another Bencher designated by the President may apply to the Supreme Court under section 44 (5) [*Witnesses*] to enforce an order made under subrule (3).

Pre-hearing conference

- 2-96**
- (1) At the request of the applicant or counsel for the Society, or on his or her own initiative, the President may order a pre-hearing conference at any time before a hearing ordered under this division commences.
 - (2) When a conference has been ordered under subrule (1), the President must
 - (a) set the date, time and place of the conference, and
 - (b) designate a Bencher to preside at the conference.
 - (3) Counsel for the Society, and the applicant or applicant's counsel or both, must be present at the conference.
 - (4) Any person may participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of subrule (3).
 - (5) The conference must consider
 - (a) the possibility of agreement on facts in order to facilitate the hearing,
 - (b) the discovery and production of documents,
 - (c) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public, or that exhibits and other evidence be excluded from public access,
 - (d) setting a date for the hearing,
 - (e) any application by counsel for the Society to withhold the identity or locating particulars of a witness, and
 - (f) any other matters that may aid in the disposition of the application.
 - (6) The Bencher presiding at a pre-hearing conference may
 - (a) adjourn the conference generally or to a specified date, time and place,
 - (b) order discovery and production of documents,
 - (c) set a date for the hearing, and
 - (d) allow or dismiss an application under subrule (5) (f).

Appointment of panel

2-97 When a hearing is ordered under this division, the President must appoint a panel in accordance with Rule 5-2 [*Hearing panels*].

Adjournment of hearing

- 2-98**
- (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 2-85 (12) [*Reinstatement of former lawyer*];
 - (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 Benchler 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, generally or to a specified date, time and place.

Attendance at the hearing

2-99 Unless the chair of the panel otherwise orders, the applicant must personally attend the entire hearing.

Onus and burden of proof

- 2-100**
- (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) and this division.
 - (2) A panel must reject an application for enrolment if it considers that the applicant's qualifications referred to in Rule 2-54 (2) [*Enrolment in the admission program*] are deficient.

Procedure

- 2-101** (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, after hearing submissions on behalf of the Society and the applicant, the panel may do one of the following:
- (a) adjourn the hearing generally;
 - (b) reject the application;
 - (c) commence or continue with the hearing.
- (3) After hearing 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.

Inactive applications

- 2-102** (1) When the Credentials Committee has ordered a hearing under this division and the applicant has taken no steps for one year to bring the application to a hearing, the application is deemed abandoned.
- (2) When an application is abandoned under this rule, counsel for the Society may apply for an order that some or all of the funds paid under Rule 2-92 [*Security for costs*] 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).

Deductible, surcharge and reimbursement

- 3-44** (1) On demand, a lawyer must pay in full to the Society any of the following amounts paid under the Society’s insurance program on behalf of the lawyer:
- (a) a deductible amount;
 - (b) any other amount that the lawyer is required to repay or reimburse the insurer under the policy of professional liability insurance.
- (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
 - (b) if the payment was made under Part B of the policy of professional liability insurance, reimburse the Society in full on demand, for all amounts paid under Part B.
- (3) The Executive Director may, in the Executive Director’s discretion, extend the time for a lawyer to reimburse the Society under subrule (1) or (2), or pay a surcharge under subrule (2) or, in extraordinary circumstances, waive payment altogether.

Application for insurance coverage

- 3-45** (1) A lawyer may apply for insurance coverage by delivering to the Executive Director
- (a) an application for insurance coverage, and
 - (b) the prorated insurance fee as specified in Schedule 2.
- (2) A lawyer who is insured for part-time practice may apply for insurance coverage for full-time practice by delivering to the Executive Director
- (a) an application for full-time insurance coverage, and
 - (b) the difference between the prorated full-time insurance fee specified in Schedule 2 and any payment made for part-time insurance coverage for the current year.
- (3) The Executive Director must not grant the insurance coverage applied for under subrule (1) or (2) unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*].

Confidentiality of insurance claims

- 3-46** (1) In this rule, “**claim**” means a claim or potential claim reported under the policy of professional liability insurance.
- (2) No one is permitted to disclose any information or records associated with a claim.
- (3) Despite subrule (2), the Executive Director may do any of the following:
- (a) disclose information about a claim with the consent of the lawyer;
 - (b) if a claim has become known to the public, disclose
 - (i) the existence of the claim,

- (ii) its subject matter,
 - (iii) its status, including, if the claim is closed, the general basis on which it was closed, and
 - (iv) any additional information necessary to correct inaccurate information.
- (4) For the purpose of subrule (3) (b) (iii), the status of a claim is its stage of progress through the claims handling process, including, but not limited to the following:
- (a) opened;
 - (b) under investigation;
 - (c) the stage of any litigation commenced;
 - (d) closed.
- (5) In the case of a claim under Part B of the policy of professional liability insurance, the Executive Director may do any of the following:
- (a) publish the name of a lawyer or former lawyer and the circumstances of a claim when a panel or the Benchers acting under Part 4 [*Discipline*] or 5 [*Hearings and Appeals*] or a court has found that the lawyer or former lawyer has misappropriated property of a claimant;
 - (b) disclose the name of a lawyer or former lawyer and the circumstances of a claim when
 - (i) the lawyer's misappropriation is known to the public,
 - (ii) the claim arises from part of a scheme considered by a panel or the Benchers or a court in the written reasons for a decision, or
 - (iii) the facts are not disputed or are admitted by the lawyer or former lawyer;
 - (c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.
- (6) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

Division 6 – Financial Responsibility

Definitions

3-47 In this Division:

“insolvent lawyer” means a lawyer who

- (a) is the respondent to an application for a bankruptcy 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 66.12,
 - (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*, RSC 1985, c. B-3;

PART 5 – HEARINGS AND APPEALS

Application

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.

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 if
- (a) no facts are in dispute,
 - (b) the hearing is to consider a conditional admission under Rule 4-30 [*Conditional admission and consent to disciplinary action*],
 - (c) the hearing proceeds under Rule 4-33 [*Summary hearing*],
 - (d) the hearing is to consider a preliminary question under Rule 4-36 [*Preliminary questions*], or
 - (e) it is not otherwise possible, in the opinion of the President, to convene a panel in a reasonable period of time.
- (3) A panel must
- (a) be chaired by a lawyer, and
 - (b) include at least one Bencher or Life 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 lawyer may, with the consent of the President, continue to chair the panel, and the panel may complete a hearing already scheduled or begun.
- (5.1) If a member of a panel ceases to be a Bencher and does not become a Life Bencher, the panel may, with the consent of the President, complete a hearing already scheduled or begun.
- (6) Two or more panels may proceed with separate matters at the same time.
- (7) 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.
- (8) 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.

Panel member unable to continue

- 5-3** (1) Despite Rule 5-2 [*Hearing panels*], 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.
- (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.

Disqualification

- 5-4** (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) a Bencher who made an order under Rule 3-10 [*Extraordinary action to protect public*], 3-11 [*Medical examination*] or 4-23 [*Interim suspension or practice conditions*] regarding a matter forming the basis of the citation;
 - (c) a member of a panel that heard an application under Rule 4-26 [*Review of interim suspension or practice conditions*] to rescind or vary an interim suspension or practice condition or limitation in respect of a matter forming the basis of the citation.
- (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) 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.

Compelling witnesses and production of documents

- 5-5** (1) In this rule “**respondent**” includes a shareholder, director, officer or employee of a respondent law corporation.
- (2) A panel may
- (a) compel the applicant or respondent to give evidence under oath, and
 - (b) at any time before or during a hearing, order the applicant or respondent to produce all files and records that are in the applicant’s or respondent’s possession or control that may be relevant to the matters raised by the application or in the citation.
- (3) A person who is the subject of an order under subrule (2) (a) may be cross-examined by counsel representing the Society.
- (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 [*Form of Summons*].

Failure to pay costs or fulfill practice condition

- 5-13** (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 5-12 [*Application to vary certain orders*]:
- (a) pay in full a fine or the amount owing under Rule 5-11 [*Costs of hearings*];
 - (b) fulfill a practice condition as imposed under section 21 [*Admission, reinstatement and requalification*], 22 [*Credentials hearings*], 27 [*Practice standards*], 32 [*Financial responsibility*], 38 [*Discipline hearings*] or 47 [*Review on the record*], as accepted under section 19 [*Applications for enrolment, call and admission, or reinstatement*], 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.

Recovery of money owed to the Society

- 5-14** (1) A lawyer or former lawyer who is liable to pay money as follows must pay to the Society the full amount owing by the date set by the Discipline Committee:
- (a) costs of an audit or investigation;
 - (b) an assessment under Rule 3-80 [*Late filing of trust report*].
- (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.

Reviews and appeals

Review by review board

- 5-15** (1) In Rules 5-15 to 5-28, “**review**” means a review of a hearing panel decision by a review board under section 47 [*Review on the record*].
- (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 5-15 to 5-28 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) [*Review on the record*], the Rules that apply to the hearing of evidence before a hearing panel apply.

Review boards

- 5-16** (1) When a review is initiated under Rule 5-19 [*Initiating a review*], the President must establish a review board consisting 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 Bencher who is a lawyer.
- (3) Review board members must be permanent residents of British Columbia over the age of majority.
- (4) The chair of a review board who ceases to be a lawyer 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.

Disqualification

- 5-17** 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 5-4 [*Disqualification*] from participation in the hearing panel.

Review board member unable to continue

- 5-18** (1) Despite Rule 5-16 [*Review boards*], 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) 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 review board.

Preparation and delivery of record

- 5-24.1** (1) Within 60 days of delivering a notice of review, the party initiating the review must prepare the record for the review in accordance with the relevant rule and deliver
- (a) 8 copies to the Executive Director, and
 - (b) 1 copy to the other party.
- (2) The time for producing the record may be extended by agreement of the parties.
- (3) No date may be set for the hearing of a review unless the party initiating the review has delivered all copies of the record required under subrule (1).
- (4) By delivering to the Executive Director and to the other party written notice setting out the grounds for the application, the party initiating the review may apply for
- (a) an extension of time to prepare and deliver the record, or
 - (b) an order that the Society bear all or part of the cost of obtaining and copying all or part of the record.
- (5) The Executive Director must promptly notify the President of an application under subrule (4), and the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.
- (6) The President may
- (a) designate another Bencher to make a determination under subrule (5), or
 - (b) refer the application to a pre-review conference.
- (7) A determination under subrule (5) is without prejudice to an order of the review board under Rule 5-11 [*Costs of hearings*].

Pre-review conference

- 5-25** (1) The President may order a pre-review conference at any time before the hearing on a review, at the request of the applicant, respondent or counsel for the Law Society, or on the President's own initiative.
- (2) When a conference has been ordered under subrule (1), the President must
- (a) set the date, time and place of the conference, and
 - (b) designate a Bencher to preside at the conference.
- (3) Counsel representing the Society must be present at the conference.
- (4) The Executive Director must notify the applicant or the respondent, as the case may be, or his or her counsel, of the time and place of the conference.
- (5) The applicant or the respondent, as the case may be, may attend the conference, in person, through counsel or both.

- (6) If the applicant or the respondent, as the case may be, fails to attend the conference, the Bencher presiding may proceed with the conference in the absence of that party and may make any order under this Rule, if the Bencher is satisfied that the party had been notified of the conference.
- (7) If the Bencher presiding at a pre-review conference considers it appropriate, he or she may allow any person to participate in the conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this Rule.
- (8) The conference may consider
 - (a) the simplification of the issues,
 - (b) any issues concerning the record to be reviewed,
 - (c) the possibility of agreement on any issues in the review,
 - (d) the exchange of written arguments or outlines of argument and of authorities,
 - (e) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public or that exhibits and other evidence be excluded from public access,
 - (f) setting a date for the review, and
 - (g) any other matters that may aid in the disposition of the review.
- (9) The Bencher presiding at a pre-review conference may
 - (a) adjourn the conference or the hearing of the review generally or to a specified date, time and place,
 - (b) order the exchange of written arguments or outlines of argument and of authorities, and set deadlines for that exchange,
 - (c) set a date for the review, subject to Rule 5-24.1 (3) [*Preparation and delivery of record*], and
 - (d) make any order or allow or dismiss any application consistent with this part.

Adjournment

- 5-26** (1) Before a hearing on a review commences, the applicant, respondent or counsel for the Society may apply for an order that the hearing be adjourned by delivering to the Executive Director and to the other party written notice setting out the grounds for the application.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
- (3) Before the hearing begins, the President must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.

- (4) The President may
 - (a) designate another Bencher to make a determination under subrule (3), or
 - (b) refer the application to a pre-review conference.
- (5) After a hearing has commenced, the chair of the review board may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

Decision on review

- 5-27**
- (1) The decision of the review board on a review is made by majority vote.
 - (2) The review board must prepare written reasons for its decision on a review.
 - (3) When the review board 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.
 - (4) The Executive Director must promptly deliver a copy of the review board's written reasons prepared under subrule (2) to the applicant or respondent and counsel for the Society.
 - (5) On request, the Executive Director must disclose the review board's written reasons for its decision.

Inactive reviews

- 5-28**
- (1) If no steps have been taken for 6 months or more, a party may apply for an order dismissing a review by delivering to the Executive Director a notice in writing that sets out the basis for the application.
 - (2) The Executive Director must promptly notify the following of an application under subrule (1):
 - (a) the party not making the application;
 - (b) the President;
 - (c) anyone else who, in the Executive Director's opinion, should be notified.
 - (3) If it is in the public interest and not unfair to the respondent or applicant, the President may dismiss the review.
 - (4) The President may designate another Bencher to make a determination under subrule (3).

Appeal to Court of Appeal

- 5-29** (1) The Discipline Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 [*Appeal*] of a decision of a panel or review board in a discipline hearing.
- (2) The Credentials Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 [*Appeal*] of a decision of a panel or review board in a credentials hearing.
- (3) The Practice Standards Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 [*Appeal*] of a decision of a review board with respect to an order for costs under Rule 3-25 [*Costs*].

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[11] If it appears that a deponent is unable to read the document, the commissioner must certify in the jurat that the document was read in his or her presence and the commissioner was satisfied that the deponent understood it: B.C., *Rules of Court*, Rule 22-2(6). If it appears that the deponent does not understand English, the lawyer must arrange for a competent interpreter to interpret the document to the deponent and certify by endorsement in Form 60 [now Form 109] that he or she has done so: *Rules of Court*, Rule 22-2(7).

Affirmation

[12] The British Columbia Law Reform Commission has raised the question of whether an affidavit may properly be created by solemn affirmation under provincial law. For this reason, in cases where a deponent does not want to swear an affidavit, it may be prudent to create the affidavit by solemn declaration rather than by solemn affirmation. See Appendix B to Law Reform Commission of British Columbia, *Report on Affidavits: Alternatives to Oaths* LRC 115 (1990).

Swear or affirm that the contents are true

[13] This can be accomplished by the commissioner asking the deponent: “Do you swear that the contents of this affidavit are true, so help you God?” or, if the affidavit is being affirmed, “Do you solemnly affirm [or words with the same effect] that the evidence given by you is the truth, the whole truth and nothing but the truth?,” to which the deponent must answer in the affirmative. In taking an affirmation the lawyer should comply with section 20 of the *Evidence Act*, RSBC 1996, c. 124 and the *Affirmation Regulation*, B.C. Reg. 396/89.

[14] Section 29 of the *Interpretation Act*, RSBC 1996, c. 238, defines an affidavit or oath as follows:

“affidavit” or “oath” includes an affirmation, a statutory declaration, or a solemn declaration made under the *Evidence Act*, or under the *Canada Evidence Act*; and the word “swear” includes solemnly declare or affirm;

[15] If an affidavit is altered after it has been sworn, it cannot be used unless it is resworn. Reswearing can be done by the commissioner initialling the alterations, taking the oath again from the deponent and then signing the altered affidavit. A second jurat should be added, commencing with the word “resworn.”

[16] Generally, an affidavit is sworn and filed in a proceeding that is already commenced. An affidavit may also be sworn before the proceeding is commenced: *Rules of Court*, Rule 22-2(15). However, an affidavit may not be postdated: *Law Society of BC v. Foo*, [1997] LSDD No. 197.

[17] Swearing to an affidavit exhibits that are not in existence can amount to professional misconduct: *LSBC v. Foo*.

Solemn declaration

[18] A solemn declaration should be made in the words of the statute: *King v. Phillips, supra*; *R. v. Whynot, supra*.

[19] The proper form for a solemn declaration is set out in section 41 of the *Canada Evidence Act*, RSC 1985, c. C-5:

Solemn declaration

41. Any judge, notary public, justice of the peace, provincial court judge, recorder, mayor or commissioner authorized to take affidavits to be used either in the provincial or federal courts, or any other functionary authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making the declaration before him, in the following form, in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing:

I, , solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Declared before me at this . day of , 20

and in section 69 of the *Evidence Act*, RSBC 1996, c. 124:

Statutory declarations

69. A gold commissioner, mayor or commissioner authorized to take affidavits, or any other person authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making it before him or her in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing, in the following words:

I, A.B., solemnly declare that [state the facts declared to], and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath.

Execution

[20] A deponent unable to sign an affidavit may place his or her mark on it: *Rules of Court*, Rule 22-2(4)(b)(ii). An affidavit by a person who could not make any mark at all was accepted by the court in *R. v. Holloway* (1901), 65 JP 712 (Magistrates Ct.).

[[11], [16] and [20] amended 05/2016]