

MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2016: No. 2 September

Highlights

Law Society Rules 2015:* Some functions have been reassigned from the Executive Director to the President, and the process for pre-hearing applications and motions is streamlined (Rules 2-91, 2-94(1) to (3), 2-95(1) and (2), 2-98(1) and (2), 2-101(5), 2-102(3), 4-21(1), 4-22(1), (3) and (4), 4-32(1) and (2), 4-35(1), (2) and (5), 4-36(1) to (3), 4-37(1) and (2), 4-38(2) and (3), 4-40(1), (2), (4) and (6), 4-43(3), 4-44(4), 5-12(1) and (3), 5-19(1), (2), (5) and (6), 5-24.1(1), (4) and (5), 5-24.2, 5-25(2) and (4), 5-26(1) and (2), 5-27(4), 5-28(1) and (2) and 10-1(4.1): pp. 90, 91, 93, 94, 166, 173-179, 192, 195, 197-199 and 213); funds that are fiduciary property may be held in a trust account, provided that the trust accounting rules are followed (Rules 3-55(6), 3-60(4) and 3-61(3): pp. 129-132).

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

Note re Code of Professional Conduct for British Columbia: Amendments approved by the Benchers in June 2016 require further consideration and are not included in this amendment package.

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 2015	89 – 94 129 – 132 165 – 166 173 – 180 191 – 192 195 – 200 213 – 214	89 – 94 129 – 132 165 – 166 173 – 180 191 – 192 195 – 200 213 – 214

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

Updates: This amendment package updates the Law Society Rules to **August 25, 2016** [see the note above regarding the *Code of Professional Conduct for British Columbia*]. The previous amendment package was 2016: No. 1 June.

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

2016: No. 2 September

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>)	189 – 190	[06/2015]
Title page	—	—		191 – 192	[09/2016]
Table of Contents	1 – 8	[06/2016]		193 – 194	[06/2016]
	9 – 14	[12/2012]		195 – 200	[09/2016]
	15 – 16	[06/2016]		201 – 216	[06/2015]
	17 – 20	[12/2012]		217 – 222	[12/2015]
	21 – 22	[06/2016]		223 – 224	[06/2015]
	23 – 24	[12/2012]			
	25 – 26	[06/2016]	Divider tab: CODE OF PROFESSIONAL CONDUCT /		
	27 – 30	[12/2012]	PROFESSIONAL CONDUCT HANDBOOK		
	31 – 34	[06/2016]	Title page	—	—
34.1 – 34.6	[12/2012]		Table of Contents	i – ii	[03/2014]
35 – 36	[09/2011]			iii – vi	[06/2016]
36.1 – 36.2	[07/07]		Text	1 – 2	[12/2013]
37 – 38	[12/98]			3 – 10	[12/2012]
39 – 42	[12/2012]			11 – 14, 14.1 – 14.2	[12/2013]
43 – 44	[03/2013]			15 – 16	[06/2013]
45 – 46	[07/2010]			17 – 34	[12/2012]
47 – 48	[06/2016]			35 – 36	[12/2015]
49 – 50	[12/98]			37 – 38	[12/2013]
51 – 58	[12/2012]			39 – 40	[06/2013]
59 – 60	[09/2014]			41 – 42	[12/2012]
				43 – 44	[06/2013]
				45 – 46	[06/2015]
Divider tab: LAW SOCIETY RULES				47 – 48	[12/2015]
Title page	—	—		49 – 52	[12/2012]
Table of Contents	1 – 2	[06/2016]		53 – 54	[12/2015]
	3 – 8	[06/2015]		55 – 56	[12/2012]
	9 – 10	[06/2016]		57 – 58	[12/2014]
Text	11 – 16	[06/2015]		59 – 70	[12/2012]
	17 – 26	[12/2015]		71 – 72	[09/2014]
	27 – 28	[06/2015]		73 – 74	[12/2012]
	29 – 38	[12/2015]		75 – 76	[12/2015]
	39 – 88	[06/2015]		76.1 – 76.2	[06/2013]
	89 – 94	[09/2016]		77 – 82	[12/2012]
	95 – 98	[06/2015]		83 – 84, 84.1 – 84.2	[12/2013]
	99 – 100	[12/2015]		85 – 96	[12/2012]
	101 – 122	[06/2015]		97 – 98	[06/2016]
	123 – 124	[06/2016]		99 – 100	[12/2012]
	125 – 128	[06/2015]		101 – 102	[03/2013]
	129 – 132	[09/2016]		102.1 – 102.4	[12/2015]
	133 – 134	[06/2015]		103 – 106	[03/2015]
	135 – 136	[12/2015]		107 – 114	[12/2012]
	137 – 142	[06/2015]		115 – 116	[12/2015]
	143 – 144	[12/2015]			
	145 – 154	[06/2015]			
	155 – 156	[12/2015]	Divider tab: INSURANCE POLICIES		
	157 – 164	[06/2015]	Policy No. LPL 16-01-01	1 – 28	[12/2015]
	165 – 166	[09/2016]			
	167 – 172	[06/2015]	Divider tab: ARTICLING		
	173 – 180	[09/2016]	Text	1 – 2	[06/03]
	181 – 186	[06/2015]		3 – 4	[07/09]
	187 – 188	[06/2016]		5 – 8	[06/03]

Conditions on returning to practice

- 2-90** (1) A lawyer or applicant who has spent a period of 7 years or more not engaged in the practice of law must not practise law without the permission of the Credentials Committee.
- (2) Subrule (1) applies
- (a) despite any other rule, and
 - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.
- (3) A lawyer or applicant must apply in writing to the Credentials Committee for permission to practise law under subrule (1).
- (4) An application under subrule (3) may be combined with an application under Rule 2-89 (3) [*Returning to practice of law after an absence*].
- (5) As a condition of permission to practise law under subrule (1), the Credentials Committee may require one or more of the following:
- (a) successful completion of all or part of one or more of the following:
 - (i) the admission program;
 - (ii) another course offered by the Society or a provider approved by the Society;
 - (b) a written undertaking to do any or all of the following:
 - (i) practise law in British Columbia immediately on being granted permission;
 - (ii) not practise law as a sole practitioner;
 - (iii) practise law only in a situation approved by the Committee for a period set by the Committee, not exceeding 2 years;
 - (iv) successfully complete the training course or a part of the training course within a period set by the Committee, not exceeding one year from the date permission is granted;
 - (v) practise law only in specified areas;
 - (vi) not practise law in specified areas.
- (6) Despite Rule 2-52 (3) [*Powers of Credentials Committee*], the Credentials Committee may vary a condition under subrule (5) (a) without the consent of the lawyer concerned.
- (7) On the written application of the lawyer, the Credentials Committee may allow a variation of an undertaking given under subrule (5) (b).

Credentials hearings

Notice to applicant

- 2-91** (1) When a hearing is ordered under this division, the Executive Director must promptly notify the applicant in writing of
- (a) the purpose of the hearing,
 - (b) [rescinded]
 - (c) the circumstances to be inquired into at the hearing, and
 - (d) the amount of security for costs set by the Credentials Committee under Rule 2-92 [*Security for costs*].
- (1.1) The date, time and place for the hearing to begin must be set
- (a) by agreement between counsel for the Society and the applicant, or
 - (b) on the application of a party, by the President or by the Bencher presiding at a pre-hearing conference.
- (1.2) When a date is set under subrule (1.1), the President must notify the parties in writing of the date, time and place of the hearing.
- (2) The notice referred to in subrule (1) or (1.2) must be served
- (a) in accordance with Rule 10-1 [*Service and notice*], and
 - (b) not less than 30 days before the date set for the hearing, unless the applicant consents in writing to a shorter period.

Security for costs

- 2-92** (1) When the Credentials Committee orders a hearing under this division, it must set an amount to be deposited by the applicant as security for costs.
- (2) In setting the amount to be deposited as security for costs under this rule, the Credentials Committee may take into account the circumstances of the matter, including but not limited to, the applicant's
- (a) ability to pay, and
 - (b) likelihood of success in the hearing.
- (3) The amount to be deposited as security for costs cannot exceed an amount that approximates the amount that the panel may order to be paid under Rule 5-11 [*Costs of hearings*].
- (4) On application by the applicant or counsel for the Society, the Credentials Committee may vary the amount to be deposited as security for costs under this rule.

- (5) If, 15 days before the date set for a hearing, the applicant has not deposited with the Executive Director the security for costs set under this rule, the hearing is adjourned.
- (6) Before the time set for depositing security for costs under subrule (5), an applicant may apply to the Credentials Committee for an extension of time, and the Committee may, in its discretion, grant all or part of the extension applied for.

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 President, and to the other party, written notice setting out the substance of the application and the grounds for it.
- (2) [rescinded]
- (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 pre-hearing 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 President and to the other party.
- (2) [rescinded]

- (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 written notice setting out the reasons for the request to the President and to the other party.
 - (2) [rescinded]
 - (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) A copy of the panel's reasons prepared under subrule (4) must be delivered promptly 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 written notification of the following:
 - (a) the applicant;
 - (b) the President.
 - (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 Benchler to make a determination under subrule (4).

- (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.
- (6) A lawyer may deposit funds that are fiduciary property to a pooled or separate trust account, provided that the lawyer complies with the rules pertaining to trust funds with respect to the fiduciary property.

Designated savings institutions

- 3-56** Subject to Rule 3-57 [*Removal of designation*], a savings institution is a designated savings institution within the meaning of section 33 (3) (b) [*Trust accounts*] 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.

Removal of designation

- 3-57** (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) [*Trust accounts*].
- (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

- 3-58** (1) Subject to subrule (2) and Rule 3-62 [*Cheque endorsed over*], a lawyer who receives trust funds must deposit the funds in a pooled trust account as soon as practicable.

- (2) 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) [*Interest on trust accounts*] and Rule 3-61 [*Separate trust account*].
- (3) Unless the client instructs otherwise in writing, a lawyer must deposit all trust funds in an account in a designated savings institution.
- (4) 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.

Cash transactions

- 3-59** (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.
- (2) This rule does not apply to a lawyer when
- (a) engaged in activities referred to in subrule (1) on behalf of his 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.
- (4) 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.
- (5) A lawyer who accepts an aggregate amount in cash of \$7,500 or more under subrule (4) must make any refund greater than \$1,000 out of such money in cash.
- (6) 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 payer 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.
- (7) 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.

Pooled trust account

- 3-60** (1) The following provisions apply to a pooled trust account:
- (a) the account must be kept in a designated savings institution;
 - (b) the account must be readily available for the lawyer to draw on;
 - (c) the lawyer must periodically receive
 - (i) cancelled cheques, and
 - (ii) bank statements for the account covering all transactions on the account;
 - (d) the savings institution must agree with the lawyer to pay interest to the Foundation in accordance with subrule (3);
 - (e) the account must be kept in the name of
 - (i) the lawyer, or
 - (ii) the firm of which the lawyer is a partner, employee, member or voting shareholder;
 - (f) the account must be designated as a "trust" account on the records of the savings institution and of the lawyer.
- (2) The cancelled cheques and bank statements referred to in subrule (1) (c) may be received or retained by the lawyer in an electronic form acceptable to the Executive Director.
- (3) A lawyer who opens or maintains a pooled trust account must
- (a) instruct the savings institution in writing to remit the net interest earned on the account to the Foundation at least quarterly, and
 - (b) if the lawyer opens or maintains the account at a bank or trust company, notify the institution in writing that the account is a trust account containing the funds of more than one client.
- (4) Subject to subrule (5) and Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a pooled trust account any funds other than trust funds or funds that are fiduciary property.
- (5) A lawyer may maintain in a pooled trust account up to \$300 of the lawyer's own funds.

Separate trust account

- 3-61** (1) A separate trust account must be
- (a) an interest-bearing trust account or a savings, deposit, investment or similar form of account in a savings institution in British Columbia, and
 - (b) designated as a “trust” account on the records of the savings institution and of the lawyer.
- (2) An account referred to in subrule (1) must be
- (a) in the name of
 - (i) the lawyer,
 - (ii) the firm of which the lawyer is a partner, employee, member or voting shareholder, or
 - (iii) the trust, or
 - (b) identified by a number that identifies the client on inspection of the lawyer’s books and accounts.
- (3) Subject to Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a separate trust account any funds other than trust funds or funds that are fiduciary property.

Cheque endorsed over

- 3-62** If a lawyer receives a cheque payable to the lawyer in trust and, in the ordinary course of business, pays the cheque to a client, or to a third party on behalf of the client, in the form in which it was received, the lawyer must keep a written record of the transaction and retain a copy of the cheque.

Trust account balance

- 3-63** A lawyer must at all times maintain sufficient funds on deposit in each pooled or separate trust account to meet the lawyer’s obligations with respect to funds held in trust for clients.

Withdrawal from trust

- 3-64** (1) A lawyer must not withdraw or authorize the withdrawal of any trust funds unless the funds are
- (a) properly required for payment to or on behalf of a client or to satisfy a court order,
 - (b) the property of the lawyer,
 - (c) in the account as the result of a mistake,
 - (d) paid to the lawyer to pay a debt of that client to the lawyer,
 - (e) transferred between trust accounts,
 - (f) due to the Foundation under section 62 (2) (b) [*Interest on trust accounts*], or
 - (g) unclaimed trust funds remitted to the Society under Division 8 [*Unclaimed Trust Money*].

- (4) Subject to subrule (5), the Executive Director may disclose the report of a Conduct Review Subcommittee that has been considered by a hearing panel as part of a lawyer’s professional conduct record under Rule 4-44 (5) [*Disciplinary action*].
- (5) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

Evidence of conduct review at the hearing of a citation

- 4-16** If a hearing is held on a citation issued following a conduct review concerning the same conduct referred to in the citation,
- (a) the Conduct Review Subcommittee’s written report is not admissible at the hearing, and
 - (b) no member of the Conduct Review Subcommittee is permitted to testify as to any statement made by the lawyer during the conduct review, unless the respondent puts the matter in issue.

Direction to issue, expand or rescind citation

- 4-17** (1) The Discipline Committee or the chair of the Committee may order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer.
- (2) After a hearing has been ordered under subrule (1), the Discipline Committee may direct the Executive Director to add an allegation to a citation.
- (3) At any time before a panel makes a determination under Rule 4-44 [*Disciplinary action*], the Discipline Committee may rescind a citation or an allegation in a citation and substitute another decision under Rule 4-4(1) [*Action on complaints*].

Contents of citation

- 4-18** (1) A citation may contain one or more allegations.
- (2) Each allegation in a citation must
- (a) be clear and specific enough to give the respondent notice of the misconduct alleged, and
 - (b) contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven against the respondent and to identify the transaction referred to.

Notice of citation

- 4-19** The Executive Director must serve a citation on the respondent
- (a) in accordance with Rule 10-1 [*Service and notice*], and
 - (b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.

Disclosure of citation

- 4-20** (1) Once the respondent has been notified of a direction to issue a citation, the Executive Director may disclose to the public the citation and its status.
- (2) The Executive Director may disclose the outcome of a citation, including dismissal by a panel, rescission by the Discipline Committee or the acceptance of a conditional admission.
- (3) Disclosure under this rule may be made by means of the Society's website.
- (4) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

Amending an allegation in a citation

- 4-21** (1) Discipline counsel may amend an allegation contained in a citation
- (a) before the hearing begins, by giving written notice to the respondent and the President, and
 - (b) after the hearing has begun, with the consent of the respondent.
- (2) The panel may amend a citation after the hearing has begun
- (a) on the application of a party, or
 - (b) on its own motion.
- (3) The panel must not amend a citation under subrule (2) unless the respondent and discipline counsel have been given the opportunity to make submissions respecting the proposed amendment.

Severance and joinder

- 4-22** (1) Before a hearing begins, the respondent or discipline counsel may apply in writing to the President for an order that
- (a) one or more allegations in a citation be determined in a separate hearing from other allegations in the same citation, or
 - (b) two or more citations be determined in one hearing.
- (2) An application under subrule (1) must
- (a) be copied to the party not making the application, and
 - (b) state the grounds for the order sought.
- (3) [rescinded]
- (4) The President may
- (a) allow the application with or without conditions,
 - (b) designate another Benchler to make a determination, or
 - (c) refer the application to a pre-hearing conference.

- (2) A conditional admission tendered under Rule 4-30 [*Conditional admission and consent to disciplinary action*] must not be used against the respondent in any proceeding under this part unless
 - (a) the admission is accepted by the Discipline Committee, and
 - (b) the admission and proposed disciplinary action is accepted by a hearing panel.
- (3) If a panel rejects the respondent’s proposed disciplinary action tendered in accordance with Rule 4-30 [*Conditional admission and consent to disciplinary action*], it must advise the chair of the Discipline Committee of its decision and proceed no further with the hearing of the citation.
- (4) On receipt of a notification under subrule (3), the chair of the Discipline Committee must instruct discipline counsel to proceed to set a date for the hearing of the citation.
- (5) When a panel rejects a proposed disciplinary action tendered in accordance with Rule 4-30 [*Conditional admission and consent to disciplinary action*], no member of that panel is permitted to sit on the panel that subsequently hears the citation.

Notice of hearing

- 4-32** (1) The date, time and place for the hearing to begin must be set
 - (a) by agreement between discipline counsel and the respondent, or
 - (b) on the application of a party, by the President or by the Benchers presiding at a pre-hearing conference.
- (2) When a date is set under subrule (1), the President must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the respondent consents to a shorter notice period.
- (3) Written notification under subrule (2) may be made at the same time that the citation is served under Rule 4-19 [*Notice of citation*], or at a later time.

Summary hearing

- 4-33** (1) This rule may be applied in respect of the hearing of a citation comprising only allegations that the respondent has done one or more of the following:
 - (a) breached a rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to a communication from the Society;
 - (d) breached an order made under the Act or these rules.

- (2) Unless the panel orders otherwise, the respondent and discipline counsel may adduce evidence by
 - (a) affidavit,
 - (b) an agreed statement of facts, or
 - (c) an admission made or deemed to be made under Rule 4-28 [*Notice to admit*].
- (3) Despite Rules 4-43 [*Submissions and determination*] and 4-44 [*Disciplinary action*], the panel may consider facts, determination, disciplinary action and costs and issue a decision respecting all aspects of the proceeding.

Demand for disclosure of evidence

- 4-34** (1) At any time after a citation has been issued and before the hearing begins, a respondent may demand in writing that discipline counsel disclose the evidence that the Society intends to introduce at the hearing.
- (2) On receipt of a demand for disclosure under subrule (1), discipline counsel must provide the following to the respondent by a reasonable time before the beginning of the hearing:
- (a) a copy of every document that the Society intends to tender in evidence;
 - (b) a copy of any statement made by a person whom the Society intends to call as a witness;
 - (c) if documents provided under paragraphs (a) and (b) do not provide enough information, a summary of the evidence that the Society intends to introduce;
 - (d) a summary of any other relevant evidence in discipline counsel's possession or in a Society file available to discipline counsel, whether or not counsel intends to introduce that evidence at the hearing.
- (3) Despite subrule (2), discipline counsel must not provide any information or documents about any discussion or other communication with the Ombudsperson in that capacity.

Application for details of the circumstances

- 4-35** (1) Before a hearing begins, the respondent may apply for disclosure of the details of the circumstances of misconduct alleged in a citation by delivering to the President and discipline counsel written notice setting out the substance of the application and the grounds for it.
- (2) [rescinded]
- (3) If the President is satisfied that an allegation in the citation does not contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven and to identify the transaction referred to, the President must order discipline counsel to disclose further details of the circumstances.

- (4) Details of the circumstances disclosed under subrule (3) must be
 - (a) in writing, and
 - (b) delivered to the respondent or respondent's counsel.
- (5) The President may
 - (a) designate another Bencher to make a determination under subrule (3), or
 - (b) refer the application to a pre-hearing conference.

Preliminary questions

- 4-36** (1) Before a hearing begins, the respondent or discipline counsel may apply for the determination of a question relevant to the hearing by delivering to the President and to the other party written notice setting out the substance of the application and the grounds for it.
- (2) [rescinded]
- (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 pre-hearing conference;
 - (c) refer the question to the panel at the hearing of the citation.
- (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 citation or any question pertaining to the citation other than that referred under that provision.

Compelling witnesses and production of documents

- 4-37** (1) Before a hearing begins, the respondent or discipline counsel may apply for an order under section 44 (4) [*Witnesses*] by delivering to the President and to the other party written notice setting out the substance of the application and the grounds for it.
- (2) [rescinded]
- (3) When an application is made under subrule (1), after considering any submissions, 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 respondent or discipline counsel, 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

- 4-38**
- (1) The President may order a pre-hearing conference at any time before the hearing of a citation begins, at the request of the respondent or discipline counsel, or on the President's own initiative.
 - (2) When the President orders a conference under subrule (1), the President must
 - (a) set the date, time and place of the conference, and notify the parties, and
 - (b) designate a Bencher to preside at the conference.
 - (3) [rescinded]
 - (4) Discipline counsel must be present at the conference.
 - (5) The respondent may attend the conference in person, through counsel or both.
 - (6) If the respondent fails to attend the conference, the Bencher presiding may proceed with the conference in the absence of the respondent and may make any order under this rule, if the Bencher is satisfied that the respondent had notice of the conference.
 - (7) 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 this rule.
 - (8) The conference may consider
 - (a) the simplification of the issues,
 - (b) the necessity or desirability of amendments to the citation,
 - (c) the possibility of obtaining admissions that might facilitate the hearing,
 - (d) the discovery and production of documents,
 - (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 hearing to begin, and
 - (g) any other matters that may aid in the disposition of the citation.

- (9) The respondent or discipline counsel may apply to the Bencher presiding at the conference for an order
 - (a) for discovery and production of documents,
 - (b) to withhold the identity or contact information of a witness,
 - (c) to adjourn the hearing of the citation,
 - (d) for severance of allegations or joinder of citations under Rule 4-22 [*Severance and joinder*],
 - (e) for disclosure of the details of the circumstances of misconduct alleged in a citation under Rule 4-35 [*Application for details of the circumstances*], or
 - (f) concerning any other matters that may aid in the disposition of the citation.
- (10) The Bencher presiding at a pre-hearing conference may
 - (a) adjourn the conference generally or to a specified date, time and place,
 - (b) set a date for the hearing to begin, and
 - (c) allow or dismiss an application made under subrule (9) or referred to the conference under this part.

Appointment of panel

4-39 When a citation is issued under Rule 4-17 (1) [*Direction to issue, expand or rescind citation*], the President must establish a panel to conduct a hearing, make a determination under Rule 4-43 [*Submissions and determination*] and take action, if appropriate, under Rule 4-44 [*Disciplinary action*].

Adjournment

- 4-40** (1) Before a hearing begins, the respondent or discipline counsel may apply for an order that the hearing be adjourned by delivering to the President and the other party written notice setting out the grounds for the application.
- (2) [rescinded]
- (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-hearing conference.
- (5) After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.
- (6) [rescinded]
- (7) Rule 4-32 [*Notice of hearing*] does not apply when a hearing is adjourned and re-set for another date.

Preliminary matters

- 4-41** (1) Before hearing any evidence on the allegations set out in the citation, the panel must determine whether
- (a) the citation was served in accordance with Rule 4-19 [*Notice of citation*], or
 - (b) the respondent waives any of the requirements of Rule 4-19.
- (2) If the requirements of Rule 4-19 [*Notice of citation*] have been met, or have been waived by the respondent, the citation or a copy of it must be filed as an exhibit at the hearing, and the hearing may proceed.
- (3) Despite subrule (1), before the hearing begins, the panel may receive and consider.
- (a) the citation,
 - (b) an agreed statement of facts,
 - (c) an admission made or deemed to be made under Rule 4-28 [*Notice to admit*],
 - (d) a conditional admission and consent to a specified disciplinary action tendered by the respondent and accepted by the Discipline Committee under Rule 4-30 [*Consent to disciplinary action*], and
 - (e) any other document or evidence by agreement of the parties.

Evidence of respondent

- 4-42** Discipline counsel must notify the respondent of an application for an order that the respondent give evidence at the hearing.

Submissions and determination

- 4-43** (1) Following completion of the evidence, the panel must invite submissions from discipline counsel and the respondent on each allegation in the citation.
- (2) After submissions under subrule (1), the panel must
- (a) find the facts and make a determination on each allegation, and
 - (b) prepare written reasons for its findings on each allegation.
- (3) A copy of the panel's reasons prepared under subrule (2) (b) must be delivered promptly to each party.

Disciplinary action

- 4-44** (1) Following a determination under Rule 4-43 [*Submissions and determination*] adverse to the respondent, the panel must
- (a) invite the respondent and discipline counsel to make submissions as to disciplinary action,
 - (b) take one or more of the actions referred to in section 38 (5) or (6) [*Discipline hearings*],

- (c) include in its decision under this rule
 - (i) any order, declaration or imposition of conditions under section 38(7), and
 - (ii) any order under Rule 5-11 [*Costs of hearings*] on the costs of the hearing, including any order respecting time to pay,
 - (d) prepare a written record, with reasons, of its action taken under subrule (b) and any action taken under subrule (c),
 - (e) if it imposes a fine, set the date by which payment to the Society must be completed, and
 - (f) if it imposes conditions on the respondent's practice, set the date by which the conditions must be fulfilled.
- (2) If a panel gives reasons orally for its decision under Rule 4-43 (2) (a) [*Submissions and determination*], the panel may proceed under subrule (1) before written reasons are prepared under Rule 4-43 (2) (b).
- (3) Despite subrule (1) (b), if the respondent is a member of another governing body and not a member of the Society, the panel may do one or more of the following:
- (a) reprimand the respondent;
 - (b) fine the respondent an amount not exceeding \$50,000;
 - (c) prohibit the respondent from practising law in British Columbia permanently or for a specified period of time;
 - (d) declare that, had the respondent been a member of the Society, the panel would have
 - (i) disbarred the respondent,
 - (ii) suspended the respondent, or
 - (iii) imposed conditions or limitations on the practice of the respondent.
- (4) A copy of the panel's reasons prepared under subrule (1) (d) must be delivered promptly to each party.
- (5) The panel may consider the professional conduct record of the respondent in determining a disciplinary action under this rule.
- (6) Regardless of the nature of the allegation in the citation, the panel may take disciplinary action based on the ungovernability of the respondent by the Society.
- (7) The panel must not take disciplinary action under subrule (6) unless the respondent has been given at least 30 days notice that ungovernability may be raised as an issue at the hearing on disciplinary action.
- (8) The panel may adjourn the hearing on disciplinary action to allow compliance with the notice period in subrule (7).

Discipline proceedings involving members of other governing bodies

- 4-45** (1) The Executive Director must send written notice of the action to every governing body of which the person concerned is known to be a member when
- (a) a citation is authorized under Rule 4-17 [*Direction to issue, expand or rescind citation*],
 - (b) a disciplinary action is imposed under Rule 4-44 [*Disciplinary action*], or
 - (c) a conditional admission tendered under Rule 4-29 [*Conditional admissions*] is accepted by the Discipline Committee.
- (2) When a citation is authorized against a lawyer who is a member of a governing body or when a governing body initiates disciplinary proceedings against a member of the Society, the Discipline Committee must consult with the governing body about the manner in which disciplinary proceedings are to be taken and the Society is bound by any agreement the Discipline Committee makes with the other governing body.
- (3) The Discipline Committee may agree that the venue of disciplinary proceedings be changed to or from that of the Society, if it is in the public interest or if there is a substantial savings in cost or improvement in the convenience of any person without compromising the public interest.
- (4) The Discipline Committee may take action under Rule 4-4 [*Action on complaints*] against a lawyer who
- (a) has violated a prohibition against practice imposed by a governing body,
 - (b) is the subject of a declaration by a governing body under a provision similar to Rule 4-44 (3) (d) [*Disciplinary action*], or
 - (c) has made an admission that is accepted under a provision similar to Rule 4-29 [*Conditional admission*].
- (5) The fact that a lawyer concerned is or has been the subject of disciplinary proceedings by a governing body does not preclude any disciplinary action for the same or related conduct under this part.
- (6) In a proceeding under this part, the filing of a duly certified copy of the disciplinary decision of a governing body against a lawyer found guilty of misconduct is proof of the lawyer's guilt.

Discipline involving lawyers practising in other jurisdictions

- 4-46** (1) If it is alleged that a member of the Society has committed misconduct while practising temporarily in another Canadian jurisdiction under provisions equivalent to Rules 2-15 to 2-27 [*Inter-jurisdictional practice*], the Discipline Committee will
- (a) consult with the governing body concerned respecting the manner in which disciplinary proceedings will be conducted, and
 - (b) subject to subrule (2), assume responsibility for the conduct of the disciplinary proceedings under this part.

Decision

- 5-10** (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.

Costs of hearings

- 5-11** (1) A panel may order that an applicant or respondent pay the costs of a hearing referred to in Rule 5-1 [*Application*], and may set a time for payment.
- (2) A review board may order that an applicant or respondent pay the costs of a review under section 47, and may set a time for payment.
- (3) Subject to subrule (4), the panel or review board must have regard to the tariff of costs in Schedule 4 [*Tariff for hearing and review costs*] to these Rules in calculating the costs payable by an applicant, a respondent or the Society.
- (4) A panel or review board may order that the Society, an applicant or a respondent recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4 [*Tariff for hearing and review costs*] if, in the judgment of the panel or review board, it is reasonable and appropriate to so order.
- (5) The cost of disbursements that are reasonably incurred may be added to costs payable under this Rule.
- (6) In the tariff in Schedule 4 [*Tariff for hearing and review costs*],
- (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.
- (7) 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.
- (8) If the citation is dismissed or rescinded after the hearing has begun, the panel or review board has the discretion to direct that the respondent be awarded costs in accordance with subrules (3) to (6).
- (9) Costs deposited under Rule 2-92 [*Security for costs*] must be applied to costs ordered under this Rule.
- (10) An applicant must not be enrolled, called and admitted or reinstated until the costs ordered under this Rule or the Act are paid in full.

- (11) As an exception to subrule (10), the Credentials Committee may direct that an applicant be enrolled, called and admitted or reinstated even though costs ordered under this rule have not been paid in full and may make the direction subject to any conditions that the Committee finds appropriate.

Application to vary certain orders

- 5-12** (1) An applicant or respondent may apply in writing to the President for
- (a) an extension of time
 - (i) to pay a fine or the amount owing under Rule 5-11 [*Costs of hearings*],
or
 - (ii) to fulfill a condition imposed under section 22 [*Credentials hearings*],
38 [*Discipline hearings*], or 47 [*Review on the record*],
 - (b) a variation of a condition referred to in paragraph (a) (ii), or
 - (c) a change in the start date for a suspension imposed under section 38 [*Discipline hearings*] or 47 [*Review on the record*].
- (2) An application under subrule (1) (c) must be made at least 7 days before the start date set for the suspension.
- (3) [rescinded]
- (4) The President must refer an application under subrule (1) to one of the following, as may in the President's discretion appear appropriate:
- (a) the same panel that made the order;
 - (b) a new panel;
 - (c) the Discipline Committee;
 - (d) the Credentials Committee.
- (5) The panel or Committee that hears an application under subrule (1) must
- (a) dismiss it,
 - (b) extend to a specified date the time for payment,
 - (c) vary the conditions imposed, or extend to a specified date the fulfillment of the conditions, or
 - (d) specify a new date for the start of a period of suspension imposed under section 38 [*Discipline hearings*] or 47 [*Review on the record*].
- (6) If, in the view of the President and the chair of the Committee to which an application is referred under subrule (4) (c) or (d), there is a need to act on the application before a meeting of the Committee can be arranged, the chair of the Committee may hear the application and make the determination under subrule (5).
- (7) An application under this rule does not stay the order that the applicant seeks to vary.

Initiating a review

- 5-19** (1) Within 30 days after being notified of the decision of the panel in a credentials hearing, the applicant may initiate a review by delivering a notice of review to the President and counsel representing the Society.
- (2) Within 30 days after being notified of the decision of a panel under Rule 4-44 [*Disciplinary action*] or 5-11 [*Costs of hearings*], the respondent may initiate a review by delivering a notice of review to the President and discipline counsel.
- (3) Within 30 days after a decision of the panel in a credentials hearing, the Credentials Committee may initiate a review by resolution.
- (4) Within 30 days after a decision of the panel in a hearing on a citation, the Discipline Committee may initiate a review by resolution.
- (5) When a review is initiated under subrule (3) or (4), counsel acting for the Society or discipline counsel must promptly deliver a notice of review to the President and the respondent.
- (6) Within 30 days after the order of the Practice Standards Committee under Rule 3-25 (1) [*Costs*], the lawyer concerned may initiate a review by delivering a notice of review to the President.

Stay of order pending review

- 5-20** (1) When a review is initiated under Rule 5-19 [*Initiating a review*], 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 5-19 (3) [*Initiating a review*], 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 5-19 [*Initiating a review*], 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) The President may designate another Bencher to make a determination under subrule (3).

Notice of review

- 5-21** 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.

Record of credentials hearing

- 5-22** (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;
 - (d) any written arguments or submissions received by the panel;
 - (e) the panel's written reasons for any decision;
 - (f) the notice of review.
- (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.

Record of discipline hearing

- 5-23** (1) Unless counsel for the respondent and for the Society agree otherwise, the record for a review of a discipline decision consists of the following:
- (a) the citation;
 - (b) a transcript of the proceedings before the panel;
 - (c) exhibits admitted in evidence by the panel;
 - (d) any written arguments or submissions received by the panel;
 - (e) the panel's written reasons for any decision;
 - (f) the notice of review.
- (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.

Record of an order for costs by the Practice Standards Committee

- 5-24** (1) Unless counsel for the lawyer and for the Society agree otherwise, the record for a review of an order for costs under Rule 3-25 [*Costs*] consists of the following:
- (a) the order;
 - (b) all correspondence between the Society and the lawyer relating to the assessment and ordering of costs;
 - (c) the Committee's written reasons for any decision on costs;
 - (d) the notice of review.
- (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.

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 President, 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 President 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) When an application is made under subrule (4), 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*].

Notice of review hearing

- 5-24.2** (1) The date, time and place for the hearing on a review to begin must be set
- (a) by agreement between the parties, or
 - (b) on the application of a party, by the President or by the Bencher presiding at a pre-review conference.
- (2) When a date is set under subrule (1), the President must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the parties agree to a shorter notice period.

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 notify the parties, and
 - (b) designate a Bencher to preside at the conference.
- (3) Counsel representing the Society must be present at the conference.
- (4) [rescinded]
- (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 President and to the other party written notice setting out the grounds for the application.
- (2) [rescinded]
- (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) A copy of the review board's written reasons prepared under subrule (2) must be delivered promptly 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 President and the other party a notice in writing that sets out the basis for the application.
- (2) [rescinded]
- (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*].

PART 10 – GENERAL

Service and notice

- 10-1** (1) A lawyer, former lawyer, articulated student or applicant may be served with a notice or other document personally, by leaving it at his or her place of business or by sending it by
- (a) registered mail, ordinary mail or courier to his or her last known business or residential address,
 - (b) electronic facsimile to his or her last known electronic facsimile number,
 - (c) electronic mail to his or her last known electronic mail address, or
 - (d) any of the means referred to in paragraphs (a) to (c) to the place of business of his or her counsel or personal representative or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation.
- (2) If it is impractical for any reason to serve a notice or other document as set out in subrule (1), the President may order substituted service, whether or not there is evidence that
- (a) the notice or other document will probably
 - (i) reach the intended recipient, or
 - (ii) come to the intended recipient's attention, or
 - (b) the intended recipient is evading service.
- (3) The President may designate another Benchers to make a determination under subrule (2).
- (4) A document may be served on the Society or on the Benchers by
- (a) leaving it at or sending it by registered mail or courier to the principal offices of the Society, or
 - (b) personally serving it on an officer of the Society.
- (4.1) A document required under the Act or these rules to be delivered to the President or the Executive Director must be left at or sent by registered mail or courier to the principal offices of the Society.
- (5) A document sent by ordinary mail is deemed to be served 7 days after it is sent.
- (6) A document that is left at a place of business or sent by registered mail or courier is deemed to be served on the next business day after it is left or delivered.
- (7) A document sent by electronic facsimile or electronic mail is deemed to be served on the next business day after it is sent.
- (8) Any person may be notified of any matter by ordinary mail, electronic facsimile or electronic mail to the person's last known address.

Duty not to disclose

- 10-2** A person performing any duty or fulfilling any function under the Act or these rules who receives or becomes privy to any confidential information, including privileged information,
- (a) has the same duty that a lawyer has to a client not to disclose that information, and
 - (b) must not disclose and cannot be required to disclose that information except as authorized by the Act, these rules or an order of a court.

Records

- 10-3** (1) In this rule, “**storage provider**” means any entity storing or processing records outside of a lawyer’s office, whether or not for payment.
- (2) When required under the Act or these rules, a lawyer must, on demand, promptly produce records in any or all of the following forms:
- (a) printed in a comprehensible format;
 - (b) accessed on a read-only basis;
 - (c) exported to an electronic format that allows access to the records in a comprehensible format.
- (3) A lawyer who is required to produce records under the Act or these rules must not alter, delete, destroy, remove or otherwise interfere with any record that the lawyer is required to produce, except with the written consent of the Executive Director.
- (4) A lawyer must not maintain records, including electronic records, with a storage provider unless the lawyer
- (a) retains custody and control of the records,
 - (b) ensures that ownership of the records does not pass to another party,
 - (c) is capable of complying with a demand under the Act or these rules to produce the records and provide access to them,
 - (d) ensures that the storage provider maintains the records securely without
 - (i) accessing or copying them except as is necessary to provide the service obtained by the lawyer,
 - (ii) allowing unauthorized access to or copying or acquisition of the records, or
 - (iii) failing to destroy the records completely and permanently on instructions from the lawyer, and
 - (e) enters into a written agreement with the storage provider that is consistent with the lawyer’s obligations under the Act and these rules.
- (5) If the Executive Committee declares, by resolution, that a specific entity is not a permitted storage provider for the purpose of compliance with this rule, no lawyer is permitted to maintain records of any kind with that entity.