

# MEMBER'S MANUAL

The Law Society  
of British Columbia



## AMENDMENT PAGES

2019: No. 2 June

### Highlights

**Legal Profession Act:** The qualifications of the person appointed to audit the accounts of the Law Foundation are updated (section 61(8): p. 39); two minor errors are corrected (sections 35 and 50(6): pp. 28 and 35).

**Law Society Rules 2015:\*** The Law Society may publish limitations and conditions placed on a lawyer who is subject to an interim order under Rule 3-10 (Rules 2-53(7), 3-10(3) to (11), 4-50(4) and 9-11(9): pp. 65, 105, 184 and 209); Quebec lawyers may transfer to British Columbia under the terms of the National Mobility Agreement 2013, notwithstanding that a reciprocal provision for BC lawyers has not been finalized (Rules 2-80(4), 2-81(1) and 3-43(3): pp. 82 and 122).

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

**Code of Professional Conduct for British Columbia:** Minor text changes bring the *BC Code* more closely into line with the Federation of Law Societies' model code and correct a gender-specific reference (rule 3.3-3, commentary [5]: p. 24).

**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.

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**Updates:** This amendment package updates the *Member's Manual* to **May 15, 2019**. The previous amendment package was 2019: No. 1 March.

To check that your copy of the Manual is up to date, consult the contents checklist on the next page. If you have further questions about updating your Manual, contact the Communications department: telephone 604.697.5838 or toll-free 1.800.903.5300 or email [communications@lsbc.org](mailto:communications@lsbc.org).

**Website:** The *Legal Profession Act*, Law Society Rules and *Code of Professional Conduct for British Columbia* can be accessed in the [Support & Resources for Lawyers](#) section of the Law Society website at [www.lawsociety.bc.ca](http://www.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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**Trust accounts**

- 33** (1) The benchers may require a lawyer or law firm to do any of the following:
- (a) provide information or an annual report concerning the lawyer's or law firm's books and accounts;
  - (b) have all or part of the lawyer's or law firm's books and accounts audited or reviewed annually;
  - (c) provide the executive director with an accountant's report on the lawyer's or law firm's books and accounts.
- (2) The benchers may
- (a) exempt classes of lawyers or law firms from some or all of the requirements of subsection (1), and
  - (b) determine the qualifications required of a person performing an audit or review referred to in subsection (1).
- (3) The benchers may make rules to do any of the following:
- (a) establish standards of accounting for and management of funds held in trust by lawyers or law firms;
  - (b) designate savings institutions and classes of savings institutions in which lawyers or law firms may deposit money that they hold in trust;
  - (c) provide for precautions to be taken by lawyers and law firms for the care of funds or property held in trust by them.
- (4) The rules referred to in subsection (3) apply despite section 19 of the *Trustee Act*.
- (5) The rules made under subsection (3) may be different for
- (a) lawyers and law firms, or
  - (b) different classes of lawyers and law firms.

[2012-16-22]

**Unclaimed trust money**

- 34** (1) A lawyer who or a law firm that has held money in trust on behalf of a person whom the lawyer or law firm has been unable to locate for 2 years may pay the money to the society.
- (2) On paying money to the society under subsection (1), the liability of the lawyer or law firm to pay that money to the person on whose behalf it was held or to that person's legal representative is extinguished.
- (3) The society must hold in trust any money paid to it under subsection (1).
- (4) The society is entitled to retain, for its purposes, interest on any money held by it under subsection (3).

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- (5) A person or the person's legal representative who, but for subsections (1) and (2), could have claimed money held by a lawyer or law firm may claim the money from the society.
- (6) On being satisfied that the person claiming money under subsection (5) is entitled to it, the society must pay the money to that person together with interest on it at a rate that the benchers consider reflects market rates during the time the society held the money.
- (7) If the money is not paid out under subsection (6) within 5 years after its receipt by the society under subsection (1), the society must pay the money, excluding any interest retained under subsection (4), to the foundation for its purposes, but subsections (5) and (6) continue to apply as though the money had not been paid to the foundation.
- (8) The foundation must indemnify the society for any claims paid under subsection (6) in respect of money received from the society under subsection (7), including interest paid by the society under subsection (6) for the period when the money was held by the foundation.
- (9) A person whose claim against the society under subsection (5) has been refused may apply to the Supreme Court for a review of the decision of the society.
- (10) On a claim under subsection (9), the court may allow the claim plus interest in an amount determined by it.
- (11) The benchers may make rules to do any of the following:
  - (a) create and maintain a fund consisting of money paid to the society under subsection (1);
  - (b) establish procedures for investigating and adjudicating claims made under subsection (5).
- (12) [repealed]  
[1999-48-28; 2012-16-23]

### **Restriction on suspended and disbarred lawyers**

- 35** On application of the society, the Supreme Court may order that a person referred to in section 15 (3) (a) or (b) be prohibited from acting as any or all of the following until the person is a member in good standing of the society or until the court orders otherwise:
- (a) a personal representative of a deceased person;
  - (b) a trustee of the estate of a deceased person;
  - (c) a committee under the *Patients Property Act*;
  - (c.1) an attorney under Part 2 of the *Power of Attorney Act*;
  - (d) a representative under the *Representation Agreement Act*.
- [1998-9-107; 2007-34-92]

## PART 6 – CUSTODIANSHIPS

- (4) When a law corporation carries on the business of providing legal services to the public through a lawyer who is the subject of an application under this section, the court may order the custodian appointed under subsection (2) to
  - (a) take possession of or control over all or part of the law corporation's property, and
  - (b) determine the status of, manage, arrange for the conduct of and, if appropriate, terminate the practice of the law corporation.
- (5) An order under this section must direct that any person receiving notice of the order must retain all the lawyer's property that is within or comes into that person's possession or control, until directed otherwise by the custodian or by an order of the court.
- (6) An order under this section may
  - (a) direct the sheriff to search for, seize, remove and place into the possession or control of the custodian all or part of the lawyer's property,
  - (b) authorize the sheriff, for the purpose of paragraph (a), to enter
    - (i) any building or place other than the lawyer's dwelling house and open any safety deposit box or other receptacle, and
    - (ii) the lawyer's dwelling house and open any safe or other receptacle, if there are grounds to believe that the lawyer's property may be found there,
  - (c) direct any savings institution or other person to deal with, hold or dispose of the lawyer's property as the court directs, and to deliver to the custodian or otherwise, as the court directs, one or more of the following:
    - (i) the lawyer's property;
    - (ii) a copy of records relating to the lawyer's practice;
    - (iii) a copy of other records, when it is necessary for the effective conduct of the custodianship to do so,
  - (d) give directions to the custodian respecting the disposition of the lawyer's property and the manner in which the custodianship should be conducted,
  - (e) give directions as to the service of an order made or notice required under this Part,
  - (f) include other orders or give other directions to facilitate the conduct of the custodianship, and
  - (g) if the lawyer is a person referred to in section 15 (3) (a) or (b), prohibit the lawyer from acting as any or all of the following until the lawyer is a member in good standing of the society or until the court orders otherwise:
    - (i) a personal representative of a deceased person;
    - (ii) a trustee of the estate of a deceased person;

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- (iii) a committee under the *Patients Property Act*;
  - (iii.1) an attorney under Part 2 of the *Power of Attorney Act*;
  - (iv) a representative under the *Representation Agreement Act*.
- (7) Unless otherwise directed by the court, the custodian must cause an order made under this Part to be served promptly on the lawyer.
- (8) A sheriff, deputy sheriff or court bailiff executing an order under this Part has the same powers as that person has in the execution of a writ of seizure and sale.
- [1998-9-108; 2007-14-41; 2007-34-93]

### **If society appointed as custodian**

**50.1** If the society is appointed as a custodian, the executive director must

- (a) designate a person who is
    - (i) an employee of the society, and
    - (ii) a practising lawyer, or
  - (b) retain the services of a practising lawyer
- to perform the duties and functions and exercise the powers of a custodian on behalf of the society.

[2007-14-42]

### **Powers of custodian**

**51** A custodian may do any or all of the following:

- (a) notify a client of the lawyer, or any other person, of the custodian's appointment, and may communicate with that client or person respecting the conduct of the custodianship;
- (b) represent a client of the lawyer, in place of that lawyer, in any cause or matter in respect of which that lawyer was acting at the time a custodian was appointed, to the extent necessary to preserve the interests of the client;
- (c) conduct or authorize an investigation of the property of the lawyer;
- (d) require from the lawyer or any other person records and information that may be reasonably necessary to facilitate the conduct of the custodianship and, if necessary, apply to the court for an order to enforce the requirement;
- (e) report to an insurer any facts of which the custodian becomes aware that indicate that the lawyer in that lawyer's professional capacity may be liable to a client or other person;
- (f) cooperate with an insurer respecting any claim arising out of the lawyer's practice, to the extent required by the policy;
- (g) advise a client or other person of any facts of which the custodian becomes aware that may give rise to a claim for payment under section 31;



## PART 7 – LAW FOUNDATION

### Definitions

57 In this Part:

“**board**” means the board of governors of the foundation;

“**governor**” means a member of the board.

### Law Foundation of British Columbia

- 58 (1) The Law Foundation is continued as a corporation with the name “Law Foundation of British Columbia” consisting of the members of the board appointed under section 59 (1).
- (2) The foundation may acquire, dispose of and otherwise deal with its property for the purposes of the foundation.

### Board of governors

- 59 (1) The foundation is administered by a board of governors consisting of 18 governors as follows:
- (a) the Attorney General or his or her appointee;
  - (b) 3 persons, not lawyers, appointed to the board by the Attorney General;
  - (c) 12 lawyers or judges appointed by the executive committee, of whom at least one must be from each county referred to in the *County Boundary Act*;
  - (d) 2 lawyers appointed by the executive committee of the British Columbia Branch of the Canadian Bar Association.
- (2) Governors, other than the Attorney General, hold office for a term of 3 years or until their successors are appointed, and they may be re-appointed.
- (3) The Attorney General may revoke the appointment of a governor appointed by the Attorney General, during that governor’s term of office.
- (4) The benchers may revoke the appointment of a governor appointed by the executive committee, during that governor’s term of office.
- (5) The Provincial Council of the British Columbia Branch of the Canadian Bar Association may revoke the appointment of a governor appointed by the executive committee of the branch, during that governor’s term of office.
- (6) The board must elect one governor to be chair of the board.
- (7) If a vacancy occurs in the office of a governor, the person or body by whom the governor was appointed may appoint to the vacant office a person eligible to be appointed to that office by that person or body under subsection (1), and the person so appointed holds office for the balance of the term for which the governor was appointed, or until a successor is appointed.
- (8) The continuing governors may act despite a vacancy in the board.

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- (9) An act of the board is not invalid because of a defect that is afterwards discovered in the appointment of one or more governors.
- (10) An appointed governor may resign from office on giving one month's notice in writing to the board of an intention to do so, and the resignation takes effect on the expiration of the notice or on its earlier acceptance by the board.
- (11) A governor ceases to hold office if the governor
  - (a) ceases to hold the qualifications necessary for appointment,
  - (b) becomes a mentally disordered person,
  - (c) becomes bankrupt, or
  - (d) contravenes a provision of this Act or the rules, and a majority of the other governors considers that the contravention is sufficiently serious to justify the governor's removal from the board.
- (12) A quorum of the board is 8 governors.

### Bylaws

- 60** The board may make bylaws for purposes relating to the affairs, business, property and objects of the foundation including bylaws respecting the
- (a) number and designation of officers of the foundation,
  - (b) appointment and terms of office of officers of the foundation and all matters relating to their offices,
  - (c) establishment of an executive committee and the delegation of powers to it,
  - (d) resignation or removal from office of officers of the foundation,
  - (e) number, designations and conditions of employment of employees of the foundation, other than officers,
  - (f) remuneration, if any, of officers of the foundation, and
  - (g) operation of the foundation's account.

### Application of fund

- 61** (1) The purpose of the foundation is to establish and maintain a fund to be used for the following purposes:
- (a) legal education;
  - (b) legal research;
  - (c) legal aid;
  - (d) law reform;
  - (e) establishing, operating and maintaining law libraries in British Columbia.
- (2) The board may apply the funds of the foundation for the purposes of the foundation in the manner that the board may decide and may grant loans of the funds on terms and conditions the board determines.
- (3) The foundation may employ or retain lawyers to advance the purposes of the foundation.

## PART 7 – LAW FOUNDATION

- (4) The funds of the foundation consist of the following:
  - (a) all money remitted to the foundation by or on behalf of lawyers and law firms under section 62 (2) or held in trust under section 63 (12);
  - (b) interest accruing from investment of the funds of the foundation;
  - (c) other money received by the foundation.
- (5) The board may pay out of the funds of the foundation the costs, charges and expenses
  - (a) involved in the administration of the foundation, and
  - (b) incurred by the board in carrying out the purposes of the foundation.
- (6) All money of the foundation must be paid into a savings institution designated under section 33 (3) (b) until invested or applied in accordance with this section, and that money must be used for the purposes of the foundation.
- (7) Money that is not immediately required for the purposes of the foundation may be invested in the name of the foundation by the board in any manner in which trustees are authorized to invest trust funds.
- (8) The accounts of the foundation must be audited annually by a person appointed for that purpose by the board who is
  - (a) a member of a provincial organization of chartered professional accountants within Canada, authorized by that organization to perform an audit,
  - (b) a professional accounting corporation as defined in the *Chartered Professional Accountants Act*, authorized by the CPABC as defined in that Act to perform an audit, or
  - (c) a registered firm as defined in the *Chartered Professional Accountants Act*, authorized by the CPABC as defined in that Act to perform an audit.

[2012-16-38; 2018-36-27]

### Interest on trust accounts

- 62**
- (1) A lawyer or law firm must deposit money received or held in trust in an interest bearing trust account at a savings institution designated under section 33 (3) (b).
  - (2) Subject to subsection (5), a lawyer or law firm who is credited by a savings institution with interest on money received or held in trust,
    - (a) holds the interest in trust for the foundation, and
    - (b) must remit the interest to the foundation in accordance with the rules.
  - (3) The benchers may make rules
    - (a) permitting a lawyer or law firm to hold money in trust for more than one beneficiary in the same trust account, and
    - (b) respecting payment to the foundation of interest on trust accounts.
  - (4) A relationship between a lawyer or law firm and client or a trust relationship between a lawyer or law firm, as trustee, and the beneficiary of the trust does not

make the lawyer or law firm liable to account to the client or beneficiary for interest received by the lawyer or law firm on money received or held in an account established under subsection (1).

- (5) On instruction from a client, a lawyer or law firm may place money held on behalf of the client in a separate trust account, in which case
  - (a) this section and the rules made under it do not apply, and
  - (b) interest paid on money in the account is the property of the client.

[2012-16-39]

### Security and investment of trust funds

- 63 (1) In this section:

“**pooled trust funds**” means money that has been received by a lawyer or law firm in trust and that is not the subject of instructions under section 62 (5);

“**society trust account**” means a Law Society Pooled Trust Account established under subsection (5).

- (2) The benchers may make rules requiring that a lawyer or law firm do any or all of the following:
  - (a) use an approved form of agreement respecting the terms and conditions under which pooled trust funds will be held at designated savings institutions;
  - (b) tender the agreement, prepared and approved under paragraph (a), at a designated savings institution before the lawyer or law firm deposits pooled trust funds at that savings institution;
  - (c) report annually to any savings institution into which the lawyer or law firm has deposited pooled trust funds the information required under the *Canada Deposit Insurance Corporation Act*.
- (3) The society may enter into an agreement with a savings institution with whom lawyers or law firms have deposited pooled trust funds, respecting the investment and security of pooled trust funds on deposit at all branches of that savings institution.
- (4) Without limiting subsection (3), an agreement under that subsection may provide that
  - (a) pooled trust funds be transferred to the society, in trust, to be held in the account referred to in subsection (5) and to be invested in the manner permitted by subsection (6), and
  - (b) the society obtain a line of credit, either secured or unsecured, from the savings institution for the purpose of ensuring that there is always sufficient money on deposit to guarantee that lawyers’ and law firms’ trust cheques on their pooled trust fund accounts will be honoured.
- (5) The society may establish and operate an account, to be known as a Law Society Pooled Trust Account, at any branch of the savings institution into which pooled trust funds may be deposited in accordance with an agreement under subsection (3).

- (e) withdrawn;
  - (f) refused.
- (3) [rescinded]
- (4) With the consent of the Credentials Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that the Committee reasonably believes may disclose evidence of an offence.
- (5) The Executive Director may disclose the existence and nature of a condition or limitation imposed or agreed to under this division if the condition or limitation
- (a) is ordered as a result of a hearing under this division,
  - (b) restricts or prohibits a lawyer's practice in one or more areas of law, or
  - (c) is imposed by Rule 2-78 [*Law school faculty*], 2-80 [*In-house counsel*] or 2-87 [*Reinstatement of former judge or master*].
- (6) If the Executive Director discloses the existence of a condition or limitation under subrule (5) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.
- (7) Subrule (6) does not apply to a decision of Benchers, a hearing panel or a review board.

## **Admission program**

### **Enrolment in the admission program**

- 2-54** (1) An applicant may apply for enrolment in the admission program at any time by delivering to the Executive Director the following:
- (a) a completed application for enrolment in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society;
  - (b) proof of academic qualification under subrule (2);
  - (c) an articling agreement stating a proposed enrolment start date not less than 30 days from the date that the application is received by the Executive Director;
  - (d) other documents or information that the Credentials Committee may reasonably require;
  - (e) the application fee specified in Schedule 1.
- (2) Each of the following constitutes academic qualification under this rule:
- (a) successful completion of the requirements for a bachelor of laws or the equivalent degree from an approved common law faculty of law in a Canadian university;

- (b) a Certificate of Qualification issued under the authority of the Federation of Law Societies of Canada;
  - (c) approval by the Credentials Committee of the qualifications of a full-time lecturer at the faculty of law of a university in British Columbia.
- (3) For the purposes of this rule, a common law faculty of law is approved if it has been approved by the Federation of Law Societies of Canada unless the Benchers adopt a resolution declaring that it is not or has ceased to be an approved faculty of law.
- (4) An official transcript of the applicant's grades at each approved faculty of law at which the applicant studied is proof of academic qualification under subrule (2) (a).
- (5) The Credentials Committee may approve academic qualifications under subrule (2) (c) if the applicant
- (a) has been a full-time lecturer at a common law faculty of law in a Canadian university for at least 5 of the last 8 years, and
  - (b) has been found by the Credentials Committee to have an adequate knowledge of the common law.

### Re-enrolment

- 2-55** (1) This rule applies to a person
- (a) whose application for enrolment has been rejected because he or she has not satisfied a panel that he or she is of good character and repute and fit to become a barrister and solicitor of the Supreme Court,
  - (b) whose enrolment has been set aside by a panel under section 38 (6) (d) [*Discipline hearings*], or
  - (c) who has failed to complete the training course satisfactorily.
- (2) A person referred to in subrule (1) (a) or (b) may not apply for enrolment until the earlier of
- (a) the date set by a panel acting under subrule (1) (a) or (b), or
  - (b) 2 years after the date of the event referred to in subrule (1) (a) or (b).
- (3) A person referred to in subrule (1) (c) may not apply for enrolment for 1 year after the later of
- (a) the date on which the Executive Director issued the transcript of failed standing, or
  - (b) the failed standing is confirmed under Rule 2-74 (7) (a) [*Review by Credentials Committee*].

### Consideration of application for enrolment

- 2-56** (1) The Executive Director must consider an application for enrolment by a person meeting the academic qualifications established under Rule 2-54 [*Enrolment in the admission program*], and may conduct or authorize any person to conduct an investigation concerning the application.

- (d) a professional liability insurance application or exemption form;
  - (e) proof of academic qualification
    - (i) as required of applicants for enrolment under Rule 2-54 (2) [*Enrolment in the admission program*], or;
    - (ii) for a member of the Barreau, proof that he or she has earned
      - (A) a bachelor's degree in civil law in Canada, or
      - (B) a foreign degree and a certificate of equivalency from the Barreau;
  - (f) the following fees:
    - (i) the application fee and call and admission fees specified in Schedule 1;
    - (ii) the prorated practice fee specified in Schedule 2;
    - (iii) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from professional liability insurance*];
  - (g) any other information and documents required by the Act or these rules that are requested by the Credentials Committee or the Benchers.
- (2) An applicant under this rule must not be called and admitted unless the Executive Director is satisfied that the lawyer is not prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*].
- (3) Unless Rule 2-81 [*Transfer under National Mobility Agreement and Territorial Mobility Agreement*] applies, an applicant under this rule must pass an examination on jurisdiction-specific substantive law, practice and procedure set by the Executive Director.
- (4) An applicant who does not satisfy the Executive Director that he or she has an adequate knowledge of the English language must satisfactorily complete the training required by the Credentials Committee.
- (5) An applicant who is required to write an examination under this rule or Rule 2-89 [*Returning to practice after an absence*] must pass the required examination within 12 months after the Executive Director's decision to permit the applicant to write the examination.
- (6) At least 30 days before writing the first examination, an applicant who is required to write an examination under this rule or Rule 2-89 [*Returning to practice after an absence*] must pay the fee specified in Schedule 1 for the examination.
- (7) An applicant who fails the transfer or qualification examination
- (a) is entitled to a formal re-read of the examination on application to the Executive Director in writing within 30 days of notification of his or her failure,
  - (b) may re-write the examination
    - (i) at any time, provided he or she has not failed the examination before, or
    - (ii) after a period of one year from the date of the failure if he or she has previously failed the examination, or

- (c) may be permitted to write the examination for a third or subsequent time at any time despite paragraph (b) (ii) on application to the Credentials Committee in writing stating
  - (i) compassionate grounds, supported by medical or other evidence, or
  - (ii) other grounds based on the applicant's past performance.

### **In-house counsel**

- 2-80** (1) An applicant under Rule 2-79 [*Transfer from another Canadian jurisdiction*] may apply to the Credentials Committee for call and admission as in-house counsel.
- (2) On an application under this rule, the Credentials Committee may exempt an applicant from the requirements to write and pass the transfer examination or the qualification examination or complete the requirement under Rule 2-81 (3) [*Transfer under National Mobility Agreement and Territorial Mobility Agreement*].
- (3) A lawyer who is called and admitted as in-house counsel must practise law in British Columbia only on behalf of the lawyer's employer or one of its subsidiaries or affiliates.
- (4) On application of a lawyer called and admitted as in-house counsel, the Credentials Committee may relieve the lawyer of the restriction under subrule (3), on the lawyer
- (a) writing and passing the required examination under Rule 2-79 [*Transfer from another Canadian jurisdiction*], or
  - (b) completing the requirements under Rule 2-81 (3) [*Transfer under National Mobility Agreement and Territorial Mobility Agreement*], if the lawyer
    - (i) has practised law full-time in British Columbia for 2 years, or the equivalent in part-time practice, immediately preceding the application,
    - (ii) is entitled to practise law in the jurisdiction of a governing body of which the applicant is a member, or
    - (iii) was, when called and admitted in British Columbia, entitled to practise law in the jurisdiction of a governing body of which the applicant was a member.

### **Transfer under National Mobility Agreement and Territorial Mobility Agreement**

- 2-81** (1) This rule applies to an applicant for transfer from another Canadian jurisdiction, provided that the applicant is entitled to practise law in the jurisdiction of a governing body of which the applicant is a member.
- (2) An applicant under this rule must fulfill all of the requirements in Rule 2-79 [*Transfer from another Canadian jurisdiction*] for call and admission on transfer from another Canadian jurisdiction, except that he or she need not pass any transfer examination.



- (4) Despite subrule (3), the Executive Director may refer a complaint to the chair of the Discipline Committee if the complaint concerns only allegations that the lawyer has done one or more of the following:
- (a) breached a rule;
  - (b) breached an undertaking given to the Society;
  - (c) failed to respond to a communication from the Society;
  - (d) breached an order made under the Act or these rules.

### **Notifying the parties**

- 3-9** (1) When a decision has been made under Rule 3-8 [*Action after investigation*], the Executive Director must notify the complainant and the lawyer in writing of the disposition.
- (2) When the Executive Director takes no further action on a complaint under Rule 3-8 (1) [*Action after investigation*], notice to the complainant under subrule (1) must include
- (a) the reason for the decision, and
  - (b) instructions on how to apply for a review of the decision under Rule 3-14 [*Review by Complainants' Review Committee*].

### **Extraordinary action to protect public**

- 3-10** (1) An order may be made under this rule with respect to a lawyer or articled student who is
- (a) the subject of an investigation or intended investigation under Rule 3-5 [*Investigation of complaints*], and
  - (b) not the subject of a citation in connection with the matter under investigation or intended to be under investigation.
- (2) If they are satisfied, on reasonable grounds, that extraordinary action is necessary to protect the public, 3 or more Benchers may
- (a) impose conditions or limitations on the practice of a lawyer or on the enrolment of an articled student, or
  - (b) suspend a lawyer or the enrolment of an articled student.
- (3) An order made under subrule (2) or varied under Rule 3-12 [*Procedure*] is effective until the first of
- (a) final disposition of any citation authorized under Part 4 [*Discipline*] arising from the investigation, or
  - (b) rescission, variation or further variation under Rule 3-12.
- (4) Subject to an order under subrule (6), when a condition or limitation is imposed under this rule on the practice of a lawyer or the enrolment of an articled student, the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation.

- (5) The Benchers who make an order under subrule (2) (a) must consider the extent to which disclosure of the existence and content of the order should be made public.
- (6) Where, in the judgment of the Benchers who made an order under subrule (2) (a), there are extraordinary circumstances that outweigh the public interest in the disclosure of the order, those Benchers may order
  - (a) that the Executive Director not disclose all or part of the order, or
  - (b) placing limitations on the content, means or timing of disclosure.
- (7) An order made under subrule (6) does not apply to disclosure of information for the purposes of
  - (a) enforcement of the order,
  - (b) investigation and consideration of a complaint under this part or Part 4 [*Discipline*] or a proceeding under Part 5 [*Hearings and appeals*], or
  - (c) obtaining and executing an order under Part 6 [*Custodianships*].
- (8) The Benchers who make an order under subrule (6) must give written reasons for their decision.
- (9) An order under subrule (6) may be made by a majority of the Benchers who made the order under subrule (2) (a).
- (10) If the Executive Director discloses the existence of a condition or limitation under subrule (2) (a) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.
- (11) Subrule (10) does not apply to a decision of a hearing panel or a review board.

### **Medical examination**

- 3-11** (1) This rule applies to a lawyer or articled student who is the subject of
- (a) an investigation or intended investigation under Rule 3-5 [*Investigation of complaints*], or
  - (b) a citation under Part 4 [*Discipline*].
- (2) If they are of the opinion, on reasonable grounds, that the order is likely necessary to protect the public, 3 or more Benchers may make an order requiring a lawyer or articled student to
- (a) submit to an examination by a medical practitioner specified by those Benchers, and
  - (b) instruct the medical practitioner to report to the Executive Director on the ability of the lawyer to practise law or, in the case of an articled student, the ability of the student to complete his or her articles.

- (3) The Executive Director may deliver a copy of the report of a medical practitioner under this rule to the Discipline Committee or the Practice Standards Committee.
- (4) The report of a medical practitioner under this rule
  - (a) may be used for any purpose consistent with the Act and these rules, and
  - (b) is admissible in any hearing or proceeding under the Act and these rules.

**Procedure**

- 3-12** (1) The Benchers referred to in Rules 3-10 to 3-12 must not include a member of the Discipline Committee.
- (2) Before Benchers take action under Rule 3-10 [*Extraordinary action to protect public*] or 3-11 [*Medical examination*], there must be a proceeding at which 3 or more Benchers and discipline counsel are present.
- (3) The proceeding referred to in subrule (2)
  - (a) must be initiated by one of the following:
    - (i) the Discipline Committee;
    - (ii) the Practice Standards Committee;
    - (iii) the Executive Director, and
  - (b) may take place without notice to the lawyer or articled student if the majority of Benchers present are satisfied, on reasonable grounds, that notice would not be in the public interest.
- (4) The lawyer or articled student and his or her counsel may be present at a proceeding under this rule.
- (5) All proceedings under this rule must be recorded by a court reporter.

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- (2) A lawyer is bound by and must comply with the terms and conditions of trust protection insurance maintained under subrule (1).

### **Annual insurance fee**

- 3-40** (1) The insurance fee to be paid under section 23 (1) (c) [*Annual fees and practising certificate*] is calculated as follows:
- (a) the appropriate base assessment as specified in Schedule 1; plus
  - (b) any surcharge for which the lawyer is liable under Rule 3-44 [*Deductible, surcharge and reimbursement*]; minus
  - (c) any credit to which the lawyer is entitled under Rule 3-42 [*Insurance fee credit*].
- (2) If a lawyer undertakes, in a form approved by the Executive Committee, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time insurance fee specified in Schedule 1.
  - (3) Subject to subrule (6), a lawyer is not eligible to pay the part-time insurance fee under subrule (2) for 5 years in practice after the Society pays an indemnity claim in respect of the lawyer.
  - (4) For a lawyer who does not give the undertaking referred to in subrule (2), the appropriate base assessment is the full-time insurance fee specified in Schedule 1.
  - (5) For the purpose of this rule,
    - (a) the average number of hours per week that a lawyer engages in the practice of law and associated activities is calculated over successive 6 months periods, beginning on the effective date of the undertaking referred to in subrule (2), and
    - (b) “**associated activities**” includes practice management, administration and promotion and voluntary activities associated with the practice of law.
  - (6) The Executive Director may, in the Executive Director’s discretion, reduce the time that a lawyer is not eligible under subrule (3) to pay the part-time insurance fee or, in extraordinary circumstances, allow the lawyer to pay the part-time insurance fee despite subrule (3).

### **Payment of annual insurance fee by instalments**

- 3-41** (1) A lawyer must pay the insurance fee in two equal annual instalments as follows:
- (a) the first instalment on or before November 30 of the year preceding the year for which it is paid;
  - (b) the second instalment on or before June 30 of the year for which it is paid.
- (2) A lawyer who fails to pay the second instalment by the date prescribed in subrule (1) must immediately cease the practice of law in accordance with section 30 (7) [*Insurance*] and surrender to the Executive Director his or her practising certificate and any proof of professional liability insurance issued by the Society.

### **Insurance fee credit**

- 3-42** (1) The Benchers may approve an annual insurance fee credit and set the conditions that a lawyer must meet to be entitled to the credit.
- (2) When a lawyer is entitled to an annual insurance fee credit, the first instalment of the insurance fee payable by the lawyer is reduced by the amount of the credit.

### **Exemption from professional liability insurance**

- 3-43** (1) A lawyer is exempt from the requirement to maintain professional liability insurance and pay the insurance fee if the lawyer is
- (a) not engaged in the practice of law, other than pro bono legal services, anywhere in his or her capacity as a member of the Society, or
  - (b) employed by one of the following and is not engaged in the practice of law, other than pro bono legal services, except in the course of that employment:
    - (i) a government department;
    - (ii) a corporation other than a law corporation;
    - (iii) a society, trade union or a similar organization.
- (2) A lawyer is not exempt under subrule (1) (b) if the lawyer engages in the practice of law, other than pro bono legal services, in any way other than as described in those provisions.
- (3) Subrule (4) applies to a lawyer who is entitled to practise law in the jurisdiction of a governing body of which the lawyer is a member.
- (4) A lawyer may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee, if, in another Canadian jurisdiction in which the governing body allows a similar exemption for members of the Society, the lawyer
- (a) is resident or is deemed resident under the National Mobility Agreement, and
  - (b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to that required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.
- (5) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee.
- (6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Chambre that extends to the Canadian legal advisor's practice in British Columbia.

- (3) When a publication is required under subrule (1) or permitted under subrule (2), the Executive Director may also publish generally
  - (a) a summary of the circumstances of the decision, reasons and action taken,
  - (b) all or part of the written reasons for the decision, or
  - (c) in the case of a conditional admission that is accepted under Rule 4-29 [*Conditional admissions*], all or part of an agreed statement of facts.
- (4) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

### **Anonymous publication**

- 4-49** (1) Except as allowed under this rule, a publication under Rule 4-48 [*Publication of disciplinary action*] must identify the respondent.
- (2) If all allegations in the citation are dismissed by a panel, the publication must not identify the respondent unless the respondent consents in writing.
  - (3) An individual affected, other than the respondent, may apply to the panel for an order under subrule (4) before the written report on findings of fact and determination is issued or oral reasons are delivered.
  - (4) On an application under subrule (3) or on its own motion, the panel may order that publication not identify the respondent if
    - (a) the panel has imposed a disciplinary action that does not include a suspension or disbarment, and
    - (b) publication of the identity of the respondent could reasonably be expected to identify an individual, other than the respondent, and that individual would suffer serious prejudice as a result.
  - (5) If a panel orders that a respondent's identity not be disclosed under subrule (4), the panel must state in writing the specific reasons for that decision.

### **Disclosure of practice restrictions**

- 4-50** (1) When, under this part or Part 4 [*Discipline*] of the Act, a condition or limitation is imposed on the practice of a lawyer or a lawyer is suspended, the Executive Director may disclose the fact that the condition, limitation or suspension applies and the nature of the condition, limitation or suspension.
- (2) If a lawyer gives an undertaking that restricts, limits or prohibits the lawyer's practice in one or more areas of law, the Executive Director may disclose the fact that the undertaking was given and its effect on the lawyer's practice.
  - (3) If the Executive Director discloses the existence of a condition, limitation or suspension under subrule (1) or an undertaking under subrule (2) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition, limitation or suspension ceases to be in force.

- (4) Subrule (3) does not apply to a decision of Benchers, a hearing panel or a review board.

### **Disbarment**

- 4-51** When a lawyer is disbarred, the Executive Director must strike the lawyer's name from the barristers and solicitors' roll.

### **Conviction**

- 4-52** (1) In this rule, "**offence**" means
- (a) an offence that was proceeded with by way of indictment, or
  - (b) an offence in another jurisdiction that, in the opinion of the Benchers, is equivalent to an offence that may be proceeded with by way of indictment.
- (2) If the Discipline Committee is satisfied that a lawyer or former lawyer has been convicted of an offence, the Committee may refer the matter to the Benchers to consider taking action under subrule (3).
- (3) Without following the procedure provided for in the Act or these rules, the Benchers may summarily suspend or disbar a lawyer or former lawyer on proof that the lawyer or former lawyer has been convicted of an offence.

### **Notice**

- 4-53** (1) Before the Benchers proceed under Rule 4-52 [*Conviction*], the Executive Director must notify the lawyer or former lawyer in writing that
- (a) proceedings will be taken under that rule, and
  - (b) the lawyer or former lawyer may, by a specified date, make written submissions to the Benchers.
- (2) The notice referred to in subrule (1) must be served in accordance with Rule 10-1 [*Service and notice*].
- (3) In extraordinary circumstances, the Benchers may proceed without notice to the lawyer or former lawyer under subrule (1).

### **Summary procedure**

- 4-54** (1) This rule applies to summary proceedings before the Benchers under Rule 4-52 [*Conviction*].
- (2) The Benchers may, in their discretion, hear oral submissions from the lawyer or former lawyer.
- (3) Subject to the Act and these rules, the Benchers may determine practice and procedure.



- (7) When a panel imposes a condition or limitation under which a law corporation may continue to provide legal services to the public under subrule (2) (c), the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation.
- (8) If the Executive Director discloses the existence of a condition or limitation under subrule (7) by means of the Society’s website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.
- (9) Subrule (8) does not apply to a decision of Benchers, a hearing panel or a review board.

## Division 2 – Limited Liability Partnerships

### Definition

**9-12** In this division “**person applying**” means a person applying or proposing to apply on behalf of a partnership for registration as a limited liability partnership or extraprovincial limited liability partnership under Part 6 [*Limited Liability Partnerships*] of the *Partnership Act*.

### Practice through a limited liability partnership

**9-13** A lawyer or law corporation is authorized to carry on the practice of law through a limited liability partnership, provided that the lawyer or law corporation and the limited liability partnership comply with the *Partnership Act* and meet the prerequisites of this division.

### LLP name

**9-14** A limited liability partnership must not use a name contrary to the *Code of Professional Conduct*, section 4.2 [*Marketing*].

### Notice of application for registration

- 9-15** (1) Before an application to register a partnership or an extraprovincial limited liability partnership as a limited liability partnership is made on behalf of the partnership under Part 6 [*Limited Liability Partnerships*] of the *Partnership Act*, the person applying must
- (a) submit to the Executive Director a copy of the registration statement that he or she intends to file under that Act,
  - (b) pay the LLP registration fee specified in Schedule 1, and
  - (c) receive a statement of approval of LLP registration from the Executive Director.
- (2) On receipt of a submission under subrule (1), the Executive Director must issue a statement of approval of LLP registration if the Executive Director is satisfied that

- (a) the intended name complies with Rule 9-14 [*LLP name*], and
  - (b) membership in the partnership complies with subrules (3) and (5).
- (3) Each partner in an LLP must be
- (a) a member of the Society,
  - (b) a member of a recognized legal profession in another jurisdiction,
  - (c) a law corporation holding a valid permit under this part or the equivalent in the jurisdiction in which it provides legal services, or
  - (d) a non-lawyer participating in the partnership in another Canadian jurisdiction as permitted in that jurisdiction.
- (4) Despite subrule (3), an LLP that is an MDP in which a lawyer has permission to practise law under Rules 2-38 to 2-49 may include non-lawyer members as permitted by those rules.
- (5) At least one partner in an LLP must be a member of the Society or a law corporation holding a valid permit under this Part.
- (6) If the Executive Director is not satisfied of the matters referred to in subrule (2), the Executive Director must decline to issue a statement of approval.
- (7) The Executive Director must notify the person applying in writing of the Executive Director's decision under subrule (2).

### **Review of Executive Director's decision**

- 9-16** (1) If the Executive Director declines to issue a statement of approval under Rule 9-15 [*Notice of application for registration*], the person applying may apply in writing to the Ethics Committee for a review.
- (2) After considering any submissions received from the partners and from the Executive Director, the Ethics Committee must
- (a) direct the Executive Director to issue a statement of approval if it is satisfied that
    - (i) the intended name complies with Rule 9-14 [*LLP name*], and
    - (ii) Rule 9-15 (3) [*Notice of application for registration*] has been satisfied,or
  - (b) reject the application.
- (3) The Ethics Committee must notify the person applying and the Executive Director in writing of its decision under this rule.

### **Disclosure of LLP status**

- 9-17** (1) When a firm provides legal services to the public through a limited liability partnership, all advertising for the firm must indicate that the limited liability partnership provides the legal services.

**Commentary**

[1] The fiduciary relationship between a lawyer and a client forbids the lawyer or a third person from benefiting from the lawyer's use of a client's confidential information. If a lawyer engages in literary works, such as a memoir or autobiography, the lawyer is required to obtain the client's or former client's consent before disclosing confidential information.

**Lawyers' obligation to claim privilege when faced with requirement to surrender document**

**3.3-2.1** A lawyer who is required, under federal or provincial legislation, to produce a document or provide information that is or may be privileged must, unless the client waives the privilege, claim solicitor-client privilege in respect of the document.

**Commentary**

[1] A lawyer who is required by law or by order of a court to disclose a client's affairs must not disclose more information than is necessary.

**Future harm / public safety exception**

**3.3-3** A lawyer may disclose confidential information, but must not disclose more information than is required, when the lawyer believes on reasonable grounds that there is an imminent risk of death or serious bodily harm, and disclosure is necessary to prevent the death or harm.

**Commentary**

[1] Confidentiality and loyalty are fundamental to the relationship between a lawyer and a client because legal advice cannot be given and justice cannot be done unless clients have a large measure of freedom to discuss their affairs with their lawyers. However, in some very exceptional situations identified in this rule, disclosure without the client's permission might be warranted because the lawyer is satisfied that truly serious harm of the types identified is imminent and cannot otherwise be prevented. These situations will be extremely rare.

[2] The Supreme Court of Canada has considered the meaning of the words "serious bodily harm" in certain contexts, which may inform a lawyer in assessing whether disclosure of confidential information is warranted. In *Smith v. Jones*, [1999] 1 SCR 455 at paragraph 83, the Court also observed that serious psychological harm may constitute serious bodily harm if it substantially interferes with the health or well-being of the individual.

**[3]** In assessing whether disclosure of confidential information is justified, a lawyer should consider a number of factors, including:

- (a) the seriousness of the potential injury to others if the prospective harm occurs;
- (b) the likelihood that it will occur and its imminence;
- (c) the apparent absence of any other feasible way to prevent the potential injury; and
- (d) the circumstances under which the lawyer acquired the information of the client's intent or prospective course of action.

**[4]** How and when disclosure should be made under this rule will depend upon the circumstances. A lawyer who believes that disclosure may be warranted should contact the Law Society for ethical advice. When practicable and permitted, a judicial order may be sought for disclosure.

**[5]** If confidential information is disclosed under rule 3.3-3, the lawyer should prepare a written note as soon as possible, which should include:

- (a) the date and time of the communication in which the disclosure is made;
- (b) the grounds in support of the lawyer's decision to communicate the information, including the harm the lawyer intended to prevent, the identity of the person who prompted the lawyer to communicate the information as well as the identity of the person or group of persons exposed to the harm; and
- (c) the content of the communication, the method of communication used and the identity of the person to whom the communication was made.

[[5] amended 05/2019]

**3.3-4** If it is alleged that a lawyer or the lawyer's associates or employees:

- (a) have committed a criminal offence involving a client's affairs;
- (b) are civilly liable with respect to a matter involving a client's affairs;
- (c) have committed acts of professional negligence; or
- (d) have engaged in acts of professional misconduct or conduct unbecoming a lawyer,

the lawyer may disclose confidential information in order to defend against the allegations, but must not disclose more information than is required.

**3.3-5** A lawyer may disclose confidential information in order to establish or collect the lawyer's fees, but must not disclose more information than is required.

**3.3-6** A lawyer may disclose confidential information to another lawyer to secure legal or ethical advice about the lawyer's proposed conduct.