

AMENDMENT PAGES

2024: No. 3 August

Highlights

**Legal Profession Act:** A new division permits the executive director to exempt applicants, who are not lawyers, from the provisions of section 15, provided their services will promote access to justice in BC and not pose a significant risk to the public (Contents and sections 15(1), 18.1-18.4 and 81(1): pp. 1, 13, 15-16 and 51).

**Law Society Rules 2015:**\* The Benchers election rules have been updated so that electronic voting is now the default process, the voting period is a minimum of one week, and the Executive Director may approve a lawyer's request to change voting districts (Rules 1-20(1) and (2), 1-25(5) and (6), 1-27, 1-27.1, 1-29 and 1-31 to 1-33: pp. 28 and 30-33); the Rules have been updated to reflect new terminology for Supreme Court masters, now known as associate judges (Rules 2-87(1) and (4) to (7), 3-36(1) and 3-37(1): pp. 87 and 119); members of administrative tribunals may qualify to act as family law mediators or parenting coordinators (Rules 3-36(1) and 3-37(1): p. 119).

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

**Code of Professional Conduct for British Columbia:** A new process is established for the remote execution of affidavits (Appendix A, rule 1 and commentary [12]: pp. 95 and 97-99); a minor amendment clarifies that the rule on single-party communications with a tribunal does not apply to mediations (rule 5.1-2.3 commentary [3]: p. 64.3).

**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.

This amendment package updates the *Member's Manual* to **August 23, 2024**. The previous amendment package was 2024: No. 2 March.

To check that your copy of the Manual is up to date, consult the contents checklist on the next page. To print replacement pages, download the PDFs at [Member's Manual](#) on the Law Society website.

The Law Society Rules and *Code of Professional Conduct for British Columbia* can be accessed in the [For Lawyers](#) section of the Law Society website at [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca). Refer to the website for the most current versions of the Rules and Code.



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### Division 1 – Practice of Law

#### Members

- 14 (1) The benchers may make rules to do any of the following:
- (a) establish categories of members;
  - (b) determine the rights and privileges associated with categories of members;
  - (c) set the annual fee for categories of members other than practising lawyers;
  - (d) determine whether or not a person is a member in good standing of the society.
- (2) A member in good standing of the society is an officer of all courts of British Columbia.
- (3) A practising lawyer is entitled to use the style and title of “Notary Public in and for the Province of British Columbia”, and has and may exercise all the powers, rights, duties and privileges of the office of notary public.

[2019-40-16]

#### Authority to practise law

- 15 (1) No person, other than a practising lawyer, is permitted to engage in the practice of law, except
- (a) a person who is an individual party to a proceeding acting without counsel solely on his or her own behalf,
  - (b) as permitted by the *Court Agent Act*,
  - (c) an articulated student, to the extent permitted by the benchers,
  - (d) an individual or articulated student referred to in section 12 of the *Legal Services Society Act*, to the extent permitted under that Act,
  - (e) a lawyer of another jurisdiction permitted to practise law in British Columbia under section 16 (2) (a), to the extent permitted under that section,
  - (f) a practitioner of foreign law holding a permit under section 17 (1) (a), to the extent permitted under that section,
  - (g) a lawyer who is not a practising lawyer to the extent permitted under the rules, and
  - (h) a person who is exempt from this provision under Division 1.1.
- (2) A person who is employed by a practising lawyer, a law firm, a law corporation or the government and who acts under the supervision of a practising lawyer does not contravene subsection (1).
- (3) A person must not do any act described in paragraphs (a) to (g) of the definition of “practice of law” in section 1 (1), even though the act is not performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed, if

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- (a) the person is a member or former member of the society who is suspended or has been disbarred, or who, as a result of disciplinary proceedings, has resigned from membership in the society or otherwise ceased to be a member as a result of disciplinary proceedings, or
  - (b) the person is suspended or prohibited for disciplinary reasons from practising law in another jurisdiction.
- (4) A person must not falsely represent himself, herself or any other person as being
- (a) a lawyer,
  - (b) an articled student, a student-at-law or a law clerk, or
  - (c) a person referred to in subsection (1) (e) or (f).
- (5) Except as permitted in subsection (1), a person must not commence, prosecute or defend a proceeding in any court.
- (6) The benchers may make rules prohibiting lawyers from facilitating or participating in the practice of law by persons who are not authorized to practise law.

[2002-30-29; 2012-16-8; 2024-26-311]

### Interprovincial practice

- 16** (1) In this section, “**governing body**” means the governing body of the legal profession in another province or a territory of Canada.
- (2) The benchers may permit qualified lawyers of other Canadian jurisdictions to practise law in British Columbia and may promote cooperation with the governing bodies of the legal profession in other Canadian jurisdictions by doing one or more of the following:
- (a) permitting a lawyer or class of lawyers of another province or a territory of Canada to practise law in British Columbia;
  - (b) attaching conditions or limitations to a permission granted under paragraph (a);
  - (c) submitting disputes concerning the interjurisdictional practice of law to an independent adjudicator under an arbitration program established by agreement with one or more governing bodies;
  - (d) participating with one or more governing bodies in establishing and operating a fund to compensate members of the public for misappropriation or wrongful conversion by lawyers practising outside their home jurisdictions;
  - (e) making rules
    - (i) establishing conditions under which permission may be granted under paragraph (a), including payment of a fee,
    - (ii) respecting the enforcement of a fine imposed by a governing body, and

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

### Practitioners of foreign law

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

[2012-16-9]

### Association with non-resident lawyers or law firms

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

[2012-16-10]

## Division 1.1 — Exemptions

### Definitions for this Division

- 18.1 In this Division:

“**application**” means an application under section 18.2 (1);

“**exempt person**” means a person exempt under section 18.3 (2) from section 15 (1).

[2024-26-312]

### Applications for exemptions

- 18.2 (1) A person may apply for an exemption from section 15 (1) by submitting to the executive director an application in the form established by the executive director.
- (2) An application must
- (a) describe the legal services the applicant seeks to provide,
  - (b) describe the education, training and credentials of the applicant as they relate to the legal services described under paragraph (a),
  - (c) specify to whom the applicant expects to provide the legal services described under paragraph (a),
  - (d) describe how the provision by the applicant of the legal services described under paragraph (a) would facilitate access to legal services in British Columbia,

- (e) describe any risks to the public associated with the provision by the applicant of the legal services described under paragraph (a), and
- (f) include any additional information specified in the rules.

[2024-26-312]

**Executive director may grant exemptions**

- 18.3** (1) On receiving an application, the executive director may
- (a) grant the application, if satisfied that the provision by the applicant of the legal services described in the application
    - (i) will facilitate access to legal services in British Columbia, and
    - (ii) will not pose a significant risk to the public,
  - (b) approve the application subject to limits or conditions, with written reasons, or
  - (c) deny the application, with written reasons.
- (2) An exempt person must comply with the following:
- (a) the rules made under section 18.4;
  - (b) any limits and conditions imposed under subsection (1) (b) of this section.
- (3) The executive director may revoke an exemption granted under this section if
- (a) the exempt person fails to comply with the rules or with a limit or condition imposed under subsection (1) (b), or
  - (b) the executive director considers the continued provision of legal services by the exempt person to pose a significant risk to the public or to the clients of the exempt person.

[2024-26-312]

**Rules respecting exemptions**

- 18.4** The benchers may make rules
- (a) specifying additional information to be included in an application,
  - (b) establishing a process for the review or reconsideration of a decision under section 18.3 (1) (b) or (c) or (4),
  - (c) establishing a code of conduct for exempt persons,
  - (d) establishing measures to ensure the competence of exempt persons,
  - (e) respecting the annual fee to be paid by exempt persons,
  - (f) respecting the professional liability indemnification to be maintained by exempt persons, and
  - (g) establishing a register of exempt persons.

[2024-26-312]

## Division 2 – Admission and Reinstatement

### Applications for enrolment, call and admission, or reinstatement

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

[2016-5-41]

### Articled students

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

[2016-5-41]

### Admission, reinstatement and requalification

- 21** (1) The benchers may make rules to do any of the following:
- (a) establish a credentials committee and delegate any or all authority and responsibility under this Part, other than rule-making authority, to that committee;

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- (b) establish requirements, including academic requirements, and procedures for call to the Bar of British Columbia and admission as a solicitor of the Supreme Court;
  - (c) set a fee for call and admission;
  - (d) establish requirements and procedures for the reinstatement of former members of the society;
  - (e) set a fee for reinstatement;
  - (f) establish conditions under which a member in good standing of the society who is not permitted to practise law, may apply to become a practising lawyer.
- (2) The fee set under subsection (1) (c) must not exceed 1/6 of the practice fee set under section 23 (1) (a).
- (3) The benchers may impose conditions or limitations on the practice of a lawyer who, for a cumulative period of 3 years of the 5 years preceding the imposition of the conditions, has not engaged in the practice of law.

[2012-16-11]

## PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

### Definitions

**80** In this Part:

“**limited liability partnership**” means a partnership registered as a limited liability partnership under Part 6 of the *Partnership Act*;

“**permit**” means a permit issued under section 82 and includes a permit and a renewal of a permit issued to a law corporation or personal law corporation under the *Legal Profession Act*, R.S.B.C. 1996, c. 255.

[2004-38-18]

### Authorized and prohibited activities of law corporations

- 81** (1) A law corporation is authorized to carry on the business of providing legal services to the public through one or more persons each of whom is
- (a) a practising lawyer, or
  - (b) subject to this Act and the rules, any of the following persons who are employees of the law corporation:
    - (i) a person referred to in section 15 (1) (c), (e) or (f) or (2);
    - (ii) an exempt person under Division 1.1 of Part 2.
- (2) A partnership consisting of law corporations or of one or more lawyers and one or more law corporations is authorized to carry on the business of providing legal services to the public through one or more persons described in subsection (1).
- (3) A corporation that has the words “law corporation” as part of its name must not carry on any business unless it holds a valid permit.
- (4) A law corporation must not carry on any activities, other than the provision of legal services or services directly associated with the provision of legal services.
- (5) Subsection (4) does not prohibit a law corporation from investing its funds in real estate, personal property, mortgages, stocks, bonds, insurance or any other type of investment.
- (6) A voting trust agreement, proxy or any other type of agreement vesting in a person who is not a practising lawyer or a law corporation the authority to exercise the voting rights attached to shares in a law corporation is prohibited.

[2024-26-313]

### Law corporation permit

- 82** (1) The executive director must issue a permit to a corporation that is a company, as defined in the *Business Corporations Act*, and that is in good standing under that Act or that is an extraprovincial company as defined in that Act, if the executive director is satisfied that
- (a) the corporation has complied with the rules made under this Part,
  - (b) the name of the corporation includes the words “law corporation,”

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- (c) each voting share is legally and beneficially owned by a practising lawyer or by a law corporation,
  - (d) each non-voting share is legally and beneficially owned by
    - (i) a practising lawyer,
    - (ii) a law corporation that is a voting shareholder,
    - (iii) a person who is a relative of or resides with a practising lawyer who is a shareholder or who is a shareholder in a law corporation that is a shareholder,
    - (iv) a corporation, all the shares of which are beneficially owned by one or more of the individuals referred to in subparagraph (i) or (iii), or
    - (v) a trust, all the beneficiaries of which are individuals referred to in subparagraph (i) or (iii),
  - (e) all of the directors and the president of the corporation are practising lawyers, and
  - (f) all of the persons who will be practising law on behalf of the corporation are persons described in section 81 (1).
- (2) The executive director may refuse to issue a permit under subsection (1) if
- (a) the law corporation has previously had its permit revoked, or
  - (b) a shareholder of the law corporation was a shareholder of a law corporation or personal law corporation that previously had its permit revoked.
- (3) The executive director must inform the Registrar of Companies of the revocation of any permit under this Part or the rules.
- (4) Unless the benchers otherwise direct and subject to rules made under this Part, if a law corporation fails to pay the renewal fee set by the benchers by the date it is due, its permit ceases to be valid and the corporation must
- (a) immediately surrender its permit to the executive director, and
  - (b) cease providing legal services to the public.

[2003-70-210]

### Law corporation rules

- 83** (1) The benchers may make rules as follows:
- (a) establishing procedures for the issue and renewal of permits;
  - (b) establishing procedures for revocation of permits, including
    - (i) the adaptation of rules respecting practice and procedure in hearings before a panel, and
    - (ii) rules to authorize a panel to consider action against a law corporation as part of a hearing on a citation issued against a respondent who is or was a shareholder, director, officer or employee of a law corporation;

### **Procedure at Bencher meeting**

- 1-16 (1) Subject to subrule (4), members of the Society in good standing and articulated students are entitled to be present at Bencher meetings.
- (2) The President may allow a member of the Society in good standing or an articulated student to speak at the meeting.
- (3) The President may allow a person not referred to in subrule (1) to be present at all or part of a Bencher meeting, with or without the right to speak at the meeting.
- (4) The President may order that only Benchers, or Benchers and specified employees of the Society, be present during the discussion of a confidential matter at a Bencher meeting.
- (5) In the absence of the President, or at the request of the President, the First Vice-President or Second Vice-President must preside at a Bencher meeting and assume the duties of the President under this rule.
- (6) In the absence of the President, First Vice-President and Second Vice-President, the Benchers present must choose one of their number to preside at the meeting and assume the duties of the President under this rule.
- (7) If a quorum is not present 30 minutes after the time appointed for a Bencher meeting, the meeting may, as determined by the President, stand adjourned to a date, time and place set by the President.
- (8) The Benchers must not conduct business other than the election of a presiding Bencher and the adjournment of the meeting unless a quorum is present.
- (9) A dispute concerning the procedure to be followed at a Bencher meeting that is not provided for in the Act or these rules is to be resolved in accordance with the most recent edition of *Robert's Rules of Order Newly Revised*.
- (10) When a decision of the President is appealed, the President must call a vote of all Benchers present, without debate, on whether they are in favour of or opposed to sustaining the President's decision.
- (11) A Bencher present at a Bencher meeting is entitled to one vote.
- (12) Voting at a Bencher meeting must be by show of hands, unless the President orders a secret ballot.
- (13) A Bencher is not entitled to vote by proxy.
- (14) A Bencher meeting may be adjourned from time to time and from place to place.
- (15) The Benchers may conduct a meeting by joining together 2 or more locations by telephone or by any other means of communication that allows all persons participating in and entitled to vote at the meeting to hear each other, and a Bencher participating in the meeting in that way is, for the purpose of this rule and the calculation of a quorum, present at the meeting.

### **Quorum for committee meetings**

- 1-17** (1) At least half the members of a committee constitutes a quorum.
- (2) As an exception to subrule (1), a quorum of the Executive Committee is 4.

### **Procedure for committee meetings**

- 1-18** (1) A member of a committee may not vote by proxy.
- (2) A meeting of a committee may be conducted by joining together 2 or more locations by telephone or by any other means of communication that allows all persons participating in and entitled to vote at the meeting to hear each other, and a member of the committee participating in the meeting in that way is present at the meeting for all purposes, including the calculation of a quorum.
- (3) A committee may take any action consistent with the Act and these rules by resolution of a majority of the members of the committee present at a meeting, if the members constitute a quorum.

## **Elections**

### **Second Vice-President-elect**

- 1-19** (1) The election of a Second Vice-President-elect is held at the annual general meeting each year.
- (2) A nomination for election as Second Vice-President-elect is valid only if
- (a) the nominator is a member of the Society in good standing,
  - (b) the candidate is a Bencher and a member of the Society in good standing, and
  - (c) the candidate consents to the nomination.
- (3) All members of the Society in good standing in attendance are entitled to vote for Second Vice-President-elect.
- (4) A vote for Second Vice-President-elect must be conducted by secret ballot.
- (5) If only one candidate is nominated, the President must declare that candidate the Second Vice-President elect.

### **Bencher elections**

- 1-20** (1) Elections for the office of Bencher in all districts must be held each odd-numbered year.
- (2) An election in the district represented by the President must be held each even-numbered year.
- (3) The Bencher elected under subrule (2) holds office for one year starting on the following January 1.

### **Regional election of Benchers**

- 1-21** (1) Benchers must be elected from electoral districts as follows:
- (a) 13 Benchers from District No. 1, the County of Vancouver;
  - (b) 2 Benchers from District No. 2, the County of Victoria;
  - (c) one Bencher from District No. 3, the County of Nanaimo;
  - (d) 3 Benchers from District No. 4, the County of Westminister;
  - (e) one Bencher from District No. 5, the County of Kootenay;
  - (f) one Bencher from District No. 6, Okanagan, being those parts of the County of Yale
    - (i) east of 120 degrees west longitude and south of the northernmost point of Okanagan Lake, or
    - (ii) west of 120 degrees west longitude and south of 50 degrees north latitude;
  - (g) 2 Benchers from District No. 7, the County of Cariboo;
  - (h) one Bencher from District No. 8, the County of Prince Rupert;
  - (i) one Bencher from District No. 9, Kamloops, being that part of the County of Yale not included in District No. 6, Okanagan.
- (2) The number of Benchers to be elected from each district must be reduced by one for each Bencher from that district who holds office as First Vice-President, Second Vice-President or Second Vice-President-elect.

### **Qualifications of candidate**

- 1-22** (1) To be eligible to be a candidate for election as a Bencher, a member of the Society must
- (a) be in good standing at the time of nomination,
  - (b) [rescinded]
  - (c) if a practising lawyer, maintain the chief place of the lawyer's practice or employment in the district in which the lawyer seeks to be a candidate, and
  - (d) if a retired or non-practising member, reside in the district in which the member seeks to be a candidate.
- (2) An incumbent Bencher who qualifies under subrule (1) and is not disqualified under Rule 1-2 [*Term limits*] is eligible to be nominated as a candidate for re-election as a Bencher.

## **Nomination**

- 1-23** The nomination of a candidate for election as a Bencher is valid only if
- (a) it is in writing, signed by at least 2 members of the Society in good standing who are eligible to vote in the district in which the nominee seeks to be a candidate,
  - (b) the nominee consents in writing to the nomination, and
  - (c) the nomination and consent are received by the Executive Director on or before October 15 before the election is to take place.

## **Acclamation**

- 1-24** If the number of candidates nominated does not exceed the number to be elected in a district, the Executive Director must declare that those nominated are elected as Benchers for that district.

## **Eligibility and entitlement to vote**

- 1-25** (1) A member of the Society in good standing is eligible to vote in a Bencher election.
- (1.1) A member of the Society must not cast a vote or attempt to cast a vote that the member is not entitled to cast.
  - (1.2) A member of the Society must not enable or assist a person
    - (a) to vote in the place of the member, or
    - (b) to cast a vote that the person is not entitled to cast.
  - (2) [rescinded]
  - (3) A non-resident member may vote
    - (a) in the district in which the member was last eligible to vote as a resident member, or
    - (b) if paragraph (a) does not apply, in District No. 1.
  - (4) A resident member of the Society may vote only in the district in which the member maintains
    - (a) the chief place of the member's practice or employment, in the case of a practising lawyer, or
    - (b) the member's residence, in the case of a retired or non-practising member.
  - (5) The Executive Director may, on an application by or with the consent of a member, place the member on the voter list for a District other than the one required by this rule where satisfied that the member has a significantly greater connection to the District in which the member wishes to vote.
  - (6) A member whose application is rejected under subrule (5) may seek a review of the decision by the Executive Committee, whose decision is final.

### **Voter list**

- 1-26** (1) [rescinded]
- (2) In this Division, a “**voter list**” is a list of voters for an electoral district containing, in alphabetical order, the names of all members of the Society eligible to vote in the electoral district.
- (2.1) For the purpose of this rule, an election is in progress from the day that nominations are opened until the last day that members are permitted to vote.
- (3) When an election is in progress, a member of the Society may request a voter list from the Executive Director.
- (3.1) The Executive Director may comply with a request for a voter list by providing the list in electronic form.
- (4) A member of the Society who has reason to believe that a voter list improperly includes or omits a name, or contains an error respecting the district in which a member is entitled to vote may, when an election is in progress, report the error to the Executive Director.
- (5) The Executive Director must promptly investigate a report made under subrule (4) and correct any error that exists.
- (6) A member of the Society who is not satisfied with the action taken by the Executive Director under subrule (5) may apply in writing to the Executive Committee for a review.
- (7) The Executive Committee must promptly review an application made under subrule (6), and must
- (a) confirm the decision of the Executive Director, or
  - (b) order the Executive Director to correct the voter list as the Committee directs.

### **Voting period and procedure**

- 1-27** (0.1) Bencher elections are held by electronic means.
- (0.2) Despite subrule (0.1), the Executive Committee may, where circumstances require, authorize the Executive Director to conduct a Bencher election by means other than electronic means.
- (0.3) For each election, the Executive Director must establish a voting period of no less than one week closing no later than the close of business on November 14 of the year the election is held.
- (0.4) Votes received for a Bencher election held must be counted and results published on November 15 of the year the election is held.

(0.5) The Executive Director

- (a) must oversee the election process and procedure,
  - (b) may retain a contractor to assist in any part of an election,
  - (c) must ensure that votes cast remain secret,
  - (d) must ensure that the voting process enables the voter to clearly and unambiguously record the names of the candidate or candidates voted for, and
  - (e) must take reasonable security measures to ensure that only members entitled to vote can do so.
- (1) On or before the commencement of the voting period, the Executive Director must make available to each member of the Society entitled to vote in an election
- (a) a ballot containing, in the order determined under Rule 1-28 [*Order of names on ballot*], the names of all candidates in the district in which the member is entitled to vote and stating the number of Benchers to be elected in that district,
  - (b) instructions on submitting the ballot and returning it to the Society in a way that will preserve the secrecy of the member's vote, and
  - (c) – (e) [rescinded]
  - (f) biographical information received from the candidates.
- (2) An election is not invalidated by
- (a) the accidental omission to make the material referred to in subrule (1) available to any member of the Society or the non-receipt of the material, or
  - (b) an error in the delivery of a ballot that results in a member voting in an incorrect district.
- (3) For a ballot to be valid, the voter must
- (a) vote in accordance with the instructions provided with the ballot,
  - (b) not vote for more candidates than the number of Benchers to be elected in the district, and
  - (c) – (e) [rescinded]
  - (f) submit the ballot before the close of the voting period and by the means provided to the Executive Director.
- (4) [rescinded]
- (5) The Executive Director may issue a new ballot to a member entitled to vote who informs the Executive Director in writing that the original ballot sent to the member relates to a district other than the one in which the member is entitled to vote, provided the member has not already submitted the ballot initially received.

1-27.1 [rescinded 07/2024]

**Order of names on ballot**

- 1-28** (1) The order of names on a ballot under this division must be determined by lot in accordance with this rule.
- (2) The Executive Director must notify all candidates as to the date, time and place when the determination is to be made.
- (3) The procedure for the determination is as follows:
- (a) the name of each candidate is written on a separate piece of paper, as similar as possible to all other pieces prepared for the determination;
  - (b) the pieces of paper are folded in a uniform manner in such a way that the names of the candidates are not visible;
  - (c) the pieces of paper are placed in a container that is sufficiently large to allow them to be shaken for the purpose of making their distribution random, and the container is shaken for this purpose;
  - (d) the Executive Director withdraws the papers one at a time;
  - (e) the name on the first paper drawn is the first name on the ballot, the name on the second paper is the second, and so on until the placing of all candidates' names on the ballot has been determined.

**1-29** [rescinded 07/2024]

**Alternative vote ballot**

- 1-30** (1) In a district in which only one Bencher is to be elected and there are more than 2 candidates, voting must be by an alternative vote ballot on which voters may indicate their preference for candidates.
- (2) When an alternative vote ballot is conducted under subrule (1), the ballots in that election must be counted according to the following procedure:
- (a) on the first count, each voter's first preference is recorded in favour of the candidate preferred;
  - (b) on the second count, the candidate who received the least votes on the first count is eliminated and that candidate's first count ballots are distributed among the remaining candidates according to the second preferences indicated;
  - (c) on each subsequent count, the candidate who received the least votes in the preceding count is eliminated, and that candidate's ballots are distributed among the remaining candidates according to the next preferences indicated;
  - (d) the first candidate to receive a majority of votes on any count is elected.

**1-31** [rescinded 07/2024]

**1-32** [rescinded 07/2024]

**1-33** [rescinded 07/2024]

**Declaration of candidates elected**

- 1-34** (1) The Executive Director must declare elected the candidates who receive the greatest number of votes, up to the number of Benchers to be elected in each district.
- (2) If, as a result of a tie vote, the Executive Director cannot determine all of the candidates elected in a district, the Executive Director must report to the Executive Committee that the positions affected have not been filled by the election, and Rule 1-38 [*Bencher by-election*] or 1-39 [*Appointment of Bencher to represent a district*] applies.

- (4) With the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be 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 associate judge*].
- (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 the prescribed form, 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 by a panel that is not satisfied that the person 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 of failed standing]*.

### 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.
- (2) On an application for enrolment as an articled student, the Executive Director may

## Former judge or associate judge

### Former judge or associate judge

- 2-87** (1) Subject to subrules (2) and (3), the practice of law by a lawyer who was a judge or an associate judge is restricted as follows:
- (a) a former judge of a federally-appointed court must not appear as counsel in any court in British Columbia without first obtaining the approval of the Credentials Committee;
  - (b) a former judge of a provincial or territorial court in Canada must not appear as counsel in the Provincial Court of British Columbia for 3 years after ceasing to be a judge;
  - (c) a former associate judge of the Supreme Court of British Columbia must not appear as counsel before an associate judge, a registrar, a district registrar or a deputy district registrar of the Supreme Court of British Columbia for 3 years after ceasing to be an associate judge.
- (2) The Credentials Committee may impose conditions or limitations respecting the practice of a former judge when giving approval for that lawyer to appear as counsel under subrule (1) (a).
- (3) The Credentials Committee may at any time relieve a lawyer of a practice restriction referred to in subrule (1) and may impose conditions or limitations respecting the practice of the lawyer concerned.
- (4) A lawyer who has served as a judge or associate judge in any court must not use any judicial title or otherwise allude to the lawyer's former status in any marketing activity.
- (5) Subrule (4) does not preclude a lawyer who has served as a judge or associate judge from referring to the lawyer's former status in
- (a) a public announcement that the lawyer has resumed the practice of law or joined a law firm,
  - (b) a public speaking engagement or publication that does not promote the lawyer's practice or firm,
  - (c) seeking employment, partnership or appointment other than the promotion of the lawyer's practice or firm, or
  - (d) informal conversation or correspondence.
- (6) For the purpose of this rule, it is not the promotion of a lawyer's practice or firm to provide, on request, a curriculum vitae or other statement of experience that refers to the lawyer's former status as a judge or associate judge.
- (7) This rule applies to a lawyer who has served as an associate judge, master or the equivalent officer of a superior court in Canada as it does to a former associate judge of the Supreme Court of British Columbia.

## Returning to practice

### Definition and application

- 2-88** (1) In Rules 2-88 to 2-90, unless the context indicates otherwise, “**relevant period**” is the shortest of the following periods of time in the immediate past:
- (a) 7 years;
  - (b) the time since the lawyer’s first call and admission in any jurisdiction;
  - (c) the time since the lawyer last passed the qualification examination.
- (2) For the purpose of paragraph (b) of the definition of “relevant period” in subrule (1), a lawyer is deemed to have been called and admitted as of the date that a practising certificate was issued under Rule 2-84 (4) [*Barristers and solicitors’ roll and oath*].
- (3) Rules 2-88 to 2-90 apply to a former lawyer and an applicant.

### Returning to practice after an absence

- 2-89** (1) If, for a total of between 3 years and less than 5 years in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first completing the practice management course described in Rule 3-28 [*Practice management course*] or another course offered by the Society or by a provider approved by the Society.
- (1.1) If, for a total of 5 years or more in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first
- (a) completing the practice management course described in Rule 3-28 or another course approved by the Executive Director, and
  - (b) certifying, in the prescribed form, that the lawyer has reviewed and understands all of the materials reasonably required by the Executive Director.
- (2) Subrules (1) and (1.1) apply
- (a) despite any other rule, and
  - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.
- (3) A lawyer may apply in writing to the Credentials Committee for permission to practise law without completing a requirement set out in subrule (1) or (1.1).
- (4) On an application under subrule (3), the Credentials Committee may approve the application if, in its judgement
- (a) the lawyer has engaged in activities that have kept the lawyer current with substantive law and practice skills, or
  - (b) the public interest does not require the lawyer to complete the relevant requirements.
- (5) Before approving an application under subrule (4), the Credentials Committee may require the lawyer to enter into a written undertaking to do any of the things set out in Rule 2-90 (5) (b) [*Conditions on returning to practice*].
- (6) [rescinded]

- (c) is in compliance with Rule 3-38 (3) [*Professional development for family law neutrals*].
- (2) A lawyer who has been accredited by the Society as a family law mediator may so state in any marketing activity.
- (3) The Credentials Committee may allow a lawyer previously accredited by the Society as a family law mediator time in which to comply with any changes to the requirements under subrule (1) (b).

### **Family law arbitrators**

- 3-36** (1) A lawyer may act as a family law arbitrator only if the lawyer
- (a) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of an arbitrator in a fair and competent manner,
  - (b) has, for a total of at least 10 years, engaged in the full-time practice of law or the equivalent in part-time practice or sat as a judge, associate judge or the equivalent officer of a superior court in Canada, or member of an administrative tribunal,
  - (c) has completed a course of study in family law arbitration approved by the Credentials Committee, and
  - (d) is in compliance with Rule 3-38 (3) [*Professional development for family law neutrals*].
- (2) A lawyer who has been accredited by the Society as a family law arbitrator may so state in any marketing activity.
- (3) The Credentials Committee may allow a lawyer who has previously acted as a family law arbitrator time in which to comply with any changes to the requirements under subrule (1) (c).

### **Parenting coordinators**

- 3-37** (1) A lawyer may act as a parenting coordinator only if the lawyer
- (a) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of a parenting coordinator in a fair and competent manner,
  - (b) has, for a total of at least 10 years, engaged in the full-time practice of law or the equivalent in part-time practice or sat as a judge, associate judge or the equivalent officer of a superior court in Canada, or member of an administrative tribunal, including considerable family law experience dealing with high conflict families with children,
  - (c) has completed a course of study in parenting coordination approved by the Credentials Committee, and
  - (d) is in compliance with Rule 3-38 (3) [*Professional development for family law neutrals*].

- (2) A lawyer who has been accredited by the Society as a parenting coordinator may so state in any marketing activity.
- (3) The Credentials Committee may allow a lawyer who has previously acted as a parenting coordinator time in which to comply with any changes to the requirements under subrule (1) (c).

### **Professional development for family law neutrals**

- 3-38**
- (1) The Credentials Committee may determine the minimum number of hours of professional development that is required of a family law mediator, arbitrator or parenting coordinator in each calendar year.
  - (2) The requirements under subrule (1) may be different for each of family law mediators, arbitrators or parenting coordinators.
  - (3) In each calendar year, a family law mediator, arbitrator or parenting coordinator must
    - (a) complete the required professional development, and
    - (b) certify to the Executive Director in the prescribed form that the lawyer has completed the professional development required under this rule.
  - (4) Professional development completed under this rule may also be reported under Rule 3-29 [*Professional development*] if it meets the requirements of that rule.
  - (5) Despite subrule (3), a family law mediator, arbitrator or parenting coordinator need not complete the required professional development in a calendar year in which the lawyer has successfully completed the course of study required under Rules 3-35 to 3-37.

## **Division 5 – Indemnification**

### **Compulsory professional liability indemnification**

- 3-39**
- (1) A lawyer must maintain professional liability indemnity coverage on the terms and conditions offered by the Society through the Lawyers Indemnity Fund and pay the indemnity fee under Rule 3-40 [*Annual indemnity fee*], unless the lawyer is exempt or ineligible under Rule 3-43 [*Exemption from professional liability indemnification*].
  - (2) A lawyer is bound by and must comply with the terms and conditions of the professional liability indemnity policy maintained under subrule (1).
  - (3) As soon as practicable, the Executive Director must notify all governing bodies of any change to professional liability indemnification under this division that affects the limits of liability or scope of coverage.

### **Single-party communications with a tribunal**

**5.1-2.3** Except where authorized by law, and subject to rule 5.1-2.2, a lawyer must not communicate with a tribunal in the absence of the opposing party or their lawyer (when they are represented) concerning any matter of substance, unless the opposing party or their lawyer has been made aware of the content of the communication or has appropriate notice of the communication.

#### **Commentary**

[1] It is improper for a lawyer to attempt to influence, discuss a matter with, or make submissions to, a tribunal without the knowledge of the other party or the lawyer for the other party (when they are represented). A lawyer should be particularly diligent to avoid improper single-party communications when engaging with a tribunal by electronic means, such as email correspondence.

[2] When a tribunal invites or requests a communication from a lawyer, the lawyer should inform the other party or their lawyer. As a general rule, the other party or their lawyer should be copied on communications to the tribunal or given advance notice of the communication.

[3] This rule does not apply in the context of mediation or prohibit single-party communication with a tribunal on routine administrative or procedural matters, such as scheduling hearing dates or appearances. A lawyer should consider notifying the other party or their lawyer of administrative communications with the tribunal. Routine administrative communications should not include any submissions dealing with the substance of the matter or its merits.

[4] When considering whether single-party communication with a tribunal is authorized by law, a lawyer should review local rules, practice directives, and other relevant authorities that may regulate such a communication.

[[3] amended 06/2024]

[rule and commentary added 04/2023]

### **Duty as prosecutor**

**5.1-3** When acting as a prosecutor, a lawyer must act for the public and the administration of justice resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy and respect.

#### **Commentary**

[1] When engaged as a prosecutor, the lawyer's primary duty is not to seek to convict but to see that justice is done through a fair trial on the merits. The prosecutor exercises a public function involving much discretion and power and must act fairly and dispassionately. The prosecutor should not do anything that might prevent the accused from being represented by counsel or communicating with counsel and, to the extent required by law and accepted practice, should make timely disclosure to defence counsel or directly to an unrepresented accused of all relevant and known facts and witnesses, whether tending to show guilt or innocence.

### **Disclosure of error or omission**

**5.1-4** A lawyer who has unknowingly done or failed to do something that, if done or omitted knowingly, would have been in breach of this rule and who discovers it, must, subject to section 3.3 (Confidentiality), disclose the error or omission and do all that can reasonably be done in the circumstances to rectify it.

## Appendix A – Affidavits, Solemn Declarations and Officer Certifications

### Affidavits and solemn declarations

1. A lawyer must not swear an affidavit or take a solemn declaration unless the deponent:
  - (a) appears personally before the lawyer,
  - (b) acknowledges that he or she is the deponent,
  - (c) understands or appears to understand the statement contained in the document,
  - (d) in the case of an affidavit, swears, declares or affirms that the contents of the document are true,
  - (e) in the case of a solemn declaration, orally states that the deponent makes the solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath, and
  - (f) signs the document, or if permitted by statute, swears that the signature on the document is that of the deponent.

[amended 07/2024]

### Commentary

#### Non-practising and retired members

[1] Non-practising and retired members are not permitted to act as notaries public or commissioners for the purpose of taking affidavits or solemn declarations. See Law Society Rules 2-3 and 2-4 for the definitions of non-practising and retired members.

#### Interjurisdictional practice

[2] A British Columbia lawyer, as a notary public, may administer oaths and take affidavits, declarations and affirmations only within British Columbia: See section 14 of the *Legal Profession Act* for a lawyer's right to act as a notary public, and section 18 of the *Notaries Act*, RSBC 1996, c. 334 for rights and powers of a notary public, including the right to draw affidavits, affirmations or statutory declarations for other jurisdictions.

[3] A British Columbia lawyer, as a commissioner for taking affidavits for British Columbia, has authority to administer oaths and take affidavits, declarations and affirmations outside of BC *for use in BC*: See sections 59 and 63, as well as sections 56 and 64 of the *Evidence Act*, RSBC 1996, c.124.

[4] Notwithstanding Law Society mobility provisions across Canada, a British Columbia lawyer cannot swear an affidavit in another province or territory for use in that jurisdiction unless the lawyer is a member of the bar in that jurisdiction or the jurisdiction's own legislation allows it.

For example, because of Alberta legislation, a member of the Law Society of British Columbia, while in Alberta acting under the mobility provisions on an Alberta matter, cannot swear an affidavit for use in Alberta.

[5] British Columbia lawyers should contact the law society of the other province or territory if they need to check whether they are entitled to swear an affidavit in that jurisdiction.

[6] Likewise, lawyers from other jurisdictions visiting British Columbia may not swear affidavits in BC for use in BC: See section 60 of the *Evidence Act* and the definition of “practising lawyer” in section 1(1) of the *Legal Profession Act*.

#### **Deponent present before commissioner**

[7] See *R. v. Schultz*, [1922] 2 WWR 582 (Sask. CA) in which the accused filled in and signed a declaration and left it on the desk of a commissioner for taking oaths, later meeting the commissioner outside and asking him to complete it. The court held that it was not a solemn declaration within the meaning of the *Canada Evidence Act*, stating that: “The mere fact that it was signed by the accused does not make it a solemn declaration. The written statement by the commissioner that it was ‘declared before him’ is not true. The essential requirement of the *Act* is not the signature of the declarant but his solemn declaration made before the commissioner” (p. 584). Likewise, it has been held in the U.S. that the taking of an affidavit over the telephone is grounds for a charge of negligence and professional misconduct: *Bar Association of New York City v. Napolis* (1915), 155 N.Y. Sup. 416 (N.Y. Sup. Ct. App. Div.). In B.C., the conduct of a lawyer who affixed the lawyer’s name to the jurat of the signed affidavit without ever having seen the deponent constituted professional misconduct: *Law Society Discipline Case Digest* 83/14.

#### **Identification**

[8] The commissioner should be satisfied of the deponent’s identity. Where the commissioner does not know the deponent personally, identification should be inspected and/or appropriate introductions should be obtained.

#### **Appearing to understand**

[9] To be satisfied of this, the commissioner may read the document aloud to the deponent, have the deponent read it aloud or accept the deponent’s statement that its contents are understood: *R. v. Whynot* (1954), 110 CCC 35 at 42 (NSCA).

[10] It is also important that the deponent understands the significance of the oath or declaration to be taken. See *King v. Phillips* (1908), 14 CCC 239 (B.C. Co. Ct.); *R. v. Nichols*, [1975] 5 WWR 600 (Alta SC); and *Owen v. Yorke*, (6 December, 1984), Vancouver A843177 (BCSC).

[11] If it appears that a deponent is unable to read the document, the commissioner must certify in the jurat that the document was read in his or her presence and the commissioner was satisfied that the deponent understood it: B.C., *Rules of Court*, Rule 22-2(6). If it appears that the

deponent does not understand English, the lawyer must arrange for a competent interpreter to interpret the document to the deponent and certify by endorsement in Form 60 [now Form 109] that he or she has done so: *Rules of Court*, Rule 22-2(7).

### **Remote commissioning of affidavits or solemn declarations**

[12] While it is preferable for the deponent to appear physically before a lawyer for the purposes of commissioning an affidavit or solemn declaration, a lawyer may discharge the lawyer's ethical and professional obligations regarding commissioning an affidavit or solemn declaration where the lawyer and deponent are not physically together through the use of electronic and video technology in the manner set out below.

Lawyers should keep in mind however that what is accepted as evidence is ultimately for a trier of fact to determine, and that complying with the process set out in this commentary is not a guarantee that an affidavit or solemn declaration commissioned using electronic and video technology will be accepted as evidence by the trier of fact. Moreover, if concerns are identified about the particular manner in which an affidavit or solemn declaration is commissioned remotely or if a remote process raises any issues, in particular the serious concerns that would arise from issues regarding the identity or capacity of the deponent, or whether coercion of the deponent is a concern, those issues may result in the affidavit or solemn declaration not being accepted, or being given less weight. Lawyers are also reminded to be cautious regarding the heightened risks of fraud and undue influence presented by engaging in virtual processes, and of their obligations under Code rule 3.2-7.

Lawyers are also reminded to ensure that there are no prohibitions to the commissioning of an oath or solemn declaration through electronic or video technology for the purposes of any particular document for which such a process is contemplated.

Where the deponent is not physically present in British Columbia, the process for remote commissioning of an affidavit or solemn declaration should not be used unless the lawyer is satisfied there is no other practical way to undertake the commissioning of the document in accordance with the procedures of the jurisdiction in which the deponent is situated.

#### **Process**

The process for remote commissioning of an affidavit or solemn declaration by a lawyer must include the following elements.

1. Any affidavit or solemn declaration to be commissioned using electronic and video technology must contain a paragraph at the end of the body of the affidavit or solemn declaration describing that the deponent was not physically present before the lawyer as commissioner, but was in the lawyer's electronic presence linked with the lawyer utilizing video technology and that the process described below for remote commissioning of affidavits or solemn declarations was utilized.

2. The affidavit or solemn declaration must contain a paragraph acknowledging the solemnity of making the affidavit or solemn declaration and acknowledging the consequences of making an untrue statement.
3. While the lawyer and the deponent are in each other's electronic and video presence, the deponent must show the lawyer the front and back of the deponent's valid and current government-issued photo identification. The lawyer must compare the video image of the deponent and information in the deponent's government-issued photo identity document to be reasonably satisfied that the name and the photo are of the same person and that the document is authentic, valid and current. The lawyer must record that these steps have been taken. The lawyer should also consider recording the session through which the affidavit or solemn declaration is made.
4. The lawyer and the deponent must both have the text of the affidavit or solemn declaration, including all exhibits, before each of them while in each other's electronic presence.
5. The lawyer and the deponent must review the affidavit or solemn declaration and exhibits together to verify that the language is identical.
6. At the conclusion of the steps outlined above, while still in each other's electronic presence, the lawyer, as commissioner, must administer the oath, the deponent will swear or affirm the truth of the facts contained in the affidavit or solemn declaration, and the deponent will affix the deponent's signature to the affidavit or solemn declaration.
7. Where it is not permissible to commission an affidavit or solemn declaration using an electronic signature, the deponent's signature must be affixed in ink to the physical (paper) copy of the affidavit or solemn declaration above, and the deponent must immediately scan the document, save a copy immediately after scanning it, and immediately forward it electronically to the lawyer.
8. Where it is permissible to commission an affidavit or solemn declaration using an electronic signature, the deponent must immediately save the document and immediately forward it, together with the exhibits, electronically to the lawyer.
9. Upon receipt by the lawyer of the sworn affidavit or of a solemn declaration that has been attested to bearing the deponent's signature and all exhibits, the lawyer should, after having taken steps to ensure that the document received is the same as the document reviewed under the steps set out above, affix the lawyer's name and signature, as commissioner, to the jurat and exhibits.
10. If an electronic process is used that allows the lawyer, as commissioner, access to the document being signed by the deponent while in video contact with the deponent, the lawyer will then affix the lawyer's signature to the document, provided such process is permitted by the tribunal or court in which the affidavit or solemn declaration is to be used.

The version of the affidavit or solemn declaration that has been duly sworn or affirmed and contains the signatures of the deponent and the lawyer must then be saved by the lawyer, and may be filed with the Court or tribunal as may be required.

### **Affirmation**

[13] In cases where a deponent does not want to swear an affidavit by oath, an affidavit can be created by solemn affirmation. See section 20 of the *Evidence Act*, R.S.B.C. 1996, c. 124.

### **Swear or affirm that the contents are true**

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

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

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

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

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

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

### **Solemn declaration**

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

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

#### **Solemn declaration**

41. Any judge, notary public, justice of the peace, provincial court judge, recorder, mayor or commissioner authorized to take affidavits to be used either in the provincial or federal courts, or any other functionary authorized by law to administer an oath in any matter,

may receive the solemn declaration of any person voluntarily making the declaration before him, in the following form, in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing:

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

Declared before me at this day of , 20

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

**Statutory declarations**

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

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

**Execution**

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

[[11], [16] and [20] amended 05/2016; [3], [7], [8], [10], [12], [14], [17] and [20] amended 10/2021; [12]-[20] renumbered as [13]-[21], [12] added 07/2024]

**Witnessing the execution of an instrument**

2. When a lawyer witnesses the execution of an instrument by an individual under the *Land Title Act*, RSBC 1996, c. 250, the lawyer's signature is a certification by the lawyer that:

- (a) the individual appeared before and acknowledged to the lawyer that he or she is the person named in the instrument as transferor, and
- (b) the signature witnessed by the lawyer is the signature of the individual who made the acknowledgment. (See section 43 of the *Land Title Act*.)

**Commentary**

[1] Non-practising and retired members are not permitted to act as officers for the purpose of witnessing the execution of instruments under the *Land Title Act*.