



# Agenda

## Benchers

Date: Friday, April 10, 2015

Time: **7:30 am** Continental breakfast

**8:30 am** Call to order

Location: Bencher Room, 9<sup>th</sup> Floor, Law Society Building

Recording: *Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings.*

### CONSENT AGENDA:

The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Renee Collins Goult) prior to the meeting.

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Consent Agenda <ul style="list-style-type: none"> <li>Minutes of March 6, 2015 meeting (regular session)</li> <li>Minutes of March 6, 2015 meeting (<i>in camera</i> session)</li> <li>BC Code Appendix B: Confidentiality Rules for Parenting Coordinators</li> <li>Approval of the Law Society Rules 2015 – to take effect July 1, 2015</li> </ul>	1	President	Tab 1.1  Tab 1.2  Tab 1.3  Tab 1.4	Approval  Approval  Approval  Approval

### GUEST PRESENTATIONS

2	Lawyers' Assistance Program (LAP)	20	Derek LaCroix, QC		Presentation
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# Agenda

The Law Society  
of British Columbia



ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
<b>FOR DISCUSSION/DECISION</b>					
3	Lawyers' Assistance Program (LAP) Referral	15	CLO	Tab 3	Decision (In principle)
<b>REPORTS</b>					
4	Presentation of Objectives: Law Firm Regulation Task Force	10	Herman Van Ommen, QC	Tab 4	Briefing
5	Report on Outstanding Hearing & Review Decisions	5	President	<i>(To be circulated at the meeting)</i>	Briefing
6	President's Report	15	President	Oral report (update on key issues)	Briefing
7	CEO's Report	15	CEO	Tab 7	Briefing
8	2015-2017 Strategic Plan Implementation Update	5	President / Phil Riddell & Nancy Merrill		Briefing
<b>FOR INFORMATION</b>					
9	<ul style="list-style-type: none"> <li>Report on University of Victoria Law Graduates of 2012 and 2013</li> <li>National Committee on Accreditation Statistics</li> <li>Small Firm Practice Course 2015 Update</li> </ul>			Tab 9.1  Tab 9.2  Tab 9.3	Information  Information  Information

# Agenda

The Law Society  
of British Columbia



ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
<b><i>IN CAMERA</i></b>					
10	<i>In camera</i> <ul style="list-style-type: none"> <li>• Memorandum from President Walker and Tim McGee re Unified Regulatory Regime for Legal Services in British Columbia</li> <li>• Benchers concerns</li> <li>• Other business</li> </ul>	20	President/CEO	Tab 10	Discussion/ Decision



# Minutes

## Benchers

Date: Friday, March 06, 2015

Present:	<p>Ken Walker, QC, President</p> <p>David Crossin, QC, 1<sup>st</sup> Vice-President</p> <p>Haydn Acheson</p> <p>Joseph Arvay, QC</p> <p>Satwinder Bains</p> <p>Edmund Caissie</p> <p>David Corey</p> <p>Jeevyn Dhaliwal</p> <p>Lynal Doerksen</p> <p>Thomas Fellhauer</p> <p>Craig Ferris, QC</p> <p>Martin Finch, QC</p> <p>Miriam Kresivo, QC</p>	<p>Dean Lawton</p> <p>Peter Lloyd, FCA</p> <p>Jamie Maclaren</p> <p>Sharon Matthews, QC</p> <p>Ben Meisner</p> <p>Maria Morellato, QC</p> <p>David Mossop, QC</p> <p>Greg Petrisor</p> <p>Claude Richmond</p> <p>Elizabeth Rowbotham</p> <p>Cameron Ward</p> <p>Sarah Westwood</p>
Excused:	<p>Herman Van Ommen, QC, 2<sup>nd</sup> Vice-President</p> <p>Pinder Cheema, QC</p> <p>Nancy Merrill</p> <p>Lee Ongman</p> <p>Phil Riddell</p>	
Staff Present:	<p>Tim McGee, QC</p> <p>Deborah Armour</p> <p>Taylor Ashlie</p> <p>Felicia Ciolfitto</p> <p>Renee Collins Goult</p> <p>Su Forbes, QC</p> <p>Andrea Hilland</p> <p>Jeffrey Hoskins, QC</p>	<p>Thomas Kampioni</p> <p>Ryan Lee</p> <p>Michael Lucas</p> <p>Jeanette McPhee</p> <p>Jaia Rai</p> <p>Alan Treleven</p> <p>Adam Whitcombe</p>

<p>Guests: Dom Bautista  Mark Benton, QC  Johanne Blenkin  Prof. Janine Benedet    Jennifer Chow  Ron Friesen  Richard Fyfe, QC    Yves Moisan  Bradford Morse  Caroline Nevin  Anne Pappas, J.D.  MaryAnn Reinhardt  Wayne Robertson, QC</p>	<p>Executive Director, Law Courts Center  Executive Director, Legal Services Society  Chief Executive Officer, Courthouse Libraries BC  Associate Dean of Academic Affairs, University of British Columbia    Vice President, Canadian Bar Association, BC Branch  CEO, Continuing Legal Education Society of BC  Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General    President, BC Paralegal Association  Interim Dean of Law, Thompson Rivers University  Executive Director, Canadian Bar Association, BC Branch  Interim Dean of Law, Thompson Rivers University  BC Paralegal Association  Executive Director, Law Foundation of BC</p>
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## Introductions

President Ken Walker, QC noted absent Benchers Herman Van Ommen, QC, Lee Ongman, Phil Riddell, Nancy Merrill, Pinder Cheema, QC and Dean Jeremy Webber, and congratulated Craig Ferris, QC on his recent Queen's Counsel appointment.

Tim McGee QC introduced the members of the 2015 Leadership Council, comprised of Deborah Armour, Felicia Ciolfito, Su Forbes QC, Jeffrey Hoskins QC, Thomas Kampioni, Jeanette McPhee, Jaia Rai, Alan Treleaven and Adam Whitcombe.

## CONSENT AGENDA

### 1. Minutes

#### a. Minutes

The minutes of the meeting held on January 30, 2015 were approved as circulated.

The *in camera* minutes of the meeting held on January 30, 2015 were approved as circulated.

#### b. Resolutions

The following resolution was passed unanimously and by consent.

- External Committee Appointments: LSS, Hamber Foundation and BC Building Code Appeal Board

*BE IT RESOLVED to appoint Ms. Jean Whittow, QC to the Board of Directors of the Legal Services Society for a two-year term effective September 7, 2015.*

*BE IT RESOLVED to appoint Mr. Todd L. Kerr as the Law Society's new representative on the Hamber Foundation Board of Governors, and that Mr. Mark Killas be re-appointed to the Board for a second term.*

*BE IT RESOLVED to nominate Edna Cheung for Vancouver City Council's appointment of the Law Society representative on the Building Board of Appeal.*

- Rules 5-2.1 and 5-12.3 – New rules to allow hearing panel or review board to continue without all members

*BE IT RESOLVED to amend the Law Society Rules by adding the following rules:*

**Panel member unable to continue**

- 5-2.1** (1) Despite Rule 5-2 [*Hearing panels*], if a member of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may order that the panel continue with the remaining members.
- (2) Despite Rule 5-2 [*Hearing panels*], if the chair of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may appoint another member of the hearing panel who is a lawyer as chair of the hearing panel, whether or not the lawyer is a current Bencher.

**Review board member unable to continue**

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

All passed by consent

## **DISCUSSION/ DECISION**

### **2. Governance Committee Report on 2014 Bencher and Committee Evaluations**

Miriam Kresivo, QC, chair of the Governance Committee, opened her remarks by thanking individually the members of the Committee for their robust discussion and hard work. In introducing the Committee's report, she noted that the exercise of conducting annual evaluations is an important one, allowing directors to understand how well an organization is functioning both procedurally and substantively.

Generally, while the Committee response rate was relatively high and positive, the Bencher response rate was relatively low and somewhat negative; at 55% it was a decrease from the previous year. This represents a problem for analysis, as data collected from the low sample size is not necessarily representative of the Benchers' opinion as whole; nevertheless, as the only data

available, it was still analyzed for guidance purposes. Consideration is being given to ways to increase participation next year, including earlier notice.

The questions themselves are also being reviewed in case negative responses were the unintended result of the way particular questions were being asked, rather than an actual indicator of dissatisfaction.

The analysis itself reveals that Benchers feel adequately prepared and informed about expectations. However, they feel less aware of Board and CEO functions, including financial management, strategic planning, succession planning and performance evaluations. To address this, the Governance Committee will look at whether increased training and education should be provided to Benchers on an annual basis.

Finally, responses indicate a possible concern around how the Benchers work collectively as a team. It is unclear what assumptions might underlie the individual notions of teamwork, but the Committee stressed that it is committed to encouraging and maintaining an environment of healthy debate alongside meaningful collaboration.

Mr. Walker joined others in their thanks of Ms. Kresivo and the work of the Governance Committee, and noted the value of his recent governance training with Glen Tecker of Tecker International. The Benchers agreed that the Governance Committee should pursue the question of whether similar training would be valuable for the Bencher group as a whole

### **3. Fiduciary Property Rule Amendments**

Ms. Jeevyn Dhaliwal, reporting as Vice-Chair of the Act and Rules Committee, opened her remarks by thanking the current Committee members and previous Chair Tom Fellhauer for their hard work in preparing these and other Rule amendments.

As an introduction to the amendments at hand, she detailed the circumstances in which lawyers may act in a fiduciary capacity on behalf of clients outside the practice of law but arising from their practice, such as acting as an executor of a will or under a power of attorney. The current Rules dictate that such lawyers must treat all funds they manage as trust funds in accordance with the Rules, even when they are acting in a different representative role; the proposed amendments relieve lawyers of some of the responsibilities in this circumstance.

After consultation with relevant CBA sections and with associated regulatory departments of the Law Society, including inviting commentary through the Law Society e-briefs and website, the Act and Rules Committee recommended amendments to revise the Rules accordingly.



Ms. Dhaliwal moved (seconded by Mr. Doerkson) that the Benchers approve the following resolution:

***BE IT RESOLVED to amend the Law Society Rules as follows:***

***1. In Rule 1, by rescinding the definitions of “general funds” and “trust funds” and substituting the following:***

**“fiduciary property”** means

- (a) funds, other than trust funds, and valuables for which a lawyer is responsible in a representative capacity or as a trustee, if the lawyer’s appointment is derived from a solicitor-client relationship,

but does not include

- (b) any funds and valuables that are subject to a power of attorney granted to the lawyer if the lawyer has not taken control of or otherwise dealt with the funds or valuables;

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

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

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

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

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

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

**2. In Rule 3-47**

- (a) *by striking the semi-colon at the end of the definition of “public body” and substituting a period, and*
- (b) *by rescinding the definition of “valuables”;*

**3. By adding the following Rule:**

**Fiduciary property**

**3-48.1**(1) In addition to any other obligations required by law and equity, this rule applies to lawyers who are responsible for fiduciary property.

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

**4. In Rule 3-57(3), by rescinding paragraph (e) and substituting the following:**

- (e) made available to the client by other means agreed to in writing by the client.;

**5. In Rule 3-68, by rescinding subrules (1) and (2) and substituting the following:**

- (1) A lawyer must keep his or her records for as long as the records apply to money held as trust funds or to valuables held in trust for a client and for at least 10 years from the final accounting transaction or disposition of valuables.

- (2) A lawyer must keep his or her records, other than electronic records, at his or her chief place of practice in British Columbia for at least 3 years from the final accounting transaction or disposition of valuables.;

**6. In Rule 3-80**

- (a) *in subrule (1), by striking the phrase “in the lawyer’s possession or power” and substituting “in the lawyer’s possession or control”,*
- (b) *by rescinding subrule (1)(e) and substituting the following:*
- (e) trust accounts and trust funds;
- (f) fiduciary property., *and*
- (c) *by rescinding subrule (2)(c) and substituting the following:*
- (c) the lawyer or former lawyer has notified all clients and other persons for whom the lawyer is or potentially may become a personal representative, executor, trustee or other fiduciary regarding the lawyer or former lawyer’s withdrawal from practice and any change in his or her membership status.;

**7. In Rule 3-82**

- (a) *by striking the heading substituting “Payment of unclaimed money to the Society”, and*
- (b) *by rescinding subrules (1), (4) and (5) and substituting the following:*
- (1) A lawyer who has held money in trust on behalf of a person whom the lawyer has been unable to locate for 2 years may apply to the Executive Director to pay those funds to the Society under section 34 [*Unclaimed Trust Money*] of the Act.
- (4) If the Executive Director is satisfied that the lawyer has made appropriate efforts to locate the owner of the money, the Executive Director may accept the money under section 34 [*Unclaimed Trust Money*] of the Act.
- (5) The Executive Director must account for money received by the Society under subrule (4) separately from the other funds of the Society.;

**8. In Rule 3-84, by rescinding subrule (9) and substituting the following:**

- (9) Following the hearing of the evidence and submissions, the Executive Committee must determine whether the claimant is entitled to the money held in trust by the Society.;

**9. In Rule 3-85, by rescinding subrule (2) and substituting the following:**

- (2) Interest calculated under subrule (1) is payable from the first day of the month following receipt of the unclaimed money by the Society, until the last day of the month before payment out by the Society.;

**10. By rescinding Rules 3-86 and 3-87 and substituting the following:**

**Efforts to locate the owner of money**

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

**Payment to the Law Foundation**

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

Discussion surrounded the positive outcome of the changes, which would better enable lawyers who are well trained as fiduciaries to provide additional, valued services.

The motion was passed unanimously.

**4. Approval of the Law Society Rules 2015 – to take effect July 1, 2015**

Ms. Dhaliwal also reported on the Act and Rules Committee's Consolidated Rules revision, a collection of non-substantive amendments designed to enhance clarity and restore consistency of numbering and cross-references. Historically such revisions have been undertaken in 10 to 15 year cycles; the last major revision was in 1998. Work on this revision began in 2010; its completion marks hundreds of hours of work by staff and the Committee.

All regulatory committees have been informed of changes in their areas; once approved, the amended Rules will be posted to the Law Society website for members to review before the July 1 implementation.

Motion was made and seconded to approve the Law Society Rules 2015 as amended; during discussion, it was suggested that more time be afforded the Benchers to review the proposed amendments, before approval of them.

After consideration of the time needed to implement the necessary operational changes prior to the new Rules coming into effect July 1, 2015, it was unanimously agreed to postpone the

motion to approve the proposed Law Society Rules 2015 to the April 10 Bencher meeting, for review under the Consent Agenda.

## **5. Review of the Law Society's 2014 Audited Financial Statements and Financial Reports**

Mr. Peter Lloyd, Chair of the Finance and Audit Committee introduced Ms. Jeanette McPhee, Chief Financial Officer, to review the Law Society's 2014 Internal Financial Statements, to be followed by his own presentation of the 2014 Audited Financial Statements.

Ms. McPhee's presentation, found at Appendix 1, provided an overview of the General Fund, Trust Assurance Program, Lawyers Insurance Fund ("LIF") and the Special Compensation Fund, and some information on 2015 to date.

The General Fund experienced a negative variance of approximately 2.2%, due to costs associated with the TWU application and external counsel fees in both the regulation and credentialing areas. These losses were partially offset by approximately \$500,000 in additional revenue, representing a total revenue increase of 2.4% over budget. Specifically, there were increases in the areas of PLTC fees, disciplinary fines and recoveries, and lease revenues, and a slight decrease in practice fee income.

The Trust Assurance Program, funded by the Trust Assurance Fee ("TAF") saw an increase in transactional revenue, likely due to an increase in real estate sales in 2014. The TAF itself was also increased in 2014 to bring the reserve out of deficit position, and closer to the targeted 6-12 months of operating expenses needed to guard against future economic fluctuations. The Special Compensation Fund saw no real activity; the \$1.3 million reserve currently held in it will be transferred to LIF in 2015. Fee revenue for LIF was also up 2% ahead of budget in 2014. LIF operating expenses were 7% below budget, due in part to lower staff compensation costs and lower travel and consulting fees. Investment of LIF funds is currently managed by two investment managers, who reported a rate of return of 9.6%, which was slightly below the targeted benchmark.

For 2015, all areas appear to be tracking to budget, with the possible exception of external counsel fees and the ongoing TWU process.

Mr. Lloyd then reviewed and provided explanatory detail for the 2014 Audited Financial Statements, including a review of the Notes provided (found at page 229 of the meeting materials).

Motion was made and seconded (Fellhauer/Meisner) to approve the following resolution:

*BE IT RESOLVED to approve the Law Society's 2014 Financial Statements, for the General & Special Compensation Fund and the Consolidated Lawyers Insurance Fund.*

The motion was passed unanimously.

## REPORTS

### 6. Lawyers Insurance Fund: Program Report for 2014

Su Forbes, Director of LIF, detailed her report found at Appendix 2. The total number of lawyers in BC is currently 13,300, of which 2200 are non-practicing or retired. 8400 are engaged in private practice while 2700 practice in house. 7250 practice full time, but the growth in part time practice is outpacing full time, due in part to the trend of retiring lawyers transitioning first to part time work.

With regards to insurance reports, LIF experienced an increase in 2010 and 2011 consistent with the economic climate. One third of all reports arose from the civil litigation and plaintiffs' personal injury areas. Those areas also account for a third of dollars reserved. This represents a shift from years past, in which commercial real estate and lending claims were the most severe, in keeping with the recessionary times.

At 17%, LIF also experienced a significant percentage of files that were resolved through successful repairs, driven by timely reporting by insured lawyers, proactive steps by claims counsel, and an experienced group of repair counsel. Other comparative results include an increase in indemnity payments and a decrease in excess payments, an increase in the number of Risk Management presentations made, and a decrease in the number of trials held. As compared to other jurisdictions, ours is the third largest program, but only the ninth largest fee; additionally, we were one of only two jurisdictions in which fees remained the same.

Survey of closed files indicates an overall positive evaluation of LIF service. Surveys also allow for lawyer self-reflection in considering how they might have avoided the claim; responses in this regard are used in risk management presentations to help raise awareness around potential pitfalls. Ms. Forbes detailed several examples of practice situations resulting in claims, and insured lawyers' suggestions for how they could have been avoided.

Efforts to educate members on practice risks and tips will continue this year with a Fall webinar, and the publication of "My Insurance Program Q and A" on the website.

## 7. Report on 2014 Key Performance Measures

Mr. McGee provided highlights of the report (found at page 250 of the meeting materials), noting that Key Performance Measures are the Board's tool to monitor performance and provide insight into the standards set by the organization with respect to its public mandate. He detailed the results in the areas of Professional Regulation, Trust Assurance, PLTC, Practice Advice and Practice Standards.

While the KPMs set a high standard for the processing of complaints under Professional Regulation, there are good indicators of satisfaction with the service provided and the processes used. In reviewing the area of Trust Assurance, it was suggested that efforts be made to further minimize the potential disruption to practice caused by an audit.

The PLTC program represents the largest credentialing body in BC and is seen as successful. The upcoming Strategic Plan review of our bar admission program will focus on ensuring achievement of our pre-call goals, acknowledging that principals rate the articling program lower each year. The area of Practice Advice will also be a focus of the Strategic Plan, through the Knowledge Management Project; specifically, the goal will be to update current manual processes to include new technological tools, while still maintaining the high rate of satisfaction. Finally, while the KPMs were not met in the area of Practice Standards, the Small Firm Practice course remains a valuable resource for improvement in this area.

Discussion included praise for the Report and the efforts by staff to produce it, questions around the use of the Small Firm Practice course, and how we measure the performance of organizations funded by the Law Society. In answer to the latter, it was noted that, while these organizations each have Boards measuring their performance, the Finance Committee has recognized that some program review could be implemented, to keep apprised of business plans and objectives. Finally, note was made of the need to raise awareness amongst the membership of the many resources available through the Law Society, as many continue to view the Law Society as solely a disciplinary body.

## 8. Report on the Outstanding Hearing & Review Reports

Written reports on outstanding hearing decisions and conduct review reports were received and reviewed by the Benchers.

## 9. President's Report

Mr. Walker briefed the Benchers on various Law Society events he has attended since the last meeting, including:

- Mr. Justice Romilly's retirement dinner;

- The Iona Campagnolo Lecture on Restorative Justice in Courtenay, at which Chief Justice McLachlin spoke.

He also noted the upcoming Call ceremony, asking that Benchers try to attend, and thanked Ms. Dhaliwal for attending on his behalf at the Federal Court Welcoming Ceremony, and Mr. Lawton for attending the Court of Appeal Welcoming ceremony.

In briefing the Benchers on judicial appointments, he noted that there will be no replacement for the resident judge in Cranbrook following the retirement of Mr. Justice Melnyk. Concern was expressed by Benchers on behalf of the Kootenay and rural Bars, characterizing this loss as an access to justice issue for rural communities. Opinion was expressed both for the cultural differences in rural communities that should dictate a local appointment, and for the efficiency inherent in dedicating a visiting Vancouver judge to a particular area. Also noted was the relative shortage of Supreme Court Judges, as the Federal Judicial Council has not yet been struck to consider new appointments. After discussion of whether the Law Society should intervene in some way, it was agreed that the matter would be considered next meeting, allowing further investigation in the interim.

Mr. Crossin then briefed the Benchers on the upcoming Retreat program, which will focus on our mandate as set out in section 3 of the Legal Professions Act and the extent to which it obliges us to go beyond setting standards and regulating lawyers. Guest speakers will include Mister Justice Cromwell, Madam Justice Bennett and Professor Adam Dodek. Mark Benton, QC will be the facilitator.

## **10. CEO's Report**

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 3). Regarding engagement with the Notaries, two successful meetings with the Notaries have helped map out a Memorandum of Understanding ("MOU"), a non-binding framework for future discussion that has been reviewed by the Executive Committee. Discussions going forward will be overseen by the Executive Committee and guided by the MOU, particularly around any increased scope of practice, with a view to determining whether merger is a possibility.

Regarding the Federation Governance Committee, the upcoming Federation conference in Ottawa will involve a series of discussions around the Federation's governance model, to help determine whether the Federation should be more of a coordinating or regulatory body. The Law Society will be well represented by both Benchers and staff.



## 11.2015-2017 Strategic Plan Implementation Update

On behalf of the Lawyer Education Advisory Committee, Chair Tony Wilson provided an update on the Committee's Admission program review (PLTC and articling), pursuant to the Strategic Plan (presentation attached as Appendix 4).

Despite the long success of PLTC, a review is desirable to determine what enhancements ought to be made. To that end, recently called lawyers are being surveyed regarding the effectiveness of PLTC and articling. The Committee awaits the Federation's next report on proposals for implementing the national competency profile, and a review of programs in other Canadian and international jurisdictions has begun. The latter review has shown that Ontario's mainstream program has no meaningful training course, only articles and rigorous multiple choice examinations. In response to increasing numbers of students without articles, the Law Society of Upper Canada is embarking on a streamed approach, in which students choose one of:

- Articling for 10 months, followed by exams,
- The Law Practice Program pilot in which students without articles participate in a four month online program followed by four months of workplace experiential learning and exams,
- The Lakehead University 3 year program, which includes two summer terms, with an integrated practice component in place of articles.

Alberta, Saskatchewan and Manitoba share a program combining a mainly online training program and articles, followed by written and performance tests rather than exams (except in the case of ethics). The program, which utilizes relatively old technology, is itself under review.

In comparing programs, the Committee remains focused on effectiveness, taking into consideration both technological advances and the value of face to face learning, as well as being mindful of law firm feedback on change.

A review of admission programs nationally and internationally shows that American states have no articling requirements, Canada's range from 6-12 months, and the Solicitors' Regulation Authority (UK) requires a 2 year training contract. Some question the value of articling, citing concerns over increasing numbers of students unable to secure articling positions. Some also question the consistency of articles, noting that students receive training of unequal quality.

In response to those questions, the Committee's task is to consider options for training students for practice. Possibilities include an expedited admission program for students willing to confine their practice to in-demand legal areas. The Committee remains open to ideas and encourages the Benchers to provide suggestions.

Discussion of the report included concerns over the quality and consistency of articles at small and large firms, and over the intrusiveness of a 10 week articling program.

The Benchers discussed other matters *in camera*.

RCG  
2015-03-06

# The Law Society *of British Columbia*



## **Law Society of British Columbia 2014 Financial Results**

*Benchers Meeting – March 6, 2015*

# Overview

**The Law Society**  
*of British Columbia*



1. 2014 General Fund
2. 2014 TAF (Trust Assurance Program)
3. 2014 Special Compensation Fund
4. 2014 Lawyers Insurance Fund
5. 2015 to date

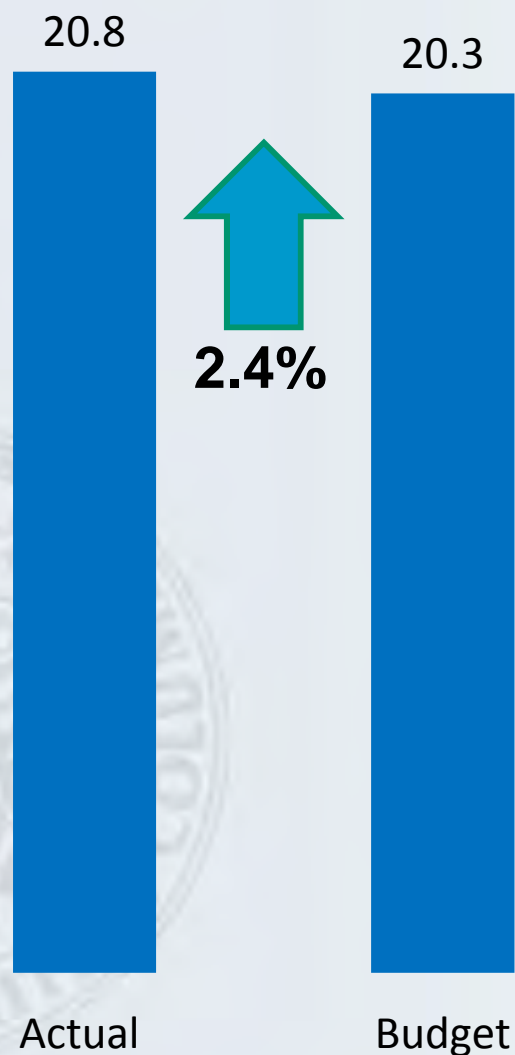
# General Fund Operating Results

(without capital)

**The Law Society**  
of British Columbia

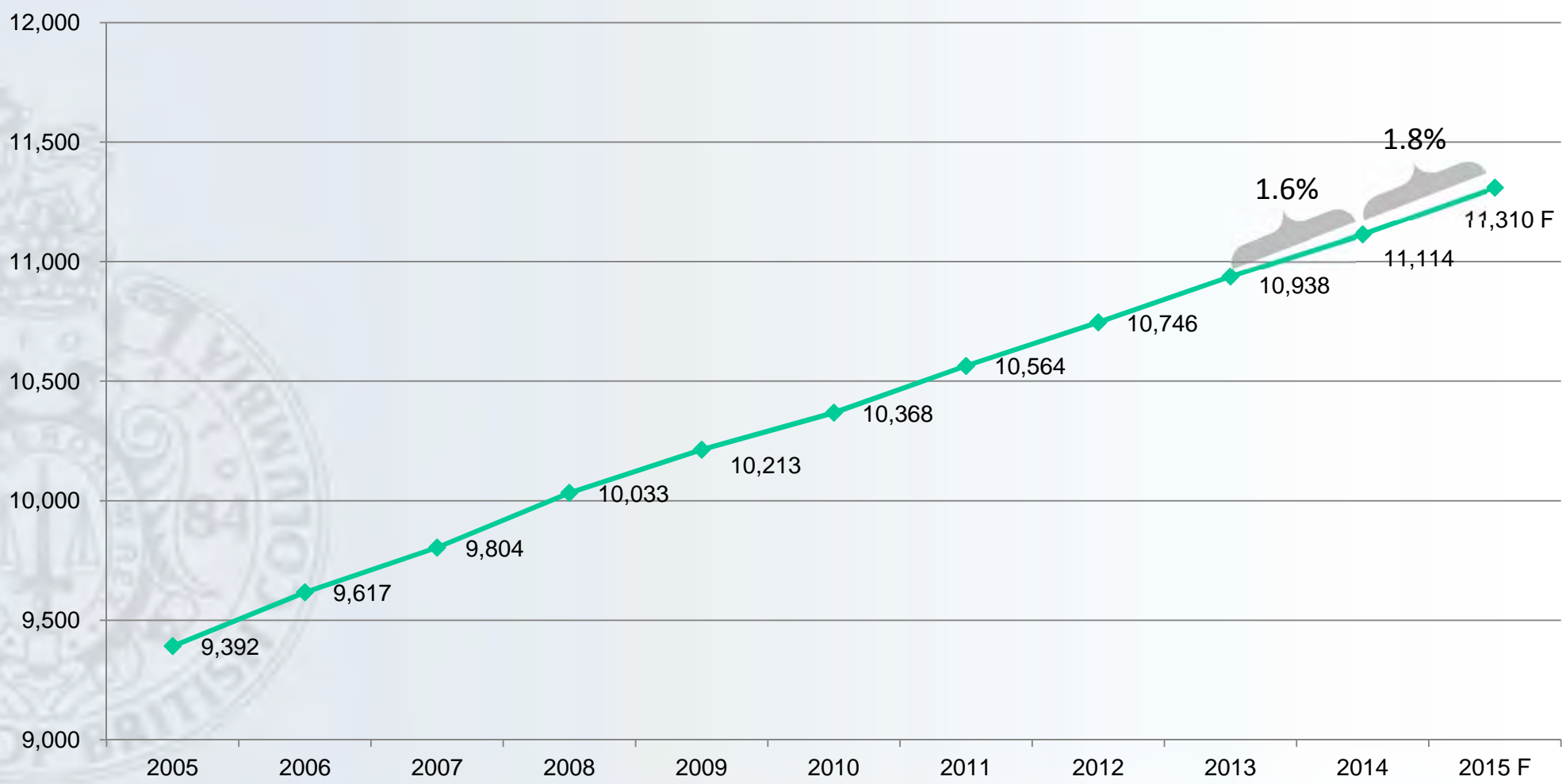


**Revenue**

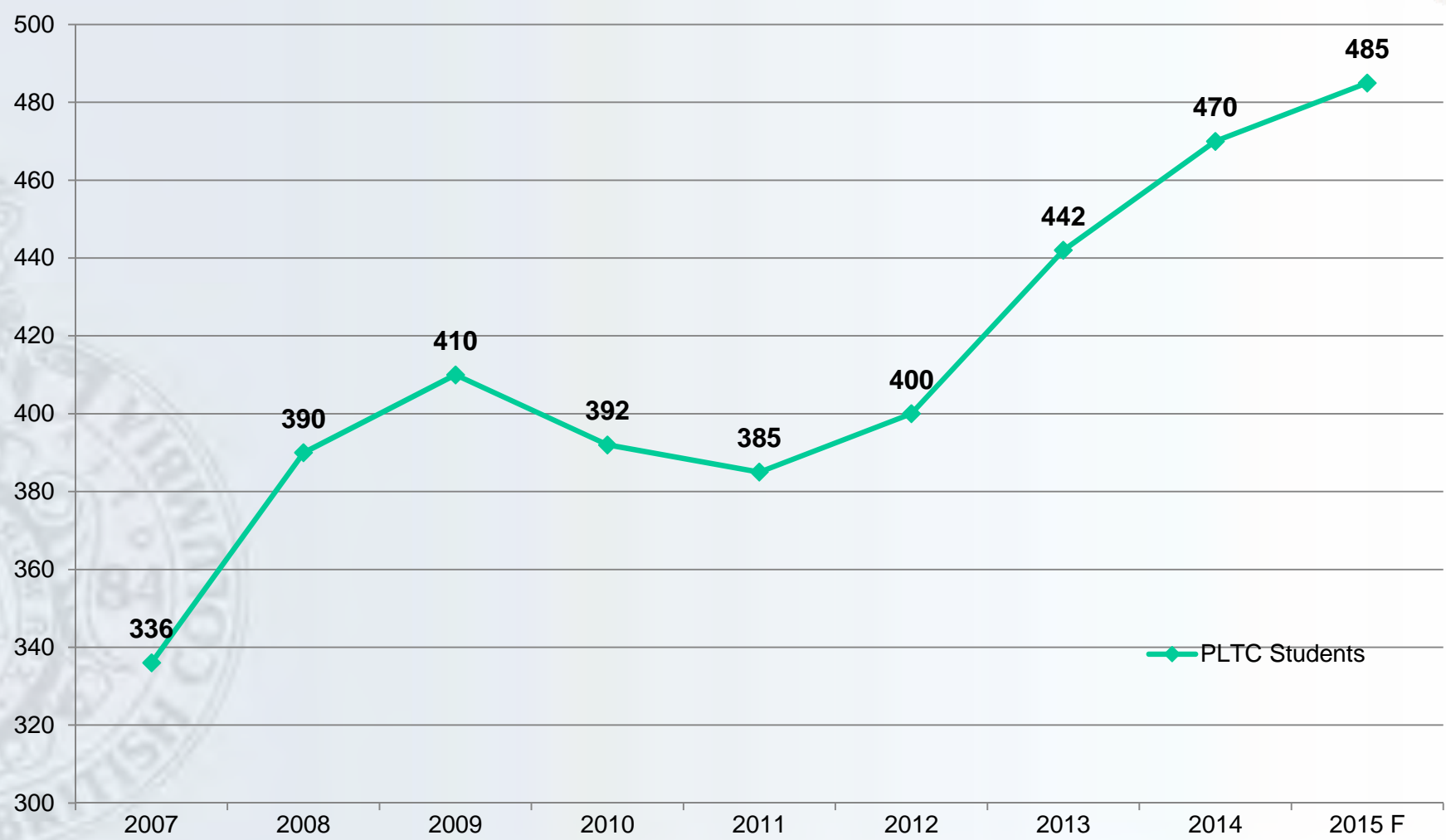


- Membership fees below budget, and PLTC fees, recoveries, buildings and interest above budget
- 11,114 members, 76 members below budget of 11,190
- 470 PLTC students, 20 students above budget
- Electronic filing revenue above budget = \$30,000
- Recoveries ahead of budget = \$198,000
- Interest income above budget = \$78,000
- Cambie building lease revenue above budget = \$108,000

# 2014 Practicing Membership



# PLTC Students





# General Fund Operating Results (without capital)

**The Law Society**  
of British Columbia



## Expenses



### Approved reserve funded amounts (unbudgeted):

- CBA REAL initiative = \$48,000
- Articling Student = \$57,000
- Practice Standards / On-line courses = \$50,000

### Unexpected Costs:

- TWU (external counsel/ meetings) = \$432,000

### Costs in excess of budget:

- Regulation external professional fees = \$464,000
- Credentials professional fees = \$201,000
- Building – property taxes / utilities = \$80,000

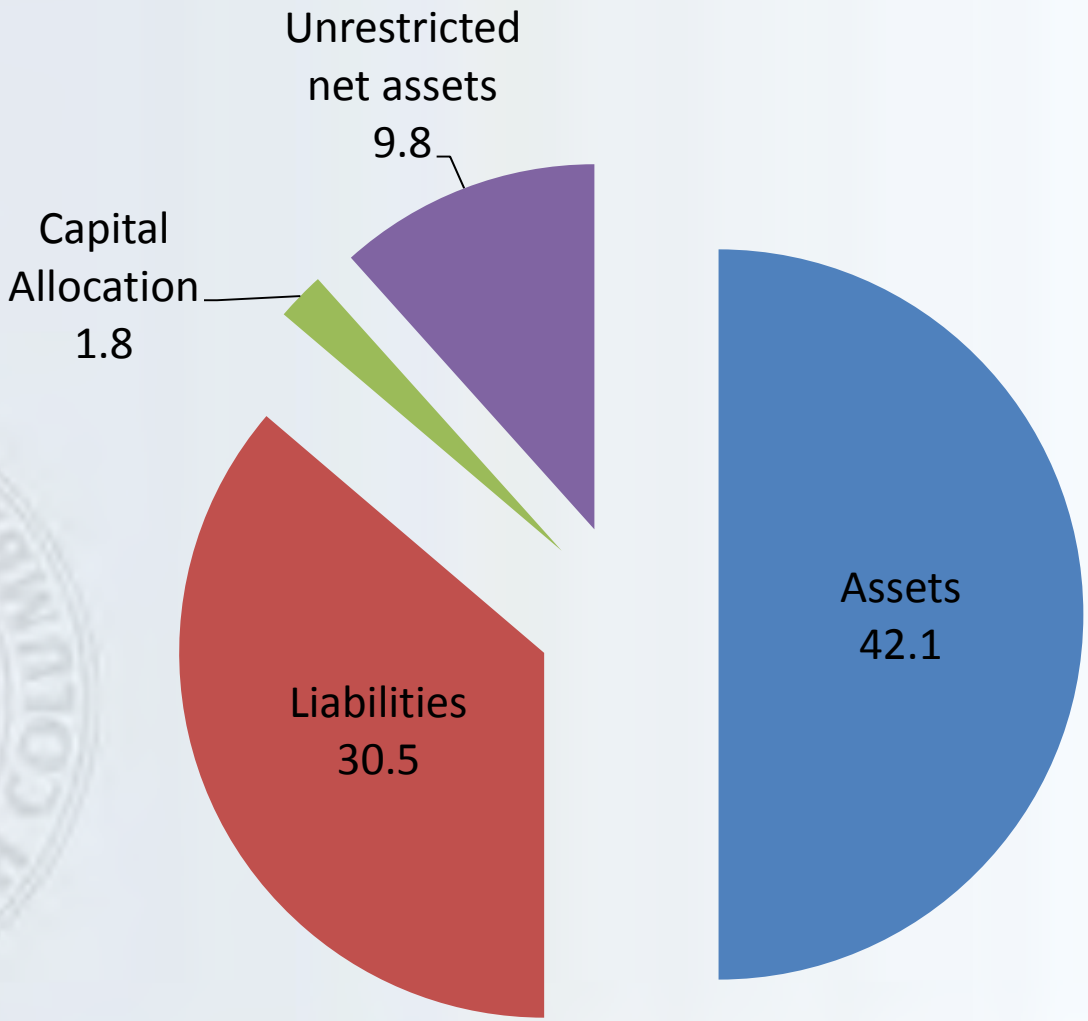
### Areas of savings against budget:

- Staff compensation = \$237,000
- Forensic professional fees = \$80,000





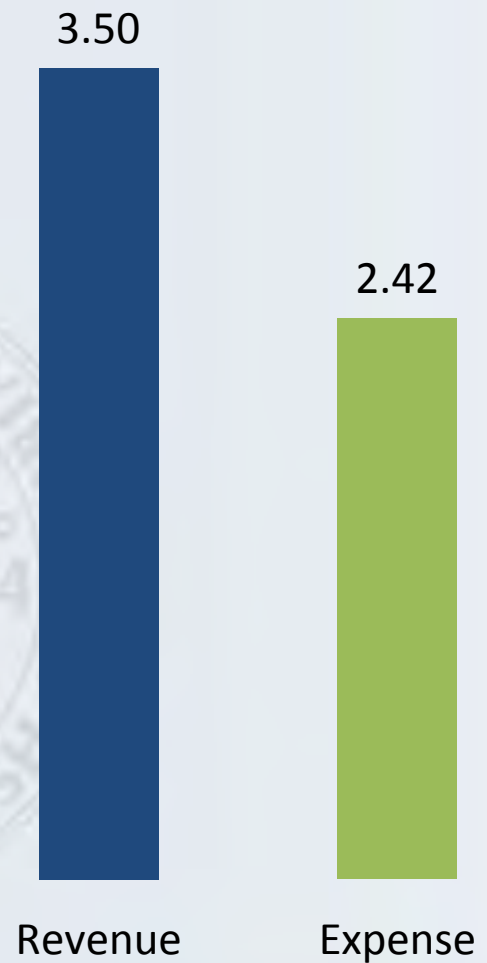
# General Fund Balance Sheet – December 2014



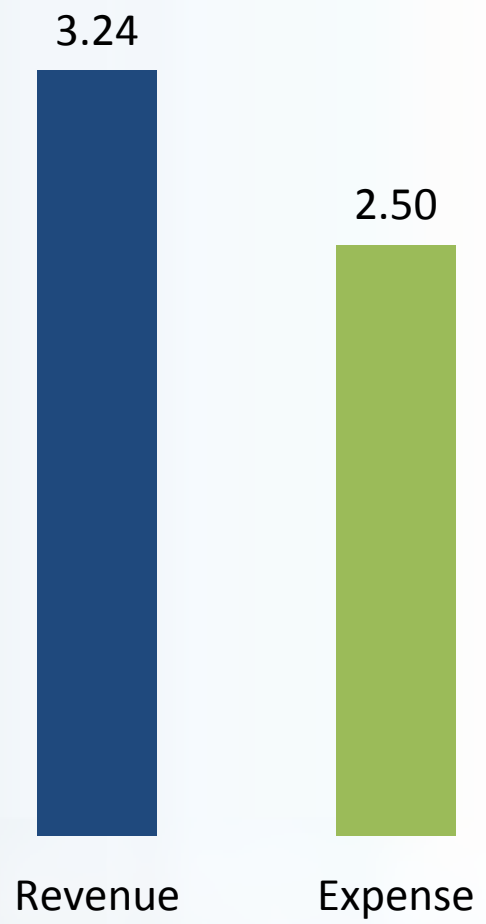
# Trust Assurance



2014 Actual



2014 Budget



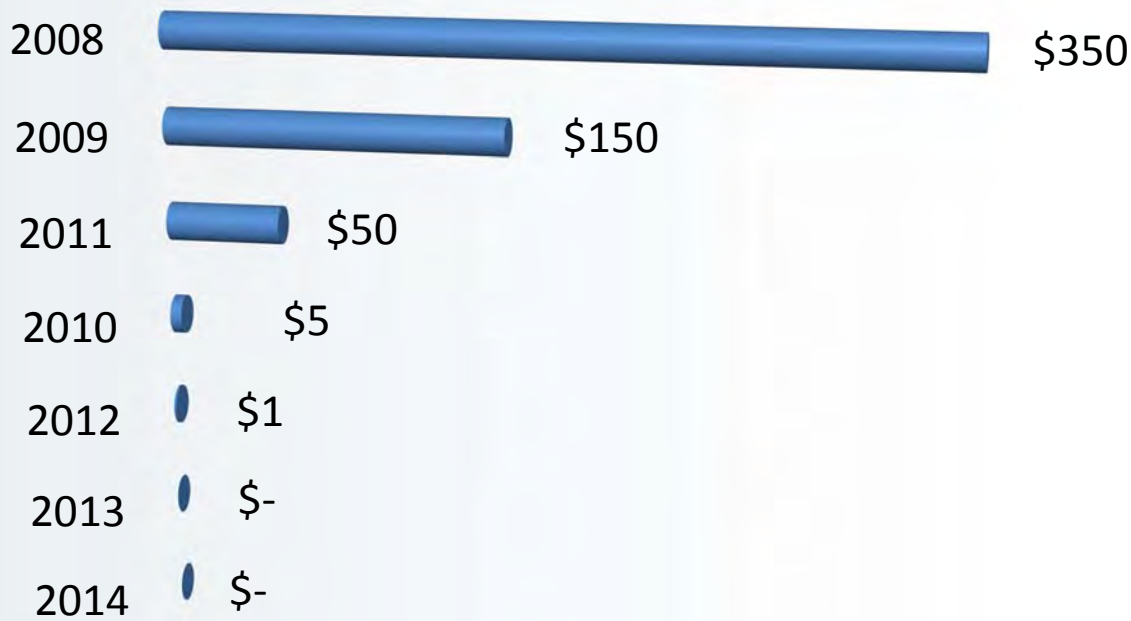


# Special Compensation Fund

## Net Assets



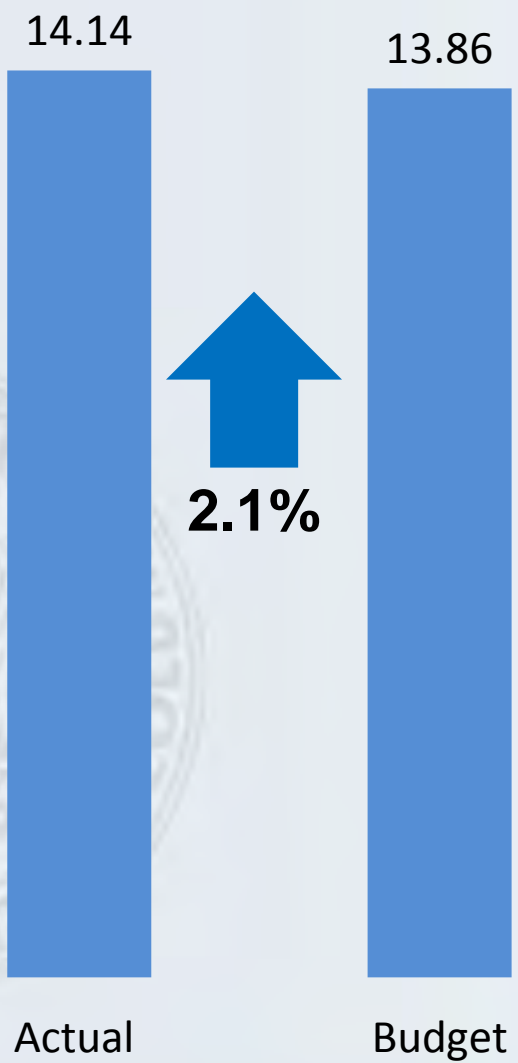
## Special Fund Fee



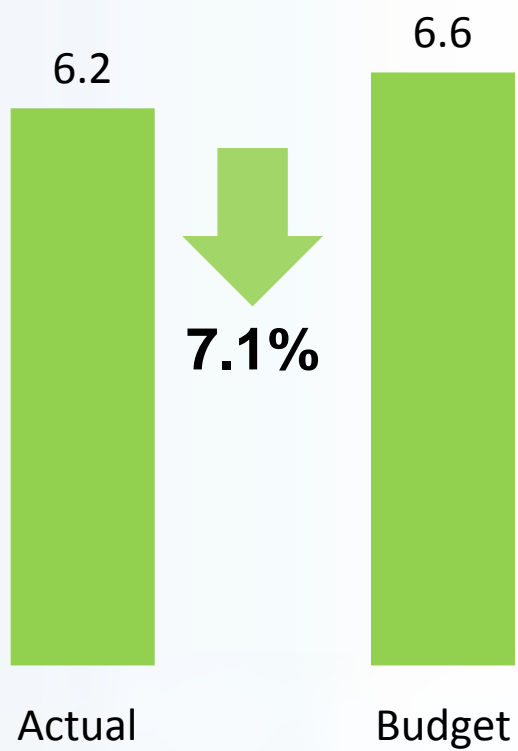
# Lawyers Insurance Fund



## Revenue



## Expenses



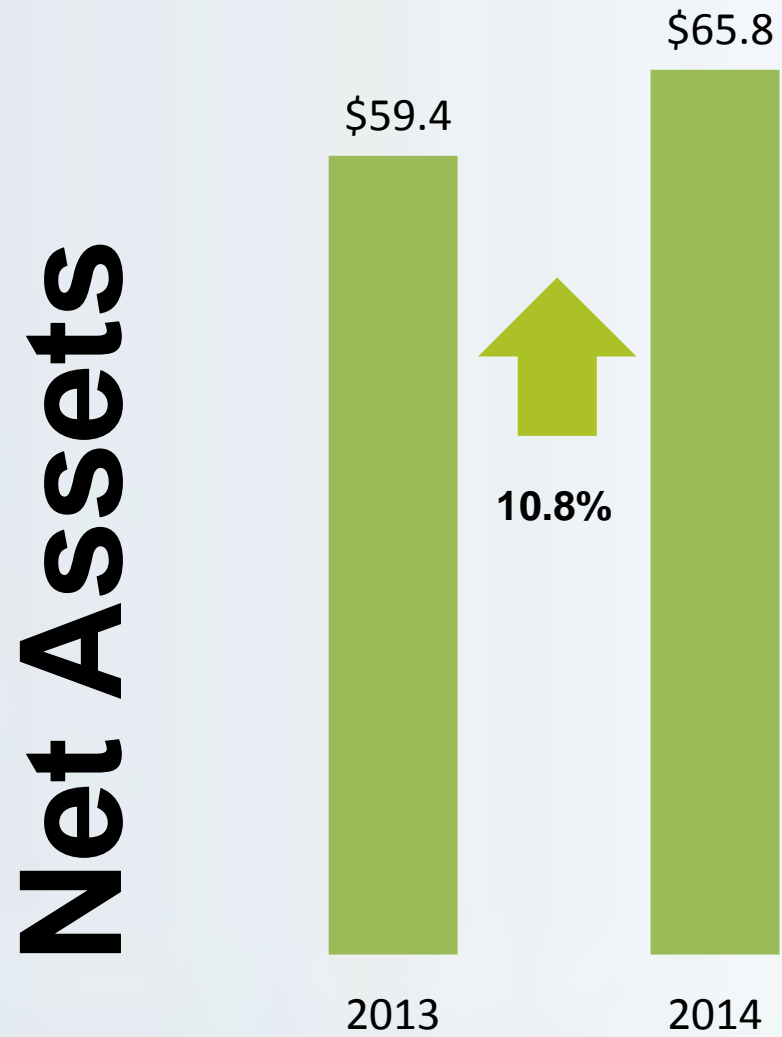
# Lawyers Insurance Fund



## Investment Returns – 2007 to 2014



# Lawyers Insurance Fund







## A preliminary look at 2015...

- 2015 membership numbers and PLTC are expected to be on budget
- Pressures and strengths for 2015 –
  - External counsel fees will continue to have pressure this year, with complex and challenging files, and the on-going TWU process
  - Other cost areas are expected to be on budget at this time



Questions?







*Lawyers  
Insurance  
Fund*

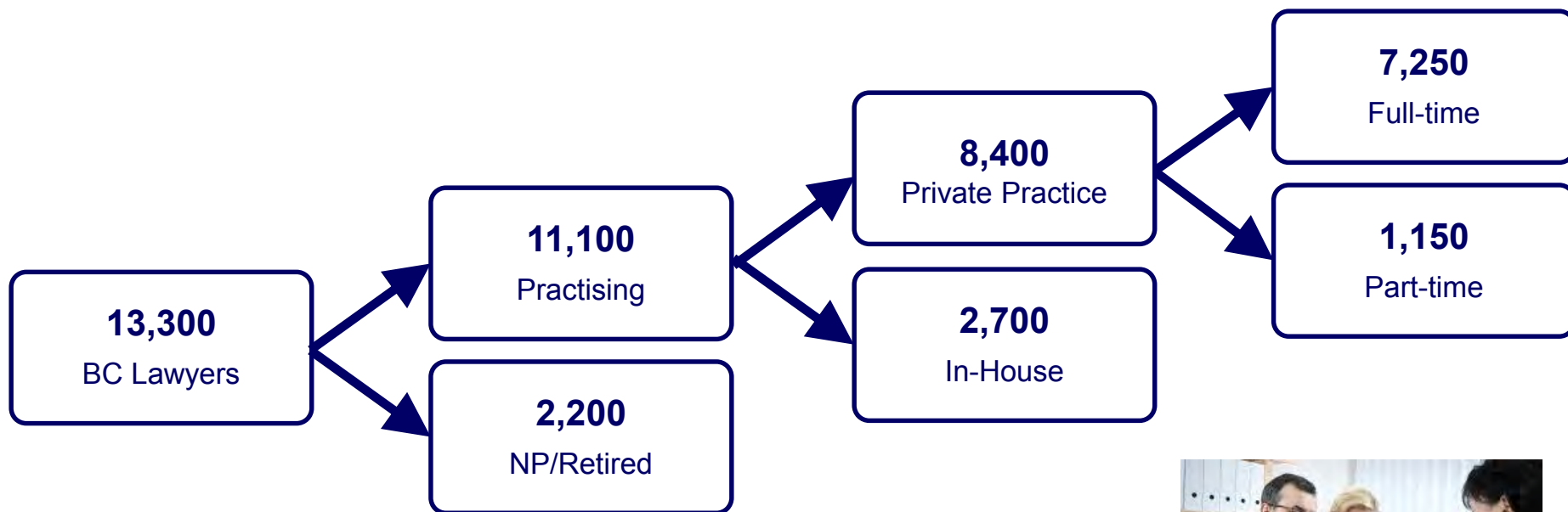
# Lawyers Insurance Fund

## 2014 Year End Report

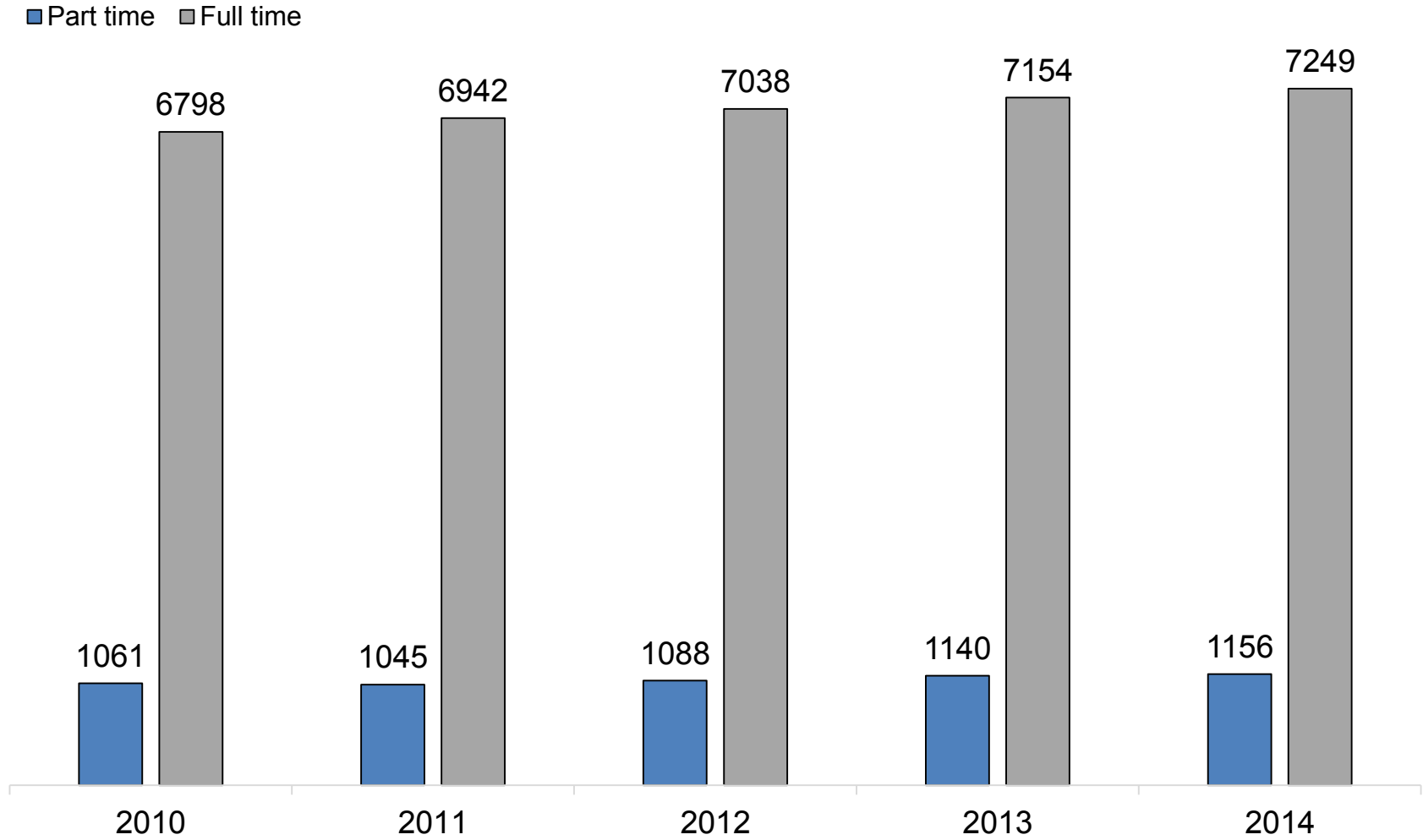
# Overview

1. BC lawyers
2. Part A (negligence)
3. Part B (theft)
4. Service evaluation & risk identification
5. What's new on the horizon

# BC Lawyers

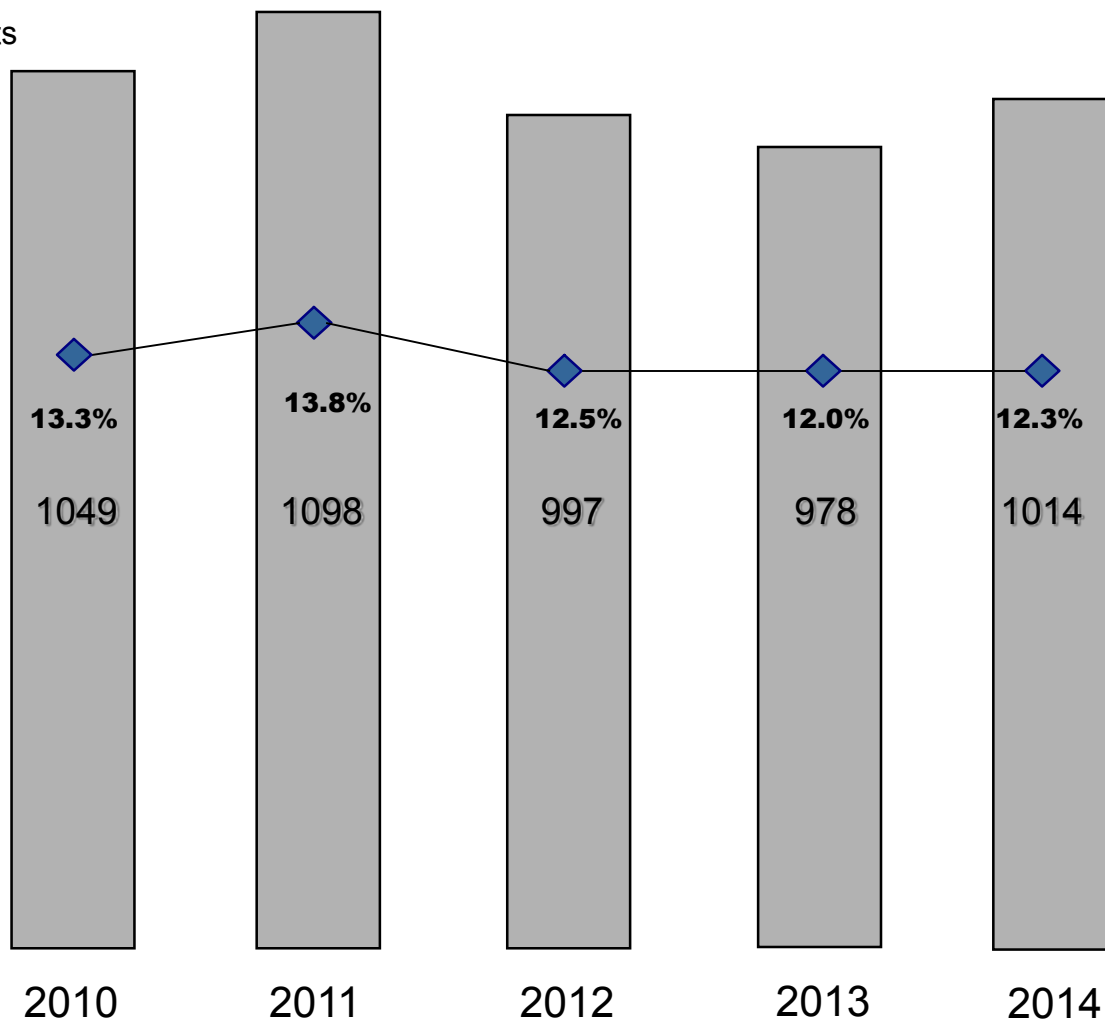


# Full and Part Time Insureds

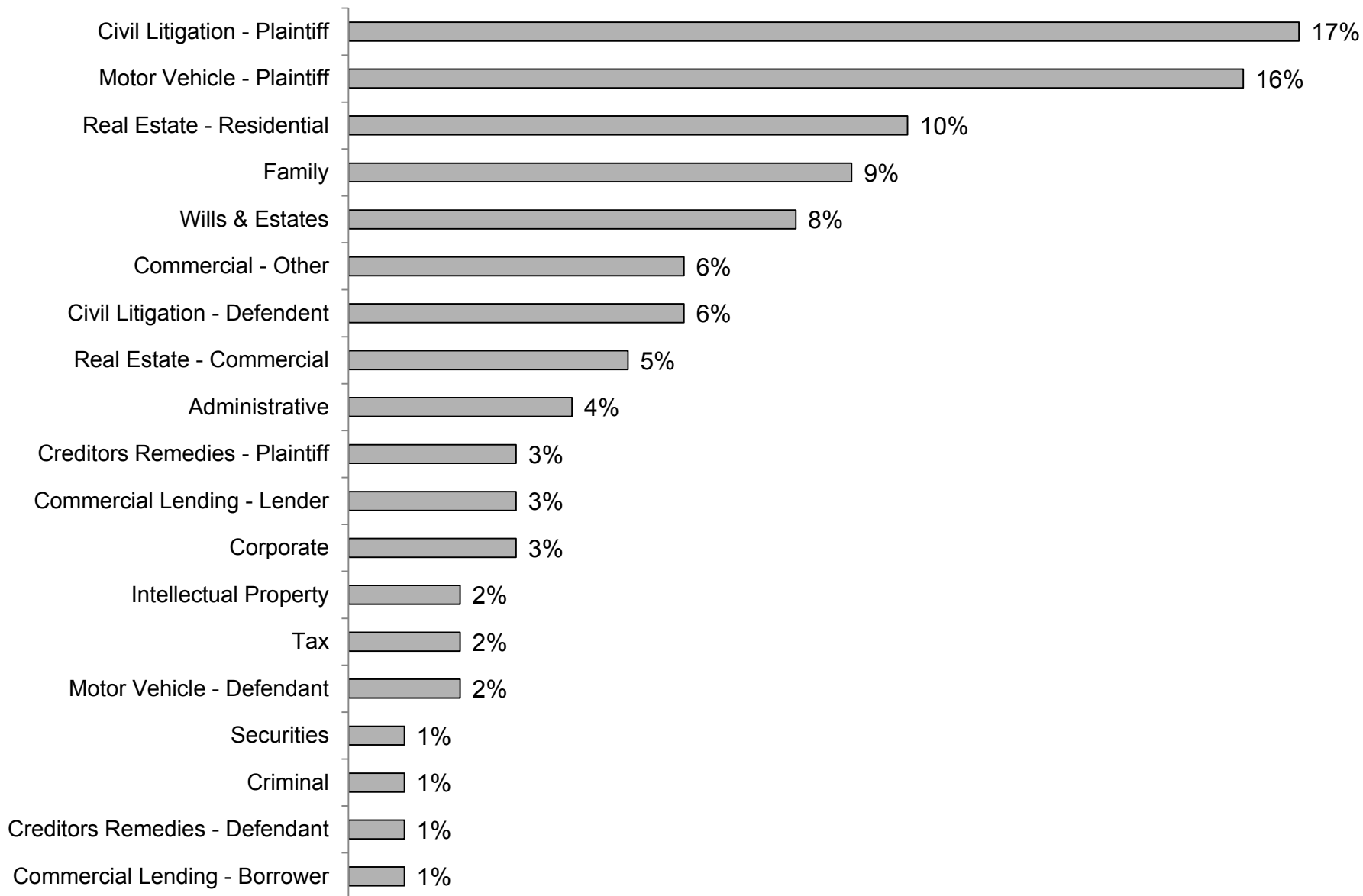


# Number and Frequency of Reports

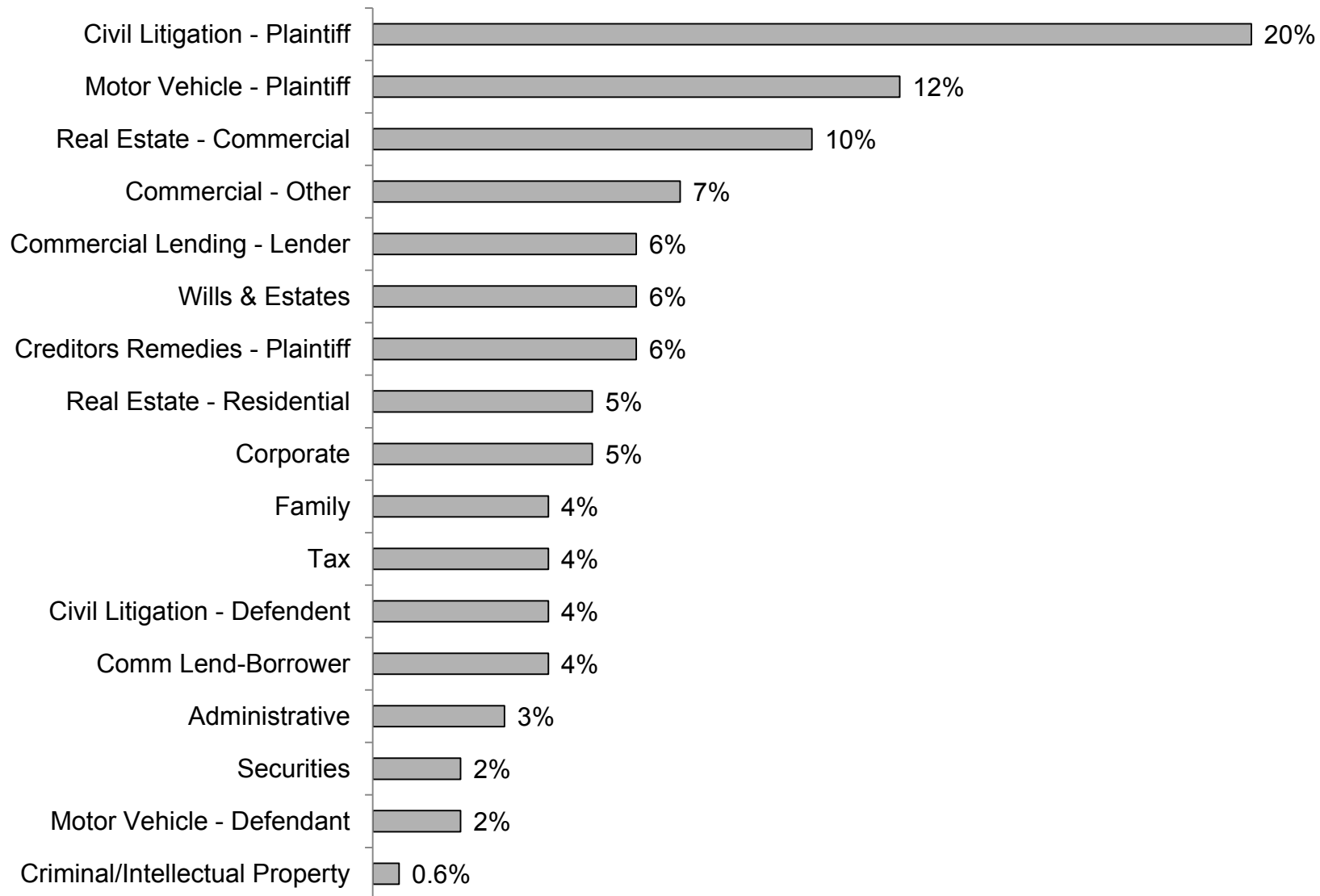
■ Number of Reports  
◆ Frequency of Reports



# Frequency by Area of Practice

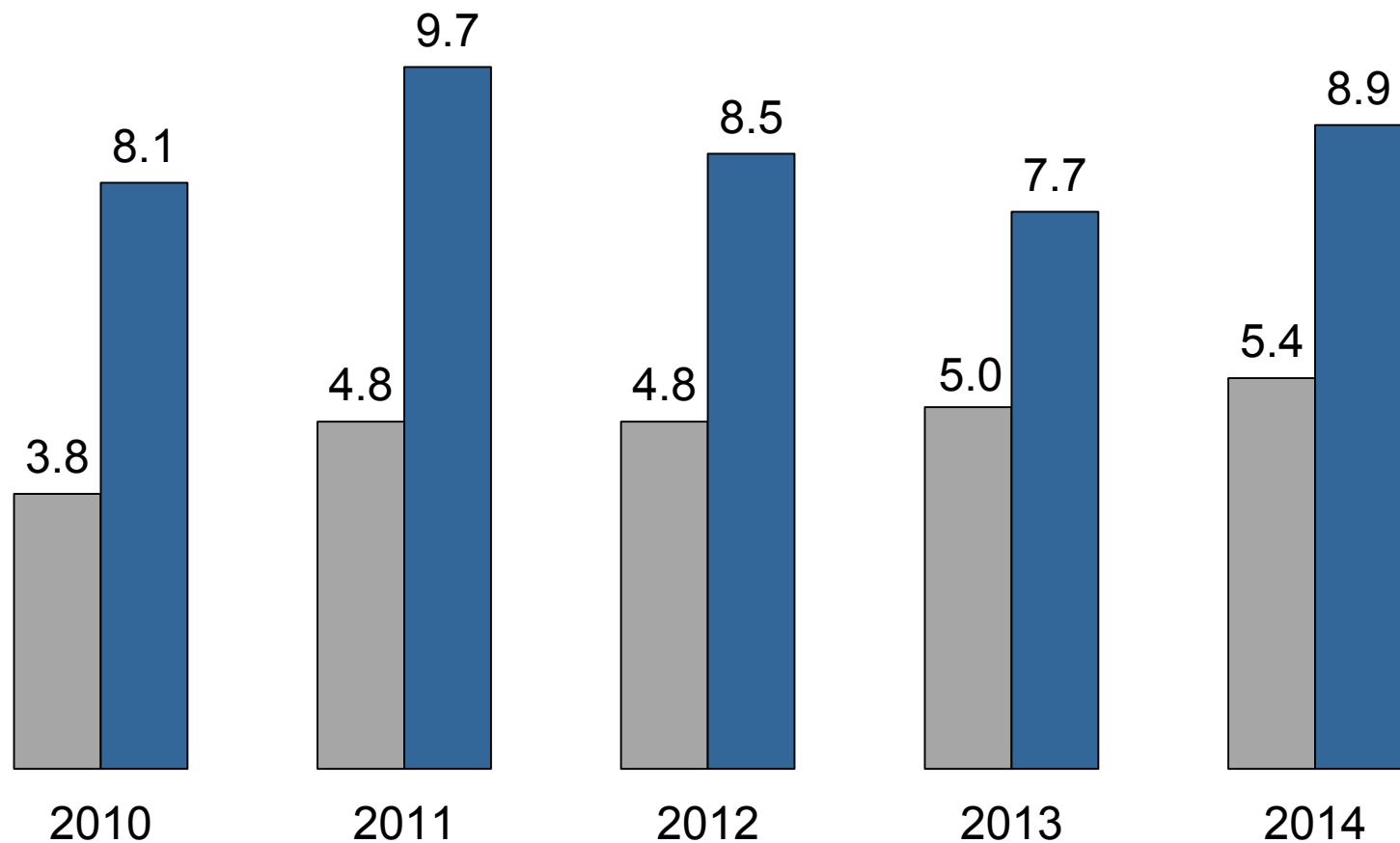


# Severity by Area of Practice



# Claim Payments

Expense  
Indemnity

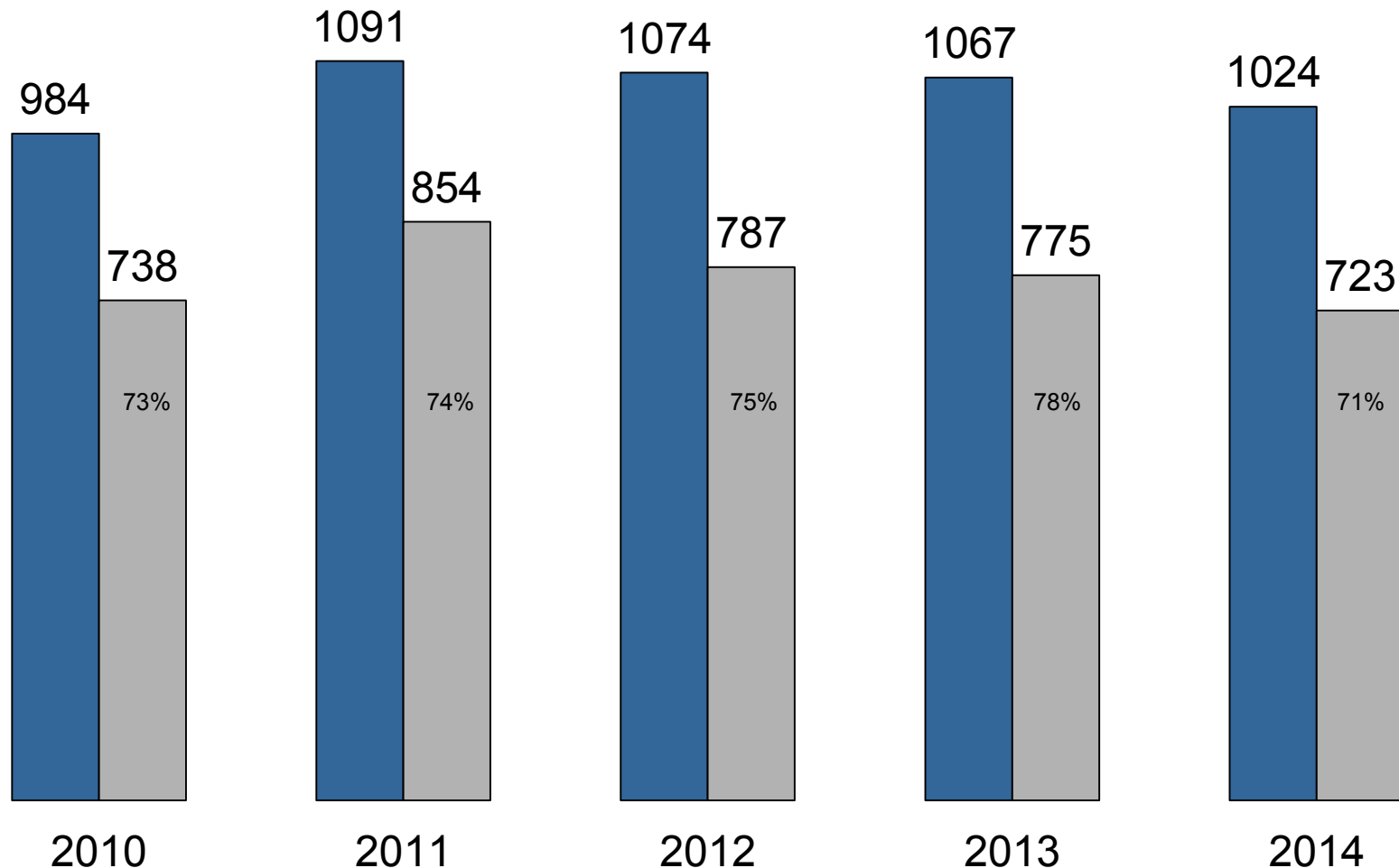




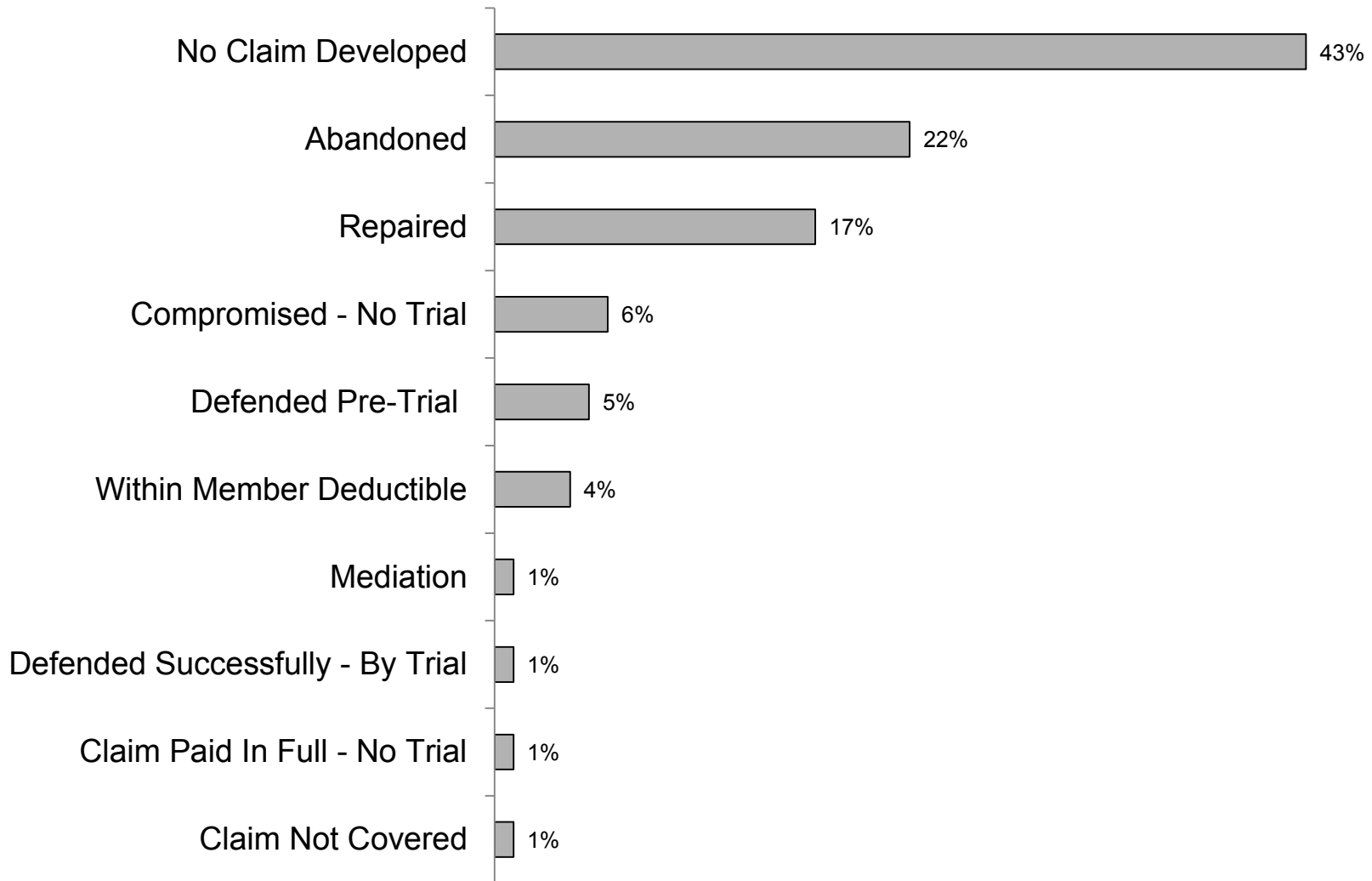
# Closed Reports with No Payment

■ Total Reports Closed

■ Reports Closed with No Payment



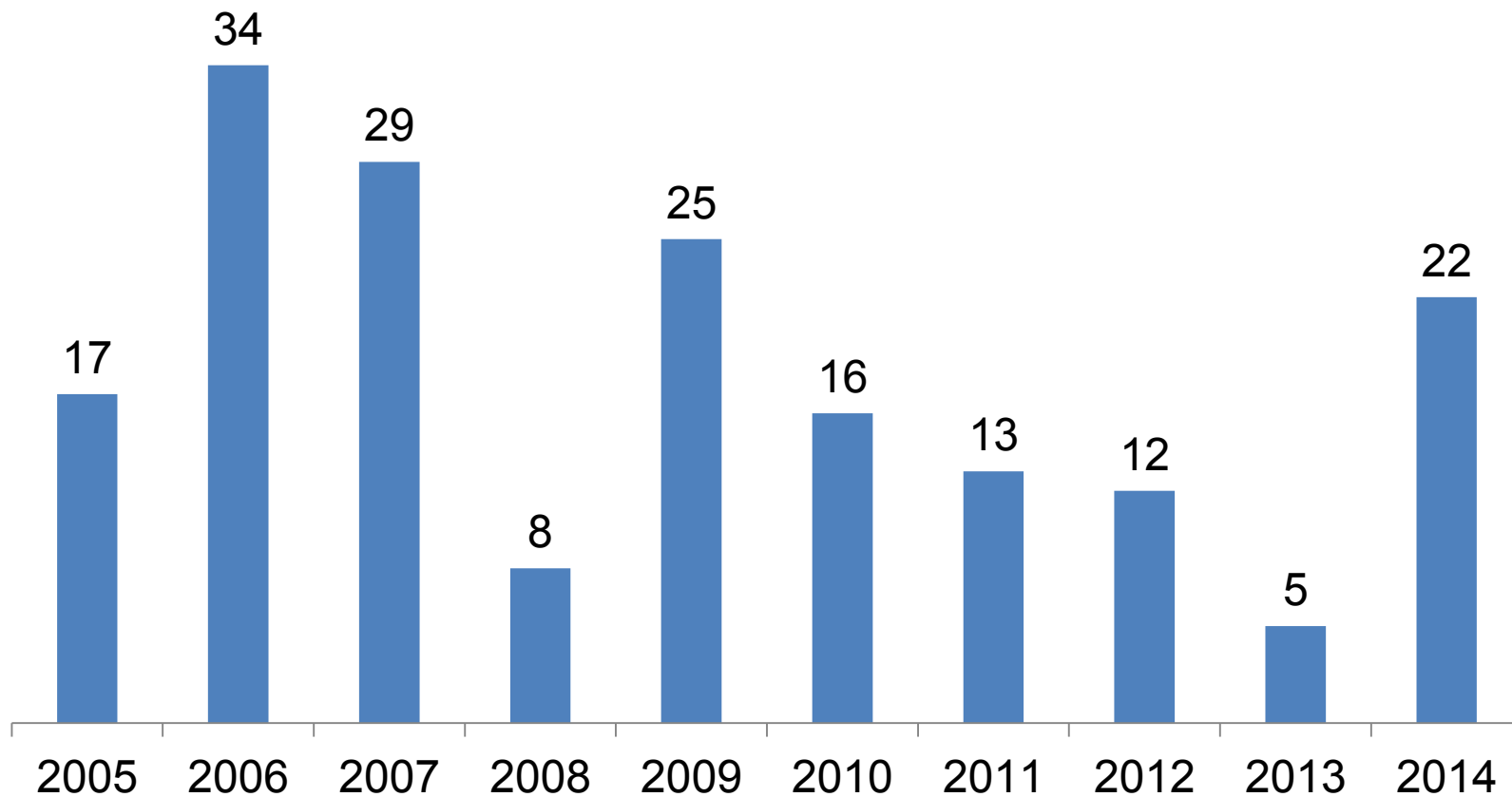
# Results of Reports



## Other Results in 2014

	2013	2014
Indemnity payments	124	137
Excess payments (settlements over \$1 million)	1	0
Number of risk management presentations	8	22
Matters tried	10	3
• Trials won	8	3
• Trials lost	2	0
• Appeals won	0	1
• Appeals lost	1	0

## Part B Claims: 2005 - 2014

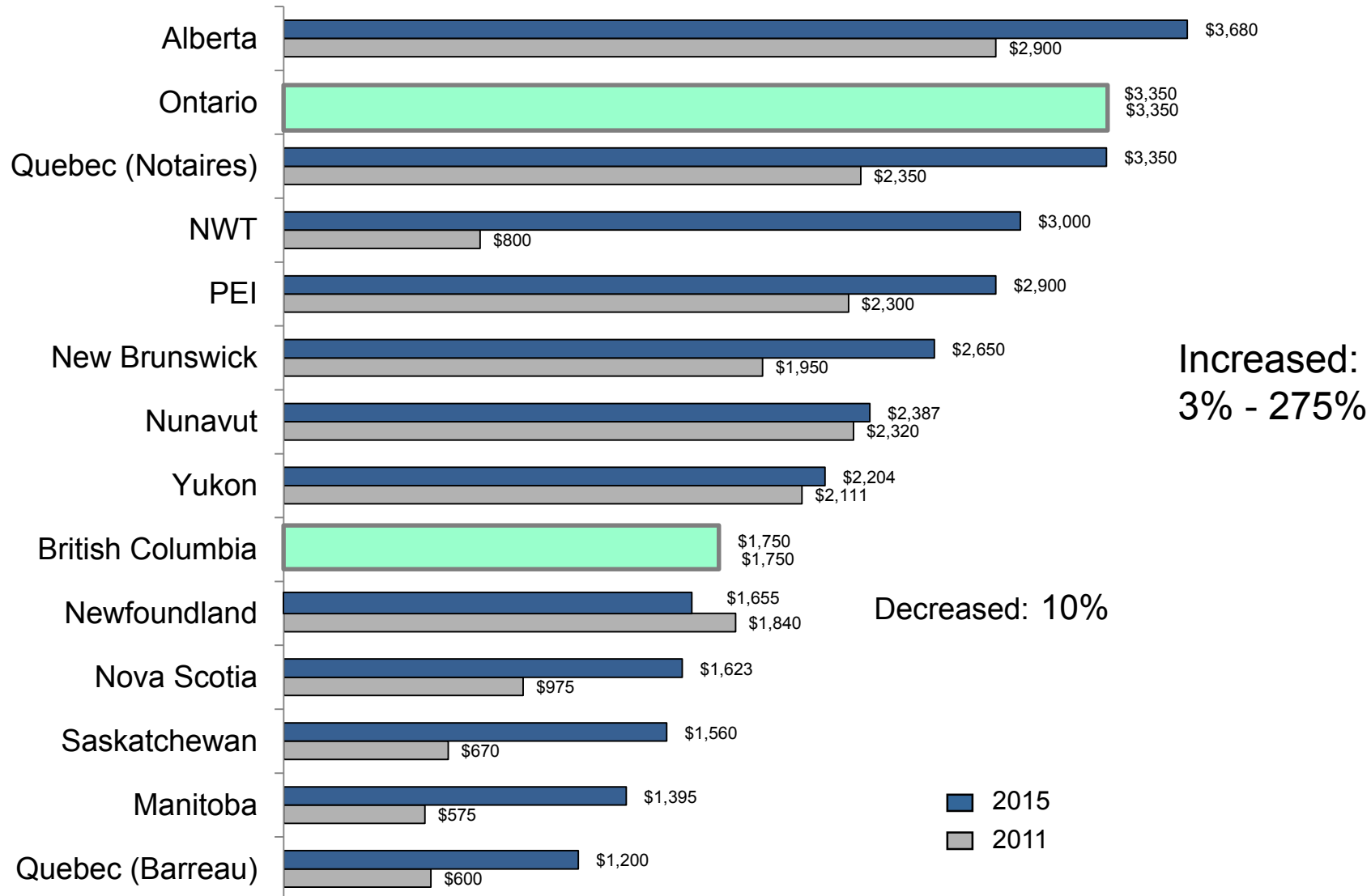


## Part B

In 2014:

- 22 reports
- 2 claims – 2 lawyers – totaling \$132,900
- 2 actions against former members - 2 default judgments
- \$53,500 was recovered

# Insurance Fee Comparison

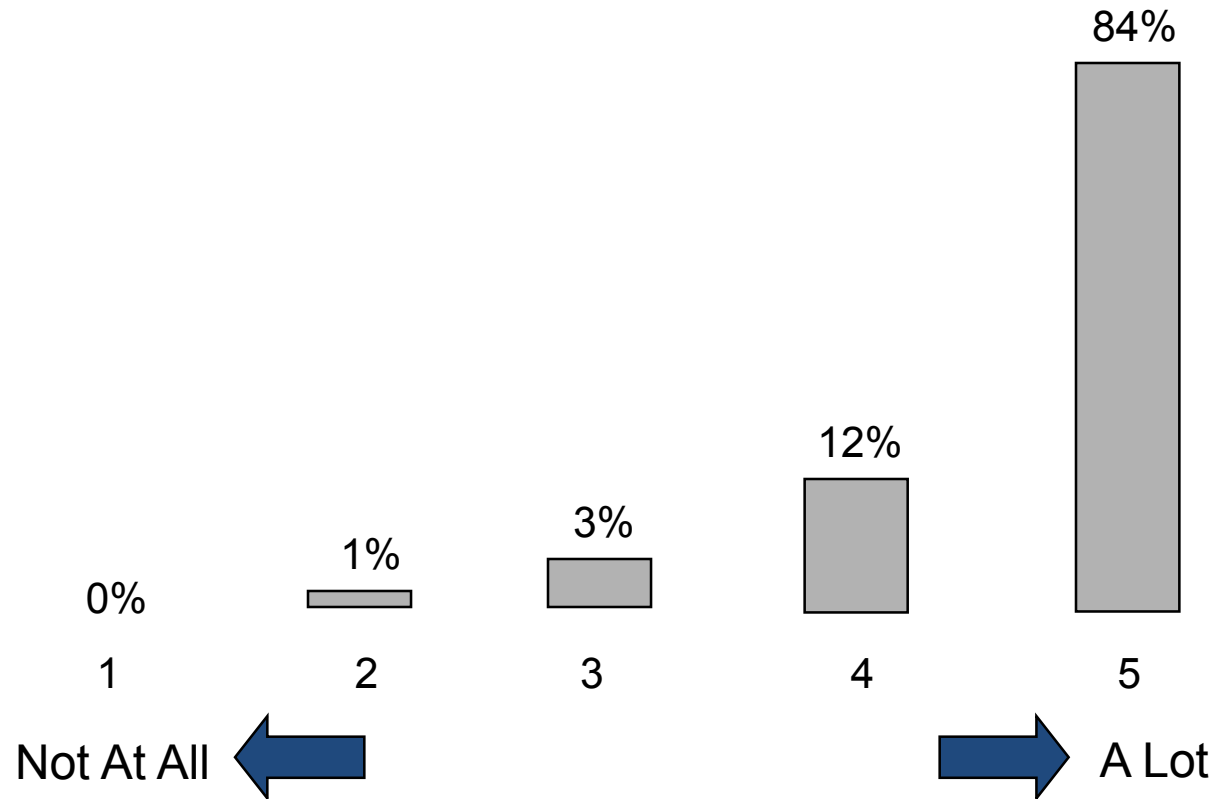


## Service Evaluation Forms

- SEFs completed – 268
- Kudos (good) – 190
- Grumbles (bad) – 7

# Service Evaluation Form Results

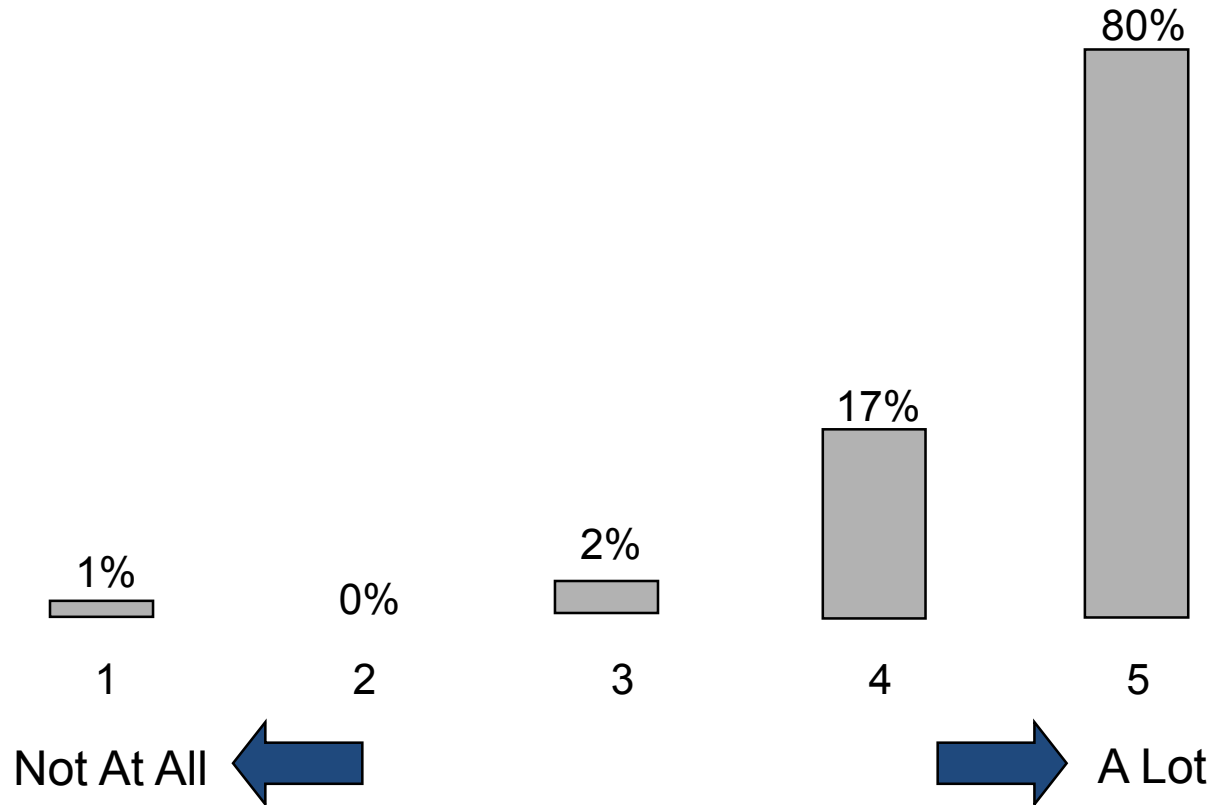
How satisfied overall were you with the outcome of your claim?





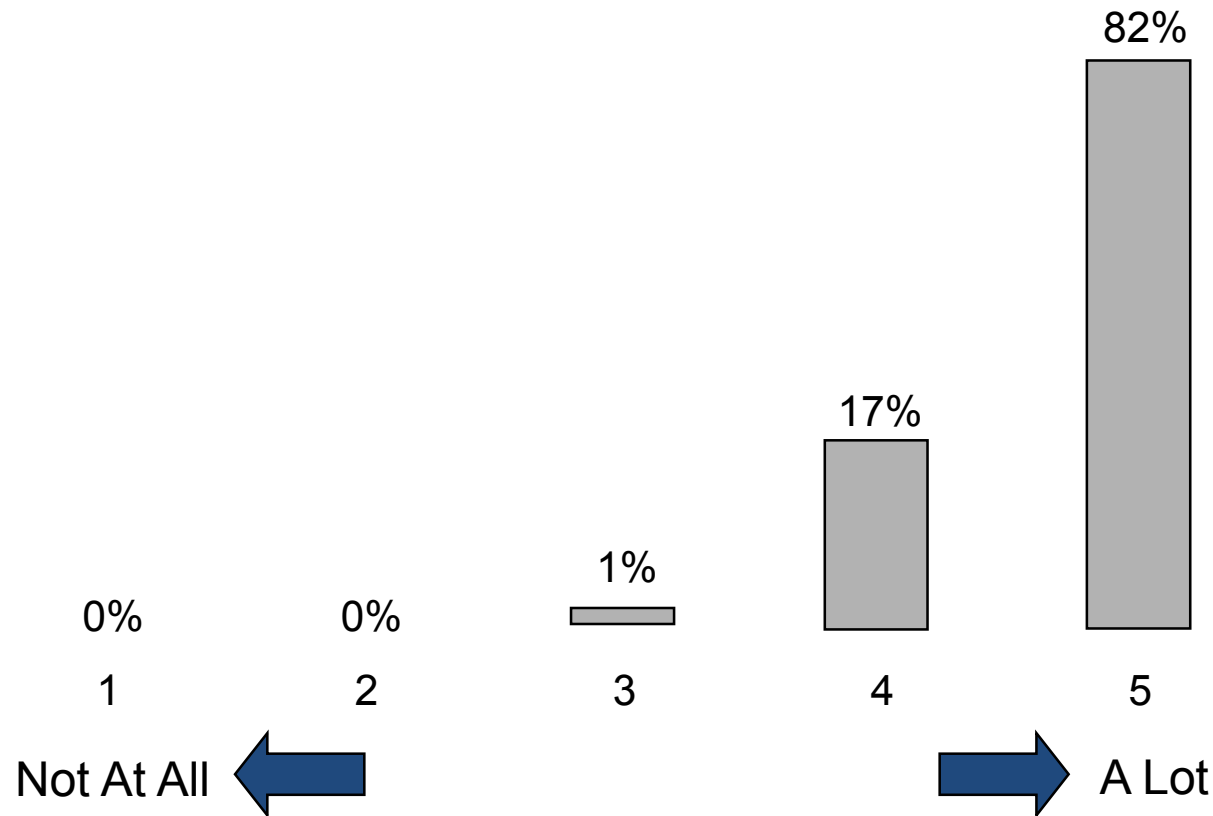
# Service Evaluation Form Results

How satisfied overall were you with the handling of your claim?



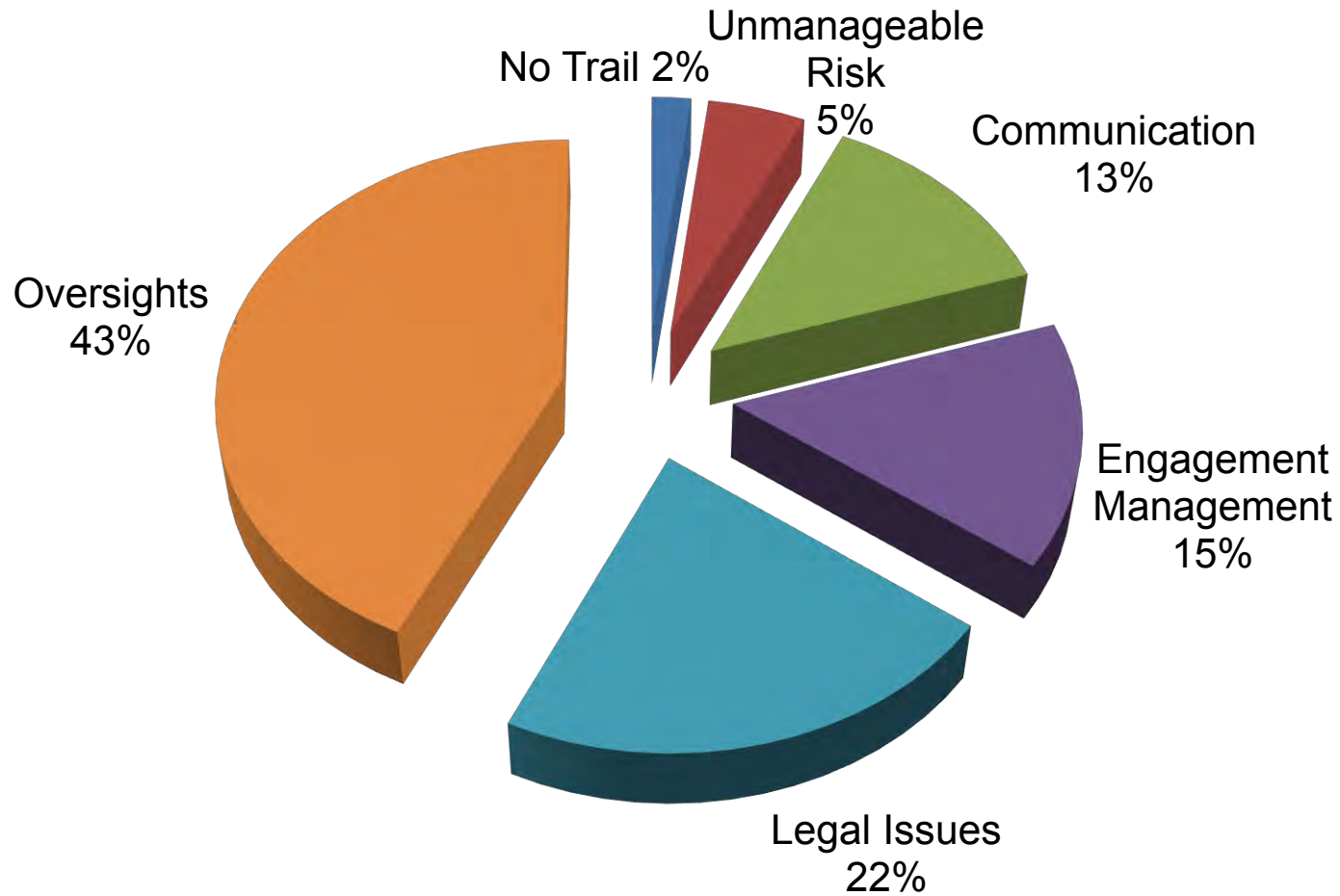
# Service Evaluation Form Results

How satisfied overall were you with the services provided by LIF claims counsel?



# Risks of Malpractice

## Risks of Malpractice



No Trail – 2%



Tip:

“This claim arose because of my poor ILA note taking. My advice? Be more thorough – very thorough – in recording details of the legal advice that you provide.”

Communication  
13%



Tip:

“Refuse to draft a will without a direct, in person, meeting with the will maker and insist on attending on the execution.”

Tip:

“Fee disputes are sometimes inevitable, particularly when clients are so entrenched in positions that they are not prepared to listen to or accept anything that is negative. It is important to keep these types of clients informed at all times and to keep current on billings and maintain proper records of phone calls, meetings and emails.”

Engagement  
Management  
15%



Tip:

“Slow down and think it through and discuss with more specialized counsel. Usually your instincts give you some pause - best to listen to the niggling concerns and at least discuss the matter with colleagues. You may get good advice.”

Legal Issues  
22%



Oversights  
43%



Tip:

“If you feel that your practice is failing, for whatever reason, get help. I felt like a deer caught in the headlights. Hoping things would get better was no way to deal with my future.”



Unmanageable  
Risk  
5%



Tip:

“Nothing can be done except ensure that all bases are covered.”

Unmanageable  
Risk  
5%



Tip:

“There is no way to avoid this claim being threatened although it was doomed from the start.”

Unmanageable  
Risk  
5%



Tip:

“Impossible to avoid.”

Unmanageable  
Risk  
5%



Tip:

“The claimant is mentally ill. The lawsuit against me and many others could not have been avoided unless we paid her the millions of dollars that she was demanding.”

Unmanageable  
Risk  
5%



Tip:

“I have no meaningful suggestions,  
short of ceasing to practise law.”

Unmanageable  
Risk  
5%



Tip:

“Pray”

New on the horizon....

2013 - My Insurance *Policy*: Questions and Answers  
Webinar - *"The Naked Lawyer:*

Big data reveals why risk leaves you bare and what  
2014 - My Insurance *Claim*: Questions and Answers  
you can do to protect yourself"

2015 - My Insurance *Program*: Questions and Answers



*Lawyers  
Insurance  
Fund*

# Thank you





## **CEO's Report to the Benchers**

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February 2015

Prepared for: Benchers

Prepared by: Timothy E. McGee

## **Report on 2014 Key Performance Measures**

The Law Society's report on 2014 Key Performance Measures (KPM's) has been distributed to the Benchers as part of the meeting agenda package.

The KPM's were first adopted by the Benchers in 2007 to serve as a dashboard to help monitor the desired high level outcomes of our regulatory processes. The KPM's are also one of the principal tools management uses to assess the efficacy of our methods of operations. We also publish the KPM results each year on our website as part of our commitment to accountability and transparency as a public interest regulator. The KPM's have been reviewed and modified in several respects since their inception. I will highlight relevant trends and provide our analysis of current results at the meeting. As always, I encourage the Benchers to review the KPM's and to ask any questions of me or senior management.

## **Federation of Law Societies of Canada March 26-29, 2015 Spring Semi-Annual Conference: Governance Review Phase II**

In 2014 the Federation Council authorized a broad Federation governance review. Phase I consisted of recent visits by members of the Federation's Governance Review Committee to meet law societies' leaders and listen to their views. A group of Benchers met with representatives of the Governance Review Committee in Vancouver on January 29 and exchanged views and addressed questions on a broad range of topics related to the Federation. Ken and I will speak to the highlights at the Benchers meeting.

Phase II: On March 26 to 29, law societies' Presidents, Vice Presidents, CEOs and senior staff, and Council members, will meet in Ottawa to participate in a series of workshops to shape a preliminary consensus on how Federation structures and processes might be improved. I expect that law society delegates will grapple with how they view their relationships with the Federation and each other, as well as with their expectations of the roles to be played by the Federation, including, the respective roles of the law societies' Benchers and staff.

## **Bencher Retreat Planning**

Vice-President David Crossin, QC and Michael Lucas, Manager, Policy & Legal Services, have been actively planning this year's Bencher Retreat to be held at Sun Peaks Resort on May 7-9, 2015.

The theme of this year's Retreat will be focused on "How is Section 3, and in particular, Section 3(a) of the Legal Profession Act to be interpreted?" The focus will be to provide an understanding of the scope of Section 3(a) and how to go about meeting the challenges it prescribes. The ultimate focus will be on "What specific activities or types of activities could be seen as answering the call of Section 3(a)?"

The purpose of the discussion from the Retreat will be:

1. To have the Benchers explore this rather undefined corner of the Law Society's mandate, and begin to identify and understand some of the issues associated with meeting the challenge of the section; and
2. To assist the work of groups such as the Rule of Law and Lawyer Independence Advisory Committee and the Governance Committee, and inform recommendations they may bring to the Benchers to help the Law Society better meet its statutory mandate.

## **Financial Statements for Fiscal Year 2014**

The Finance and Audit Committee has completed its review of the audited 2014 Financial Statements and Peter Lloyd, Chair of that Committee and Jeanette McPhee our CFO will present the Committee's report at the Bencher meeting. I will also be available together with other members of senior management to respond to any questions arising from the report.

## **CEO Succession Planning**

I have presented and discussed with the Executive Committee a proposed plan for ensuring that mechanisms are in place to deal with my succession in various possible scenarios. This is standard good governance. My report is included in your Bencher agenda package. The Executive Committee is supportive of the plan and I

would be pleased to discuss it and to answer any questions at the Bencher meeting.

## **CSAE -Tecker Symposium for Chief Elected and Chief Staff Officers**

Ken and I attended the 2015 CSAE Symposium for Chief Elected and Chief Staff Officers in Toronto on February 21-23, 2015 given by Glenn Tecker. This symposium is a very well attended and useful conference for Presidents and CEOs of organizations like ours. In attendance in Toronto were also the Presidents and CEOs of the Law Societies of Nova Scotia, New Brunswick, and Saskatchewan as well as the Society of Notaries Public of BC and the Law Foundation of BC. This gave us an extra opportunity to compare notes on common governance issues with our sister and related organizations. Ken and I will share the highlights of the interactive sessions at the Bencher meeting.

## **Benchers Teaching PLTC Professional Responsibility**

The PLTC staff extend special thanks to the following for teaching Professional Responsibility on February 12:

Ken Walker, QC; Jamie Maclaren; Phil Riddell; Past President Anna Fung, QC; Past President Bruce LeRose, QC; Past President Gordon Turriff, QC and Bill Maclagan, QC.

Timothy E. McGee  
Chief Executive Officer



# Admission Program Review

March 6, 2015

Lawyer Education Advisory Committee

# Strategic Plan Initiatives

- 2-1 Improve the admission, education and continuing competence of students and lawyers
- 2-1 (a) Evaluate the current admission program (PLTC and articles), including the role of lawyers and law firms, and develop principles for what an admission program is meant to achieve.
- 2-1 (b) Monitor the Federation's development of national admission standards and the need for a consistent approach to admission requirements in light of interprovincial mobility.
- 2-1 (c) Review the CPD program.
- 2-1 (e) Examine alternatives to articling, including Ontario's new LPP and Lakehead's integrated co-op law degree program, and assess their potential effects in BC.

# OK....The Show So Far



# 2014 - 2015

1. Commenced initial review of admission program pursuant to the Strategic Plan.
2. Developed survey questionnaire for those called for two years to three years on the value of PLTC program and articling.
3. Fine-tuned survey questions.
4. Survey has been sent. We should have results in April.



# An example of the survey questions

1. How effective was PLTC in preparing you to practise law?
2. What were PLTC's strengths and weaknesses?
3. What changes would you recommend?
4. How effective was articling in preparing you to practise law?
5. What were the strengths and weaknesses of your articles?
6. What changes would you recommend to the articling program?

# 2014 - 15 (continued)

- Anticipating National Admission Standards  
Implementation proposals from Federation of Law Societies.
- By way of background, the Federation points out that national admission standards are desirable in light of Canadian lawyer mobility.
- The first phase of the Federation project was to develop a national profile of the competencies required for entry into the profession.

# 2014 – 15 (continued)

- The Benchers approved the competency profile on the understanding that implementation will be based on nationally acceptable implementation plan.
- 
- Tim and Alan are on the Federation committee.
- Development of Federation proposals for an implementation plan is a work in progress (timing uncertain).

# 2014 - 15 (continued)

- We're engaged in information gathering on PLTC, and "bar admission programs" in all provinces and territories and some other countries.
- We're engaged in information gathering on articling in all provinces and territories.
- Considerable discussion of Ontario's LPP at Ryerson U and the Lakehead U program, and the lack of a meaningful "bar admission" training program for the mainstream of Ontario students.

# 2014 - 15 (continued)

- Considerable discussion of whether BC can anticipate a problem with increases in the number of law students looking for articling positions, including out of province students and NCA students.
- Considerable discussion of underpaid or unpaid articles, including the desire by some students who say “leave me alone.”

# Other provinces

## 1. CPLED

- Joint professional legal training course for the three Prairie provinces.
- Predominantly online. Takes place while students complete 12 months of articling.
- Skills focused.
- No traditional examinations except in Professional Ethics. Students assessed by written and performance tests.
- Under review.

## 2. Ontario's Three Streams

### 1) Articling Program Stream

- No bar admission training program (that is to say no skills or practical training program like we have in PLTC, and no CPLED).
- Two rigorous multiple choice 7 hour exams.
- 10 months of articling

## 2) Law Practice Program stream (LPP)

- Offered for first time in 2014-15 through Ryerson U in English and Ottawa U in French.
- LPP is a pilot project to deal with too many students who couldn't find articles.
  - Anticompetitive issue?
  - Perhaps students didn't want to go to rural Ontario if they couldn't article on Bay Street?
- Four months of mainly online learning (similar to SFU notaries, CPLED)



# Ontario LPP stream (continued)

- Followed by four months “experiential learning”, where students could be placed in law firms, but could also be placed in legal clinics or public interest advocacy centers.
- No articles in the traditional sense
- The two Law Society 7 hour exams
- Criticized by President of Law Students Society of Ontario

### 3) Lakehead University stream

- Integrated three year law degree program that includes two summer terms, practical training and work placements, and the two Law Society 7 hour multiple choice exams.
- Graduates then eligible for Call in Ontario.
- No articling and no further professional training course.

# We are comparing all of the programs

1. Should all or part of PLTC be taught online?
2. Competing issue... Don't fix it if it's not broken.
3. Other law societies may be inclined to go to online education because they lack the physical resources (classrooms) that BC has been blessed with.
4. What changes do law firms want (if any) if they're paying for PLTC?

# PLTC Today

1. PLTC offered 3 times yearly in Vancouver.
2. Once a year in Kamloops immediately after law school ends. Priority given to students articling in Kamloops and vicinity.
3. Once a year in Victoria. Priority to students articling in Victoria.
4. 460 students went through PLTC in 2014. For 2015, budgeted for 485 students.

# PLTC Today (continued)

- 5. Ten week face-to-face training and assessment program.
- 6. Predominantly skills-based training, including professional responsibility, advocacy, dispute resolution, interviewing, drafting, writing, practice management.
- 7. Four skills assessments and two examinations, plus assignments.

# Articling

- No articling in USA
- Articling for U.K. solicitors lasts two years (“training contract”).
- Nine months in BC. Articling ranges between nine and 12 months in Canada. Special dispensation for shorter periods, if practised abroad or clerked.

# Articling (continued)

- Is it valuable? Should we retain it or, like Jim Middlemiss suggests in *Canadian Lawyer*, should it be discarded in favour of the American model?
- What do we do if we experience a tsunami of law students coming to BC who seek articling positions, but can't get them?

# Articling (continued)

- Are law schools generating too many law students?
- Are NCA students creating an articling availability problem?
- Or should we, as former Chief Justice Finch suggests, create more positions in law schools, and shorten or eliminate articling, so that the cost of legal services responds to supply and demand?



# Problems with articling?

1. Not everyone may get articles.
2. But is this because of low marks, bad fit, unfortunately poor interview skills or, due to family commitments, they cannot go elsewhere for articles?
3. Uneven quality. You might have excellent articles in a small suburban firm (in court every day), or poor articles in a big firm where all you do is research and prepare lists of documents.

# The elephant in the room



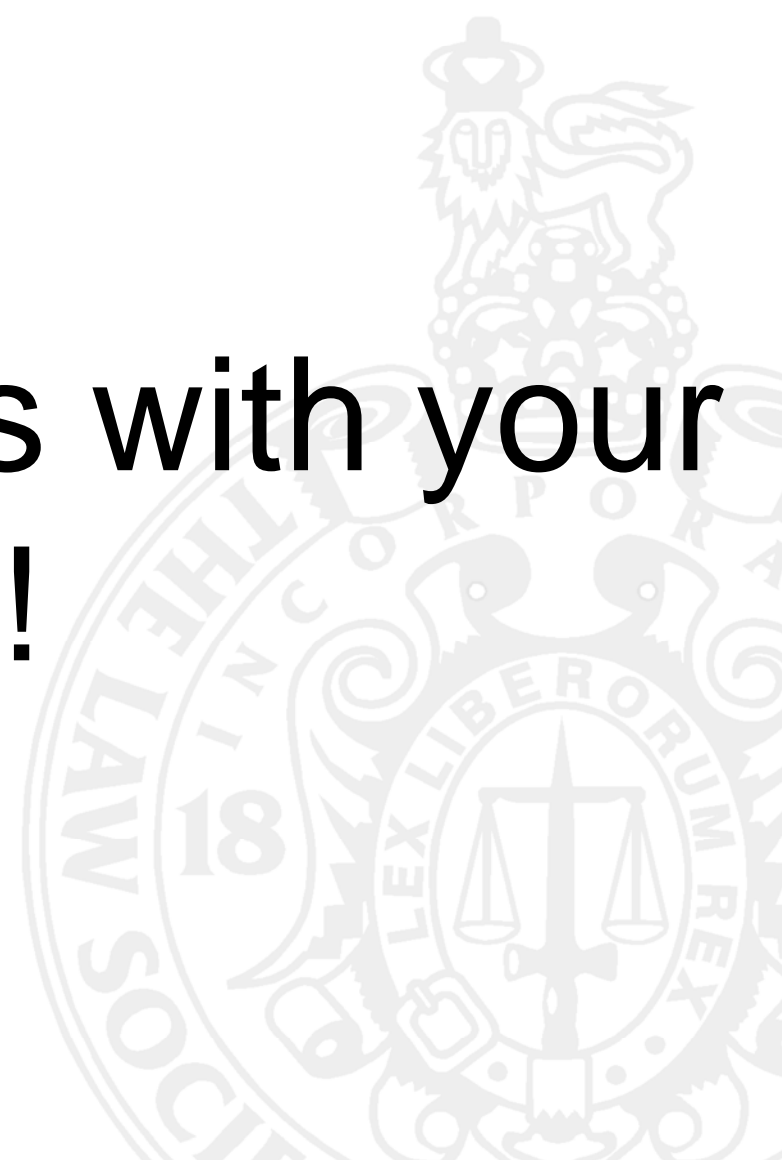
# The White Spot Idea

## (Thinking out of the Pirate Pak)

- Treat the admission program like a graduated driver's license.
- Those with certain courses (and pass rigorous exams) can only practise and will only be insured for particular practice areas... where there is a shortage lack of available service. i.e. poverty law/family law, etc.
- They still take PLTC.
- Whether there is no articling, or three months articling, they practise with a restricted license for a year in the "at need," areas, and their licenses convert to a full practice certificate after one year.
- Maybe this involves additional funding for justice access centers.

# Finally

Please contact us with your  
ideas. Thank you!



# **REDACTED MATERIALS**

# **REDACTED MATERIALS**

# The Law Society *of British Columbia*



## **BC Code Appendix B: Confidentiality rules for Parenting Coordinators**

**March 9, 2015**

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**Purpose of Report:**

**Recommendation for Change to BC Code**

**Prepared by:**

**Ethics Committee**



# Memo

To: Benchers  
From: Ethics Committee  
Date: March 9, 2015  
Subject: **BC Code Appendix B: Confidentiality rules for Parenting Coordinators**

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## I. Background

The Law Society's Family Law Task Force (the "FLTF") recommended to us that Appendix B – Family Law Mediation, Arbitration and Parenting Coordination be altered to recognize that parent coordinators are not bound by a duty of confidentiality with respect to communications made in the parenting coordination process. The basis of the recommendation is that the nature of parenting coordination work contemplates that communications can be used for later determinations by the parenting coordinator to the prejudice of one of the parties. The concern was brought to the attention of the FLTF by the Parenting Coordinators Roster Society, a group of professionals who have spearheaded the establishment of parenting coordinators in British Columbia and who are active in acting as parent coordinators and in monitoring issues that affect them.

The Parenting Coordinators Roster Society website is located at:

<http://www.bcparentingcoordinators.com/>

## II. Conflict Between Appendix B and Parenting Coordination Agreement

Section 4 of Appendix B of the BC Code provides:

4. Unless otherwise ordered by the court, a lawyer who acts as a family law mediator or parenting coordinator and the participants must, before family law mediation or parenting coordination begins, enter into a written agreement that includes at least the following provisions:

- (a) an agreement that the lawyer, throughout the family law mediation or parenting coordination, is not acting as legal counsel for any participant;
- (b) an agreement that the lawyer may disclose fully to each participant all information provided by the other participant that is relevant to the issues;



- (c) an agreement that, subject to rule 3.3-3, the family law mediation or parenting coordination is part of an attempt to settle the differences between the participants and that all communications between participants or between any participant and the family law mediator or parenting coordinator will be “without prejudice” so that no participant will attempt:
  - (i) to introduce evidence of the communications in any legal proceedings, or
  - (ii) to call the family law mediator or parenting coordinator as a witness in any legal proceedings;

Section 3.4 of the Parenting Coordinators Roster Society standard form parenting coordinator agreement states:

3.4 There is no confidentiality where information is obtained by or statements are made to the Parenting Coordinator by a Parent, the child(ren) or by a third party, except that the Parenting Coordinator may withhold such information received in confidence if, in the Parenting Coordinator’s opinion, the disclosure of the information may be harmful to the child(ren)’s relationship with either Parent or compromise the child(ren)’s relationship with a therapist, a teacher or another third party.

There is clearly a conflict between these two provisions, with Appendix B placing restrictions on the use of information the parenting coordinator obtains and the standard form parenting coordinator agreement giving a discretion to disclose it. The FLTF is of the view that the nature of parenting coordination requires that communications should be able to be used for later determinations by the parenting coordinator, to the prejudice of one of the parties, a position that is inconsistent with the current wording of Appendix B, Section 4 (c).

We agree with the FLTF’s view of this matter and propose the attached amendments to remedy this problem. Our draft proposes to slightly modify section 4 (c) to confine it to family law mediation only, and we propose to add section 4 (c.1) expressly to deal with the confidentiality question with respect to parenting coordination.

Attachments:

- Draft changes to Appendix B. [641604 & 641639]

## Appendix B – Family Law Mediation, Arbitration and Parenting Coordination

### Definitions

#### 1. In this Appendix:

**“dispute resolution process”** means the process of family law mediation, family law arbitration or parenting coordination;

**“family law arbitration”** means a process by which participants submit issues relating to their marriage, cohabitation, separation or divorce to an impartial person (the family law arbitrator) for decision;

**“family law mediation”**

(a) means a process by which participants attempt, with the assistance of an impartial person (the family law mediator), to reach a consensual settlement of issues relating to their marriage, cohabitation, separation, divorce, children or finances, including division of assets, and

(b) includes, without limiting the generality of the foregoing, one or more of the following acts when performed by a lawyer acting as a family law mediator:

- (i) informing the participants of and otherwise advising them on the legal issues involved,
- (ii) advising the participants of a court’s probable disposition of the issue,
- (iii) preparing any agreement between the participants other than a memorandum recording the results of the family law mediation;

**“parenting coordination”** means a process by which an impartial person (the parenting coordinator), by agreement of participants or by court order, mediates a dispute with respect to the implementation of an agreement or a court order respecting the allocation of parenting time or parenting responsibilities, or contact with a child or makes a determination respecting that dispute that is binding on the participants;

**“participant”** means a person with issues relating to marriage, cohabitation, separation or divorce who has agreed to the intervention of an impartial person as family law mediator or arbitrator or parenting coordinator or is subject to a court order appointing such a person to assist in the resolution of such issues.

### Disqualifications

- 2. (a) If a lawyer or a partner, associate or employee of that lawyer has previously acted or is currently acting for any of the participants to a dispute resolution process in a solicitor-client relationship with respect to any matter that may reasonably be expected to become an issue during the dispute resolution process, that lawyer may not act as a family law mediator or arbitrator or parenting coordinator for any of the participants;

- (b) If a lawyer has acted in a dispute resolution process for the participants, neither that lawyer nor any partner, associate or employee of that lawyer may act in a solicitor-client relationship for either participant against the other participant;
- (c) If a lawyer or a partner, associate or employee of that lawyer has acted in a dispute resolution process for the participants, neither that lawyer nor a partner, associate or employee of that lawyer may act for or against any person if to do so might require the lawyer to disclose or make use of confidential information given in the course of the dispute resolution process.

### **Obligations of family law mediator or arbitrator or parenting coordinator when participants unrepresented**

3. A lawyer who acts as a family law mediator or arbitrator or parenting coordinator for participants who are unrepresented must:

- (a) urge each unrepresented adult participant to obtain independent legal advice or representation, both before the commencement of the dispute resolution process and at any stage before an agreement between the participants is executed;
- (b) take care to see that the unrepresented participant is not proceeding under the impression that the lawyer will protect his or her interests;
- (c) make it clear to the unrepresented participant that the lawyer is acting exclusively in a neutral capacity, and not as counsel for either participant; and
- (d) explain the lawyer's role in the dispute resolution process, including the scope and duration of the lawyer's powers.

### **Obligations of family law mediator or parenting coordinator**

4. Unless otherwise ordered by the court, a lawyer who acts as a family law mediator or parenting coordinator and the participants must, before family law mediation or parenting coordination begins, enter into a written agreement that includes at least the following provisions:

- (a) an agreement that the lawyer, throughout the family law mediation or parenting coordination, is not acting as legal counsel for any participant;
- (b) an agreement that the lawyer may disclose fully to each participant all information provided by the other participant that is relevant to the issues;
- (c) with respect to family law mediation, an agreement that, subject to rule 3.3-3, the family law mediation ~~or parenting coordination~~ is part of an attempt to settle the differences between the participants and that all communications between participants or between any participant and the family law mediator ~~or parenting coordinator~~ will be "without prejudice" so that no participant will attempt:
  - (i) to introduce evidence of the communications in any legal proceedings, or
  - (ii) to call the family law mediator ~~or parenting coordinator~~ as a witness in any legal proceedings;

(c.1) with respect to parenting coordination, an agreement that no communications between the parenting coordinator and a participant, the child of a participant or a third party are confidential, except that the parenting coordinator may withhold any such information if, in the opinion of the parenting coordinator, the disclosure

of the information may be harmful to a child's relationship with a participant, or compromise the child's relationship with a third party.

- (d)an acknowledgment that the lawyer must report to the Director of Family and Child Services any instance arising from the family law mediation or parenting coordination in which the lawyer has reasonable grounds to believe that a child is in need of protection;
- (e)an agreement as to the lawyer's rate of remuneration and terms of payment;
- (f)an agreement as to the circumstances in which family law mediation or parenting coordination will terminate.

### **Obligations of family law arbitrator**

**5.** A lawyer who acts as a family law arbitrator and the participants must, before the lawyer begins his or her duties as family law arbitrator, enter into a written agreement that includes at least the following provisions:

- (a)an agreement that the lawyer, throughout the family law arbitration, is not acting as legal counsel for any participant;
- (b)an acknowledgment that the lawyer must report to the Director of Family and Child Services any instance arising from the family law arbitration in which the lawyer has reasonable grounds to believe that a child is in need of protection;
- (c)an agreement as to the lawyer's rate of remuneration and terms of payment.

### **Lawyer with dual role**

**6.** A lawyer who is empowered to act as both family law mediator and family law arbitrator in a dispute resolution process must explain the dual role to the participants in writing and must advise the participants in writing when the lawyer's role changes from one to the other.

**7.** A parenting coordinator who may act as a family law mediator as well as determine issues in a dispute resolution process must explain the dual role to the participants in writing and must advise the participants in writing when the lawyer's role changes from one to the other.

[641604/2014]

## Appendix B – Family Law Mediation, Arbitration and Parenting Coordination

### Definitions

#### 1. In this Appendix:

**“dispute resolution process”** means the process of family law mediation, family law arbitration or parenting coordination;

**“family law arbitration”** means a process by which participants submit issues relating to their marriage, cohabitation, separation or divorce to an impartial person (the family law arbitrator) for decision;

**“family law mediation”**

(a) means a process by which participants attempt, with the assistance of an impartial person (the family law mediator), to reach a consensual settlement of issues relating to their marriage, cohabitation, separation, divorce, children or finances, including division of assets, and

(b) includes, without limiting the generality of the foregoing, one or more of the following acts when performed by a lawyer acting as a family law mediator:

- (i) informing the participants of and otherwise advising them on the legal issues involved,
- (ii) advising the participants of a court’s probable disposition of the issue,
- (iii) preparing any agreement between the participants other than a memorandum recording the results of the family law mediation;

**“parenting coordination”** means a process by which an impartial person (the parenting coordinator), by agreement of participants or by court order, mediates a dispute with respect to the implementation of an agreement or a court order respecting the allocation of parenting time or parenting responsibilities, or contact with a child or makes a determination respecting that dispute that is binding on the participants;

**“participant”** means a person with issues relating to marriage, cohabitation, separation or divorce who has agreed to the intervention of an impartial person as family law mediator or arbitrator or parenting coordinator or is subject to a court order appointing such a person to assist in the resolution of such issues.

### Disqualifications

- 2. (a) If a lawyer or a partner, associate or employee of that lawyer has previously acted or is currently acting for any of the participants to a dispute resolution process in a solicitor-client relationship with respect to any matter that may reasonably be expected to become an issue during the dispute resolution process, that lawyer may not act as a family law mediator or arbitrator or parenting coordinator for any of the participants;

- (b) If a lawyer has acted in a dispute resolution process for the participants, neither that lawyer nor any partner, associate or employee of that lawyer may act in a solicitor-client relationship for either participant against the other participant;
- (c) If a lawyer or a partner, associate or employee of that lawyer has acted in a dispute resolution process for the participants, neither that lawyer nor a partner, associate or employee of that lawyer may act for or against any person if to do so might require the lawyer to disclose or make use of confidential information given in the course of the dispute resolution process.

### **Obligations of family law mediator or arbitrator or parenting coordinator when participants unrepresented**

**3.** A lawyer who acts as a family law mediator or arbitrator or parenting coordinator for participants who are unrepresented must:

- (a) urge each unrepresented adult participant to obtain independent legal advice or representation, both before the commencement of the dispute resolution process and at any stage before an agreement between the participants is executed;
- (b) take care to see that the unrepresented participant is not proceeding under the impression that the lawyer will protect his or her interests;
- (c) make it clear to the unrepresented participant that the lawyer is acting exclusively in a neutral capacity, and not as counsel for either participant; and
- (d) explain the lawyer's role in the dispute resolution process, including the scope and duration of the lawyer's powers.

### **Obligations of family law mediator or parenting coordinator**

**4.** Unless otherwise ordered by the court, a lawyer who acts as a family law mediator or parenting coordinator and the participants must, before family law mediation or parenting coordination begins, enter into a written agreement that includes at least the following provisions:

- (a) an agreement that the lawyer, throughout the family law mediation or parenting coordination, is not acting as legal counsel for any participant;
- (b) an agreement that the lawyer may disclose fully to each participant all information provided by the other participant that is relevant to the issues;
- (c) with respect to family law mediation, an agreement that, subject to rule 3.3-3, the family law mediation is part of an attempt to settle the differences between the participants and that all communications between participants or between any participant and the family law mediator will be "without prejudice" so that no participant will attempt:
  - (i) to introduce evidence of the communications in any legal proceedings, or
  - (ii) to call the family law mediator as a witness in any legal proceedings;
- (c.1) with respect to parenting coordination, an agreement that no communications between the parenting coordinator and a participant, the child of a participant or a third party are confidential, except that the parenting coordinator may withhold any such information if, in the opinion of the parenting coordinator, the disclosure of the information may be harmful to a child's relationship with a participant, or compromise the child's relationship with a third party.

- (d)an acknowledgment that the lawyer must report to the Director of Family and Child Services any instance arising from the family law mediation or parenting coordination in which the lawyer has reasonable grounds to believe that a child is in need of protection;
- (e)an agreement as to the lawyer's rate of remuneration and terms of payment;
- (f)an agreement as to the circumstances in which family law mediation or parenting coordination will terminate.

### **Obligations of family law arbitrator**

**5.** A lawyer who acts as a family law arbitrator and the participants must, before the lawyer begins his or her duties as family law arbitrator, enter into a written agreement that includes at least the following provisions:

- (a)an agreement that the lawyer, throughout the family law arbitration, is not acting as legal counsel for any participant;
- (b)an acknowledgment that the lawyer must report to the Director of Family and Child Services any instance arising from the family law arbitration in which the lawyer has reasonable grounds to believe that a child is in need of protection;
- (c)an agreement as to the lawyer's rate of remuneration and terms of payment.

### **Lawyer with dual role**

**6.** A lawyer who is empowered to act as both family law mediator and family law arbitrator in a dispute resolution process must explain the dual role to the participants in writing and must advise the participants in writing when the lawyer's role changes from one to the other.

**7.** A parenting coordinator who may act as a family law mediator as well as determine issues in a dispute resolution process must explain the dual role to the participants in writing and must advise the participants in writing when the lawyer's role changes from one to the other.

[641639/2014]

# Memo

The Law Society  
of British Columbia



To Benchers  
From Jeffrey G. Hoskins, QC for Act & Rules Committee  
Date April 1, 2015  
Subject **Law Society Rules 2015**

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At the last meeting, the Benchers considered the proposed revised Law Society Rules 2015 and resolved to postpone adoption until the April meeting in order to allow Benchers more time to review the recommended revisions. In the meantime, the members of the Law Society have been informed by E-Brief of the upcoming revision and a copy of the proposed revised Rules has been available on the Law Society website.

After several years of discussion and work, the Act and Rules Committee has completed a review and consolidation of the Law Society Rules. The Committee recommends that the Benchers enact the revised rules effective July 1, 2015. That will allow the staff and others time to implement the changes resulting from the revision and consolidation of the numbering system.

There has been no formal review of the Law Society Rules since 1998. In the intervening years it has become replete with amendments, additions and deletions. The result is a set of Rules that are difficult and unwieldy to use and messy and unprofessional in appearance. We are up to three places of decimal in places where repeated insertions have taken place.

The objectives of the revision and consolidation are these:

- re-number all rules and subrules in consecutive whole number order to eliminate decimal numbering;
- verify and update cross-references;
- add marginal notes to cross-references to aid recognition;
- provide brief historical notes for the benefit of those researching past provisions;
- consider placement of provisions and relocate as necessary to make more logical;
- ensure consistency and economy of language;
- identify substantive issues for consideration outside of the consolidation project.

With the assistance of most of the staff departments, the Committee has completed a program of approving draft revisions of individual Parts of the Rules over the past several months.



I attach the proposed revised Rules. They have been lightly edited and re-formatted since the version that was provided to the Benchers in March. What is attached is the clean version for adoption. There is a redlined version showing changes, which was distributed in March but I have not included with this package. It can be accessed [here](#) on the Law Society website.

There is also a Historical Table showing the new and old numbers assigned to each rule, together with the dates of past changes since the 1998 Rules were adopted. Since very few rules have been re-ordered, this table will also serve as a Table of Concordance to assist staff and others working with the rules.

The Parts of the Law Society Rules correspond to those in the *Legal Profession Act*. Since Part 7 of the *Legal Profession Act* deals with the Law Foundation of British Columbia, there are no corresponding rules in the Law Society Rules.

In order to distinguish the newly revised rules from those in effect since 1998, it is proposed to call them the Law Society Rules 2015. It is also proposed that distribution of the Law Society Rules 2015 take place in the same fashion as the distribution of the *Code of Professional Conduct for BC* at the end of 2012. That is, by electronic means for the vast majority of members and students and on paper for those who have chosen to pay the cost for that service. They will be posted on the Law Society website soon after adoption so that those concerned can familiarize themselves before the effective date of July 1, 2015.

The Act and Rules Committee recommends adoption of a resolution adopting the revised Rules. This is a suggestion:

BE IT RESOLVED, effective July 1, 2015, to enact the Law Society Rules 2015 as circulated with the April 2015 Benchers meeting materials and to rescind the Law Society Rules in effect since December 31, 1998.

The resolution requires a 2/3 majority of Benchers voting to pass.

Attachment: Law Society Rules 2015,  
Table of Historical Notes

JGH

# LAW SOCIETY RULES 2015

## RULE 1 -- DEFINITIONS

### Definitions

**1** In these rules, unless the context indicates otherwise:

“**Act**” means the *Legal Profession Act*, SBC 1998, c. 9;

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

(a) articulated to a principal, or

(b) registered in the training course;

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

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

“**applicant**” means a person who has applied under Part 2 [*Membership and Authority to Practise Law*] for enrolment as an articulated student, for call and admission or for reinstatement;

“**appointed Benchers**” means a person appointed as a Benchers under section 5 [*Appointed benchers*];

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

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

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

“**articling term**” means the 9 month period referred to in Rule 2-59 [*Articling term*];

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

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

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

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

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

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

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

## LAW SOCIETY RULES 2015

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

- (a) to be contrary to the best interest of the public or of the legal profession, or
- (b) to harm the standing of the legal profession;

**“costs”** includes costs assessed under Rule 3-25 [*Costs*] or 3-81 [*Failure to file trust report*] or Part 5 [*Hearings and Appeals*];

**“disbarred lawyer”** means a person to whom section 15 (3) [*Authority to practise law*] applies;

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

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

**“discipline violation”** means any of the following:

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

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

**“Executive Committee”** means the Committee elected under Rule 1-41 [*Election of Executive Committee*];

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

**“fiduciary property”** means

## LAW SOCIETY RULES 2015

(a) funds, other than trust funds, and valuables for which a lawyer is responsible in a representative capacity or as a trustee, if the lawyer's appointment is derived from a solicitor-client relationship,

but does not include

(b) any funds and valuables that are subject to a power of attorney granted to the lawyer if the lawyer has not taken control of or otherwise dealt with the funds or valuables;

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

(a) a sole proprietorship;

(b) a partnership, including a limited liability partnership or a partnership of law corporations;

(c) an arrangement for lawyers to share certain common expenses but otherwise practise as independent practitioners;

(d) a law corporation;

(e) a public body such as government or a Crown corporation;

(f) a corporation that is not a law corporation, or other private body;

(g) a multi-disciplinary practice;

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

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

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

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

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

(a) trust funds, or

(b) fiduciary property;

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

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

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

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

## LAW SOCIETY RULES 2015

**“law clerk”** means a law clerk employed by a judge appointed under section 96 of the *Constitution Act, 1867*, or a judge of the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal or the Tax Court of Canada;

**“lawyer”** means a member of the Society;

**“limited liability partnership”** or **“LLP”** means a limited liability partnership under Part 6 of the *Partnership Act*, including an extraprovincial limited liability partnership registered under that Part;

**“metadata”** includes the following information generated in respect of an electronic record:

- (a) creation date;
- (b) modification dates;
- (c) printing information;
- (d) pre-edit data from earlier drafts;
- (e) identity of an individual responsible for creating, modifying or printing the record;

**“multi-disciplinary practice”** or **“MDP”** means a partnership, including a limited liability partnership or a partnership of law corporations, that

- (a) is owned by at least one lawyer or law corporation and at least one individual non-lawyer or professional corporation that is not a law corporation, and
- (b) provides to the public legal services supported or supplemented by the services of another profession, trade or occupation;

**“National Mobility Agreement”** means the National Mobility Agreement, 2013, of the Federation of Law Societies of Canada, as amended from time to time;

**“net interest”** means the total interest earned on a pooled trust account, minus any service charges and transmittal fee that the savings institution charges to that account;

**“officer”** means the Executive Director, a Deputy Executive Director or other person appointed as an officer by the Benchers;

**“Ombudsperson”** means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articulated students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age, and includes anyone employed by the Ombudsperson to assist in that capacity;

**“panel”** means a panel established in accordance with Part 5 [*Hearings and Appeals*];

**“practice review”** means an investigation into a lawyer’s competence to practise law ordered under Rule 3-17 (3) (d) [*Consideration of complaints*] or 3-18 (1) [*Practice review*];

**“practice year”** means the period beginning on January 1 and ending on December 31 in a year;

## LAW SOCIETY RULES 2015

**“practitioner of foreign law”** means a person qualified to practise law in a foreign jurisdiction who provides foreign legal services in British Columbia respecting the laws of that foreign jurisdiction;

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

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

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

- (a) an order under Rule 2-57 (5) [*Principals*], prohibiting the lawyer from acting as a principal for an articulated student;
- (b) any conditions or limitations of practice or articles accepted or imposed under the Act or these rules;
- (c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;
- (d) a decision by the Credentials Committee to reject an application for an inter-jurisdictional practice permit;
- (e) any suspension or disbarment under the Act or these rules;
- (f) recommendations made by the Practice Standards Committee under Rule 3-19 [*Action by the Practice Standards Committee*];
- (g) an admission accepted by the Discipline Committee under Rule 4-29 [*Conditional admissions*];
- (h) an admission and consent to disciplinary action accepted by a hearing panel under Rule 4-30 [*Conditional admission and consent to disciplinary action*];
- (i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-13 [*Conduct Review Subcommittee report*], and any written dispute of that report considered by the Committee;
- (j) a decision made under section 38 (4) (b) [*Discipline hearings*];
- (k) an action taken under section 38 (5), (6) or (7);
- (l) an action taken by a review board under section 47 [*Review on the record*];
- (m) a payment made under section 31 on account of misappropriation or wrongful conversion by the lawyer;
- (n) an order for costs made against the lawyer under Part 5 [*Hearings and Appeals*];
- (o) any failure to pay any fine, costs or penalty imposed under the Act or these rules by the time that it is to be paid.
- (p) the outcome of an application made by the lawyer under the *Judicial Review Procedure Act* concerning a decision taken under the Act or these rules, including a predecessor of either;
- (q) the outcome of an appeal under section 48 [*Appeal*];
- (r) any disciplinary or remedial action taken by a governing body or body regulating the legal profession in any other jurisdiction;

## LAW SOCIETY RULES 2015

(s) a decision of or action taken by the Benchers on a review of a decision of a hearing panel;

**“professional corporation”** includes a law corporation and means a corporation that is a company, as defined in the *Business Corporations Act*, and that is in good standing under that Act or that is registered under Part 10 of the *Business Corporations Act*, through which a member of a profession, trade or occupation is authorized under a statute governing the profession, trade or occupation to carry on the business of providing services to the public;

**“Protocol”** means the Inter-Jurisdictional Practice Protocol signed on behalf of the Society on February 18, 1994, as amended from time to time;

**“provide foreign legal services”** means give legal advice in British Columbia respecting the laws of a foreign jurisdiction in which the person giving the advice is qualified;

**“qualification examination”** means an examination set by the Executive Director for the purposes of Rule 2-89 [*Returning to practice after an absence*];

**“reciprocating governing body”**

(a) means a governing body that has signed the National Mobility Agreement, and adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement, and

(b) includes a governing body that has signed the Territorial Mobility Agreement and adopted regulatory provisions giving effect to the requirements of the Territorial Mobility Agreement;

**“record”** includes metadata associated with an electronic record;

**“remedial program”** includes anything that may be recommended by the Practice Standards Committee under Rule 3-19 (1) (b) [*Action by the Practice Standards Committee*];

**“respondent”** means a person whose conduct or competence is

(a) the subject of a citation directed to be issued under Rule 4-17 (1) [*Direction to issue, expand or rescind citation*], or

(b) under review by a review board under section 47 [*Review*];

**“review board”** means a review board established in accordance with Part 5 [*Hearings and Appeals*];

**“rule”** or **“subrule”** means a rule or subrule contained in these rules;

**“Second Vice-President-elect”** means the Benchers elected under Rule 1-19 [*Second Vice-President-elect*], from the time of the election until he or she takes office as Second Vice-President;

**“section”** means a section of the *Legal Profession Act*;

**“Society”** means the Law Society of British Columbia continued under section 2 (1) [*Incorporation*];

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

## LAW SOCIETY RULES 2015

**“Territorial Mobility Agreement”** means the 2006 Territorial Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time.

**“training course”** includes any assessments, examinations or remedial work taken during or after the training course, or an educational program required by the Credentials Committee;

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

(a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or

(b) belonging partly to a client and partly to the lawyer if it is not practicable to split the funds;

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

(a) securities,

(b) bonds,

(c) treasury bills, and

(d) personal or real property;

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

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



# LAW SOCIETY RULES 2015

## PART 1 – ORGANIZATION

### Division 1 – Law Society

#### Benchers

##### Term of office

- 1-1** (1) The term of office for an appointed Bencher begins on the date that the appointment is effective and ends on January 1 of the next even-numbered year.
- (2) Despite subrule (1), an appointed Bencher continues to hold office until a successor is appointed.
- (3) An elected Bencher holds office for 2 years beginning on January 1 following his or her election.

##### Term limits

- 1-2** (1) A Bencher is ineligible to be elected or appointed as a Bencher if
- (a) at the conclusion of the Bencher's term of office, he or she will have served as a Bencher for more than 7 years, whether consecutive or not, or
  - (b) the Bencher has been elected Second Vice-President-elect.
- (2) Despite subrule (1) (a) but subject to subrule (1) (b), a Bencher who was a Bencher on January 10, 1992 and who, at the conclusion of his or her term of office, will not have served as a Bencher for more than 11 years, whether consecutive or not, is eligible to be elected or appointed as a Bencher.

##### Oath of office

- 1-3** (1) At the next regular meeting of the Benchers attended by a Bencher after being elected or appointed as a Bencher or taking office as President or a Vice-President, the Bencher must take an oath of office in the following form:
- I, [name] do swear or solemnly affirm that:
- I will abide by the *Legal Profession Act*, the Law Society Rules and the *Code of Professional Conduct*, and I will faithfully discharge the duties of [a Bencher/President/First or Second Vice-President], according to the best of my ability;
- and
- I will uphold the objects of the Law Society and ensure that I am guided by the public interest in the performance of my duties.
- (2) An oath under this rule must be taken before a judge of the Provincial Court or a superior court in British Columbia, the President or a Life Bencher.

## LAW SOCIETY RULES 2015

### Life Benchers

- 1-4** (1) A person, including the Attorney General, who is ineligible for further election or appointment as a Bencher under Rule 1-2 [*Term limits*] is a Life Bencher on leaving office as a Bencher.
- (2) A Life Bencher
- (a) may attend and speak at meetings of the Benchers,
  - (b) has no vote in Bencher meetings,
  - (c) except as a member of a committee under Rule 1-49 [*Committees of the Benchers*], may not exercise any of the powers of a Bencher, and
  - (d) is ineligible to be elected or appointed as a Bencher.
- (3) A Bencher who was a Bencher on January 10, 1992 and who has served for at least 7 years as a Bencher is a Life Bencher on leaving office as a Bencher.
- (4) A person who was a Life Bencher on January 1, 2010 continues to be a Life Bencher.

### President and Vice-Presidents

- 1-5** (1) The term of office for the President, First Vice-President and Second Vice-President is from January 1 to December 31 of each year.
- (2) Subject to subrule (7), on January 1 of each year,
- (a) the First Vice-President becomes President,
  - (b) the Second Vice-President becomes First Vice-President, and
  - (c) the Second Vice-President-elect becomes Second Vice-President.
- (3) Each year, the members must elect a Bencher who is a member of the Society as the Second Vice-President-elect in accordance with Rule 1-19 [*Second Vice-President-elect*].
- (4) Without further election by the district, the Bencher elected by the members under subrule (3) holds office as a Bencher representing the district that last elected the Bencher until he or she completes a term as President.
- (5) If there is a vacancy in the office of President or a Vice-President for any reason, including the operation of this subrule or the failure of a Bencher to take office under this rule, the Bencher who would have assumed the office at the end of the term immediately assumes the vacant office.
- (6) If a vacancy under subrule (5) occurs when there is no Bencher elected by the members to assume the office,
- (a) the Benchers may elect a Bencher who is a member of the Society to act in the vacant office until a mail ballot of all members, the next general meeting or December 31, whichever comes first, and
  - (b) if the next general meeting or a mail ballot takes place before December 31, the members must elect a Bencher who is a member of the Society to the vacant office for the remainder of the year, and a Second Vice-President-elect.

## LAW SOCIETY RULES 2015

- (7) If the First Vice-President assumes the office of President under subrule (5) on or after July 1, subrule (2) does not operate on January 1 of the following year and the President and the Vice-Presidents continue in office for an additional full year.
- (8) The powers of the President may be exercised by a Vice-President or another member of the Executive Committee designated by the President
  - (a) if the President is absent or otherwise unable to act, or
  - (b) with the consent of the President.

### **Removal of the President or a Vice-President**

- 1-6** (1) On a resolution of a majority of the Benchers to remove the President or a Vice-President from office, the Executive Director must conduct a referendum of all members of the Society to determine if the President or Vice-President, as the case may be, should be removed from office.
- (2) If a 2/3 majority of the members voting in a referendum under this rule vote to remove the President or a Vice-President from office, he or she ceases to hold that office and ceases to be a Bencher.
- (3) Before conducting a referendum under subrule (1), the Executive Director must notify the President or Vice-President who is affected.
- (4) Within 30 days after the Benchers pass a resolution under subrule (1), the Executive Director must mail to each member of the Society in good standing
- (a) a notice stating
    - (i) that the Benchers have resolved to remove from office the President or a Vice-President, as the case may be,
    - (ii) the reasons for the Benchers' resolution,
    - (iii) that a referendum from among the membership is being conducted to determine if the President or Vice-President, as the case may be, should be removed from office, and
    - (iv) the date on which the referendum votes will be counted,
  - (b) a statement by the President or Vice-President, as the case may be, stating why he or she should not be removed from office, if that person wishes to have such a statement sent to each member, and
  - (c) voting materials as required in Rule 1-27 [*Voting procedure*].
- (5) The President or Vice-President in respect of whom the referendum is conducted may attend personally or by agent during proceedings under this rule.
- (6) After the counting of the voting papers is completed, the Executive Director must declare whether the President or Vice-President, as the case may be, ceases to hold office.

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## Bencher ceasing to be member

- 1-7** A Bencher, other than an appointed Bencher, must be a member of the Society in good standing to take or hold office as a Bencher.

## Meetings

### Annual general meeting

- 1-8** (1) The Benchers must hold an annual general meeting of the members of the Society each year.
- (2) Subject to subrule (3) and Rule 1-9 [*Telephone connections*], the Executive Committee may determine the place and time of the annual general meeting.
- (3) Unless the Benchers direct otherwise, the President must preside at the annual general meeting from a location in the City of Vancouver.
- (4) At the annual general meeting, the Benchers must present a report of their proceedings since the last annual general meeting.
- (5) At least 60 days before an annual general meeting, the Executive Director must distribute to members of the Society by mail a notice of the date and time of the meeting.
- (6) In order to be considered at the annual general meeting, a resolution must be
- (a) signed by at least 2 members of the Society in good standing, and
  - (b) received by the Executive Director at least 40 days before the annual general meeting.
- (7) At least 21 days before an annual general meeting, the Executive Director must make available to members of the Society,
- (a) by mail, a notice containing the following information:
    - (i) the locations at which the meeting is to be held, and
    - (ii) each resolution received in accordance with subrules (6), and
  - (b) by electronic or other means, the audited financial statement of the Society for the previous calendar year.
- (8) The accidental failure to comply with any requirement under subrule (5) or (7) does not invalidate anything done at the annual general meeting.

### Telephone connections

- 1-9** (1) The Benchers may conduct a general meeting by joining any number of 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.
- (2) The Executive Director may appoint a member of the Society in good standing to act as local chair of a location where the President is not present.

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- (3) The local chair must record the names of those in attendance and, unless the Executive Director directs otherwise, may dispense with registration and voting and student cards under Rule 1-13 [*Procedure at general meeting*].
- (4) A person participating in a general meeting at any location connected under subrule (1) is present at the meeting for the purpose of Rule 1-13 [*Procedure at general meeting*] and the calculation of a quorum.
- (5) The Executive Committee must designate locations to be joined to the annual general meeting, including at least the following locations:
  - (a) one in District No. 1, County of Vancouver, or District No. 4, County of Westminister;
  - (b) one in District No. 2, County of Victoria;
  - (c) one in District No. 3, County of Nanaimo;
  - (d) one in District No. 5, County of Kootenay;
  - (e) one in District No. 6, Okanagan;
  - (f) 2 in District No. 7, County of Cariboo;
  - (g) one in District No. 8, County of Prince Rupert;
  - (h) one in District No. 9, Kamloops.
- (6) As an exception to subrule (5), if, 7 days before an annual general meeting, fewer than 15 members of the Society have indicated to the Executive Director an intention to attend the meeting at any location announced under Rule 1-8 (7) [*Annual general meeting*], the Executive Committee may cancel that location.
- (7) A technical failure that prevents any member from participating in or voting at a general meeting does not invalidate anything done at the general meeting, and the meeting may continue if the members continuing to participate and vote adopt a resolution to that effect.

### Auditors

- 1-10** (1) At each annual general meeting, the members of the Society must appoint an auditor.
- (2) The auditor appointed under subrule (1) must be a chartered accountant or a certified general accountant.
- (3) A Benchler, Life Benchler or an employee of the Society is not eligible to be appointed auditor under subrule (1).
- (4) A member of the Society may require the attendance of the auditor at the meeting at the expense of the Society by giving notice in writing to the Executive Director at least 10 days before a meeting at which the financial statements of the Society are to be considered or the auditor is to be appointed or removed, and, in that case, the auditor must attend the meeting.
- (5) The auditor of the Society is entitled to

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- (a) attend any general meeting of the Society and to receive every notice and other communication relating to the meeting that a member of the Society is entitled to receive, and
  - (b) be heard at any general meeting that the auditor attends on any part of the business of the meeting that concerns the auditor or the financial statements of the Society.
- (6) At any general meeting, the auditor, if present, must answer enquiries directed to the auditor concerning the financial statements of the Society and the opinion on them stated in his or her report.
- (7) The auditor is entitled at all times to have access to every record of the Society and is entitled to require from the Benchers, officers and employees of the Society information and explanations that the auditor considers necessary to enable the auditor to prepare his or her report.

### Special general meeting

- 1-11** (1) The Benchers may at any time convene a special general meeting of the Society.
- (2) The Benchers must convene a special general meeting of the Society on a written request
- (a) delivered to the Executive Director,
  - (b) stating the nature of the business that is proposed to be considered for the meeting, and
  - (c) signed by 5 per cent of the members of the Society in good standing at the time the request is received by the Executive Director.
- (3) The Benchers must convene a special general meeting within 60 days of the receipt of a request under subrule (2).
- (4) Subject to subrule (3), a special general meeting must be held at a time and place that the Benchers may determine.
- (5) At least 21 days before a special general meeting, the Executive Director must mail to each member of the Society a notice of the meeting stating the business that will be considered at the meeting.
- (6) The accidental omission to give notice of a special general meeting to any member of the Society, or the non-receipt of that notice, does not invalidate anything done at the meeting.
- (7) No business other than the business stated in the notice under subrule (5) may be considered at a special general meeting.

### Quorum

- 1-12** At a general meeting of the Society, 50 members of the Society in good standing constitute a quorum.

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## Procedure at general meeting

- 1-13** (1) Members of the Society in good standing and articulated students are entitled to be present and to speak at a general meeting.
- (2) The Executive Director must register all persons attending a general meeting as follows:
- (a) members of the Society in good standing, who must be given a voting card;
  - (b) articulated students, who must be given a student card;
  - (c) all others given permission to attend the meeting by the President, who may be given a card for identification only.
- (3) As an exception to subrule (2), the Executive Committee may authorize the Executive Director to dispense with registration or voting and student cards at a special general meeting.
- (4) At a general meeting, the President may allow a person not in possession of a voting or student card to speak.
- (5) Subject to subrules (6) and (7), in the absence of the President, the First Vice-President or the Second Vice-President must preside at a general meeting and assume the duties of the President under Rules 1-8 to 1-13.
- (6) In the absence of the President and Vice-Presidents, one of the other Benchers present must preside at a general meeting and assume the duties of the President under Rules 1-8 to 1-13.
- (7) The members of the Society present at a general meeting must choose one of their number to preside at the meeting if
- (a) no Bencher is present 30 minutes after the time appointed for holding the meeting, or
  - (b) all Benchers present are unwilling to preside.
- (8) At the beginning of the meeting, the President must declare whether or not a quorum is present.
- (9) If a quorum is not present 30 minutes after the time appointed for a general meeting, the meeting
- (a) if convened at the written request of members, is terminated, or
  - (b) in any other case, may be adjourned to a specified place and a new date within one week, as determined by the President.
- (10) No business, other than the election of a presiding Bencher and the adjournment or termination of the meeting, can be begun unless and until a quorum is present.
- (11) If the President has declared that a quorum is present, a quorum is deemed to remain present until a member present at the meeting challenges the quorum.
- (12) The Executive Committee is authorized to set the agenda for a general meeting.

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- (13) A dispute concerning the procedure to be followed at a general meeting 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*.
- (14) When a decision of the President is appealed, the President must call a vote of all members present, without debate, on whether they are in favour of or opposed to sustaining the President's decision.
- (15) A member of the Society in good standing who is present at a general meeting is entitled to one vote.
- (16) Voting at a general meeting must be by show of voting cards, or by show of hands if voting cards have not been issued, unless the President orders a secret ballot.
- (17) A member of the Society is not entitled to vote by proxy.
- (18) A general meeting may be adjourned from time to time and from place to place, but no business can be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

### **Bencher meetings**

- 1-14** (1) Bencher meetings are held in British Columbia, unless the Benchers direct otherwise.
- (2) The President or any 2 Benchers may call a special meeting of the Benchers.
- (3) At a meeting of the Benchers, 7 Benchers constitute a quorum, provided that a majority of the Benchers present are members of the Society.

### **Notice of Bencher meeting**

- 1-15** (1) The Executive Director must notify the Benchers of the date, time and place of the next Bencher meeting or of an adjourned Bencher meeting.
- (2) The Executive Director must notify the Benchers under subrule (1) at least 48 hours before the meeting, or within less time if that is reasonable in the circumstances.

### **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.



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- (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 Benchers 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 Benchers 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 Benchers and the adjournment of the meeting unless a quorum is present.
- (9) A dispute concerning the procedure to be followed at a Benchers 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 Benchers present at a Benchers meeting is entitled to one vote.
- (12) Voting at a Benchers meeting must be by show of hands, unless the President orders a secret ballot.
- (13) A Benchers is not entitled to vote by proxy.
- (14) A Benchers 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 Benchers 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.

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- (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 Benchers 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.

#### Benchers elections

- 1-20** (1) Elections for the office of Benchers in all districts must be held on November 15 of each odd-numbered year.
- (2) An election in the district represented by the President must be held on November 15 of each even-numbered year.
- (3) The Benchers 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 Benchers from District No. 3, the County of Nanaimo;
  - (d) 3 Benchers from District No. 4, the County of Westminister;
  - (e) one Benchers from District No. 5, the County of Kootenay;
  - (f) one Benchers 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;

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- (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) have been in good standing for at least 7 years,
  - (c) if a practising lawyer, maintain his or her chief place of practice or employment in the district in which he or she seeks to be a candidate, and
  - (d) if a retired or non-practising member, reside in the district in which he or she 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 an election for Benchers.
- (2) Only those members of the Society whose names appear on the voter list prepared under Rule 1-26 [*Voter list*], as corrected, are entitled to vote in an election for Benchers.

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- (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 his or her
  - (a) chief place of practice or employment, in the case of a practising member, or
  - (b) residence, in the case of a retired or non-practising member.
- (5) A member of the Society may apply to the Executive Committee to have his or her name placed on the voter list for a District other than the one required by this rule, and the Executive Committee may direct the Executive Director to make the change if it is satisfied that the member has a significantly greater connection to the District the member wishes to vote in.

### Voter list

- 1-26** (1) By October 10 of each year, the Executive Director must prepare a list of voters for each district in which an election is to be held that year.
- (2) The list of voters for each district must list in alphabetical order the names of all members of the Society entitled to vote in the district.
  - (3) A member of the Society may examine the voter list at the Society office during normal office hours of the Society.
  - (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, before the election, 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 procedure

- 1-27** (1) By November 1 of each year, the Executive Director must mail to each member of the Society whose name is on the voter list prepared under Rule 1-26 [*Voter list*]

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- (a) a ballot paper 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 marking of the ballot paper and returning it to the Society in a way that will preserve the secrecy of the member's vote,
  - (c) a ballot envelope,
  - (d) a declaration,
  - (e) a mailing envelope, and
  - (f) biographical information received from the candidates.
- (2) The accidental omission to mail the material referred to in subrule (1) to any member of the Society or the non-receipt of the material does not invalidate an election.
- (3) For a ballot paper to be valid, the voter must
- (a) vote in accordance with the instructions enclosed with the ballot paper,
  - (b) not vote for more candidates than the number of Benchers to be elected in the district,
  - (c) place the ballot paper in the ballot envelope and seal the envelope,
  - (d) complete the declaration and sign it,
  - (e) place the ballot envelope in the mailing envelope and seal the envelope, and
  - (f) deliver, or mail postage prepaid, the mailing envelope to the Executive Director.
- (4) The Executive Director may issue a replacement ballot paper to a voter who informs the Executive Director in writing that the original ballot paper has been misplaced or spoiled or was not received.
- (5) The Executive Director may issue a new set of ballot materials to a voter who informs the Executive Director in writing that the original ballot material sent to him or her relates to a district other than the one in which he or she is entitled to vote.

### 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;

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- (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.

### Rejection of ballot papers

- 1-29** (1) A ballot paper must be rejected if it
- (a) contains, or is enclosed in an envelope that contains, a marking that could identify the voter,
  - (b) contains votes for more candidates than the number to be elected in the district concerned,
  - (c) is dissimilar to those issued by the Executive Director, or
  - (d) is received by the Executive Director on or after the election date.
- (2) A vote is void if it is
- (a) not cast for a candidate whose name appears on the ballot paper as printed by the Society, or
  - (b) ambiguous or unclear as to the candidate voted for.

### Alternative vote ballot

- 1-30** (1) In a district in which only one Benchers 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.

### Scrutineers

- 1-31** (1) The Executive Director is a scrutineer for each election for Benchers.
- (2) The Executive Committee must appoint 2 members of the Society in good standing who are not Benchers or employees of the Society, to be scrutineers of the election.
- (3) The failure of one scrutineer to attend at the time and place set for the vote counting does not prevent the votes from being counted at that time and place.

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- (4) The scrutineers must
  - (a) ensure that all votes are counted in accordance with the Act and these rules, and
  - (b) decide whether a vote is void or a ballot paper is rejected, in which case their decision is final.

### Counting of votes

**1-32** The Executive Director must supervise the counting of votes according to the following procedure:

- (a) the name of each voter who votes is crossed off the voter list, and all the ballot papers of a voter who submits more than one ballot paper must be rejected;
- (b) each voter declaration is read, and the ballot paper of a voter who has not completed and signed the declaration correctly is rejected;
- (c) the ballot envelopes containing ballot papers are separated by district, and mixed to prevent identification of voters;
- (d) for each district, the ballot envelopes are opened and the ballot papers removed;
- (e) ballot papers that are rejected according to the Act or these rules are kept separate;
- (f) all votes are counted and recorded unless void or contained in a rejected ballot paper.

### Attendance of candidate

**1-33** A candidate may attend personally or by agent during proceedings under Rules 1-28 [*Order of names on ballot*], 1-32 [*Counting of votes*] and 1-34 [*Declaration of candidates elected*].

### 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.

### Election record and disclosure of votes received

- 1-35** (1) The Executive Director must ensure that a permanent record is kept of the number of votes received by each candidate, and the candidates who are declared elected.
- (2) The information referred to in subrule (1) is public information.

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### Review by Executive Committee

- 1-36** (1) A candidate who is not elected in an election for Bencher may apply to the Executive Committee for a review of the election.
- (2) An application under subrule (1) can only be made
- (a) in writing, and
  - (b) not more than 10 days after the election date.
- (3) On an application under subrule (1), the Executive Committee must promptly review the election in that district, and must
- (a) confirm the declaration made by the Executive Director under Rule 1-34 *[Declaration of candidates elected]*,
  - (b) rescind the declaration made by the Executive Director under Rule 1-34 and declare that the candidate who applied under subrule (1) or another candidate is elected, or
  - (c) order a new election in the district concerned, and give directions for it.
- (4) The decision of the Executive Committee under subrule (3) is final.

### Retention of documents

- 1-37** The Executive Director must retain the voting papers and other documents of an election for at least 14 days after the election or, if a review is taken under Rule 1-36 *[Review by Executive Committee]*, until that review has been completed.

### Bencher by-election

- 1-38** (1) If an elected Bencher ceases to hold office in an even numbered year or before July 1 of an odd numbered year, a by-election must be held to fill the vacancy for the remainder of the term of office.
- (2) When a Bencher by-election is required under subrule (1), the Executive Committee must set a date for the prompt holding of the by-election.
- (3) Rules 1-21 to 1-37 apply to a by-election under subrule (1), except that the Executive Director may change the dates referred to in Rules 1-23 (c) *[Nomination]*, 1-26 (1) *[Voter list]* and 1-27 (1) *[Voting procedure]*.

### Appointment of Bencher to represent a district

- 1-39** (1) The Benchers may fill a vacancy by appointment in the following circumstances:
- (a) an elected Bencher ceases to hold office on or after July 1 of an odd-numbered year;
  - (b) an electoral district fails to nominate enough candidates at an election to elect the required number of Benchers;
  - (c) an amendment to Rule 1-21 *[Regional election of Benchers]* increases the number of Benchers to be elected from a district.



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- (2) A Bencher appointed under subrule (1) takes office on appointment and continues in office until the end of the current term.
- (3) The Benchers may appoint any member of the Society in good standing eligible to be a candidate for Bencher in the district concerned.
- (4) When the Benchers appoint a Bencher under this rule, they may conduct a non-binding plebiscite of the members of the Society in the district concerned.

### Referendum ballots

- 1-40** (1) The Benchers may direct the Executive Director to conduct a referendum ballot of all members of the Society or of all members in one or more districts.
- (2) The rules respecting the election of Benchers apply, with the necessary changes and so far as they are applicable, to a referendum under this rule, except that the voting paper envelopes need not be separated by districts.

### Election of Executive Committee

- 1-41** (1) The Benchers must elect 3 Benchers to serve as members of the Executive Committee for each calendar year.
- (2) All persons elected as a Bencher for a term that includes the calendar year for which members of the Executive Committee are to be elected are eligible for election under subrule (1).
- (3) Nominations for election to the Executive Committee must be made by November 22.
- (4) If more than 3 Benchers are nominated under subrule (3), the Executive Director must conduct a ballot.
- (5) The Executive Director must specify a date no later than December 6 for the return of the ballots, and a ballot returned after that date is not valid.
- (6) All Benchers in office on the date specified under subrule (5) are eligible to vote for the Executive Committee.
- (7) At the last regular meeting of the Benchers in each calendar year, the appointed Benchers must elect one appointed Bencher to serve as a member of the Executive Committee for the following calendar year.
- (8) All Benchers appointed, or eligible to be appointed, for a term that includes all or part of the calendar year for which members of the Executive Committee are to be elected are eligible for election to the Executive Committee under subrule (7).
- (9) All appointed Benchers present are entitled to vote for the member of the Executive Committee under subrule (7).
- (10) If a vote is required for an election under this rule,
  - (a) it must be conducted by secret ballot,
  - (b) a ballot must be rejected if it contains votes for more candidates than there are positions to be filled, and

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- (c) when more than one Benchers is to be elected, the candidates with the most votes, up to the number of positions to be filled, are elected.
- (11) If, because of a tie vote or for any other reason, the Benchers fail to elect 3 members of the Executive Committee under subrule (1), or if a vacancy occurs in any position elected under this rule, the Benchers or the appointed Benchers, as the case may be, must hold an election to fill the vacancy at the next regular meeting of the Benchers

### **Date falling on Saturday, Sunday or holiday**

- 1-42** If the time for doing an act in this division falls or expires on a day when the Society office is not open during regular business hours, the time is extended to the next day that the office is open.

### **Interruption of postal service**

- 1-43** If an interruption of postal service makes it impracticable to conduct an election according to the schedule set by this Part, the Executive Committee may
- (a) postpone the election,
  - (b) extend the time for the doing of an act, or
  - (c) make special arrangements for the delivery and receipt of notices and ballots.

### **Extension of dates**

- 1-44** The Executive Committee may, on application by the Executive Director, extend any date stated in Rule 1-20 to 1-44.

## **General**

### **Seal**

- 1-45** (1) Subject to subrule (2), the seal of the Society may be affixed to a document in the presence of
- (a) 2 persons, one of whom must be the President or a Vice-President, and the other of whom must be an officer of the Society, or
  - (b) one or more persons appointed by resolution of the Executive Committee.
- (2) The seal may be affixed in the presence of any one of the persons referred to in subrule (1) in the case of
- (a) a certificate, or
  - (b) a document that certifies true copies of any document or resolution.
- (3) The person or persons in whose presence the seal is affixed must sign the certificate or document of certification.

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## Laying of information

- 1-46** Any information alleging an offence against the Act may be laid in the name of the Society on oath of an officer of the Society or a member of the Executive Committee.

## Freedom of Information and Protection of Privacy Act

- 1-47** The Executive Director is designated as the head of the Society for the purposes of the *Freedom of Information and Protection of Privacy Act*.

## Appointment of Law Society counsel

- 1-48** (1) Subject to Rule 1-51 (a) [*Powers and duties*], the Executive Director may appoint an employee of the Society or retain another lawyer to advise or represent the Society in any legal matter.
- (2) When Rule 1-51 (a) [*Powers and duties*] applies and it is not practicable to call a meeting of the Executive Committee before the advice of counsel is required, the Executive Director may appoint counsel on an interim basis.

## Division 2 – Committees

### Committees of the Benchers

- 1-49** Subject to these rules, the President may
- (a) appoint any person as a member of a committee of the Benchers, and
  - (b) terminate the appointment.

### Executive Committee

- 1-50** The Executive Committee consists of the following Benchers:
- (a) the President;
  - (b) the First and Second Vice-Presidents;
  - (c) the Second Vice-President-elect, if not elected under paragraph (d);
  - (d) 3 other Benchers elected under Rule 1-41 (1) [*Election of Executive Committee*];
  - (e) one appointed Bencher elected under Rule 1-41 (7).
- (2) The President is the chair of the Executive Committee, and the First Vice-President is the vice chair.
- (3) The Executive Committee is accountable and reports directly to the Benchers as a whole

### Powers and duties

- 1-51** The powers and duties of the Executive Committee include the following:
- (a) authorizing appointment of counsel to advise or represent the Society when the Society is a plaintiff, petitioner or intervenor in an action or proceeding;

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- (b) authorizing the execution of documents relating to the business of the Society;
- (c) appointing persons to affix the seal of the Society to documents;
- (d) approving forms under these rules;
- (e) approving agreements relating to the employment, termination or resignation of the Executive Director and the remuneration and benefits paid to him or her;
- (f) assisting the President and Executive Director in establishing the agenda for Benchers meetings and the annual general meeting;
- (g) planning of Benchers meetings or retreats held to consider a policy development schedule for the Benchers;
- (h) assisting the Benchers and the Executive Director on establishing relative priorities for the assignment of Society financial, staff and volunteer resources;
- (i) providing constructive performance feedback to the President;
- (j) recommending to the appointing bodies on Law Society appointments to outside bodies;
- (k) determining the date, time and locations for the annual general meeting;
- (l) overseeing Benchers elections in accordance with Division 1 of this Part;
- (m) appointing members of the Board of Governors of the Foundation under section 59 [*Board of Governors*];
- (n) deciding matters referred by the Executive Director under Rule 2-113 [*Referral to Executive Committee*];
- (o) declaring that a financial institution is not or ceases to be a savings institution under Rule 3-57 [*Removal of designation*];
- (p) adjudicating claims for unclaimed trust funds under Rule 3-91 [*Adjudication of claims*];
- (q) other functions authorized or assigned by these rules or the Benchers.

### Division 3 – Law Society Rules

#### Act, Rules and Handbook

- 1-52** The Executive Director must provide each lawyer and each articulated student with a copy of the *Legal Profession Act*, all rules made by the Benchers, and the *Code of Professional Conduct*.

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## PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

### Division 1 – Practice of Law

#### Members

##### Categories of membership

**2-1** The following are the categories of members of the Society:

- (a) practising lawyers, as defined in section 1;
- (b) retired members;
- (c) non-practising members;
- (d) Canadian legal advisor.

##### Member in good standing

**2-2** Subject to Rules 3-18 (7) [*Practice review*] and 4-6 (2) [*Continuation of membership under investigation or disciplinary proceedings*], a member of the Society is a member in good standing unless suspended under section 38 (5) (d) [*Discipline hearings*] or under these rules.

##### Non-practising members

- 2-3** (1) Any member of the Society in good standing may become a non-practising member by
- (a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and
  - (b) paying the application fee specified in Schedule 1 and a prorated annual fee for non-practising members as provided in Schedule 3.
- (2) Non-practising members must pay the annual fee specified in Schedule 1 by the preceding November 30.

##### Retired members

- 2-4** (1) A member of the Society in good standing who has done one of the following qualifies to become a retired member:
- (a) reached the age of 55 years;
  - (b) been a member of the Society in good standing for 20 of the previous 25 years;
  - (c) engaged in the full-time active practice of law for 20 of the previous 25 years.
- (2) A lawyer who qualifies under subrule (1) may become a retired member by
- (a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and
  - (b) paying the application fee specified in Schedule 1 and the prorated annual fee for retired members as provided in Schedule 3.

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- (3) Retired members must pay the annual fee specified in Schedule 1 by the preceding November 30.
- (4) The Benchers may, by resolution, waive payment of the annual fee by a retired member or group of retired members.

### Release from undertaking

- 2-5** (1) A retired or non-practising member may apply for release from an undertaking given under Rule 2-3 [*Non-practising members*] or 2-4 [*Retired members*] by delivering to the Executive Director
- (a) an application in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society, and
  - (b) the application fee specified in Schedule 1.
- (2) The Executive Director must not grant a release from undertaking under this rule unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 [*Returning to practice of law after an absence*].

### Legal services by non-practising and retired members

- 2-6** Despite an undertaking given under Rule 2-3 (1) (a) [*Non-practising members*] or 2-4 (2) (a) [*Retired members*], a non-practising or retired member may
- (a) provide pro bono legal services, or
  - (b) act as a designated paralegal under Rule 2-13 [*Paralegals*].

### Certificates and permits

- 2-7** The Executive Director may approve the form of
- (a) practising certificate issued under section 23 [*Annual fees and practising certificate*],
  - (b) retired membership certificate issued under Rule 2-4 [*Retired members*],
  - (c) non-practising membership certificate issued under Rule 2-3 [*Non-practising members*],
  - (d) practitioner of foreign law permit issued under Rule 2-29 [*Practitioners of foreign law*],
  - (e) inter-jurisdictional practice permit issued under Rule 2-20 [*Application for inter-jurisdictional practice permit*], and
  - (f) Canadian legal advisor certificate issued under Rule 2-84 [*Barristers and solicitors' roll and oath*].

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## Member information

### Annual practice declaration

- 2-8** (1) In this rule, “**declaration**” means the Annual Practice Declaration in a form approved by the Executive Committee.
- (2) A practising lawyer must complete and deliver a declaration to the Executive Director in each calendar year.
- (3) A declaration is not delivered under this rule unless it is
- (a) complete to the satisfaction of the Executive Director,
  - (b) received by the Executive Director by the date set by the Executive Director, and
  - (c) signed by the practising lawyer.
- (4) The Executive Director must not issue a practising certificate to a lawyer who fails to deliver a declaration as required under this rule, unless the Credentials Committee directs otherwise.

### Definition

- 2-9** In Rules 2-10 [*Business address*] and 2-11 [*Residential address*], “**address**” includes
- (a) the name under which a lawyer’s firm carries on business, and
  - (b) the street address, including suite number if applicable, and mailing address, if that is different from the street address.

### Business address

- 2-10** (1) A lawyer must advise the Executive Director of the address of all of the lawyer’s places of business and inform the Executive Director immediately of a change of any of the lawyer’s places of business.
- (2) For the purpose of this rule, a lawyer’s place of business includes the place of business and registered and records office of a law corporation of which the lawyer is a voting shareholder.

### Residential address

- 2-11** A lawyer who ceases to have a place of business separate from the lawyer’s residence must provide the following information to the Executive Director immediately:
- (a) the address of the lawyer’s residence;
  - (b) any change in the address of the lawyer’s residence;
  - (c) on return to practice, employment or other business, the address of the lawyer’s place of business.

### Practice history

- 2-12** (1) In this rule, “**practice history**” means a record of

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- (a) the dates and places that a lawyer or former lawyer has practised law or been enrolled in the admission program, including the name of the firms through which the lawyer or former lawyer practised law, and
  - (b) dates of any periods since call and admission during which the lawyer or former lawyer has been a non-practising or retired member or a former member.
- (2) At the request of any person, the Executive Director may disclose all or part of the practice history of any member or former member of the Society.

### Paralegals

#### Supervision of limited number of designated paralegals

- 2-13** (1) In this rule, “**designated paralegal**” means an individual permitted under section 6.1 [Supervision] of the *Code of Professional Conduct* to give legal advice and represent clients before a court or tribunal.
- (2) A lawyer must not supervise more than 2 designated paralegals at one time.

### Unauthorized practice

#### Unauthorized practice of law

- 2-14** (1) A lawyer must not knowingly facilitate by any means the practice of law by a person who is not a practising lawyer or otherwise permitted to practise law under sections 15 to 17 or Rule 2-39 [Conditions for MDP].
- (2) Without limiting subrule (1), a lawyer must not knowingly do any of the following:
- (a) act as an agent or permit his or her name to be used or held out in any way that enables a person to engage in the unauthorized practice of law;
  - (b) send a process or other document to a person or do any other act that enables a person to engage in the unauthorized practice of law;
  - (c) open or maintain an office for the practice of law unless the office is under the personal and actual control and management of a practising lawyer.
- (3) When the Society obtains a court order or an agreement restraining a person who is not a practising lawyer from the practice of law, the Executive Director may publish generally a summary of the circumstances and of the order or agreement, in a form that appears appropriate to the Executive Director.

### Inter-jurisdictional practice

#### Definitions

- 2-15** In Rules 2-15 to 2-27,
- “**business day**” means any calendar day or part of a calendar day in which a lawyer provides legal services;



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**“entitled to practise law”** means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction;

**“legal matter”** includes any activity or transaction that constitutes the practice of law and any other activity or transaction ordinarily conducted by lawyers in British Columbia in the course of practising law, whether or not persons other than lawyers are legally capable of conducting it;

**“National Registry”** means the National Registry of Practising Lawyers established under the National Mobility Agreement;

**“permit”** means an inter-jurisdictional practice permit issued under Rule 2-19 [*Inter-jurisdictional practice permit*];

**“provide legal services”** means to engage in the practice of law

- (a) physically in British Columbia, except with respect to the law of a home jurisdiction, or
- (b) with respect to the law of British Columbia physically in any jurisdiction, and includes to provide legal services respecting federal jurisdiction in British Columbia;

**“resident”** has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada).

### Inter-jurisdictional practice without a permit

**2-16** (1) Subject to the other requirements of this rule, a visiting lawyer may provide legal services without a permit

- (a) in the case of a visiting lawyer who is entitled to practise law in the jurisdiction of a reciprocating governing body of which the visiting lawyer is a member, for a maximum of 100 business days in any calendar year, or
  - (b) in all other cases, on not more than 10 legal matters and for not more than 20 business days in total during any 12-month period.
- (2) A visiting lawyer must not hold himself or herself out or allow himself or herself to be held out as willing or qualified to provide legal services, except as a visiting lawyer.
- (3) Subject to subrule (4), to qualify to provide legal services on a temporary basis under this rule, a visiting lawyer must at all times
- (a) carry professional liability insurance that
    - (i) is reasonably comparable in coverage and limits to that required of lawyers under Rule 3-39 (1) [*Compulsory liability insurance*], and
    - (ii) extends to the visiting lawyer’s temporary practice in British Columbia,
  - (b) have defalcation compensation coverage from a governing body that extends to the visiting lawyer’s temporary practice in British Columbia,
  - (c) not be subject to conditions of or restrictions on the visiting lawyer’s practice or membership in the governing body in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency or capacity,

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- (d) not be the subject of criminal or disciplinary proceedings in any jurisdiction,
  - (e) have no disciplinary record in any jurisdiction, and
  - (f) not establish an economic nexus with British Columbia, contrary to Rule 2-17 *[Disqualifications]*.
- (4) On application of a visiting lawyer who otherwise qualifies under subrule (3), the Executive Director may allow the visiting lawyer to provide legal services without a permit beyond the limits set in subrule (1).
- (5) At the written request of a visiting lawyer affected by a decision made by the Executive Director under subrule (4), the Credentials Committee may
- (a) confirm the decision, or
  - (b) substitute its decision.
- (6) The requirement in subrule (3) (a) does not apply to a visiting lawyer who is exempt from compulsory liability insurance under Rule 3-43 *[Exemption from liability insurance]* with respect to legal services to be provided in British Columbia.
- (7) A visiting lawyer who provides legal services without a permit must, on request,
- (a) provide evidence to the Executive Director that the visiting lawyer has complied with and continues to comply with this rule, and
  - (b) disclose to the Executive Director each governing body of which the visiting lawyer is a member.
- (8) Notwithstanding Rules 2-15 to 2-27, a member of the Canadian Forces who is entitled to practise law in a home jurisdiction in which he or she is a member of the governing body
- (a) may provide legal services for or on behalf of the Office of the Judge Advocate General without a permit, and
  - (b) does not establish an economic nexus with British Columbia under Rule 2-17 *[Disqualifications]*, provided that he or she provides legal services exclusively for or on behalf of the Office of the Judge Advocate General.

### Disqualifications

- 2-17** (1) A visiting lawyer who has established an economic nexus with British Columbia is not permitted to provide legal services without a permit under Rule 2-16 *[Inter-jurisdictional practice without a permit]*.
- (2) For the purposes of this rule, an economic nexus is established by actions inconsistent with a temporary basis for providing legal services, including but not limited to doing any of the following in British Columbia:
- (a) providing legal services beyond 100 business days, or longer period allowed under Rule 2-16 (4) *[Inter-jurisdictional practice without a permit]*;
  - (b) opening an office from which legal services are offered or provided to the public;
  - (c) becoming resident;

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- (d) opening or operating a trust account, or accepting trust funds, except as allowed under Rule 2-25 [*Trust funds*];
  - (e) holding oneself out or allowing oneself to be held out as willing or qualified to provide legal services, except as a visiting lawyer.
- (3) A visiting lawyer who provides legal services in or from an office affiliated with the visiting lawyer's law firm in his or her home jurisdiction does not, for that reason alone, establish an economic nexus with British Columbia.
  - (4) A visiting lawyer who becomes disqualified under this rule must cease providing legal services forthwith, but may apply under Rule 2-19 [*Inter-jurisdictional practice permit*] for an inter-jurisdictional practice permit or under Rule 2-79 [*Transfer from another Canadian jurisdiction*] for call and admission.
  - (5) On application by a visiting lawyer, the Executive Director may allow the visiting lawyer to continue to provide legal services pending consideration of an application under Rule 2-19 [*Inter-jurisdictional practice permit*] or 2-79 [*Transfer from another Canadian jurisdiction*].

### Federal jurisdiction

- 2-18** (1) Despite Rule 2-16 [*Inter-jurisdictional practice without a permit*], a visiting lawyer who is not disqualified under Rule 2-17 (2) (b) to (e) [*Disqualifications*] may appear before any of the following tribunals without a permit:
- (a) the Supreme Court of Canada;
  - (b) the Federal Court of Appeal;
  - (c) the Federal Court;
  - (d) the Tax Court of Canada;
  - (e) a federal administrative tribunal;
  - (f) service tribunals as defined in the *National Defence Act*;
  - (g) the Court Martial Appeal Court of Canada.
- (2) Subrule (1) applies when a visiting lawyer is preparing for an appearance allowed under that subrule and otherwise furthering the matter giving rise to the appearance.

### Inter-jurisdictional practice permit

- 2-19** (1) A visiting lawyer who does not qualify to provide legal services without a permit under Rule 2-16 [*Inter-jurisdictional practice without a permit*] or is disqualified under Rule 2-17 [*Disqualification*] may apply for a permit.
- (2) A permit allows a visiting lawyer to provide legal services as follows:
- (a) in the case of a visiting lawyer who is entitled to practise law in the jurisdiction of a reciprocating governing body of which the visiting lawyer is a member, for a maximum of 100 business days;
  - (b) in all other cases, for a specific legal matter.

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- (3) A visiting lawyer applying under subrule (1) must deliver to the Executive Director
  - (a) a completed permit application in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society,
  - (b) the application fee or renewal fee specified in Schedule 1,
  - (c) certificates of standing dated not more than 30 days before the date of application and in a form acceptable to the Credentials Committee, issued by each governing body of which the visiting lawyer is a member,
  - (d) proof of professional liability insurance as required under Rule 2-16 (3) (a) *[Inter-jurisdictional practice without a permit]*, and
  - (e) proof that the visiting lawyer has the defalcation coverage required under Rule 2-16 (3) (b) *[Inter-jurisdictional practice without a permit]*.
- (4) Subrule (3) (b) does not apply to an application made by a visiting lawyer who is a member of a governing body in a jurisdiction in which
  - (a) the visiting lawyer is entitled to practise law, and
  - (b) the governing body does not charge members of the Society a fee for the equivalent of a permit.

### Application for inter-jurisdictional practice permit

- 2-20** (1) On receipt of an application for a permit, the Executive Director must
- (a) issue or renew the permit, or
  - (b) refer the application to the Credentials Committee.
- (2) If the Executive Director refers an application to the Credentials Committee under subrule (1), the Committee must
- (a) issue or renew a permit, subject to any conditions or limitations the Committee may direct, or
  - (b) reject the application.
- (3) If the Credentials Committee rejects an application, the Committee must, at the written request of the person applying under Rule 2-19 (1) *[Inter-jurisdictional practice permit]*, give written reasons for the decision.

### Non-practising and retired members

- 2-21** (1) If a permit is issued under Rule 2-20 *[Application for inter-jurisdictional practice permit]* to a non-practising member or a retired member, the member is released from the undertaking given under Rule 2-3 *[Non-practising members]* or 2-4 *[Retired members]* only for the purpose allowed by the permit.
- (2) If a non-practising member or a retired member qualifies to provide legal services as a visiting lawyer without a permit under Rule 2-16 *[Inter-jurisdictional practice without a permit]*, the member is released from the undertaking given under Rule 2-3 *[Non-*

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*practising members*] or 2-4 [*Retired members*] only for the purpose of providing legal services under Rule 2-16.

### Expiry and renewal of inter-jurisdictional practice permit

- 2-22** (1) Subject to subrules (2) to (4), a permit issued or renewed under Rule 2-20 [*Application for inter-jurisdictional practice permit*] is valid for one year from the date it was issued.
- (2) In the case of a visiting lawyer who is not entitled to practise law in the jurisdiction of a reciprocating governing body of which the visiting lawyer is a member, the permit expires on the completion of the legal matter for which the permit was granted.
- (3) A permit ceases to be valid if the holder of the permit
- (a) is not a practising member in good standing of a governing body,
  - (b) fails to maintain professional liability insurance as described in Rule 2-19 (3) (d) [*Inter-jurisdictional practice permit*], or
  - (c) is suspended or disbarred by any governing body.
- (4) Before expiry of a permit under subrule (1), the holder of the permit may apply under Rule 2-19 [*Inter-jurisdictional practice permit*] for its renewal.

### Responsibilities of visiting lawyer

- 2-23** (1) The Act, these rules and the *Code of Professional Conduct* apply to and bind a visiting lawyer providing legal services.
- (2) It is the responsibility of a visiting lawyer providing legal services to
- (a) record and verify the number of business days in which he or she provides legal services, and
  - (b) prove that he or she has complied with these rules.

### Enforcement

- 2-24** (1) At the request of a governing body that is investigating the conduct of a lawyer, former lawyer or visiting lawyer or has initiated disciplinary proceedings against a lawyer, former lawyer or visiting lawyer, the Executive Director must provide all relevant information.
- (2) When the Executive Director provides information to a governing body under subrule (1), the Executive Director may inform any person whose personal, confidential or privileged information may be included of that fact and the reasons for it.
- (3) A fine imposed on a lawyer or former lawyer by a governing body may be enforced under Rule 4-45 (4) [*Discipline proceedings involving members of other governing bodies*].
- (4) A lawyer who practises law in another Canadian jurisdiction must comply with the applicable legislation, regulations, rules and *Code of Professional Conduct* of that jurisdiction.

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- (5) The Executive Director may require a visiting lawyer to
  - (a) account for and verify the number of business days spent providing legal services, and
  - (b) verify compliance with any rules specified by the Executive Director.
- (6) If a visiting lawyer fails or refuses to comply with a requirement under subrule (5) within 20 days, or such longer time that the Executive Director may allow in writing,
  - (a) the visiting lawyer is prohibited from providing legal services without a permit,
  - (b) any permit issued to the visiting lawyer under Rule 2-19 [*Inter-jurisdictional practice permit*] is rescinded, and
  - (c) the Executive Director must advise each of the governing bodies of which the visiting lawyer is or has been a member, of the visiting lawyer's failure to comply and the consequences.
- (7) A visiting lawyer who is affected by subrule (6) may apply to the Credentials Committee for restoration of any or all rights lost under that subrule and the Committee may, in its discretion, grant the application, subject to any conditions or limitations it considers to be in the public interest.

### Trust funds

- 2-25** A visiting lawyer providing legal services must not maintain a trust account in British Columbia, and must
- (a) promptly remit funds received in trust to the visiting lawyer's trust account in the home jurisdiction, or
  - (b) ensure that trust funds received are handled
    - (i) by a practising lawyer in a trust account controlled by the practising lawyer, and
    - (ii) in accordance with the Act and these rules.

### Dispute resolution

- 2-26** If a dispute arises with a governing body concerning any matter under the Protocol, the Credentials Committee may do one or both of the following:
- (a) agree with a governing body to refer the matter to a single mediator;
  - (b) submit the dispute to arbitration under Appendix 5 of the Protocol.

### National Registry of Practising Lawyers

- 2-27** (1) The Executive Director must provide to the National Registry the current and accurate information about practising lawyers required under the National Mobility Agreement.
- (2) No one may use or disclose information obtained from the National Registry except for a purpose related to enforcement of the Act and these rules.

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## Practitioners of foreign law

### Definitions

**2-28** In Rules 2-28 to 2-34,

“**business day**” means any calendar day or part of a calendar day in which a practitioner of foreign law provides foreign legal services;

“**permit**” means a practitioner of foreign law permit issued under Rule 2-29  
[*Practitioners of foreign law*];

“**resident**” has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada).

### Practitioners of foreign law

**2-29** (1) A person who qualifies under section 17 [*Practitioners of foreign law*] may apply to the Executive Director for a permit to act as a practitioner of foreign law in British Columbia by delivering to the Executive Director

(a) a completed permit application in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society, and

(b) the application fee specified in Schedule 1.

(2) The Executive Director may issue a permit to a person applying under subrule (1) if satisfied that the person

(a) is a member of the legal profession in one or more foreign jurisdictions,

(b) is not suspended or disbarred and has not otherwise ceased, for disciplinary reasons, to be a member of a governing body or of the legal profession in any foreign jurisdiction,

(c) is a person of good character and repute,

(d) has practised the law of a foreign jurisdiction for at least 3 of the past 5 years, or undertakes in writing to act as a practitioner of foreign law in British Columbia only under the direct supervision of a practitioner of foreign law who has practised law in that foreign jurisdiction for at least 3 of the past 5 years,

(e) carries professional liability insurance or a bond, indemnity or other security

(i) in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-39 (1) [*Compulsory liability insurance*], and

(ii) that specifically extends to services rendered by the practitioner of foreign law while acting as such in British Columbia.

(3) Subject to subrule (4), the Executive Director may attach conditions or limitations to a permit issued or renewed under this rule.

(4) The Executive Director may only attach under subrule (3) conditions or limitations that are authorized by the Credentials Committee.

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- (5) A permit issued under subrule (2) is valid for one year from the issue date shown on it.
- (6) Despite subrule (5), a practitioner of foreign law permit ceases to be valid if the practitioner of foreign law
  - (a) is suspended as a result of proceedings taken under Part 4 [*Discipline*], or
  - (b) ceases to comply with any of the requirements of this Part.

### Conditions and limitations

- 2-30** (1) Subject to Rule 2-31 [*Providing foreign legal services without a permit*], no one may provide foreign legal services or market a foreign legal practice in British Columbia without a permit issued under Rule 2-29 (2) [*Practitioners of foreign law*].
- (2) A practitioner of foreign law who holds a current permit may provide foreign legal services in British Columbia respecting
- (a) the law of a foreign jurisdiction in which the practitioner of foreign law is fully licensed to practise law, and
  - (b) trans-jurisdictional or international legal transactions.
- (3) A practitioner of foreign law must not
- (a) provide advice respecting the law of British Columbia or another Canadian jurisdiction, or
  - (b) deal in any way with funds that would, if accepted, held, transferred or otherwise dealt with by a lawyer, constitute trust funds, except money received on deposit for fees to be earned in the future by the practitioner of foreign law.
- (4) The Act, these rules and the *Code of Professional Conduct* apply to and bind a practitioner of foreign law.
- (5) A practitioner of foreign law must notify the Executive Director promptly if he or she
- (a) is the subject of criminal or professional discipline proceedings in any jurisdiction,
  - (b) ceases to be a member in good standing of the legal profession in any jurisdiction, or
  - (c) fails to complete satisfactorily any continuing legal education program required of the practitioner of foreign law as a member of the legal profession in a foreign jurisdiction.

### Providing foreign legal services without a permit

- 2-31** (1) Subject to the other requirements of this rule, a practitioner of foreign law may provide foreign legal services without a permit for a maximum of 30 business days in any calendar year.
- (2) Subject to subrule (3), to qualify to provide foreign legal services without a permit, a practitioner of foreign law must at all times



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- (a) qualify for a permit under Rule 2-29 (2) [*Practitioners of foreign law*],
  - (b) comply with Rules 2-30 (3) to (5) [*Conditions and limitations*],
  - (c) not be subject to conditions of or restrictions on his or her membership in the governing body or his or her qualification to practise law in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency or capacity,
  - (d) not be the subject of criminal or disciplinary proceedings in any jurisdiction,
  - (e) have no criminal or disciplinary record in any jurisdiction, and
  - (f) not establish an economic nexus with British Columbia.
- (3) A practitioner of foreign law who provides foreign legal services without a permit must, on request,
- (a) provide evidence to the Executive Director that the practitioner of foreign law has complied with and continues to comply with this rule, and
  - (b) disclose to the Executive Director each governing body of which the practitioner of foreign law is a member.
- (4) For the purposes of this rule, an economic nexus is established by actions inconsistent with a temporary basis for providing foreign legal services, including but not limited to doing any of the following in British Columbia:
- (a) providing foreign legal services beyond 30 business days in a calendar year;
  - (b) opening an office from which foreign legal services are offered or provided to the public;
  - (c) becoming resident;
  - (d) holding oneself out or allowing oneself to be held out as willing or qualified to provide legal services, except as a practitioner of foreign law without a permit.
- (5) A practitioner of foreign law who practises law in a law firm in his or her home jurisdiction and provides legal services in or from an office in British Columbia affiliated with that firm does not, for that reason alone, establish an economic nexus with British Columbia.
- (6) A practitioner of foreign law who becomes disqualified under subrule (4) must cease providing foreign legal services forthwith, but may apply under Rule 2-29 [*Practitioners of foreign law*] for a permit.
- (7) On application by a practitioner of foreign law, the Executive Director may allow the practitioner of foreign law to begin or continue to provide foreign legal services pending consideration of an application under Rule 2-29 [*Practitioners of foreign law*].

### Dual qualification

- 2-32** A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may act as a practitioner of foreign law in British Columbia without obtaining a permit, provided the lawyer holds liability insurance that

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- (a) specifically extends to the lawyer's activities as a practitioner of foreign law in British Columbia, and
- (b) is in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-39 (1) [*Compulsory liability insurance*].

### Marketing of legal services by practitioners of foreign law

**2-33** A practitioner of foreign law who is not a member of the Society must do all of the following when engaging in any marketing activity as defined in the *Code of Professional Conduct*, section 4.2 [*Marketing*]:

- (a) use the term “practitioner of foreign law”;
- (b) state the foreign jurisdiction in which he or she holds professional legal qualifications, and the professional title used in that jurisdiction;
- (c) not use any designation or make any representation from which a recipient might reasonably conclude that the practitioner of foreign law is a member of the Society.

### Renewal of permit

**2-34** (1) In order to renew a practitioner of foreign law permit, a practitioner of foreign law must apply to the Executive Director for a renewal of the permit before his or her permit expires.

- (2) A renewal application must include
  - (a) a completed permit renewal application in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society,
  - (b) evidence satisfactory to the Executive Director that the practitioner of foreign law continues to comply with the requirements set out in Rule 2-29 (2) [*Practitioners of foreign law*], and
  - (c) the renewal fee specified in Schedule 1.
- (3) The Executive Director may renew the permit of a practitioner of foreign law who has complied with the Act and these rules.
- (4) Subject to subrule (5), a permit renewed under subrule (3) is valid for one year.
- (5) Rule 2-29 (6) [*Practitioners of foreign law*] applies to a permit renewed under subrule (3).
- (6) A practitioner of foreign law who fails to pay when due the fee for renewal of a permit under subrule (2), including applicable taxes, or any part of it, must pay the late payment fee specified in Schedule 1.

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## Canadian legal advisors

### Scope of practice

- 2-35** (1) A Canadian legal advisor may
- (a) give legal advice on
    - (i) the law of Québec and matters involving the law of Québec,
    - (ii) matters under federal jurisdiction, or
    - (iii) matters involving public international law, or
  - (b) where expressly permitted by federal statute or regulation
    - (i) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or
    - (ii) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.
- (2) A Canadian legal advisor must not engage in the practice of law except as permitted under subrule (1).

### Requirements

- 2-36** (1) A member in good standing who is admitted as a Canadian legal advisor has all the duties and responsibilities of a practising lawyer under the Act, these rules and the *Code of Professional Conduct*.
- (2) A Canadian legal advisor must
- (a) be a member in good standing of the Chambre authorized to practise law in Québec,
  - (b) undertake to comply with Rule 2-35 [*Scope of practice*], and
  - (c) immediately notify the Executive Director in writing if he or she ceases to be authorized to practise law in Québec.

## Non-resident partners

### Inter-jurisdictional law firms

- 2-37** (1) A lawyer who practises law as a member of an inter-jurisdictional law firm must ensure that the firm does the following respecting the firm's practice of law in British Columbia:
- (a) complies with the Part 3, Division 7 [*Trust Accounts and Other Client Property*];
  - (b) makes its books, records and accounts, wherever they are located, available on demand by the Society or its designated agent.
- (2) An inter-jurisdictional law firm is subject to discipline under Part 4 [*Discipline*] in the same way as a law corporation, except that the penalties that a panel may impose are the following:

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- (a) a reprimand of the firm;
  - (b) a fine in an amount not exceeding \$100,000;
  - (c) an order prohibiting members of the firm who are not members of the Society from practising in British Columbia.
- (3) On certification by a governing body that an inter-jurisdictional law firm has failed to pay, by the date on which it was due, a fine imposed under a provision similar to subrule (2), the Credentials Committee may make an order prohibiting lawyers from practising as members of the firm.

### Multi-Disciplinary Practice

#### Definition and application

- 2-38** (1) In Rules 2-38 to 2-49,
- “**legal services**” means services that constitute the practice of law as defined in section 1;
- “**member of an MDP**” means a lawyer or non-lawyer who holds an ownership interest in the MDP.
- (2) The responsibilities imposed under Rules 2-38 to 2-49 are not affected by the fact that a member of an MDP is carrying on the practice of a profession, trade or occupation or participating in the MDP as an employee, shareholder, officer, director or contractor of a professional corporation or on its behalf.

#### Conditions for MDP

- 2-39** (1) A lawyer must not practise law in an MDP unless
- (a) the lawyer and all members of the MDP are in compliance with Rules 2-38 to 2-49 and the *Code of Professional Conduct*,
  - (b) all lawyers who are members of the MDP have obtained express permission under this division to practise law in the MDP,
  - (c) all non-lawyer members of the MDP are of good character and repute,
  - (d) all members of the MDP agree in writing
    - (i) that practising lawyers who are members of the MDP will have actual control over the delivery of legal services by the MDP,
    - (ii) that non-lawyer members of the MDP will not interfere, directly or indirectly with the lawyer’s
      - (A) obligation to comply with the Act, these rules and the *Code of Professional Conduct*, and
      - (B) exercise of independent professional judgement,
    - (iii) to comply with the Act, these rules and the *Code of Professional Conduct*, and
    - (iv) to co-operate with and assist the Society or its agents in the conduct of a practice review, examination or investigation, and

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- (e) all members of the MDP who are governed by the regulatory body of another profession agree to report to the MDP any proceedings concerning their conduct or competence.
- (2) For the purposes of this rule, a lawyer has actual control over the delivery of legal services of the MDP if, despite any partnership agreement or other contract, the lawyer is able, in all cases and without any further agreement of any member of the MDP, to
  - (a) exercise independent professional judgement, and
  - (b) take any action necessary to ensure that the lawyer complies with the Act, these rules and the *Code of Professional Conduct*.

### Application to practise law in MDP

- 2-40** (1) Before a lawyer may practise law as a member of an MDP that has not been granted permission under Rule 2-41 [*Consideration of MDP application*], the lawyer must submit the following to the Executive Director:
- (a) an application in a form approved by the Credentials Committee;
  - (b) the application fee specified in Schedule 1;
  - (c) the investigation fee specified in Schedule 1 for each non-lawyer member of the proposed MDP;
  - (d) copies of all partnership agreements and other contracts that the lawyer proposes to enter into with other members of the proposed MDP.
- (2) In addition to any other requirement determined by the Credentials Committee, in the form referred to in subrule (1), the lawyer must report full details of the arrangements that the lawyer has made to ensure that
- (a) no non-lawyer member of the MDP provides services to the public, except
    - (i) those services that support or supplement the practice of law by the MDP, and
    - (ii) under the supervision of a practising lawyer,
  - (b) privileged and confidential information is protected under Rule 2-45 [*Privilege and confidentiality*],
  - (c) all members of the MDP comply with the rules respecting conflicts of interest as required under Rule 2-46 [*Conflicts of interest*],
  - (d) every member of the MDP obtains and maintains liability insurance as required under Rule 2-47 [*Liability insurance*],
  - (e) the lawyer and the MDP maintain trust accounts and trust accounting records in accordance with Rule 2-48 [*Trust funds*], and
  - (f) all non-lawyer members of the MDP enter into the agreements required under Rule 2-39 [*Conditions for MDP*].
- (3) Any number of lawyers proposing to practise law together in an MDP may submit a joint application under this rule.

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### Consideration of MDP application

- 2-41** (1) On receipt of an application under Rule 2-40 [*Application to practise law in MDP*], the Executive Director must
- (a) grant permission to practise law in the MDP,
  - (b) if the requirements for permission to practise law in an MDP have not been met, refuse permission, or
  - (c) refer the application to the Credentials Committee.
- (2) The Executive Director must not grant permission under subrule (1) unless satisfied of the following:
- (a) all of the conditions set out in Rule 2-39 [*Conditions for MDP*] have been satisfied;
  - (b) the lawyer has made arrangements that will enable the lawyer and the MDP to comply with Rules 2-38 to 2-49.
- (3) If the lawyer applying for permission under Rule 2-40 [*Application to practise law in MDP*] agrees, the Executive Director may impose conditions or limitations on permission granted under subrule (1).
- (4) Within 30 days after being notified of the decision of the Executive Director under subrule (1) (b), the lawyer may, by written notice, request a review by the Credentials Committee.
- (5) If the Executive Director refers an application to the Credentials Committee under subrule (1) (c) or a review is requested under subrule (4), the Credentials Committee must
- (a) grant permission to practise law in an MDP, with or without conditions or limitations, or
  - (b) reject the application.
- (6) If an application is rejected or if conditions or limitations are imposed, the Credentials Committee must, at the written request of the lawyer applying, give written reasons for the decision.

### Changes in MDP

- 2-42** (1) A lawyer practising in an MDP must immediately notify the Executive Director when
- (a) ceasing to practise law in the MDP for any reason,
  - (b) any new person proposes to become a member of the MDP,
  - (c) any member of the MDP ceases to be a member of the MDP or to be actively involved in the MDP's delivery of services to clients or in the management of the MDP, or
  - (d) there is any change in the terms of the partnership agreement or other contract affecting the conditions under which members of the MDP participate in the MDP.

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- (2) When a new non-lawyer proposes to become a member of an MDP, the lawyer practising in the MDP must do the following at least 60 days before the proposed membership takes effect:
  - (a) notify the Executive Director in a form approved by the Credentials Committee;
  - (b) pay the application fee specified in Schedule 1.
- (3) Any number of lawyers practising law in an MDP may notify the Executive Director jointly under subrule (1) or (2).

### **Cancellation of MDP permit**

- 2-43** (1) If, for any reason, the Executive Director, in his or her sole discretion, is not satisfied that a lawyer is complying and will continue to comply with Rules 2-38 to 2-49, the Executive Director must cancel the permission granted under Rule 2-41 [*Consideration of MDP application*].
- (2) A cancellation under subrule (1) takes effect
    - (a) after 30 days notice to all lawyers who are current members of the MDP affected by the cancellation, or
    - (b) without notice or on notice less than 30 days on the order of the Credentials Committee.
  - (3) A lawyer who is notified of a cancellation under this rule may apply within 30 days to the Credentials Committee for a review of the decision.
  - (4) When a lawyer applies for a review under subrule (3), the Credentials Committee must consider all the information available to the Executive Director, as well as submissions from or on behalf of the lawyer applying and the Executive Director and must
    - (a) confirm the decision,
    - (b) reinstate the permission, with or without conditions or limitations specified by the Credentials Committee, or
    - (c) order a hearing before a panel under Part 5 [*Hearings and Appeals*].
  - (5) The lawyer applying under subrule (3) or the Executive Director may initiate a review by a review board on the record of a decision under subrule (4) by delivering to the President and the other party a notice of review.
  - (6) Rules 5-21 [*Notice of review*] and 5-23 to 5-28 apply to a review under this rule, insofar as they are applicable and with the necessary changes.
  - (7) A lawyer who has applied for a review under subrule (3) may apply to the President for a stay of the cancellation pending the decision of the Credentials Committee on the review.
  - (8) The person who applies for a review under subrule (5) may apply to the President for a stay of the cancellation pending the decision of the review board.

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- (9) When considering an application for a stay under subrule (8), the President must consider all the information available to the Executive Director, as well as submissions from or on behalf of the Executive Director and the lawyer concerned and must
  - (a) refuse the stay, or
  - (b) grant the stay, with or without conditions or limitations.
- (10) On an application under subrule (7) or (8), the President may designate another Benchers to make a determination under subrule (9).
- (11) When a lawyer's permission to practise law in an MDP is cancelled under this rule, the lawyer must immediately cease practising law in the MDP.

### Lawyer's professional duties

- 2-44** (1) Except as provided in Rules 2-38 to 2-49, the Act, these rules and the *Code of Professional Conduct* apply to lawyers who practise in an MDP.
- (2) A lawyer practising law in an MDP must take all steps reasonable in the circumstances to ensure that the non-lawyer members of the MDP
- (a) practise their profession, trade or occupation with appropriate skill, judgement and competence,
  - (b) comply with the Act, these rules and the *Code of Professional Conduct*, and
  - (c) provide no services to the public except
    - (i) those services that support or supplement the practice of law by the MDP, and
    - (ii) under the supervision of a practising lawyer, as required the *Code of Professional Conduct*, section 6.1 [Supervision].
- (3) A lawyer practising in an MDP must not permit any member or employee of the MDP to direct or control the professional judgment of the lawyer or to cause the lawyer or other members of the MDP to compromise their duties under the Act, these rules or the *Code of Professional Conduct*.

### Privilege and Confidentiality

- 2-45** A lawyer practising law in an MDP must take all steps reasonable in the circumstances, including the implementation of screening measures if necessary, to ensure that no improper disclosure of privileged or confidential information is made to any person, including a person appointed by the regulatory body of another profession in relation to the practice of another member or employee of the MDP.

### Conflicts of interest

- 2-46** (1) A lawyer practising law in an MDP must take all steps reasonable in the circumstances to ensure that the other members of the MDP will comply with the provisions of the Act, these rules and the *Code of Professional Conduct* respecting conflicts of interest as they apply to lawyers.



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- (2) This rule applies when the MDP has provided legal services to a client or when a potential client has sought legal services from the MDP.

### Liability insurance

- 2-47** (1) A lawyer practising law in an MDP must ensure that every non-lawyer member of the MDP providing services directly or indirectly to the public on behalf of the MDP
- (a) maintains professional liability insurance
    - (i) on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pays the insurance fee, and
    - (ii) in an amount equivalent to the total amount of coverage that the MDP maintains in excess of that required under Rule 3-39(1) [*Compulsory liability insurance*], and
  - (b) complies with the provisions of Part 3, Division 5 [*Insurance*] as if the non-lawyer were a lawyer.
- (2) If a non-lawyer member of an MDP agrees in writing, in a form approved by the Executive Committee, to engage in activities on behalf of the MDP for an average of 25 hours or less per week, the applicable insurance base assessment is the part-time insurance fee specified in Schedule 1.

### Trust funds

- 2-48** (1) A lawyer practising law in an MDP that accepts any funds in trust from any person must maintain a trust account and a trust accounting system that are
- (a) in compliance with Part 3, Division 7 [*Trust Accounts and Other Client Property*], and
  - (b) within the exclusive control of lawyers practising law in the MDP.
- (2) A lawyer practising law in an MDP must ensure that all funds received by the MDP that would, if received by a lawyer, constitute trust funds, are handled through a trust account and accounting system that complies with these rules.

### Notifying the Society

- 2-49** (1) Each lawyer who practises law in an MDP must report to the Executive Director in a form approved by the Credentials Committee concerning the following:
- (a) non-lawyer members of the MDP providing services to the public;
  - (b) the reasonable steps taken to protect privileged and confidential information under Rule 2-45 [*Privilege and confidentiality*];
  - (c) compliance with the rules respecting conflicts of interest;
  - (d) liability insurance maintained by non-lawyers under Rule 2-47 [*Liability insurance*],
  - (e) trust accounts and trust accounting records maintained under Rule 2-48 [*Trust funds*];

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- (f) the agreements required under Rule 2-39 [*Conditions for MDP*] between the lawyer and all non-lawyer members of the MDP, and
  - (g) any other matter required by the Credentials Committee.
- (2) The report required under this rule must be made annually on a date determined by the Executive Director, or more frequently as determined by the Credentials Committee.

### Division 2 – Admission and Reinstatement

#### Credentials Committee

##### Credentials Committee

- 2-50** (1) For each calendar year, the President must appoint a Credentials Committee, including a chair and vice chair, both of whom must be Benchers.
- (2) The President may remove any person appointed under subrule (1).
- (3) At any time, the President may appoint a person to the Credentials Committee to replace a Committee member who resigns or otherwise ceases membership in the Committee, or to increase the number of members of the Committee.

##### Referral to Credentials Committee

- 2-51** (1) The Executive Director may refer any matter for decision under this division to the Credentials Committee.
- (2) At the written request of a lawyer, former lawyer, articulated student or applicant affected by a decision made by the Executive Director under this division, the Executive Director must refer the matter to the Credentials Committee.
- (3) When the Executive Director refers a matter to the Credentials Committee under this rule, the Committee may make any decision open to the Executive Director under this division and may substitute its decision for that of the Executive Director.

##### Powers of the Credentials Committee

- 2-52** (1) The Credentials Committee may
- (a) exercise the authority of the Benchers to call and admit barristers and solicitors,
  - (b) implement, administer and evaluate a training course and examinations, assignments and assessments for all articulated students,
  - (c) establish standards for passing the training course and examinations, assignments and assessment,
  - (d) establish procedures to be applied by the Executive Director and faculty of the training course for
    - (i) the deferral, review or appeal of failed examinations, assignments and assessments, and

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- (ii) remedial work in the training course or examinations, assignments and assessments, and
- (e) review, investigate and report to the Benchers on all aspects of legal education leading to call and admission.
- (2) When the Credentials Committee is empowered to order a hearing under this division, it may do so even though the application has been withdrawn.
- (3) The Credentials Committee may, with the consent of the person concerned, vary or remove practice conditions or limitations imposed by the Committee under this division.

### Application for enrolment, admission or reinstatement

#### Disclosure of information

- 2-53** (1) When a person makes an application under this division, the Executive Director may
- (a) disclose the fact that the application has been made and the status of the application, and
  - (b) at the request of a governing body, provide to the governing body copies of all or part of the contents of the application and related material.
- (2) For the purpose of subrule (1) (a), the status of an application is its stage of progress in processing the application, including, but not limited to the following:
- (a) received and under review;
  - (b) granted, with or without conditions or limitations;
  - (c) referred to the Credentials Committee;
  - (d) hearing ordered, whether or not a hearing has been scheduled;
  - (e) withdrawn;
  - (f) refused.
- (3) Before the Executive Director sends material to a governing body under subrule (1) (b), the Executive Director must be satisfied that privacy of the applicant will be protected where possible, unless the material has been put in evidence in a public hearing.
- (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*].

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- (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.

### 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.

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### 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.
- (2) On an application for enrolment as an articulated student, the Executive Director may
- (a) enrol the applicant without conditions or limitations effective the enrolment start date proposed in the application, or
  - (b) refer the application to the Credentials Committee.
- (3) When the Executive Director refers an application to the Credentials Committee under subrule (2), the Committee may
- (a) enrol the applicant effective on or after the proposed enrolment start date without conditions or limitations,
  - (b) enrol the applicant effective on or after the proposed enrolment start date with conditions or limitations on the activities of the applicant as an articulated student, if the applicant consents in writing to those conditions or limitations, or
  - (c) order a hearing.

### Principals

- 2-57** (1) A lawyer may act as principal to no more than 2 articulated students at one time.

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- (2) To qualify to act as a principal, a lawyer must have
  - (a) engaged in the active practice of law in Canada
    - (i) for 7 of the 10 years, and
    - (ii) full-time for 3 of the 5 years immediately preceding the articling start date, and
  - (b) spent at least 5 years of the time engaged in the practice of law required under paragraph (a) (i) in
    - (i) British Columbia, or
    - (ii) Yukon Territory while the lawyer was a member of the Society.
- (3) In exceptional circumstances, the Credentials Committee may allow a lawyer
  - (a) who does not qualify under subrule (2) to act as principal to an articulated student, or
  - (b) to act as principal to more than 2 articulated students at one time, despite subrule (1).
- (4) On the recommendation of the Discipline Committee or Practice Standards Committee, or on its own motion, the Credentials Committee may inquire into a lawyer's suitability to act or to continue to act as principal to an articulated student and may do any of the following:
  - (a) conduct or authorize any person to conduct an investigation concerning the fitness of the lawyer to act as a principal;
  - (b) require the lawyer to appear before the Credentials Committee and to respond to questions of the Committee;
  - (c) order the lawyer to produce any documents, records or files that the Credentials Committee may reasonably require.
- (5) After allowing the lawyer to make submissions, the Credentials Committee may do any of the following:
  - (a) permit the lawyer to act as a principal to an articulated student;
  - (b) permit the lawyer to act as a principal to an articulated student subject to conditions or limitations;
  - (c) order that the lawyer not act as a principal to an articulated student.
- (6) The onus is on the lawyer to show cause why an order should not be made under subrule (5) (b) or (c).

### Hiring articulated students

- 2-58** (1) This rule does not apply to temporary articles under Rule 2-70 [*Temporary articles*].
- (2) This rule applies to all lawyers practising in a firm that maintains an office in the city of Vancouver north of False Creek and west of Carrall Street.
- (3) The Credentials Committee may designate an offer date in each calendar year.

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- (4) A lawyer must not offer articles to a student of any law school who has not begun the third year of studies unless the offer is to remain open at least until the offer date designated under subrule (3).
- (5) As an exception to subrule (4), the Credentials Committee may allow a lawyer to withdraw an offer of articles before the offer date designated under subrule (3).

### Articling term

- 2-59** (1) Unless the articling period is changed under Rules 2-59 to 2-65, an articulated student must work in the office of his or her principal for a period of not less than 9 months.
- (2) Unless otherwise permitted in this division, the articling term must be continuous, except that this period may be interrupted by
- (a) attendance at the training course,
  - (b) annual vacation of up to 10 working days at the discretion of the principal, or
  - (c) a leave of absence as permitted under Rule 2-69 [*Leave during articles*].
- (3) Any time taken for matters referred to in subrule (2) must not be included in the calculation of the articling term.
- (4) The articling term must not be reduced by more than 5 months under any other rule or the combined effect of any rules.
- (5) The Credentials Committee may increase the articling term to not more than 2 years if
- (a) the articulated student's performance has been unsatisfactory,
  - (b) the articulated student has not completed his or her obligations under the articling agreement, or
  - (c) other circumstances justify an increase.
- (6) If it would result in the articulated student qualifying for call and admission within 2 years of the student's first enrolment start date, a student enrolled for a second time is entitled to credit for
- (a) successful completion of the training course, and
  - (b) time spent in articles.
- (7) If an articulated student is enrolled for a second or subsequent time, the Credentials Committee may grant credit for successful completion of the training course and some or all time spent in articles when the articulated student was previously enrolled.

### Legal services by articulated students

- 2-60** (1) Subject to any prohibition in law, an articulated student may provide all legal services that a lawyer is permitted to provide, but the student's principal or another practising lawyer supervising the student must ensure that the student is
- (a) competent to provide the services offered,
  - (b) supervised to the extent necessary in the circumstances, and
  - (c) properly prepared before acting in any proceeding or other matter.

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- (2) An articulated student must not
  - (a) appear as counsel without the student's principal or another practising lawyer in attendance and directly supervising the student in the following proceedings:
    - (i) an appeal in the Court of Appeal, the Federal Court of Appeal or the Supreme Court of Canada;
    - (ii) a civil or criminal jury trial;
    - (iii) a proceeding on an indictable offence, unless the offence is within the absolute jurisdiction of a provincial court judge,
  - (b) give an undertaking unless the student's principal or another practising lawyer supervising the student has also signed the undertaking, or
  - (c) accept an undertaking unless the student's principal or another practising lawyer supervising the student also accepts the undertaking.

### Mid-term report

- 2-61** (1) This rule does not apply to
  - (a) temporary articles under Rule 2-70 [*Temporary articles*], or
  - (b) articles when the term is less than 6 months.
- (2) Before the student has completed 60 per cent of his or her articling term, the principal and the student must deliver to the Executive Director a joint report on the student's progress to date in articles in a form approved by the Credentials Committee.
- (3) A report under this rule must include a plan for completing the obligations of the principal and student under the articling agreement.

### Part-time articles

- 2-62** (1) An applicant for enrolment may apply to complete some or all of his or her articles part-time by submitting the following to the Executive Director not less than 2 months before the enrolment start date:
  - (a) the documents and information required under Rule 2-54 (1) [*Enrolment in the admission program*];
  - (b) the application fee specified in Schedule 1;
  - (c) an articling agreement that includes all of the following:
    - (i) the prospective principal's express approval of the part-time arrangements;
    - (ii) the type of experience to be provided to the applicant;
    - (iii) the hours per day to be worked by the applicant;
    - (iv) the length of the proposed articling term.
- (2) An articulated student may apply to change his or her articles to part-time articles by submitting to the Executive Director the articling agreement referred to in subrule (1) (c).
- (3) The Executive Director may approve an application made under subrule (1) or (2) if



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- (a) the proposed articling term is a continuous period that would give work experience in the office of the principal equivalent to that required under Rule 2-59 (1) [*Articling term*], and
  - (b) the student or applicant's articles will be completed within 2 years of the articling start date.
- (4) The part-time equivalent of the articling period is calculated on the following basis:
- (a) 8 hours of scheduled work equals one day of articles;
  - (b) no additional credit is allowed for more than 8 hours per day.
- (5) If the Executive Director refers an application under this rule to the Credentials Committee, the Committee must consider the applicant's submissions and may
- (a) approve the application without conditions or limitations,
  - (b) approve the application, subject to any conditions or limitations it considers appropriate, or
  - (c) reject the application.

### Law clerks

- 2-63** (1) An articulated student who has been employed as a law clerk for not less than 8 months may apply in writing to the Executive Director for a reduction in the articling term by an amount of time equal to half of the time served as a law clerk.
- (2) An articulated student whose application under this rule is accepted must article to his or her principal for a period of time and according to a schedule approved by the Executive Director.
- (3) An application under this rule must be accompanied by
- (a) a written report on the student's character and competence from the judge to whom the articulated student clerked, and
  - (b) other documents or information that the Credentials Committee may reasonably require.

### Articles in another Canadian jurisdiction

- 2-64** An articulated student or applicant for enrolment who has served a period of articles in another Canadian jurisdiction immediately before or after the student's period in articles in British Columbia, may apply in writing to the Executive Director for a reduction in the articling term by an amount of time equal to the time served in articles in the other jurisdiction.

### Practice experience in a common law jurisdiction outside Canada

- 2-65** (1) An articulated student or applicant for enrolment who holds professional legal qualifications obtained in a common law jurisdiction outside Canada and has been in the active practice of law in that jurisdiction for at least one full year, may apply in writing to the Executive Director for a reduction in the articling term.

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- (2) The Executive Director may reduce an articling term under this rule by up to one month for each full year of active practice of law in another jurisdiction.

### Secondment of articles

- 2-66** (1) A principal may permit his or her articulated student to work in the office of another lawyer qualified to act as a principal, for not more than a total of 8 weeks of the student's articling period.
- (2) The Executive Director may permit an articulated student to work in the office of a lawyer qualified to act as a principal, other than the student's principal for a period or periods exceeding 8 weeks of the student's articling period.
- (3) If the Executive Director grants permission under subrule (2), the Executive Director may set conditions or limitations as appropriate.

### Assignment of articles

- 2-67** (1) An articulated student may apply for permission to assign his or her articles to another lawyer qualified to act as a principal by filing with the Executive Director, not later than 7 days after commencing employment at the office of the new principal,
- (a) an assignment of articles in a form approved by the Credentials Committee,
  - (b) a declaration of principal in a form approved by the Credentials Committee, and
  - (c) statements from the previous principal and from the articulated student setting out the reasons for the assignment.
- (2) If the articulated student does not apply to the Executive Director within the time specified in subrule (1), the time between the date the student left the previous principal's office and the date the student filed the application for assignment is not part of the articling period, unless the Credentials Committee directs otherwise.
- (3) If the previous principal does not execute one or more of the documents referred to in subrule (1), the Executive Director may dispense with the filing of those documents.
- (4) If the proposed principal is qualified to act as principal to an articulated student, the Executive Director may approve an application under this rule.
- (5) If the Executive Director refers an application under this rule to the Credentials Committee, the Committee must consider the student's submissions, and may
- (a) approve the application without conditions or limitations,
  - (b) approve the application, subject to any conditions or limitations it considers appropriate, or
  - (c) reject the application.
- (6) An application under this rule must be approved effective on or after the date on which the articulated student began employment at the office of a new principal.

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### Other employment

- 2-68** During the articling period and the training course, an articulated student is not permitted to accept employment from any person other than the student's principal or the person to whom the student's articles are seconded under Rule 2-66 [*Secondment of articles*], except with the approval of the Executive Director.

### Leave during articles

- 2-69** (1) In the period from an articulated student's enrolment start date until call and admission, the student may take a leave of absence from articles, provided
- (a) the total time of leaves of absence, other than maternity and parental leaves, during the period does not exceed 22 working days,
  - (b) the leave of absence does not affect the student's attendance at the training course as required, and
  - (c) if any part of the leave is to take place when the student is required to work in the office of his or her principal, the principal consents to the leave in advance.
- (2) Any time taken for a leave of absence under this rule is not part of the articling period.
- (3) An articulated student who becomes a natural or adoptive parent during or within 12 weeks before the articling period is entitled to 12 weeks or, if the student is the primary caregiver of the child, 16 weeks parental leave.
- (4) An articulated student is entitled to 18 weeks maternity leave during the period from 11 weeks before to 17 weeks after giving birth, in addition to her entitlement under subrule (3).
- (5) If maternity or parental leave causes an articulated student to fail to attend any part of the training course, the Credentials Committee may require the student to attend all or part of the course at a session held after the completion of the student's maternity or parental leave.
- (6) An articulated student who takes a leave of absence under subrule (1) must notify the Executive Director in writing in advance.
- (7) An articulated student who takes a leave of absence under subrule (3) or (4) must notify the Executive Director in writing as soon as possible.
- (8) On the written application of an articulated student, the Executive Director may allow the student to take a leave of absence that is not otherwise authorized by this rule, provided that the articulated student will be eligible for call and admission within 2 years of his or her enrolment in the admission program.
- (9) On the written application of an articulated student, the Credentials Committee may allow the student to take a leave of absence that the Executive Director has not approved, including a leave that will result in the student not being eligible for call and admission within 2 years of his or her enrolment in the admission program.

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### Temporary articles

- 2-70** (1) A person may apply for enrolment in temporary articles by filing the following with the Executive Director, not less than 30 days before the enrolment start date:
- (a) an 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) an articling agreement in a form approved by the Credentials Committee;
  - (c) the application fee for temporary articles specified in Schedule 1.
- (2) The Executive Director may enrol the following in temporary articles:
- (a) a student at a common law faculty of law in a Canadian university;
  - (b) a person whose application for enrolment as an articulated student has been approved, but whose articling term has not yet begun;
  - (c) a person who is qualified to practise law in a Commonwealth country and has actually practised law in that country for 2 years or more.
- (3) Temporary articles granted under subrule (2) (a) are void if the student ceases to be a student at a common law faculty of law in Canada.
- (4) The Executive Director may only grant temporary articles under subrule (2) (a) that are subject to a definite termination date.
- (5) The Executive Director must not grant temporary articles under subrule (2) (b) effective more than 6 weeks before the beginning of the person's articling term.
- (6) The Executive Director must not grant temporary articles under subrule (2) (c) for a period exceeding 3 months.
- (7) Time spent in temporary articles is not part of the articling term.
- (8) Except as otherwise specified in these rules, a person enrolled in temporary articles has the rights, privileges and responsibilities of an articulated student.
- (9) The Credentials Committee may revoke temporary articles at any time for any reason without giving notice to the temporary articulated student and without holding a hearing.

### Court and tribunal appearances by temporary articulated students

- 2-71** (1) Despite Rule 2-60 [*Legal services by articulated students*], a person enrolled in temporary articles must not appear as counsel before a tribunal except
- (a) in the Federal Court or the Federal Court of Appeal as the Court permits,
  - (b) in the Supreme Court of British Columbia in Chambers on any
    - (i) uncontested matter, or
    - (ii) contested application for
      - (A) time to plead,
      - (B) leave to amend pleadings, or
      - (C) discovery and production of documents, or
    - (iii) other procedural application relating to the conduct of a cause or matter,

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- (c) before a registrar or other officer exercising the power of a registrar of the Supreme Court of British Columbia or Court of Appeal for British Columbia,
  - (d) in the Provincial Court of British Columbia
    - (i) on any summary conviction offence or proceeding,
    - (ii) on any matter in the Family Division or the Small Claims Division, or
    - (iii) when the Crown is proceeding by indictment or under the *Youth Criminal Justice Act* (Canada) in respect of an indictable offence, for the purposes only of
      - (A) speaking to an application for an adjournment,
      - (B) setting a date for preliminary inquiry or trial,
      - (C) speaking to an application for judicial interim release or an application to vacate a release or detention order and to make a different order, or
      - (D) an election or entry of a plea of Not Guilty on a date before the trial date,
  - (e) on an examination of a debtor,
  - (f) on an examination for discovery in aid of execution, or
  - (g) before an administrative tribunal.
- (2) A person enrolled in temporary articles must not do the following:
- (a) conduct an examination for discovery;
  - (b) represent a party who is being examined for discovery;
  - (c) represent a party at a case planning conference, trial management conference or settlement conference.
- (3) A person enrolled in temporary articles under Rule 2-70 (2) (c) [*Temporary articles*] may appear in court only on a summary conviction matter and under the direct supervision of a practising lawyer.

### Training course

- 2-72** (1) The Executive Director may set the dates on which sessions of the training course will begin.
- (2) The Credentials Committee may direct that an articulated student be given priority in selection of the training course session that the student wishes to attend if the student is or will be
- (a) articling outside the Lower Mainland,
  - (b) articling as the only student in a firm, or
  - (c) employed as a law clerk.
- (3) Before registering in the training course, an articulated student or applicant must make application for enrolment under Rule 2-54 (1) [*Enrolment in the admission program*].
- (4) To register in a training course session, an articulated student or applicant must

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- (a) pay to the Society the fee for the training course specified in Schedule 1, and
- (b) deliver to the Executive Director
  - (i) an application for registration, and
  - (ii) the principal's consent to the training course session chosen.
- (5) The Executive Director must deliver to each student who was registered in a training course session and to each student's principal, a transcript stating whether the student passed or failed the training course.
- (6) If a student fails part of the training course, the Executive Director may allow the student one further attempt to pass the examinations, assignments or assessments concerned.
- (7) An articulated student may apply in writing to the Credentials Committee for exemption from all or a portion of the training course, and the Committee may, in its discretion, grant all or part of the exemption applied for with or without conditions, if the student has
  - (a) successfully completed a bar admission course in another Canadian jurisdiction, or
  - (b) engaged in the active practice of law in a common law jurisdiction outside Canada for at least 5 full years.

### Tutorial program

- 2-73** (1) The Executive Director may establish a tutorial program to assist students participating in the training course.
- (2) Priority for access to tutorial assistance must be as follows:
- (a) first priority to students of aboriginal heritage;
  - (b) second priority to all other students.

### Review by Credentials Committee

- 2-74** (1) Subject to subrule (2), an articulated student who has failed the training course may apply in writing to the Credentials Committee, not more than 21 days after the date on which the Executive Director issued the transcript, for a review of his or her failed standing.
- (2) An articulated student may not apply to the Credentials Committee under subrule (1) if the student has failed in 3 attempts to pass the training course, including any of the following:
- (a) the original attempt;
  - (b) a further attempt to pass examinations, assignments or assessments under Rule 2-72 (6) [*Training course*];
  - (c) any attempt to meet a requirement under subrule (7).

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- (3) The Credentials Committee may, in its discretion, consider an application for review received after the period specified in subrule (1).
- (4) An articulated student applying for a review under this rule must state the following in the application:
  - (a) any compassionate grounds, supported by medical or other evidence, that relate to the student's performance in the training course;
  - (b) any grounds, based on the student's past performance, that would justify the Credentials Committee granting opportunities for further remedial work;
  - (c) the relief that the student seeks under subrule (7).
- (5) The Credentials Committee may
  - (a) deliver a copy of the student's application for review to the Executive Director,
  - (b) consider any written submission made by the Executive Director, the student, the principal or other person who, in the Committee's opinion, could provide information relevant to the grounds for review, or
  - (c) invite one or more of the student, the principal or the Executive Director, to make any further written submissions, or to meet informally with the Committee.
- (6) Subject to the Act and these rules, the Credentials Committee may determine the practice and procedure to be followed at a review under this rule.
- (7) After considering the submissions made under subrules (4) and (5), the Credentials Committee may do one or more of the following:
  - (a) confirm the standing, including any failed standing, stated in the transcript delivered by the Executive Director;
  - (b) grant the student an adjudicated pass in a training course examination, assignment or assessment, with or without conditions;
  - (c) require the student to complete further examinations, assignments or assessments, and to pass them at a standard set by the Committee;
  - (d) require the student to complete or repeat and pass all, or a portion of, the training course;
  - (e) require the student to complete a specified program of training at an educational institution or under the supervision of a practising lawyer, or both.
- (8) A student who is required to do anything under subrule (7) must pay the fee for the training course, or for each examination, assignment or assessment as specified in Schedule 1.
- (9) The Executive Director must deliver a transcript stating the student's standing and the extent to which any standards or conditions set by the Credentials Committee have been met to
  - (a) each student whom the Committee has required to do anything under subrule (7), and
  - (b) each such student's principal.

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### Termination of enrolment

- 2-75** (1) An articulated student is no longer enrolled in the admission program if the principal or the student has terminated the student's articles for any reason and no assignment of the student's articles is approved within 30 days.
- (2) The 30-day period referred to in subrule (1) does not run while the student is registered in and attending the training course.
- (3) A person whose enrolment has ceased under subrule (1) may apply for enrolment under Rule 2-54 (1) [*Enrolment in the admission program*].

### Call and admission

#### Call and admission

- 2-76** To qualify for call and admission, an articulated student must complete the following satisfactorily:
- (a) the articling term;
  - (b) the training course;
  - (c) any other requirements of the Act or these rules imposed by the Credentials Committee or the Benchers.

#### First call and admission

- 2-77** (1) An articulated student who applies for call and admission must deliver to the Executive Director
- (a) the following in the form approved by the Credentials Committee:
    - (i) a petition for call and admission;
    - (ii) a declaration of the principal;
    - (iii) a declaration of the applicant;
    - (iv) a joint report of the principal and the applicant certifying completion of their obligations under the articling agreement;
    - (v) a completed questionnaire;
    - (vi) written consent for the release of relevant information to the Society,
  - (b) an errors and omissions insurance application or exemption form,
  - (c) the following fees:
    - (i) the 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 liability insurance*], and
  - (d) any other information and documents required by the Act or these rules that the Credentials Committee or the Benchers may request.
- (2) An articulated student may apply under this rule at any time.



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- (3) If an articulated student fails to meet the requirements of this rule, including the delivery of all documents specified, the Executive Director must summarily
  - (a) reject the application for call and admission, and
  - (b) terminate the student's enrolment.
- (4) When the Credentials Committee has initiated a review under Rule 5-19 [*Initiating a review*] of a hearing panel's decision to enrol an articulated student, the articulated student is not eligible for call and admission until the review board has issued a final decision on the review or the Committee withdraws the review.

### Law school faculty

- 2-78** (1) A full-time lecturer in a faculty of law of a university in Canada who has the academic qualifications required under Rule 2-54 [*Enrolment in the admission program*] may apply for call and admission without completing the admission program.
- (2) On an application under this rule, the Credentials Committee may approve the application subject to the condition specified in subrule (3).
  - (3) A lawyer called and admitted under this rule who ceases to be a full-time lecturer in a faculty of law of a university in Canada must complete the admission program unless the Credentials Committee otherwise orders.
  - (4) The Benchers may require a lawyer who fails to comply with subrule (3) to resign from the Society.

### Transfer from another Canadian jurisdiction

- 2-79** (1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:
- (a) an application for call and admission on transfer in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;
  - (b) a certificate of character;
  - (c) a certificate of standing from each body regulating the legal profession in any jurisdiction in which the applicant is or has been a member of the legal profession;
  - (d) an errors and omissions 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;

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- (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 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.

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- (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 reciprocating 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 that is now a reciprocating 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 reciprocating 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.
  - (3) To qualify for call and admission, an applicant under this rule must certify, in a prescribed form, that he or she has reviewed and understands all of the materials reasonably required by the Executive Director.
  - (4) A lawyer called and admitted under this rule has no greater rights as a member of the Society than
    - (a) the lawyer has as a member of the governing body of his or her home jurisdiction, or
    - (b) any other member of the Society in similar circumstances.

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### Transfer as Canadian legal advisor

- 2-82** (1) Subject to subrule (3), a member of the Chambre may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:
- (a) a completed application for call and admission as a Canadian legal adviser in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;
  - (b) a certificate of character;
  - (c) a certificate of standing from the Chambre and each other body regulating the legal profession, in any jurisdiction, in which the applicant is or has been a member of the legal profession;
  - (d) an errors and omissions insurance application or exemption form;
  - (e) 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 liability insurance*];
  - (f) any other information and documents required by the Act or these rules that are requested by the Credentials Committee or the Benchers.
- (2) Subject to subrule (1), Rules 2-79 to 2-84 apply, with any necessary changes, to an application for call and admission on transfer as a Canadian legal adviser.
- (3) This rule does not apply to a member of the Chambre unless he or she has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Chambre.

### Consideration of application for call and admission

- 2-83** (1) The Executive Director must consider an application for call and admission by a person meeting the requirements under this division, and may conduct or authorize any person to conduct an investigation concerning the application.
- (2) On an application for call and admission, the Executive Director may
- (a) authorize the call and admission of the applicant without conditions or limitations, or
  - (b) refer the application to the Credentials Committee.
- (3) When the Executive Director refers an application to the Credentials Committee under subrule (2), the Committee may
- (a) authorize the call and admission of the applicant without conditions or limitations,

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- (b) authorize the call and admission of the applicant with conditions or limitations on the applicant's practice, if the applicant consents in writing to those conditions or limitations, or
- (c) order a hearing.

### **Barristers and solicitors' roll and oath**

- 2-84** (1) The Executive Director must maintain the barristers and solicitors' roll in paper or electronic form, or a combination of both.
- (2) Every lawyer who is called to the Bar of British Columbia and admitted as a solicitor of the Supreme Court must,
- (a) before beginning the practice of law, take the barristers and solicitors' oath in a form approved by the Benchers before a judge of the Provincial Court or a superior court in British Columbia or before a practising lawyer, and
  - (b) be presented in open court before one or more of the judges of the Supreme Court.
- (3) The Executive Director must enter in the barristers and solicitors' roll the full names of all persons who are called as barristers and admitted as solicitors.
- (4) On proof that an applicant who has otherwise qualified for call and admission has taken the oath required under subrule (2) (a), the Executive Director must issue to the applicant a practising certificate, a non-practising certificate or a Canadian legal advisor certificate, as the case may be.
- (5) The Executive Director must not renew a practising certificate or a Canadian legal advisor certificate issued under subrule (4) unless the lawyer has been presented in open court as required under subrule (2) (b).
- (6) As an exception to subrule (5), the Executive Director may renew a certificate issued under subrule (2) (b) within four months of its expiry date.

## **Reinstatement**

### **Reinstatement of a former lawyer**

- 2-85** (1) A former lawyer may apply for reinstatement as a member of the Society by delivering the following to the Executive Director:
- (a) an application for reinstatement in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;
  - (b) the appropriate application fee specified in Schedule 1.
- (2) An applicant for reinstatement may apply for the following status on reinstatement:
- (a) practising lawyer, only if the applicant has met the conditions for practising law under Rule 2-89 [*Returning to practice after an absence*];
  - (b) non-practising member on compliance with Rule 2-3 [*Non-practising members*];

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- (c) retired member if the lawyer is qualified under Rule 2-4 (1) [*Retired members*] and on compliance with Rule 2-4 (2) and (3).
- (3) On an application under subrule (2) (c), the Credentials Committee may waive payment of all or part of the application fee on any conditions that the Committee considers appropriate.
- (4) The Executive Director may issue a practising certificate to an applicant on reinstatement on payment of the following:
  - (a) the prorated practice fee specified in Schedule 2;
  - (b) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-43 [*Exemption from liability insurance*];
  - (c) any surcharge for which the lawyer is liable under Rule 3-44 (2) [*Deductible, surcharge and reimbursement*].
- (5) The Executive Director may issue a non-practising or retired member certificate to an applicant on reinstatement on payment of the appropriate prorated fee specified in Schedule 3.
- (6) Subject to subrule (7), the Executive Director must consider an application for reinstatement of a former lawyer and may conduct or authorize any person to conduct an investigation concerning the application.
- (7) The Executive Director must not consider an application for reinstatement of a former lawyer unless the former lawyer has
  - (a) submitted all trust reports required under Rules 3-79 [*Trust report*] and 3-84 (1) [*Former lawyers*],
  - (b) paid all assessments accrued under Rule 3-80 [*Late filing of trust report*] before and after the former lawyer ceased to be a member of the Society unless the Discipline Committee orders the assessments need not be paid under Rule 3-80 (3), and
  - (c) paid all costs of trust reports ordered under Rule 3-81 (6) [*Failure to file trust report*].
- (8) If an applicant for reinstatement is a disbarred lawyer, the Executive Director must refer the application to the Credentials Committee.
- (9) On an application for reinstatement to which subrules (7) and (8) do not apply, the Executive Director may
  - (a) reinstate the applicant without conditions or limitations, or
  - (b) refer the application to the Credentials Committee for consideration.
- (10) Subject to subrule (11), when the Executive Director refers an application for reinstatement to the Credentials Committee under subrule (9), the Committee may
  - (a) reinstate the applicant without conditions or limitations,
  - (b) reinstate the applicant with conditions or limitations on the applicant's practice if the applicant consents in writing to those conditions or limitations, or

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- (c) order a hearing.
- (11) The Credentials Committee must order a hearing in the following circumstances:
  - (a) section 19(3) applies;
  - (b) the Committee cannot reach another disposition of the matter under subrule (10);
  - (c) the Committee resolves to order a hearing.
- (12) An applicant for reinstatement must give written notice of the application as directed by the Executive Director, and persons so notified may appear in person or by counsel at the hearing and be heard on the application.

### Subsequent application for reinstatement

- 2-86** A person whose application for reinstatement is rejected under section 22 (3) [*Credentials hearings*] may not make a new application for reinstatement until the earlier of the following:
- (a) 2 years after the date on which the application was rejected;
  - (b) the date set by the panel when the application was rejected or by the review board on a review under Part 5 [*Hearings and appeals*].

### Reinstatement of former judge or master

- 2-87** (1) Subject to subrules (2) and (3), a reinstated lawyer who was a judge or a master must restrict his or her practice of law as follows:
- (a) a former judge of a federally appointed court in British Columbia, the Supreme Court of Canada, the Federal Court of Appeal or the Federal 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 the Provincial Court of British Columbia must not appear as counsel in that Court for 3 years after ceasing to be a judge;
  - (c) a former master of the Supreme Court of British Columbia must not appear as counsel before a master, a registrar, a district registrar or a deputy district registrar of the Supreme Court of British Columbia for 3 years after ceasing to be a master.
- (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 master 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 master from referring to the lawyer's former status in

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- (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 master.

### 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) 5 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 3 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 doing one of the following:
- (a) passing the qualification examination;
  - (b) obtaining the permission of the Credentials Committee under subrule (3).
- (2) Subrule (1) applies
- (a) despite any other rule, and
  - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.
- (3) A lawyer may apply in writing to the Credentials Committee for permission to practise law without passing the qualification examination.
- (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



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- (b) the public interest does not require the lawyer to pass the qualification examination.
- (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) A lawyer who is required to write the qualification examination under subrule (1) must pay, at least 30 days before writing the first examination, the fee specified in Schedule 1.

### Conditions on returning to practice

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

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- (6) Despite Rule 2-52 (3) [*Powers of the Credentials Committee*], the Credentials Committee may vary a condition under subrule (5) (a) without the consent of the lawyer concerned.
- (7) On the written application of the lawyer, the Credentials Committee may allow a variation of an undertaking given under subrule (5) (b).

### Credentials hearings

#### Notice to applicant

- 2-91** (1) When a hearing is ordered under this division, the Executive Director must promptly notify the applicant in writing of
- (a) the purpose of the hearing,
  - (b) the date, time and place of the hearing,
  - (c) the circumstances to be inquired into at the hearing, and
  - (d) the amount of security for costs set by the Credentials Committee under Rule 2-92 [*Security for costs*].
- (2) The Executive Director must serve the notice referred to in subrule (1)
- (a) in accordance with Rule 10-1 [*Service and notice*], and
  - (b) not less than 30 days before the date set for the hearing, unless the applicant consents in writing to a shorter period.

#### Security for costs

- 2-92** (1) When the Credentials Committee orders a hearing under this division, it must set an amount to be deposited by the applicant as security for costs.
- (2) In setting the amount to be deposited as security for costs under this rule, the Credentials Committee may take into account the circumstances of the matter, including but not limited to, the applicant's
- (a) ability to pay, and
  - (b) likelihood of success in the hearing.
- (3) The amount to be deposited as security for costs cannot exceed an amount that approximates the amount that the panel may order to be paid under Rule 5-11 [*Costs of hearings*].
- (4) On application by the applicant or counsel for the Society, the Credentials Committee may vary the amount to be deposited as security for costs under this rule.
- (5) If, 15 days before the date set for a hearing, the applicant has not deposited with the Executive Director the security for costs set under this rule, the hearing is adjourned.
- (6) Before the time set for depositing security for costs under subrule (5), an applicant may apply to the Credentials Committee for an extension of time, and the Committee may, in its discretion, grant all or part of the extension applied for.

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## Law Society counsel

**2-93** The Executive Director must appoint an employee of the Society or retain another lawyer to represent the Society when

- (a) a hearing is ordered under this division,
- (b) a review is initiated under section 47 [*Review on the record*],
- (c) an applicant appeals a decision to the Court of Appeal under section 48 [*Appeal*],  
or
- (d) the Society is a respondent in any other action involving an application relating to sections 19 to 22 or this division.

## Preliminary questions

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

## Compelling witnesses and production of documents

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

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

### Pre-hearing conference

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

### Appointment of panel

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

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### Adjournment of hearing

- 2-98** (1) Before a hearing commences, the applicant or counsel for the Society may request that the hearing be adjourned by delivering to the Executive Director a notice in writing that sets out the reasons for the request.
- (2) The Executive Director must promptly notify the following of a request under subrule (1) and the reasons for it:
- (a) the party not making the request;
  - (b) a person given written notice of the application under Rule 2-85 (12) *[Reinstatement of a former lawyer]*;
  - (c) the President;
  - (d) anyone else who, in the Executive Director's opinion, should be notified.
- (3) Before a hearing commences, the President must decide whether to grant the adjournment, with or without conditions, and advise the parties accordingly.
- (4) The President may designate another Benchers to make a determination under subrule (3).
- (5) After a hearing has commenced, the chair of the panel may adjourn the hearing, with or without conditions, to a specified date, time and place.

### Attendance at the hearing

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

### Onus and burden of proof

- 2-100** (1) At a hearing under this division, the onus is on the applicant to satisfy the panel on the balance of probabilities that the applicant has met the requirements of section 19 (1) and this division.
- (2) A panel must reject an application for enrolment if it considers that the applicant's qualifications referred to in Rule 2-54 (2) *[Enrolment in the admission program]* are deficient.

### Procedure

- 2-101** (1) Following completion of the evidence, the panel must invite the applicant and counsel for the Society to make submissions on the issues to be decided by the panel.
- (2) If the circumstances of the applicant have changed so as to make the outcome of the hearing moot, after hearing submissions on behalf of the Society and the applicant, the panel may do one of the following:
- (a) adjourn the hearing generally;
  - (b) reject the application;
  - (c) commence or continue with the hearing.

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- (3) After hearing submissions under subrule (1), the panel must determine the facts and decide whether to
  - (a) grant the application
  - (b) grant the application subject to conditions or limitations that the panel considers appropriate, or
  - (c) reject the application.
- (4) The panel must prepare written reasons for its findings.
- (5) The Executive Director must promptly deliver a copy of the panel's reasons prepared under subrule (4) to the applicant and counsel for the Society.

### Inactive applications

- 2-102** (1) When the Credentials Committee has ordered a hearing under this division and the applicant has taken no steps for one year to bring the application to a hearing, the application is deemed abandoned.
- (2) When an application is abandoned under this rule, counsel for the Society may apply for an order that some or all of the funds paid under Rule 2-92 [*Security for costs*] as security for costs be retained by the Society.
- (3) An application under subrule (2) is made by notifying the following:
- (a) the applicant;
  - (b) the Executive Director.
- (4) On an application under subrule (3), the President may order that some or all of the funds deposited as security for costs be retained by the Society, and the remainder, if any, be refunded to the applicant.
- (5) The President may designate another Benchers to make a determination under subrule (4).

### Publication of credentials decision

- 2-103** (1) Subject to Rule 2-104 [*Anonymous publication*], the Executive Director may publish and circulate to the profession a summary of the circumstances and of any final or interlocutory decision of a hearing panel or review board on an application under this division and the reasons given for the decision.
- (2) If a disbarred lawyer is reinstated after a hearing, the Executive Director must publish and circulate to the profession a summary of the circumstances of the decision of the hearing panel and the reasons given for the decision.
- (3) When a publication is allowed under subrule (1), the Executive Director may also publish generally
- (a) a summary of the circumstances of the decision of the hearing panel or review board and the reasons given for the decision, or
  - (b) all or part of the written reasons for the decision.

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- (4) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

### Anonymous publication

- 2-104** (1) Except as required or allowed under this rule, a publication under Rule 2-103 [*Publication of credentials decision*] must identify the applicant.
- (2) If the application that is the subject of the hearing is rejected, the publication must not identify the applicant unless the applicant consents in writing.
- (3) The panel may order that publication not identify the applicant if
- (a) the application is approved without conditions or limitations on the practice or articles of the applicant, and
  - (b) publication will cause grievous harm to the applicant or another identifiable individual that outweighs the interest of the public and the Society in full publication.
- (4) An applicant may apply to the panel for an order under subrule (3)
- (a) in writing or on the record in the course of a hearing, and
  - (b) no later than 7 days after the written decision is issued or oral reasons delivered.
- (5) The Executive Director must not publish under Rule 2-103 [*Publication of credentials decision*] until
- (a) 7 days after a written decision is issued or oral reasons given, unless the applicant waives the right to apply under subrule (4), or
  - (b) an application under subrule (4) is resolved or withdrawn.
- (6) If a panel orders that an applicant's identity not be disclosed under subrule (3), the panel must state in writing the specific reasons for that decision.
- (7) If, on a review of a panel decision rejecting an application, the review board approves the application, the applicant may apply to the Benchers under subrule (4), and subrules (3) to (6) apply as if the review board were a panel.

## Division 3 – Fees and Assessments

### Annual practising fees

- 2-105** (1) The annual practising fee and insurance fee are payable in respect of each calendar year.
- (2) The date for payment of the annual practising fee and first insurance fee instalment is November 30 of the year preceding the year for which they are payable.

### Assessments

- 2-106** (1) The Benchers may, by resolution, set a special assessment of all
- (a) practising lawyers,

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- (b) practising lawyers and applicants,
- (c) members of the Society, or
- (d) members of the Society and applicants.

(2) A resolution under subrule (1) must set a date by which the assessment must be paid.

### Application fees

**2-107** On application from a person who has paid an application fee under these rules, the Executive Director may refund all or part of the fee if, in the view of the Executive Director, it is fair to make the refund in all the circumstances, including the extent to which Society resources have been expended to process the application for which the fee was paid.

### Late payment

- 2-108** (1) A lawyer who fails to pay fees by the date required under Rule 2-105 [*Annual practising fees*] but pays all required fees before December 31 of the year preceding the year for which they are payable, together with the late payment fee under this rule, continues to be a member of the Society.
- (2) The Executive Director may extend the time for a lawyer or class of lawyers to pay fees or a special assessment and, if the lawyer pays
- (a) the annual practising fee or special assessment by the date to which the time is extended, and
  - (b) the late payment fee under this rule,
- the lawyer is deemed to be a member of the Society in good standing and to have been in good standing during the period of time that the lawyer's fee or special assessment was unpaid.
- (3) A lawyer, other than a retired or non-practising member, who has failed to pay the annual practising fee in accordance with Rule 2-105 [*Annual practising fees*], is required to pay the late payment fee for practising lawyers specified in Schedule 1.
- (4) A retired member who has failed to pay the annual fee for retired members in accordance with Rule 2-4 [*Retired members*] is required to pay the late payment fee for retired members specified in Schedule 1.
- (5) A non-practising member who has failed to pay the annual fee for non-practising members in accordance with Rule 2-3 [*Non-practising members*] is required to pay the late payment fee for non-practising members specified in Schedule 1.
- (6) A lawyer who does not pay a special assessment by the date specified under Rule 2-106 (2) [*Assessments*] or extended under subrule (2) must pay a late payment fee of 20 per cent of the amount of the assessment.
- (7) When there are special circumstances, the Executive Director may, in his or her discretion, waive or reduce a late payment fee payable under this rule.



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### Definition and application

- 2-109** (1) In Rules 2-109 to 2-113, “**client matter**” means any distinct matter on which a lawyer is retained to represent or advise a client, including but not limited to the following:
- (a) a transaction of any kind;
  - (b) a claim or potential claim by or against the lawyer’s client;
  - (c) a proceeding.
- (2) Rules 2-109 to 2-113 apply to client matters in connection with which a lawyer receives trust funds on or after March 1, 2005.

### Trust administration fee

- 2-110** (1) A lawyer must pay to the Society the trust administration fee specified in Schedule 1 for each client matter undertaken by the lawyer in connection with which the lawyer receives any money in trust, not including fees and retainers.
- (2) Only one trust administration fee is payable in respect of a single client matter in which
- (a) a lawyer represents joint clients, or
  - (b) more than one lawyer in a law firm acts.
- (3) For each quarter year ending on the last day of March, June, September or December, a lawyer must remit the following to the Society within 30 days of the end of the quarter year to which they apply:
- (a) trust administration fees that have become payable under subrule (1) during the quarter year;
  - (b) a completed trust administration report in a form approved by the Executive Committee.

### Late payment of trust administration fee

- 2-111** A lawyer who fails to remit the trust administration fee and report by the time required under this rule must pay a late payment fee of 5 per cent of the amount due for each month or part of a month from the date the lawyer is required to remit the fee and report under Rule 2-110 (3) [*Trust administration fee*] until the fee, including the late payment fee, and the report are received by the Society.

### Executive Director’s discretion

- 2-112** The Executive Director may
- (a) decide what constitutes a client matter under Rule 2-109 [*Definition and application*], in individual cases, and
  - (b) extend or vary the time for remitting the trust administration fee and report under Rule 2-110 (3) [*Trust administration fee*].

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### Referral to Executive Committee

- 2-113** (1) The Executive Director may refer any matter for decision under Rule 2-112 [*Executive Director's discretion*] to the Executive Committee, and the Committee may make any decision open to the Executive Director under that rule.
- (2) At the written request of a lawyer affected by a decision made by the Executive Director under Rule 2-112 [*Executive Director's discretion*] the Executive Director must refer the matter to the Executive Committee, and the Committee may
- (a) confirm the decision of the Executive Director, or
  - (b) substitute its decision for that of the Executive Director.

### Taxes payable

- 2-114** Any fee or assessment on which any government tax is payable is not paid unless that tax is also paid.

### Refund when lawyer does not practise law

- 2-115** (1) A lawyer who has paid the annual fee for a year but who satisfies the Executive Director that the lawyer has totally abstained from practice in British Columbia during that year through disability, other than a suspension, is entitled to a refund of
- (a) the difference between the practising fee set by the Benchers under section 23 (1) (a) [*Annual fees and practising certificate*] and the non-practising member fee specified in Schedule 1, and
  - (b) a portion of the annual insurance fee set under section 30 (3) (a) [*Professional liability insurance*], in an amount determined by the Executive Director.
- (2) On payment of the refund under subrule (1), the lawyer
- (a) immediately ceases to be qualified to practise law, and
  - (b) on compliance with Rule 2-3 [*Non-practising members*], becomes a non-practising member.
- (3) A lawyer who qualifies under Rule 2-4 [*Retired members*] to be a retired member and complies with that rule may elect to become a retired member, rather than a non-practising member under subrule (2) (b), and receive a refund of the difference between the non-practising member fee and the retired member fee specified in Schedule 1, in addition to the refund under subrule (1).

### Refund on exemption during practice year

- 2-116** (1) A lawyer who has paid the annual insurance fee for a year and ceases to practise for any reason other than suspension or who becomes exempt under Rule 3-43 [*Exemption from liability insurance*] during that year, is entitled to a refund of a portion of the fee in an amount determined by the Executive Director.
- (2) If a lawyer becomes a non-practising or retired member during a year for which the lawyer has paid the annual practising fee, the Executive Director must apply a

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prorated portion of the practising fee to the prorated non-practising or retired member fee and refund the difference, if any, to the lawyer.

- (3) A lawyer who ceases practising law under any of the following circumstances is entitled to a refund of the unused portion of the annual practising fee, less the administration fee specified in Schedule 1:
- (a) judicial appointment;
  - (b) death;
  - (c) total incapacity such that the lawyer is incapable of applying for non-practising status.

### **Failure to pay fine, costs or penalty**

- 2-117** (1) The Executive Director must apply any money received from or on behalf of a lawyer or former lawyer to payment of the following due and owing by the lawyer or former lawyer before any fees or assessments:
- (a) a fine;
  - (b) costs;
  - (c) a penalty;
  - (d) a deductible amount paid on behalf of the lawyer under the Society's insurance program;
  - (e) reimbursement for payment made on behalf of the lawyer or former lawyer under Part B of the policy of professional liability insurance.
- (2) If a lawyer fails to pay, by the time that it is required to be paid, any of the amounts referred to in subrule (1), the Credentials Committee may suspend the lawyer until the amount is paid.
- (3) The Executive Director may approve the form of certificate to be filed in the Supreme Court under section 27 [*Practice standards*], 38 [*Discipline hearings*] or 46 [*Costs*].

### **No refund on suspension**

- 2-118** A lawyer who is suspended
- (a) is not entitled to a refund of any part of the annual practising fee for the period of the suspension or any special assessment that the lawyer has paid, and
  - (b) must pay the annual practising fee or special assessment when it is due.

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## **PART 3 – PROTECTION OF THE PUBLIC**

### **Division 1 – Complaints**

#### **Application**

**3-1** This division applies to the following as it does to a lawyer, with the necessary changes and so far as it is applicable:

- (a) a former lawyer;
- (b) an articulated student;
- (c) a visiting lawyer permitted to practise law in British Columbia under Rules 2-16 to 2-20;
- (d) a practitioner of foreign law;
- (e) a law corporation.

#### **Complaints**

**3-2** Any person may deliver a written complaint against a lawyer to the Executive Director.

#### **Confidentiality of complaints**

**3-3** (1) No one is permitted to disclose any information or records that form part of the investigation of a complaint or the review of a complaint by the Complainants' Review Committee except for the purpose of complying with the objectives of the Act or with these rules.

(2) Despite subrule (1), the Executive Director may do any of the following:

- (a) disclose information referred to in subrule (1), with the consent of the lawyer who is the subject of the complaint;
- (b) if a complaint has become known to the public, disclose
  - (i) the existence of the complaint,
  - (ii) its subject matter,
  - (iii) its status, including, if the complaint is closed, the general basis on which it was closed; and
  - (iv) any additional information necessary to correct inaccurate information;
- (c) if, in the course of the investigation of a complaint, a lawyer has given an undertaking to the Society that restricts, limits or prohibits the lawyer's practice of law, disclose the fact that the undertaking was given and its effect on the lawyer's practice.

(3) For the purpose of subrule (2) (b), the status of a complaint is its stage of progress through the complaints handling process, including, but not limited to the following:

- (a) opened;
- (b) under investigation;

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- (c) referred to a Committee;
- (d) closed.
- (4) If the Executive Director discloses the existence of an undertaking under subrule (2) (c) by means of the Society's website, the information must be removed from the website within a reasonable time after the undertaking ceases to be in force.
- (5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.
- (6) This division must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

### Consideration of complaints and other information

- 3-4** (1) The Executive Director must consider every complaint received under Rule 3-2 [*Complaints*].
- (2) Information received from any source that indicates that a lawyer's conduct may constitute a discipline violation must be treated as a complaint under these rules.

### Investigation of complaints

- 3-5** (1) Subject to subrule (3), the Executive Director may, and on the instruction of the Discipline Committee must, investigate a complaint to determine its validity.
- (2) For the purpose of conducting an investigation under this division and section 26 [*Complaints from the public*], the Executive Director may designate an employee of the Society or appoint a practising lawyer or a person whose qualifications are satisfactory to the Executive Director.
- (3) The Executive Director may decline to investigate a complaint if the Executive Director is satisfied that the complaint
- (a) is outside the jurisdiction of the Society,
  - (b) is frivolous, vexatious or an abuse of process, or
  - (c) does not allege facts that, if proven, would constitute a discipline violation.
- (4) The Executive Director must deliver to the lawyer who is the subject of a complaint a copy of the complaint or, if that is not practicable, a summary of it.
- (5) Despite subrule (4), if the Executive Director considers it necessary for the effective investigation of the complaint, the Executive Director may delay notification of the lawyer.
- (6) When acting under subrule (4), the Executive Director may decline to identify the complainant or the source of the complaint.
- (7) A lawyer must co-operate fully in an investigation under this division by all available means including, but not limited to, responding fully and substantively, in the form specified by the Executive Director

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- (a) to the complaint, and
  - (b) to all requests made by the Executive Director in the course of an investigation.
- (8) When conducting an investigation of a complaint, the Executive Director may
- (a) require production of files, documents and other records for examination or copying,
  - (b) require a lawyer to
    - (i) attend an interview,
    - (ii) answer questions and provide information relating to matters under investigation, or
    - (iii) cause an employee or agent of the lawyer to answer questions and provide information relating to the investigation,
  - (c) enter the business premises of a lawyer
    - (i) during business hours, or
    - (ii) at another time by agreement with the lawyer.
- (9) Any written response under subrule (7) must be signed by
- (a) the lawyer personally, or
  - (b) a director of the law corporation, if the complaint is about a law corporation.
- (10) The Executive Director may deliver to the complainant a copy or a summary of a response received from the lawyer, subject to solicitor and client privilege and confidentiality.
- (11) A lawyer who is required to produce files, documents and other records, provide information or attend an interview under this rule must comply with the requirement
- (a) even if the information or files, documents and other records are privileged or confidential, and
  - (b) as soon as practicable and, in any event, by the time and date set by the Executive Director.

### **Failure to produce records on complaint investigation**

- 3-6** (1) Subject to subrules (2) and (3), a lawyer who is required under Rule 3-5 [*Investigation of complaints*] or 4-55 [*Investigation of books and accounts*] to produce and permit the copying of files, documents and other records, provide information or attend an interview and answer questions and who fails or refuses to do so is suspended until he or she has complied with the requirement to the satisfaction of the Executive Director.
- (2) When there are special circumstances, the Discipline Committee may, in its discretion, order that
- (a) a lawyer not be suspended under subrule (1), or
  - (b) a suspension under this rule be delayed for a specified period of time.
- (3) At least 7 days before a suspension under this rule can take effect, the Executive Director must deliver to the lawyer notice of the following:

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- (a) the date on which the suspension will take effect;
- (b) the reasons for the suspension;
- (c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

### Resolution by informal means

- 3-7** The Executive Director may, at any time, attempt to resolve a complaint through mediation or other informal means.

### Action after investigation

- 3-8** (1) After investigating a complaint, the Executive Director must take no further action if the Executive Director is satisfied that the complaint
- (a) is not valid or its validity cannot be proven, or
  - (b) does not disclose conduct serious enough to warrant further action.
- (2) The Executive Director may take no further action on a complaint if the Executive Director is satisfied that the matter giving rise to the complaint has been resolved.
- (3) Unless subrule (1) applies or the Executive Director takes no further action under subrule (2), the Executive Director must refer the complaint to the Practice Standards Committee or to the Discipline Committee.
- (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*].

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### Extraordinary action to protect public

- 3-10** (1) An order may be made under this rule with respect to a lawyer or articulated 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 articulated student, or
  - (b) suspend a lawyer or the enrolment of an articulated student.
- (3) An order made under this rule or varied under Rule 3-12 [*Procedure*] is effective until the first of
- (a) final disposition of any citation authorized under Part 4 arising from the investigation, or
  - (b) rescission, variation or further variation under Rule 3-12.

### Medical examination

- 3-11** (1) This rule applies to a lawyer or articulated 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 articulated 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 articulated 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.



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### 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 articulated 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 articulated 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.
- (6) Subject to the Act and these rules, the Benchers present at a proceeding may determine the practice and procedure to be followed.
- (7) Unless the Benchers present order otherwise, the proceeding is not open to the public.
- (8) The lawyer or articulated student or discipline counsel may request an adjournment of a proceeding conducted under this rule.
- (9) Rule 4-40 [*Adjournment*] applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.
- (10) Despite subrule (9), the Executive Director is not required to notify a complainant of a request made under subrule (8).
- (11) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.
- (12) On the application of the lawyer or articulated student or discipline counsel, the Benchers who made the order, or a majority of them, may rescind or vary an order made or previously varied under this rule.
- (13) On an application under subrule (12) to vary or rescind an order,
- (a) both the lawyer or articulated student and discipline counsel must be given a reasonable opportunity to make submissions in writing, and
  - (b) the Benchers present may allow oral submissions if, in their discretion, it is appropriate to do so.

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- (14) If, for any reason, any of the Benchers who made an order under this rule is unable to participate in the decision on an application under subrule (12), the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate.

### **Appointment of Complainants' Review Committee**

- 3-13** (1) For each calendar year, the President must appoint a Complainants' Review Committee.
- (2) If one or more Benchers have been appointed under section 5 [*Appointed benchers*], the President must appoint at least one of the appointed Benchers to the Complainants' Review Committee.

### **Review by Complainants' Review Committee**

- 3-14** (1) A complainant may apply to the Complainants' Review Committee for a review of a decision by the Executive Director under Rule 3-8 [*Action after investigation*] to take no further action after investigating a complaint.
- (2) To initiate a review under subrule (1), the complainant must apply to the Complainants' Review Committee within 30 days after the decision is communicated to the complainant.
- (3) The chair of the Complainants' Review Committee may extend the time for applying for a review under subrule (2) in extraordinary circumstances beyond the control of the complainant.
- (4) The Complainants' Review Committee must
- (a) review the documents obtained, collected or produced by the Executive Director under Rules 3-4 to 3-9, and
  - (b) on the direction of an appointed Bencher member of the Committee, make enquiries of the complainant, the lawyer or any other person.
- (5) After its review and enquiries, the Complainants' Review Committee must do one of the following:
- (a) confirm the Executive Director's decision to take no further action;
  - (b) refer the complaint to the Practice Standards Committee or to the Discipline Committee with or without recommendation.
- (6) The chair of the Complainants' Review Committee must notify the complainant, the lawyer and the Executive Director, in writing, of the Committee's decision under subrule (5) and the reasons for that decision.
- (7) If the Complainants' Review Committee keeps minutes of its consideration of a complaint, the Executive Director may disclose all or part of the minutes to the complainant or the lawyer concerned.

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## **Division 2 – Practice Standards**

### **Practice Standards Committee**

- 3-15** (1) For each calendar year, the President must appoint a Practice Standards Committee, including a chair and vice chair, both of whom must be Benchers
- (2) The President may remove any person appointed under subrule (1).
- (3) At any time, the President may appoint a person to the Practice Standards Committee to replace a Committee member who resigns or otherwise ceases membership in the Committee, or to increase the number of members of the Committee.

### **Objectives**

- 3-16** The objectives of the Practice Standards Committee are to
- (a) recommend standards of practice for lawyers,
  - (b) develop programs that will assist all lawyers to practise law competently, and
  - (c) identify lawyers who do not meet accepted standards in the practice of law, and recommend remedial measures to assist them to improve their legal practices.

### **Consideration of complaints**

- 3-17** (1) The Practice Standards Committee must consider any complaint referred to it by the Executive Director, the Complainants' Review Committee or any other Committee, and may instruct the Executive Director to make or authorize any further investigation that the Practice Standards Committee considers desirable.
- (2) While considering a complaint, the Practice Standards Committee may also consider any other matter arising out of the lawyer's practice of law.
- (3) When considering a complaint, the Practice Standards Committee may do one or more of the following:
- (a) decide that no further action be taken on the complaint;
  - (b) make recommendations to the lawyer, if it considers that the carrying out of the recommendations will improve the lawyer's practice of law;
  - (c) require the lawyer to meet and discuss the circumstances of the complaint with a lawyer or Benchers designated by the Practice Standards Committee, who must then report to the Committee;
  - (d) find that there are reasonable grounds to believe that the lawyer is practising law in an incompetent manner and order a practice review in respect of the lawyer's practice;
  - (e) refer the complaint to the Discipline Committee.
- (4) Despite subrule (3) (e), the Practice Standards Committee 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;

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- (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.
- (5) The Practice Standards Committee is not precluded from taking any of the steps in subrule (3) or (4) because it has previously taken another of those steps in the same matter.

### Practice review

- 3-18** (1) The Practice Standards Committee may order a practice review of the practice of a lawyer under Rule 3-17 (3) (d) [*Consideration of complaints*] or if the lawyer consents to the review.
- (2) When a practice review is ordered, the Executive Director must name one or more qualified persons to conduct the review.
- (3) After consultation with the lawyer and the practice reviewers, the Executive Director must set a date, time and place for the practice review.
- (4) A lawyer whose practice is being reviewed under subrule (1) must answer any inquiries and provide the practice reviewers with any information, files or records in the lawyer's possession or control as reasonably requested.
- (5) After completing a practice review, the practice reviewers must deliver to the Practice Standards Committee and to the lawyer a written report of their findings and recommendations.
- (6) A lawyer who is the subject of a practice review may not resign from membership in the Society without the consent of the Practice Standards Committee.
- (7) The Practice Standards Committee may, by resolution, direct that a lawyer who is subject to a practice review and would otherwise cease to be a member of the Society for failure to pay the annual fee or a special assessment continue as a member not in good standing and not permitted to practise law.
- (8) A direction under subrule (7) may be made to continue in effect until stated conditions are fulfilled.
- (9) When a direction under subrule (7) expires on the fulfillment of all stated conditions or if the Practice Standards Committee rescinds the direction,
- (a) the lawyer concerned ceases to be a member of the Society,
  - (b) if the rescission is in response to a request of the lawyer concerned, the Committee may impose conditions on the rescission.

### Action by the Practice Standards Committee

- 3-19** (1) After its consideration of a report received under Rule 3-17 (3) (c) [*Consideration of complaints*] or 3-18 (5) [*Practice review*], the Practice Standards Committee must
- (a) decide that no further action be taken, or

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- (b) recommend that the lawyer do one or more of the following:
  - (i) undertake not to practise in specified areas of law;
  - (ii) complete a remedial program to the satisfaction of the Committee;
  - (iii) complete, to the satisfaction of the Committee, an examination approved by the Committee or its designate;
  - (iv) obtain a psychiatric or psychological assessment or counselling, or both, and, if the Committee requests, provide a report on that assessment or counselling to the Committee;
  - (v) obtain a medical assessment or assistance, or both, and if the Committee requests, provide a report on that assessment or assistance to the Committee;
  - (vi) practise in a setting approved by the Committee, including under the supervision of a lawyer approved by the Committee;
  - (vii) take other steps intended to improve the lawyer's practice of law or otherwise protect the public interest.
- (2) When making recommendations under subrule (1) (b), the Practice Standards Committee may set one or more dates by which the lawyer is to complete the recommendations.
- (3) On application by the lawyer or the Executive Director, the Practice Standards Committee may extend the date by which the lawyer is to complete a recommendation.
- (4) The Executive Director must reduce the Practice Standards Committee's recommendations to writing and deliver a copy to the lawyer.
- (5) The Practice Standards Committee is not precluded from making a recommendation under subrule (1) because it has previously made a recommendation with respect to the same matter.

### Conditions or limitations on practice

- 3-20** (1) If a lawyer refuses or fails to comply with a recommendation under Rule 3-19 (1) (b) [*Action by the Practice Standards Committee*] by the time set by the Practice Standards Committee under Rule 3-19 (2), the Committee may make an order imposing conditions and limitations on the lawyer's practice, including but not limited to the following:
- (a) specifying areas of law in which the lawyer must not practise;
  - (b) requiring that the lawyer satisfactorily complete a remedial program;
  - (c) requiring that the lawyer satisfactorily complete an examination approved by the Committee or its designate;
  - (d) requiring that the lawyer obtain a psychiatric or psychological assessment or counselling, or both, and, if the Committee requests, provide a report on that assessment or counselling to the Committee;

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- (e) requiring that the lawyer obtain a medical assessment or assistance, or both, and if the Committee requests, provide a report on that assessment or assistance to the Committee;
  - (f) requiring that the lawyer practise in a setting approved by the Committee, including under the supervision of a lawyer approved by the Committee;
  - (g) requiring that the lawyer take other steps intended to improve the lawyer's practice of law or otherwise protect the public interest.
- (2) At least 30 days before the Practice Standards Committee is to make an order under subrule (1), the Executive Director must deliver to the lawyer notice of the following:
- (a) the terms of the proposed order;
  - (b) the date on which the proposed order is to take effect;
  - (c) the reasons for the proposed order;
  - (d) the means by which the lawyer may make submissions to the Practice Standards Committee concerning the proposed order and the deadline for making such submissions before the order is to be considered by the Committee.
- (3) A lawyer must comply with an order made under this rule.
- (4) On the written application of the lawyer, the Practice Standards Committee may vary or rescind an order made under this rule.

### Referral to Discipline Committee

- 3-21** (1) The Practice Standards Committee may, at any stage, refer to the Discipline Committee any of the following:
- (a) all or any part of a practice review report delivered under Rule 3-18 (5) [*Practice review*];
  - (b) a report on the manner in which the lawyer has carried out or followed any recommendations or has failed or refused to do so;
  - (c) an order made under Rule 3-20 [*Conditions or limitations on practice*];
  - (d) a report on the failure to comply with an order made under Rule 3-20.
- (2) Despite subrule (1), the Practice Standards Committee may refer a report to the chair of the Discipline Committee with respect to 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.
- (3) The Practice Standards Committee is not precluded from making a referral under this rule because it has previously made a referral with respect to the same matter.

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### Remedial program

- 3-22** (1) A remedial program under this Division may include any program intended to improve the lawyer's knowledge and skill in the practice of law, including, but not limited to, one or more of the following:
- (a) a continuing legal education course;
  - (b) a remedial course;
  - (c) a course offered by an educational institution;
  - (d) a program of mentoring or supervision by a practising lawyer approved by the Practice Standards Committee.
- (2) To form part of a remedial program, a course or program must be approved by the Practice Standards Committee or its designate.

### Confidentiality of Practice Standards Committee deliberations

- 3-23** (1) Subject to subrules (2) to (6) and Rule 3-24 [*Report to complainant*], the following must be treated as confidential and must not be disclosed except for the purpose of complying with the objects of the Act:
- (a) all of the information and documents that form part of the Practice Standards Committee's consideration of a complaint;
  - (b) any action taken or decision made by the Committee;
  - (c) any report prepared for or on behalf of the Committee.
- (2) If a matter referred to or considered by the Practice Standards Committee has become known to the public, the Executive Director may disclose
- (a) the fact that the matter is or has been before the Committee,
  - (b) the status of the matter, including, if the matter is concluded, the general basis on which it was concluded, and
  - (c) any additional information necessary to correct inaccurate information.
- (3) With the consent of the Practice Standards Committee, the Executive Director may deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.
- (4) With the consent of the lawyer concerned, the Executive Director may disclose the matters referred to in subrule (1) in responding to an enquiry made for the purpose of a potential judicial appointment.
- (5) Subrules (6) and (7) apply to
- (a) an undertaking under this division that restricts, limits or prohibits the lawyer's practice of law, and
  - (b) a condition or limitation of a lawyer's practice imposed under Rule 3-20 [*Conditions or limitations on practice*].

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- (6) The Executive Director may disclose the fact that a lawyer has given an undertaking or that the Practice Standards Committee has imposed a condition or limitation and the effect on the lawyer's practice.
- (7) If the Executive Director discloses the existence of an undertaking, condition or limitation under subrule (6) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time when the undertaking, condition or limitation is no longer in force.

### Report to complainant

- 3-24** The Executive Director must notify the complainant in writing of the Practice Standards Committee's decision under Rule 3-17 [*Consideration of complaints*], but must not deliver to the complainant a copy of any report or the Committee's recommendations about the lawyer's practice.

### Costs

- 3-25** (1) The Practice Standards Committee may order that a lawyer pay to the Society the cost of a practice review, action or remedial program ordered or allowed under this Division, and may set and extend the date for payment.
- (2) A lawyer who is ordered by the Practice Standards Committee, under subrule (1), to pay costs must pay those costs in full by the date set or extended by the Committee.
- (3) If any part of the amount owing under subrule (1) remains unpaid by the date set in Rule 2-105 [*Annual practising fees*], the lawyer concerned must not engage in the practice of law unless the Benchers order otherwise.

## Division 3 – Education

### Definitions

- 3-26** In this division

**“continuing education”** means activities approved by the Executive Director for credit as professional development;

**“credit as a mentor”** means a credit of a specified maximum number of hours of continuing education for participation in a mentoring relationship under Rule 3-30 [*Mentoring*];

**“required professional development”** means a minimum number of hours of continuing education determined by the Benchers under Rule 3-29 (1) [*Professional development*];

**“small firm”** includes

- (a) a firm in which not more than 4 lawyers practise law together, and
- (b) a lawyer in an arrangement to share expenses with other lawyers who otherwise practises as an independent practitioner, except when the lawyer relies on a firm



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that is not a small firm to maintain trust accounting and other financial records on the lawyer's behalf,

but does not include

- (c) a public body such as government or a Crown corporation, or
- (d) a corporation other than a law corporation, or other private body.

**“small firm course”** means a course of study designated as such and administered by the Society or its agents and includes any assignment, examinations and remedial work taken during or after the course of study.

### Application

**3-27** Rule 3-28 [*Small firm course*] applies to a lawyer when

- (a) the lawyer begins practice in a small firm or, while practising in a small firm, becomes a signatory on a trust account, unless the lawyer has done both of the following in a Canadian jurisdiction for a total of 2 years or more in the preceding 5 years:
  - (i) engaged in the practice of law in a small firm;
  - (ii) been a signatory on a trust account, or
- (b) the Practice Standards Committee, by resolution, so orders.

### Small firm course

**3-28** (1) Within 6 months after and not more than 12 months before the date on which this Rule applies to a lawyer, the lawyer must

- (a) successfully complete the small firm course, and
- (b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has successfully completed the small firm course.

(2) A lawyer who is in breach of subrule (1) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

### Professional development

**3-29** (1) The Benchers may determine by resolution the minimum number of hours of continuing education that is required of a practising lawyer in each calendar year.

(2) The Benchers may prescribe circumstances in which a class of practising lawyer may be excused from completing all or part of the required professional development.

(3) In each calendar year, a practising lawyer must

- (a) complete the required professional development, and
- (b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has completed the required professional development.

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- (4) Despite subrule (3), a practising lawyer need not complete the required professional development in a calendar year in which the lawyer has successfully completed the admission program or the equivalent in another Canadian jurisdiction.
- (5) On written application by a practising lawyer who has refrained from the practice of law for a minimum of 60 consecutive days in a calendar year, the Executive Director may reduce the required professional development for that lawyer.
- (6) The Executive Director must not reduce the amount of required professional development under subrule (5)
  - (a) by an amount greater than that proportionate to the part of the calendar year in which the lawyer refrained from the practice of law
  - (b) by any amount if the lawyer refrained from the practice of law as a result of suspension, disbarment or other disciplinary proceedings.
- (7) A lawyer who ceases to be a practising lawyer without completing all required professional development must complete the uncompleted portion in the next calendar year in which the lawyer is a practising lawyer, in addition to the required professional development for that calendar year.
- (8) A practising lawyer who is in breach of this Rule has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

### Mentoring

- 3-30** (1) The Benchers may allow credit as a mentor, subject to any conditions or limitations that the Benchers consider appropriate.
- (2) To qualify to receive credit as a mentor, a lawyer must
    - (a) have engaged in the active practice of law in Canada for 7 of the 10 years immediately preceding the calendar year, and
    - (b) not be the subject of an order of the Credentials Committee under subrule (4) (c).
  - (3) On a referral by the Executive Director or on the recommendation of the Discipline Committee or the Practice Standards Committee, or on its own motion, the Credentials Committee may inquire into a lawyer's suitability to receive credit as a mentor and may do any of the following:
    - (a) conduct or authorize any person to conduct an investigation concerning the fitness of the lawyer to act as a mentor;
    - (b) require the lawyer to appear before the Credentials Committee and to respond to questions of the Committee;
    - (c) order the lawyer to produce any documents, records or files that the Credentials Committee may reasonably require.
  - (4) After allowing the lawyer to make submissions, the Credentials Committee may do any of the following:
    - (a) permit the lawyer to receive credit as a mentor;

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- (b) permit the lawyer to receive credit as a mentor subject to conditions or limitations;
  - (c) order that the lawyer not receive credit as a mentor.
- (5) The onus is on the lawyer to show cause why an order should not be made under subrule (4) (b) or (c).

### Late completion of professional development

- 3-31** (1) A practising lawyer who fails to comply with Rule 3-29 [*Professional development*] by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does all of the following before April 1 of the following year:
- (a) completes the remainder of the required professional development;
  - (b) certifies the completion of the required professional development as required in Rule 3-29 (3) (b);
  - (c) pays the late completion fee specified in Schedule 1.
- (2) Required professional development completed before April 1 that is applied to the requirement for the previous year cannot be applied to the requirement for the calendar year in which it is completed.
- (3) A practising lawyer who complies with Rule 3-29 (3) (a) [*Professional development*] by December 31 but fails to comply with Rule 3-29 (3) (b) by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does both of the following before April 1 of the following year:
- (a) certifies the completion of the required professional development as required in Rule 3-29 (3) (b);
  - (b) pays the late reporting fee specified in Schedule 1.

### Failure to complete professional development

- 3-32** (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-29 [*Professional development*] by April 1 of the following year is suspended until all required professional development is completed and completion is certified to the Executive Director as required by Rule 3-29.
- (2) When there are special circumstances, the Practice Standards Committee may, in its discretion, order that
- (a) the lawyer not be suspended under subrule (1), or
  - (b) a suspension under subrule (1) be delayed for a specified period of time.
- (3) At least 60 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:
- (a) the date on which the suspension will take effect;
  - (b) the reasons for the suspension;

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- (c) the means by which the lawyer may apply to the Practice Standards Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.
- ### Division 4 – Specialization and Restricted Practice

#### Definitions

**3-33** In this division

“**course of study**” means an educational program consisting of activities approved by the Executive Director for the purpose of qualifying as a family law mediator, arbitrator or parenting coordinator;

“**professional development**” means activities approved by the Executive Director for credit as professional development for family law mediators, arbitrators or parenting coordinators.

#### Advertising

**3-34** A lawyer must not advertise any specialization, restricted practice or preferred area of practice except as permitted in the *Code of Professional Conduct*, rule 4.3 [Advertising nature of practice].

#### Family law mediators

- 3-35** (1) A lawyer may act as a family law mediator only if the lawyer
- (a) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of a mediator in a fair and competent manner,
  - (b) has completed a course of study in family law mediation approved by the Credentials Committee, and
  - (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 or master,
  - (c) has completed a course of study in family law arbitration approved by the Credentials Committee, and

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- (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 or master, 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 a form approved by the Executive Director 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.

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- (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 – Insurance

#### Compulsory liability insurance

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

#### 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.

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- (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 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 reciprocating 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

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- (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.

### **Deductible, surcharge and reimbursement**

- 3-44** (1) If a deductible amount has been paid under the Society's insurance program on behalf of a lawyer, the lawyer must reimburse the Society in full.
- (2) If indemnity has been paid under the Society's insurance program, the lawyer on whose behalf it is paid must
- (a) pay the insurance surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the insurance fee, and
  - (b) if the payment was made under Part B of the policy of professional liability insurance, reimburse the Society in full on demand, for all amounts paid under Part B.
- (3) The Executive Director may, in the Executive Director's discretion, extend the time for a lawyer to reimburse the Society under subrule (1) or (2), or pay a surcharge under subrule (2) or, in extraordinary circumstances, waive payment altogether.

### **Application for insurance coverage**

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



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### Confidentiality of insurance claims

- 3-46** (1) In this rule, “**claim**” means a claim or potential claim reported under the policy of professional liability insurance.
- (2) No one is permitted to disclose any information or records associated with a claim.
- (3) Despite subrule (2), the Executive Director may do any of the following:
- (a) disclose information about a claim with the consent of the lawyer;
  - (b) if a claim has become known to the public, disclose
    - (i) the existence of the claim,
    - (ii) its subject matter,
    - (iii) its status, including, if the claim is closed, the general basis on which it was closed, and
    - (iv) any additional information necessary to correct inaccurate information.
- (4) For the purpose of subrule (3) (b) (iii), the status of a claim is its stage of progress through the claims handling process, including, but not limited to the following:
- (a) opened;
  - (b) under investigation;
  - (c) the stage of any litigation commenced;
  - (d) closed.
- (5) In the case of a claim under Part B of the policy of professional liability insurance, the Executive Director may do any of the following:
- (a) publish the name of a lawyer or former lawyer and the circumstances of a claim when a panel or the Benchers acting under Part 4 [*Discipline*] or 5 [*Hearings and Appeals*] or a court has found that the lawyer or former lawyer has misappropriated property of a claimant;
  - (b) disclose the name of a lawyer or former lawyer and the circumstances of a claim when
    - (i) the lawyer’s misappropriation is known to the public,
    - (ii) the claim arises from part of a scheme considered by a panel or the Benchers or a court in the written reasons for a decision, or
    - (iii) the facts are not disputed or are admitted by the lawyer or former lawyer;
  - (c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.
- (6) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

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## Division 6 – Financial Responsibility

### Definitions

**3-47** In this Division:

**“insolvent lawyer”** means a lawyer who

- (a) is the respondent to an application for a bankruptcy order under section 43,
- (b) has made an assignment of all his or her property for the general benefit of the lawyer’s creditors under section 49,
- (c) has made a proposal under section 50 or 66.12,
- (d) has filed a notice of intention to make a proposal under section 50.4, or
- (e) has applied for a consolidation order under section 219 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3;

**“monetary judgment”** includes

- (a) an order nisi of foreclosure,
- (b) any certificate, final order or other requirement under a statute that requires payment of money to any party,
- (c) a garnishment order under the *Income Tax Act* (Canada) if a lawyer is the tax debtor, and
- (d) a judgment of any kind against an MDP in which the lawyer has an ownership interest.

### Application

**3-48** This Division applies to the following as it does to a lawyer, with the necessary changes and so far as it is applicable:

- (a) a non-practising member;
- (b) a retired member;
- (c) an articulated student;
- (d) a practitioner of foreign law;
- (e) a visiting lawyer permitted to practise law in British Columbia under Rules 2-16 to 2-20;
- (f) a law corporation.

### Standards of financial responsibility

**3-49** Instances in which a lawyer has failed to meet a minimum standard of financial responsibility include, but are not limited to, the following:

- (a) a monetary judgment is entered against a lawyer who does not satisfy the judgment within 7 days after the date of entry;
- (b) a lawyer is an insolvent lawyer;

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- (c) a lawyer does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-85 (2) (b) [*Compliance audit of books, records and accounts*];
- (d) a lawyer does not deliver a trust report as required under Rule 3-79 [*Trust report*] or 3-82 (5) [*Accountant's report*];
- (e) a lawyer does not report and pay the trust administration fee to the Society as required under Rule 2-110 [*Trust administration fee*];
- (f) a lawyer does not produce electronic accounting records when required under the Act or these rules in a form required under Rule 10-3 (2) [*Records*].

### Failure to satisfy judgment

- 3-50** (1) A lawyer against whom a monetary judgment is entered and who does not satisfy the judgment within 7 days after the date of entry must immediately notify the Executive Director in writing of
- (a) the circumstances of the judgment, including whether the judgment creditor is a client or former client of the lawyer, and
  - (b) his or her proposal for satisfying the judgment.
- (2) Subrule (1) applies whether or not any party has commenced an appeal from the judgment.
- (3) If a lawyer fails to deliver a proposal under subrule (1) (b) that is adequate in the discretion of the Executive Director, the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

### Insolvent lawyer

- 3-51** (1) A lawyer who becomes an insolvent lawyer must immediately
- (a) notify the Executive Director in writing that he or she has become an insolvent lawyer, and
  - (b) deliver to the Executive Director
    - (i) a copy of all material filed in the proceedings referred to in the definition,
    - (ii) all information about any debts to a creditor who is or has been a client of the lawyer,
    - (iii) all information about any debt that arose from the lawyer's practice of law, and
    - (iv) any other information, including copies of any books, records, accounts and other documents and information in his or her possession that are relevant to the proceedings referred to in the definition that the Executive Director may request.
- (2) An insolvent lawyer who becomes bankrupt has conducted himself or herself in a manner unbecoming a lawyer in either of the following circumstances:

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- (a) the lawyer's wilful neglect of creditors, financial irresponsibility or personal extravagance contributed to the bankruptcy;
  - (b) the lawyer fails or refuses to take reasonable steps to obtain a discharge from the bankruptcy within a reasonable time.
- (3) An insolvent lawyer must not operate a trust account except with
  - (a) the permission of the Executive Director, and
  - (b) a second signatory who is a practising lawyer, not an insolvent lawyer and approved by the Executive Director.
- (4) Any lawyer who becomes an undischarged bankrupt must resign any directorships in corporations, including law corporations.

### Consideration by Discipline Committee

- 3-52** (1) After receiving the information and material required under Rule 3-51 (1) [*Insolvent lawyer*], the Executive Director may refer an insolvent lawyer to the Discipline Committee.
- (2) The Executive Director may refer any matter for decision under this Division to the Discipline Committee.
  - (3) When the Executive Director refers a matter to the Discipline Committee under this Division, the Committee may make or authorize any investigations it considers desirable.
  - (4) The Discipline Committee may suspend or impose conditions and limitations on the practice of a lawyer that it considers does not meet the standards of financial responsibility established under section 32 [*Financial responsibility*].
  - (5) The Discipline Committee must not suspend a lawyer or impose conditions and limitations on the practice of a lawyer under subrule (4) until it has notified the lawyer of the reasons for the proposed action and given the lawyer a reasonable opportunity to make representations about those reasons.
  - (6) The Discipline Committee may rescind the suspension or vary or remove conditions and limitations imposed under subrule (4).
  - (7) When the Discipline Committee imposes conditions or limitations on the practice of a lawyer under subrule (4), the Executive Director may disclose the fact that the conditions or limitations apply and the nature of the conditions or limitations.
  - (8) If the Executive Director discloses the existence of conditions or limitations under subrule (7) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the conditions or limitations cease to be in force.

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## Division 7 – Trust Accounts and Other Client Property

### Definitions

**3-53** In this division,

“**cash**” means

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

“**cash receipt book**” means the book of duplicate receipts referred to in Rule 3-70 (1) [*Records of cash transactions*];

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

“**compliance audit**” means an examination of a lawyer’s books, records and accounts and the answering of questions by lawyers ordered under Rule 3-85 [*Compliance audit of books, records and accounts*];

“**public body**” means

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

### Personal responsibility

- 3-54** (1) A lawyer must account in writing to a client for all funds and valuables received on behalf of the client.
- (2) In this division, the responsibilities of a lawyer may be fulfilled by the lawyer’s firm.
- (3) A lawyer is personally responsible to ensure that the duties and responsibilities under this division are carried out, including when the lawyer
- (a) is authorized by the firm or lawyer through which the lawyer practises law to open, maintain, or deal with funds in a trust or general account, or
  - (b) delegates to another person any of the duties or responsibilities assigned to a lawyer under this division.

### Fiduciary property

- 3-55** (1) In addition to any other obligations required by law or equity, this rule applies to lawyers who are responsible for fiduciary property.
- (2) A lawyer must make all reasonable efforts to determine the extent of the fiduciary property for which the lawyer is responsible and must maintain a list of that fiduciary property.

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- (3) A lawyer must produce on demand the following records for any period for which the lawyer is responsible for fiduciary property:
  - (a) a current list of valuables, with a reasonable estimate of the value of each;
  - (b) accounts and other records respecting the fiduciary property;
  - (c) all invoices, bank statements, cancelled cheques or images, and other records necessary to create a full accounting of the receipt or disbursement of the fiduciary property and any capital or income associated with the fiduciary property.
- (4) The records required under subrule (3) form part of the books, records and accounts of a lawyer, and the lawyer must produce them and permit them to be copied as required under these rules.
- (5) Subrules (3) and (4) continue to apply for 10 years from the final accounting transaction or disposition of valuables.

### Designated savings institutions

- 3-56** Subject to Rule 3-57 [*Removal of designation*], a savings institution is a designated savings institution within the meaning of section 33 (3) (b) [*Trust accounts*] if it has an office in British Columbia accepting demand deposits and is insured by
- (a) the Canada Deposit Insurance Corporation, or
  - (b) the Credit Union Deposit Insurance Corporation of British Columbia.

### Removal of designation

- 3-57** (1) The Executive Committee may declare, by resolution, that a savings institution is not or ceases to be a designated savings institution within the meaning of section 33 (3) (b) [*Trust accounts*].
- (2) A lawyer who holds trust funds in a savings institution that is not or ceases to be a designated savings institution must immediately transfer those funds into a designated savings institution.
- (3) Subrule (2) does not apply if the lawyer has written instructions from the client to the contrary.

### Deposit of trust funds

- 3-58** (1) Subject to subrule (2) and Rule 3-62 [*Cheque endorsed over*], a lawyer who receives trust funds must deposit the funds in a pooled trust account as soon as practicable.
- (2) Despite subrule (1), a lawyer who receives trust funds with instructions to place the funds otherwise than in a pooled trust account may place the funds in a separate trust account in accordance with section 62 (5) [*Interest on trust accounts*] and Rule 3-61 [*Separate trust account*].
- (3) Unless the client instructs otherwise in writing, a lawyer must deposit all trust funds in an account in a designated savings institution.

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

### Cash transactions

- 3-59** (1) This rule applies to a lawyer when engaged in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:

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

- (2) This rule does not apply to a lawyer when

- (a) engaged in activities referred to in subrule (1) on behalf of his employer, or
- (b) receiving or accepting cash
  - (i) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
  - (ii) pursuant to the order of a court or other tribunal,
  - (iii) to pay a fine or penalty, or
  - (iv) from a savings institution or public body.

- (3) While engaged in an activity referred to in subrule (1), a lawyer must not accept an aggregate amount in cash of \$7,500 or more in respect of any one client matter or transaction.

- (4) Despite subrule (3), a lawyer may accept an aggregate amount in cash of \$7,500 or more in respect of a client matter or transaction for professional fees, disbursements, expenses or bail.

- (5) A lawyer who accepts an aggregate amount in cash of \$7,500 or more under subrule (4) must make any refund greater than \$1,000 out of such money in cash.

- (6) A lawyer who receives cash, unless permitted under this rule to accept it, must

- (a) make no use of the cash,
- (b) return the cash, or if that is not possible, the same amount in cash, to the payer immediately,
- (c) make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash, and
- (d) comply with all other rules pertaining to the receipt of trust funds.

- (7) For the purposes of this rule, foreign currency is to be converted into Canadian dollars based on

- (a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Memorandum of Exchange Rates in effect at the relevant time, or

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- (b) if no official conversion rate is published as set out in paragraph (a), the conversion rate that the client would use for that currency in the normal course of business at the relevant time.

### **Pooled trust account**

**3-60** (1) The following provisions apply to a pooled trust account:

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

### **Separate trust account**

**3-61** (1) A separate trust account must be

- (a) an interest-bearing trust account or a savings, deposit, investment or similar form of account in a savings institution in British Columbia, and
- (b) designated as a “trust” account on the records of the savings institution and of the lawyer.



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- (2) An account referred to in subrule (1) must be
  - (a) in the name of
    - (i) the lawyer,
    - (ii) the firm of which the lawyer is a partner, employee, member or voting shareholder, or
    - (iii) the trust, or
  - (b) identified by a number that identifies the client on inspection of the lawyer's books and accounts.
- (3) Subject to Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a separate trust account any funds other than trust funds.

### Cheque endorsed over

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

### Trust account balance

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

### Withdrawal from trust

- 3-64** (1) A lawyer must not withdraw or authorize the withdrawal of any trust funds unless the funds are
- (a) properly required for payment to or on behalf of a client or to satisfy a court order,
  - (b) the property of the lawyer,
  - (c) in the account as the result of a mistake,
  - (d) paid to the lawyer to pay a debt of that client to the lawyer,
  - (e) transferred between trust accounts,
  - (f) due to the Foundation under section 62 (2) (b) [*Interest on trust accounts*], or
  - (g) unclaimed trust funds remitted to the Society under Division 8 [*Unclaimed Trust Money*].
- (2) The Executive Director may authorize a lawyer to withdraw trust funds for a purpose not specified in subrule (1).
- (3) No payment from trust funds may be made unless
- (a) trust accounting records are current, and
  - (b) there are sufficient funds held to the credit of the client on whose behalf the funds are to be paid.

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- (4) A lawyer must not make or authorize the withdrawal of funds from a pooled or separate trust account, except
  - (a) by cheque as permitted by subrule (5) or (6),
  - (b) by electronic transfer as permitted by subrule (7) or (8),
  - (c) by instruction to a savings institution as permitted by subrule (9), or
  - (d) in cash if required under Rule 3-59 (5) or (6) [*Cash transactions*].
- (5) A lawyer who makes or authorizes the withdrawal of funds from a pooled or separate trust account by cheque must
  - (a) withdraw the funds with a cheque marked “Trust,”
  - (b) not make the cheque payable to “Cash” or “Bearer,” and
  - (c) ensure that the cheque is signed by a practising lawyer.
- (6) A lawyer who withdraws or authorizes the withdrawal of trust funds for the payment of fees must withdraw the funds with a cheque payable to the lawyer’s general account.
- (7) A lawyer may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer, provided all of the following conditions are met:
  - (a) the transfer system is one that will produce, not later than the next banking day, a confirmation form from the financial institution confirming the details of the transfer, which should include the following:
    - (i) the date of the transfer;
    - (ii) source trust account information, including account name, financial institution and account number;
    - (iii) destination account information, including account name, financial institution, financial institution address and account number;
    - (iv) the name of the person authorizing the transfer;
    - (v) amount of the transfer;
  - (b) the lawyer must
    - (i) complete and personally sign a requisition for the transfer in a form approved by the Discipline Committee,
    - (ii) submit the original requisition to the appropriate financial institution,
    - (iii) retain a copy of the requisition in the lawyer’s records,
    - (iv) obtain the confirmation referred to in paragraph (a) from the financial institution,
    - (v) retain a hard copy of the confirmation in the lawyer’s records, and
    - (vi) immediately on receipt of the confirmation, verify that the money was drawn from the trust account as specified in the requisition.
- (8) A lawyer may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer using the Electronic Filing System of the Land

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Title Branch for the purpose of the payment of Property Transfer Tax on behalf of a client, provided that the lawyer

- (a) retains in the lawyer's records a copy of
    - (i) all Electronic Payment Authorization forms submitted to the Electronic Filing System,
    - (ii) the Property Transfer Tax return, and
    - (iii) the transaction receipt provided by the Electronic Filing System,
  - (b) digitally signs the Property Transfer Tax return in accordance with the requirements of the Electronic Filing System, and
  - (c) verifies that the money was drawn from the trust account as specified in the Property Transfer Tax return.
- (9) A lawyer may instruct a savings institution to pay to the Foundation under Rule 3-60 [*Pooled trust account*] the net interest earned on a pooled trust account.
- (10) A transfer of funds from a pooled trust account to a separate trust account must be authorized by the client and approved in writing signed by a lawyer.

### Payment of fees from trust

- 3-65** (1) In this rule, “**fees**” means fees for services performed by a lawyer or a non-lawyer member of the lawyer's MDP, and taxes on those fees.
- (2) A lawyer who withdraws or authorizes the withdrawal of trust funds under Rule 3-64 [*Withdrawal from trust*] in payment for the lawyer's fees must first prepare a bill for those fees and immediately deliver the bill to the client.
- (3) A bill or letter is delivered within the meaning of this rule if it is
- (a) mailed to the client at the client's last known address,
  - (b) delivered personally to the client,
  - (c) transmitted by electronic facsimile to the client at the client's last known electronic facsimile number,
  - (d) transmitted by electronic mail to the client at the client's last known electronic mail address, or
  - (e) made available to the client by other means agreed to in writing by the client.
- (4) As an exception to subrule (2), a lawyer need not deliver a bill if the client instructs the lawyer otherwise in writing.
- (5) A lawyer must not take fees from trust funds when the lawyer knows that the client disputes the right of the lawyer to receive payment from trust funds, unless
- (a) the client has agreed that the lawyer may take funds from trust to satisfy the lawyer's account and the client has acknowledged that agreement in writing or the lawyer has confirmed the client's agreement in a letter delivered to the client,
  - (b) a bill has been delivered under subrule (3), whether or not the client has directed otherwise under subrule (4),

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- (c) the lawyer has given the client written notice that the fees will be taken from trust unless, within one month, the client commences a fee review under section 70 *[Review of a lawyer's bill]* or an action disputing the lawyer's right to the funds, and
- (d) the client has not commenced a fee review under section 70 or an action at least one month after written notice is given under paragraph (c).
- (6) Despite subrule (5), if a lawyer knows that the client disputes a part of the lawyer's account, the lawyer may take from trust funds fees that are not disputed.
- (7) A lawyer must not take fees from trust funds impressed with a specific purpose, if the object of the trust has not been fulfilled, without the express consent of the client or another person authorized to give direction on the application of the trust funds.

### Withdrawal from separate trust account

- 3-66** (1) A lawyer who makes or authorizes the withdrawal of funds from a separate trust account in respect of which cancelled cheques and bank statements are not received from the savings institution monthly and kept in the lawyer's records must first transfer the funds into his or her pooled trust account.
- (2) Rules 3-64 *[Withdrawal from trust]* and 3-65 *[Payment of fees from trust]* apply to funds that have been transferred into a pooled trust account in accordance with subrule (1).
- (3) A lawyer who disburses trust funds received with instructions under Rule 3-58 (3) *[Deposit of trust funds]* must keep a written record of the transaction.

### Accounting records

- 3-67** (1) In this rule, "supporting document" includes
- (a) validated deposit receipts,
  - (b) periodic bank statements,
  - (c) passbooks,
  - (d) cancelled and voided cheques,
  - (e) bank vouchers and similar documents,
  - (f) vendor invoices, and
  - (g) bills for fees, charges and disbursements.
- (2) A lawyer must record all funds received and disbursed in connection with his or her law practice by maintaining the records required under this division.
- (3) A lawyer must maintain accounting records, including supporting documents, in
- (a) legibly handwritten form, in ink or other duplicated or permanent form,
  - (b) printed form, or
  - (c) an electronic form in compliance with subrule (4).

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- (4) A lawyer who maintains accounting records, including supporting documents, in electronic form, must ensure that
  - (a) all records and documents are maintained in a way that will allow compliance with Rule 10-3 (2) [*Records*],
  - (b) copies of both sides of all paper records and documents, including any blank pages, are retained in a manner that indicates that they are two sides of the same document, and
  - (c) there is a clear indication, with respect to each financial transaction, of
    - (i) the date of the transaction,
    - (ii) the individual who performed the transaction, and
    - (iii) all additions, deletions or modifications to the accounting record and the individual who made each of them.
- (5) A lawyer must record transactions in accounting records in chronological order and in an easily traceable form.
- (6) A lawyer must retain all supporting documents for both trust and general accounts

### Trust account records

**3-68** A lawyer must maintain at least the following trust account records:

- (a) a book of entry or data source showing all trust transactions, including the following:
  - (i) the date and amount of receipt or disbursements of all funds;
  - (ii) the source and form of the funds received;
  - (iii) the identity of the client on whose behalf trust funds are received or disbursed;
  - (iv) the cheque or voucher number for each payment out of trust;
  - (v) the name of each recipient of money out of trust;
- (b) a trust ledger, or other suitable system, showing separately for each client on whose behalf trust funds have been received, all trust funds received and disbursed, and the unexpended balance;
- (c) records
  - (i) showing each transfer of funds between clients' trust ledgers, including the name and number of both the source file and the destination file,
  - (ii) containing an explanation of the purpose for which each transfer is made, and
  - (iii) containing the lawyer's written approval of the transfer;
- (d) the monthly trust reconciliations required under Rule 3-73 [*Monthly trust reconciliation*], and any documents prepared in support of the reconciliations;
- (e) a current listing of all valuables held in trust for each client.

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### General account records

- 3-69** (1) A lawyer must maintain at least the following general account records:
- (a) a book of original entry or data source showing
    - (i) the amount, date of receipt and the source of all general funds received, and
    - (ii) the cheque or voucher number, the amount, date and the name of each recipient of each disbursement;
  - (b) an accounts receivable ledger or other suitable system to record, for each client, showing all transactions including
    - (i) transfers from a trust account,
    - (ii) other receipts from or on behalf of the client, and
    - (iii) the balance owed by the client.
- (2) As an exception to subrule (1) (b), a lawyer may enter the information required under that subrule on the trust ledger or other suitable system referred to in Rule 3-68 [*Trust account records*], provided that the entry is clearly identified and distinct from trust account information.

### Records of cash transactions

- 3-70** (1) A lawyer who receives any amount of cash for a client that is not the lawyer's employer must maintain a cash receipt book of duplicate receipts and make a receipt in the cash receipt book for any amount of cash received.
- (2) Each receipt in the cash receipt book must
- (a) be signed by
    - (i) the lawyer who receives the cash or an individual authorized by that lawyer to sign the receipt on the lawyer's behalf, and
    - (ii) the person from whom the cash is received,
  - (b) identify each of the following:
    - (i) the date on which cash is received;
    - (ii) the person from whom cash is received;
    - (iii) the amount of cash received;
    - (iv) the client for whom cash is received;
    - (v) the number of the file in respect of which cash is received, and
  - (c) indicate all dates on which the receipt was created or modified.
- (3) A lawyer who withdraws funds in cash from a pooled or separate trust account must make a record of the transaction signed by the person to whom the cash was paid and identifying:
- (a) the date on which the cash was withdrawn,
  - (b) the amount of cash withdrawn,

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- (c) the name of the client in respect of whom the cash was withdrawn,
  - (d) the number of the file in respect of which the cash was withdrawn, and
  - (e) the name of the person to whom the cash was paid, and
  - (f) all dates on which the record was created or modified.
- (4) The cash receipt book must be kept current at all times.
- (5) A lawyer is not in breach of this rule if a receipt is not signed by the person from whom the cash is received if the lawyer makes reasonable efforts to obtain the signature of that person.

### Billing records

- 3-71** (1) A lawyer must keep file copies of all bills delivered to clients or persons charged
- (a) showing the amounts and the dates charges are made,
  - (b) indicating all dates on which the bill was created or modified,
  - (c) identifying the client or person charged, and
  - (d) filed in chronological, alphabetical or numerical order.
- (2) For the purpose of subrule (1), a bill includes a receipt issued under Rule 3-72 (3) *[Recording transactions]*.

### Recording transactions

- 3-72** (1) A lawyer must record each trust or general transaction promptly, and in any event not more than
- (a) 7 days after a trust transaction, or
  - (b) 30 days after a general transaction.
- (2) A lawyer must record in his or her general account records all funds
- (a) received by the lawyer expressly on account of fees earned and billed or disbursements made by the day the funds are received,
  - (b) subject to a specific agreement with the client allowing the lawyer to treat them as his or her own funds, or
  - (c) that the lawyer is entitled to keep whether or not the lawyer renders any services to or makes any disbursements on behalf of that client.
- (3) A lawyer who receives funds to which subrule (2) applies must immediately deliver a bill or issue to the client a receipt for the funds received, containing sufficient particulars to identify the services performed and disbursements incurred.
- (4) As an exception to subrule (1), a lawyer must record the receipt of interest on a separate trust account within 30 days of payment or of notice that funds have been credited to the account.

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### Monthly trust reconciliation

- 3-73** (1) A lawyer must prepare a monthly trust reconciliation of the total of all unexpended balances of funds held in trust for clients as they appear in the trust ledgers, with the total of balances held in the trust bank account or accounts, together with the reasons for any differences between the totals.
- (2) The monthly trust reconciliation must be supported by
- (a) a detailed monthly listing showing the unexpended balance of trust funds held for each client, and identifying each client for whom trust funds are held,
  - (b) a detailed monthly bank reconciliation for each pooled trust account,
  - (c) a listing of balances of each separate trust account or savings, deposit, investment or similar form of account, identifying the client for whom each is held,
  - (d) a listing of balances of all other trust funds received pursuant to Rule 3-58 (2) [*Deposit of trust funds*], and
  - (e) a listing of valuables received and delivered and the undelivered portion of valuables held for each client.
- (3) Each monthly trust reconciliation prepared under subrule (1) must include the date on which it was prepared.
- (4) A lawyer must retain for at least 10 years
- (a) each monthly trust reconciliation prepared under subrule (1), and
  - (b) the detailed listings described in subrule (2) as records supporting the monthly trust reconciliations.
- (5) A lawyer must make the trust reconciliation required by this rule not more than 30 days after the effective date of the reconciliation.

### Trust shortage

- 3-74** (1) A lawyer who discovers a trust shortage must immediately pay enough funds into the account to eliminate the shortage.
- (2) A lawyer must immediately make a written report to the Executive Director, including all relevant facts and circumstances, if the lawyer
- (a) discovers a trust shortage greater than \$2,500, or
  - (b) is or will be unable to deliver up, when due, any trust funds held by the lawyer.
- (3) A trust shortage referred to in this rule includes a shortage caused by service charges, credit card discounts and bank errors.

### Retention of records

- 3-75** (1) In this rule, “**records**” means the records referred to in Rules 3-67 to 3-71.
- (2) A lawyer must keep his or her records for as long as the records apply to money held as trust funds or to valuables held in trust for a client and for at least 10 years from the final accounting transaction or disposition of valuables.



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- (3) A lawyer must keep his or her records, other than electronic records, at his or her chief place of practice in British Columbia for at least 3 years from the final accounting transaction or disposition of valuables.

### Executive Director's modification

- 3-76** (1) Having regard to the accounting and storage systems employed by a specific lawyer, the Executive Director may modify the requirements of that lawyer under Rules 3-68 to 3-71 or 3-75 [*Retention of records*].
- (2) The Executive Director may, at any time, cancel or amend a modification under subrule (1).
- (3) The Executive Director must make a modification under subrule (1) or a cancellation or amendment of a modification under subrule (2) in writing.
- (4) A lawyer who receives a written modification from the Executive Director under subrule (1) must retain it and any amendment under subrule (2) for as long as
- (a) the books, records and accounts to which it relates are retained, or
  - (b) the lawyer would have been required to retain the books, records and accounts to which it relates, but for the modification and any amendment.

### Annual CDIC report

- 3-77** A lawyer who holds pooled trusts funds in a designated savings institution insured by the Canada Deposit Insurance Corporation must file an annual report for each account maintained by the lawyer with that institution in accordance with section 3 (3) of the Schedule to the *Canada Deposit Insurance Corporation Act*, so that each client's funds, rather than the account itself, are insured up to the limit of CDIC insurance.

### Lawyer's right to claim funds

- 3-78** Nothing in this division deprives a lawyer of any recourse or right, whether by way of lien, set-off, counterclaim, charge or otherwise, against
- (a) funds standing to the credit of a client in a trust account, or
  - (b) valuables held for a client.

### Trust report

- 3-79** (1) Subject to subrules (4) and (6), a lawyer must deliver to the Executive Director completed trust reports for reporting periods of 12 months covering all the time that the lawyer is a member of the Society.
- (2) The date on which a firm ceases to practise law is the end of a reporting period.
- (3) A lawyer must deliver a completed trust report to the Executive Director within 3 months of the end of each reporting period.

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- (4) On a written request made before the due date of a trust report, the Executive Director may allow a lawyer to submit a trust report covering a time period other than 12 months.
- (5) A trust report delivered to the Executive Director under this rule must
  - (a) be in a form approved by the Discipline Committee,
  - (b) be complete to the satisfaction of the Executive Director, and
  - (c) include all signatures required in the form.
- (6) A non-practising or retired lawyer or a practising lawyer who is exempt under Rule 3-43 [*Exemption from liability insurance*] from the requirement to maintain professional liability insurance and pay the insurance fee, is not required to file a trust report for a reporting period of 12 months during which the lawyer has
  - (a) not received any funds in trust,
  - (b) not withdrawn any funds held in trust, and
  - (c) complied with this division.

### Late filing of trust report

- 3-80** (1) A lawyer who does not deliver a trust report as required under Rule 3-79 [*Trust report*] or 3-82 (5) [*Accountant's report*] is in breach of these rules.
- (2) A lawyer who fails to deliver a trust report by the date required under Rule 3-79 [*Trust report*] or 3-82 (5) [*Accountant's report*] is deemed to have been in compliance with the rules during the period of time that the lawyer was late in delivering the report if the lawyer delivers the following to the Executive Director within 30 days of the due date:
- (a) the required report;
  - (b) the late fee specified in Schedule 1.
- (3) A lawyer who does not deliver a trust report for 30 days after it is required under Rule 3-79 [*Trust report*] or 3-82 (5) [*Accountant's report*] is liable to an assessment of \$400 per month or part of a month until the report is delivered.
- (4) When there are special circumstances, the Discipline Committee may, in its discretion, waive payment of all or part of an assessment made under this rule.

### Failure to file trust report

- 3-81** (1) Subject to subrules (3) and (4), a lawyer who does not deliver a trust report under Rule 3-79 [*Trust report*] or 3-82 (5) [*Accountant's report*] for 60 days after it is required, is suspended until the report is completed to the satisfaction of the Executive Director and delivered as required.
- (2) A trust report is not delivered for the purposes of subrules (1) unless all explanations of exceptions required by the Executive Director are delivered to the Executive Director.

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- (3) When there are special circumstances, the Discipline Committee may, in its discretion, order that
  - (a) a lawyer not be suspended under subrule (1), or
  - (b) a suspension under subrule (1) be delayed for a specified period of time.
- (4) At least 30 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:
  - (a) the date on which the suspension will take effect;
  - (b) the reasons for the suspension;
  - (c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (3) and the deadline for making such an application before the suspension is to take effect.
- (5) If a lawyer has not delivered a trust report after it is required, the Executive Director may do either or both of the following:
  - (a) engage or assign a qualified accountant to complete the trust report;
  - (b) order an examination of the lawyer's books, records and accounts under Rule 3-85 [*Compliance audit of books, records and accounts*].
- (6) The Discipline Committee may order that a lawyer pay to the Society all or part of the costs associated with the trust report referred to in subrule (5) (a).
- (7) A lawyer who is ordered by the Discipline Committee, under subrule (6), to pay costs must pay those costs in full by the date set or extended by the Committee.
- (8) If any part of the amount owing under subrule (6) remains unpaid by the date set in Rule 2-105 [*Annual practising fee*], the lawyer concerned must not engage in the practice of law unless the Benchers order otherwise.

### Accountant's report

- 3-82** (1) The Executive Director may require a lawyer who is required to deliver a trust report under Rule 3-79 [*Trust report*] or a lawyer or former lawyer who is required to deliver a trust report under Rule 3-84 [*Former lawyers*] to deliver as part of the report required under the relevant rule, an accountant's report completed and signed by a person in public accounting practice who is permitted to perform audit engagements by
- (a) the Institute of Chartered Accountants of British Columbia, or
  - (b) the Certified General Accountants Association of British Columbia.
- (2) The Executive Director must specify the matters to be included in the accountant's report referred to in subrule (1) and the time within which it must be delivered to the Executive Director.
- (3) Despite subrule (1), an accountant's report must not be completed and signed by any person determined by the Executive Director to be ineligible to do so.

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- (4) Despite subrule (1), on application by the lawyer, the Executive Director may allow a person without the credentials referred to in subrule (1) to complete and sign an accountant's report if the Executive Director is satisfied that
  - (a) the person has adequate accounting credentials, and
  - (b) no person qualified under subrule (1) is reasonably available to the lawyer.
- (5) The Executive Director may at any time require a lawyer to deliver a new accountant's report completed and signed by a person who has the qualifications specified by the Executive Director if the lawyer's accountant's report was completed and signed by a person
  - (a) without the credentials referred to in subrule (1), or
  - (b) ineligible under subrule (3).
- (6) If the Executive Director requires a new accountant's report under subrule (5), the lawyer must deliver the report within 3 months of notice of the requirement being sent by the Executive Director.

### Exceptions and qualifications

- 3-83** (1) The trust report of a lawyer who has not complied with this division must state the exceptions and qualifications, together with an explanation of the circumstances of and reasons for them.
- (2) The Executive Director may, following a review of a trust report with exceptions and qualifications, accept the lawyer's explanation and reasons
  - (a) without condition, in which case the lawyer is deemed to have complied with Rule 3-79 [*Trust report*], or
  - (b) subject to the lawyer fulfilling accounting conditions specified by the Executive Director, in which case, on fulfillment of those conditions, the lawyer is deemed to have complied with Rule 3-79.

### Former lawyers

- 3-84** (1) A former lawyer must deliver a trust report as required under Rule 3-79 [*Trust report*] for any period during which the former lawyer was a member of the Society.
- (2) If a former lawyer does not deliver a trust report as required under subrule (1), an assessment under Rule 3-80 [*Late filing of trust report*] applies.

### Compliance audit of books, records and accounts

- 3-85** (1) The Executive Director may at any time order a compliance audit of the books, records and accounts of a lawyer for the purpose of determining whether the lawyer meets standards of financial responsibility established under this Part, including but not limited to maintaining books, records and accounts in accordance with this division.
- (2) When an order is made under subrule (1),

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- (a) the Executive Director must designate one or more persons to conduct the compliance audit, and
- (b) on notification of the order, the lawyer concerned must immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence and must provide any explanations required by the person designated under paragraph (a) for the purpose of completing the compliance audit.

### **Failure to produce records on compliance audit**

- 3-86** (1) Subject to subrules (2) and (3), a lawyer who does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-85 (2) (b) [*Compliance audit of books, records and accounts*] is suspended until the records are produced, copying is permitted and explanations are provided to the satisfaction of the Executive Director.
- (2) When there are special circumstances, the Discipline Committee may, in its discretion, order that
- (a) a lawyer not be suspended under subrule (1), or
  - (b) a suspension under this rule be delayed for a specified period of time.
- (3) At least 7 days before a suspension under this rule can take effect, the Executive Director must deliver to the lawyer notice of the following:
- (a) the date on which the suspension will take effect;
  - (b) the reasons for the suspension;
  - (c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

### **Disposition of files, trust money and other documents and valuables**

- 3-87** (1) Before leaving a firm in British Columbia, a lawyer must advise the Executive Director in writing of his or her intended disposition of all of the following that relate to the lawyer's practice in British Columbia and are in the lawyer's possession or control:
- (a) open and closed files;
  - (b) wills and wills indices;
  - (c) titles and other important documents and records;
  - (d) other valuables;
  - (e) trust accounts and trust funds;
  - (f) fiduciary property.
- (2) Within 30 days after withdrawing from the practice of law in British Columbia, a lawyer or former lawyer must confirm to the Executive Director in writing that

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- (a) the documents and property referred to in subrule (1) (a) to (d) have been disposed of, and any way in which the disposition differs from that reported under subrule (1),
  - (b) all trust accounts referred to in subrule (1) (e) have been closed and that
    - (i) all the balances have been
      - (A) remitted to the clients or other persons on whose behalf they were held,
      - (B) transferred to another lawyer with written instructions concerning the conditions attaching to them, or
      - (C) paid to the Society under Rule 3-89 [*Payment of unclaimed trust money to the Society*], and
    - (ii) any net interest earned on a pooled trust account has been remitted to the Foundation in accordance with this division, and
  - (c) the lawyer or former lawyer has notified all clients and other persons for whom the lawyer is or potentially may become a personal representative, executor, trustee or other fiduciary regarding the lawyer or former lawyer's withdrawal from practice and any change in his or her membership status.
- (3) A law corporation must confirm to the Executive Director as required under subrule (2) within 30 days of
- (a) cancellation of its permit under Part 9 [*Incorporation and Limited Liability Partnerships*], and
  - (b) ceasing to provide legal services.
- (4) The Executive Director may, on application in writing by the lawyer, former lawyer or law corporation, extend the time limit referred to in subrule (1), (2) or (3) or, if in the opinion of the Executive Director it is in the public interest, relieve the lawyer, former lawyer or law corporation of any of the requirements of those subrules.
- (5) On an enquiry, the Executive Director may disclose information collected under this rule if satisfied that
- (a) the person enquiring has a bona fide reason to obtain the information, and
  - (b) disclosure of the information would not be an unreasonable invasion of anyone's privacy.

### Division 8 – Unclaimed Trust Money

#### Definition

- 3-88** In this division, “**efforts to locate**” means steps that are reasonable and adequate in all the circumstances, including the amount of money involved.

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### Payment of unclaimed trust money to the Society

- 3-89** (1) A lawyer who has held money in trust on behalf of a person whom the lawyer has been unable to locate for 2 years may apply to the Executive Director to pay those funds to the Society under section 34 [*Unclaimed trust money*].
- (2) A lawyer must make the application referred to in subrule (1) in writing containing all of the following information that is available to the lawyer:
- (a) the full name and last known mailing address of each person on whose behalf the lawyer held the money;
  - (b) the exact amount to be paid to the Society in respect of each such person;
  - (c) the efforts made by the lawyer to locate each such person;
  - (d) any unfulfilled undertakings given by the lawyer in relation to the money;
  - (e) the details of the transaction in respect of which the money was deposited with the lawyer.
- (3) A lawyer who cannot provide all the information described in subrule (2) must advise the Executive Director of the reasons why the lawyer does not have that information and deliver to the Executive Director copies of all records in the lawyer's power or possession that relate to the ownership and source of the money.
- (4) If the Executive Director is satisfied that the lawyer has made appropriate efforts to locate the owner of the money, the Executive Director may accept the money under section 34 [*Unclaimed trust money*].
- (5) The Executive Director must account for money received by the Society under subrule (4) separately from the other funds of the Society.

### Investigation of claims

- 3-90** (1) A person may make a claim under section 34 [*Unclaimed trust money*] in writing, in the form approved by the Executive Committee by delivering it to the Executive Director.
- (2) A claimant must provide the Executive Director with information and documents that the Executive Director reasonably requires.
- (3) In order to determine the validity of a claim, the Executive Director may make or authorize inquiries or further investigations that he or she considers desirable.

### Adjudication of claims

- 3-91** (1) The Executive Director may
- (a) approve a claim if satisfied that the claim is valid, or
  - (b) refer the claim to the Executive Committee.
- (2) When the Executive Director refers a claim to the Executive Committee, the Committee may, in its discretion

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- (a) approve or reject a claim based on the information received under Rule 3-90 [*Investigation of claims*], or
  - (b) order a hearing to determine the validity of a claim.
- (3) If a hearing is ordered, the Executive Director must give the claimant reasonable notice in writing of the date, time and place of the hearing.
- (4) The Executive Director must serve the notice referred to in subrule (3) in accordance with Rule 10-1 [*Service and notice*].
- (5) The Executive Committee must conduct every hearing under this rule in private unless the Committee determines, in the public interest, that a specific individual or the public generally may be present at part or all of the hearing.
- (6) Subject to the Act and these rules, the Executive Committee may determine the practice and procedure to be followed at a hearing.
- (7) The claimant or the Society may call a witness to testify, who
  - (a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and
  - (b) is subject to cross-examination.
- (8) Following completion of the evidence, the Executive Committee must invite the claimant and the Society to make submissions on the issues to be decided by the Committee.
- (9) Following the hearing of the evidence and submissions, the Executive Committee must determine whether the claimant is entitled to the money held in trust by the Society.
- (10) If the claim is approved under subrule (1) (a) or (9), the Executive Director must
  - (a) calculate the exact amount owing to the claimant,
  - (b) calculate, in accordance with Rule 3-92 [*Calculation of interest*], the interest owing to the claimant on that amount, and
  - (c) pay to the claimant the total of the amounts calculated under paragraphs (a) and (b).

### Calculation of interest

- 3-92** (1) In calculating the interest owing to a claimant under Rule 3-91 [*Adjudication of claims*], the Executive Committee must allow interest, for each 3-month period, at 2% below the prime lending rate of the Society's banker on March 31, June 30, September 30 and December 31 respectively, in each year, with interest to be compounded on June 30 and December 31 in each year.
- (2) Interest calculated under subrule (1) is payable from the first day of the month following receipt of the unclaimed money by the Society, until the last day of the month before payment out by the Society.



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### Efforts to locate the owner of funds

**3-93** From time to time, the Executive Director must conduct or authorize efforts to locate the owner of money held under this Part.

### Payment to the Law Foundation

**3-94** Before paying the principal amount received under Rule 3-89 [*Payment of unclaimed trust money to the Society*] to the Foundation under section 34 [*Unclaimed trust money*], the Executive Director must be satisfied that the owner of the money cannot be located following efforts to locate the owner.

## Division 9 – Real Estate Practice

### Definitions

**3-95** In this division,

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

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

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

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

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

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

### Report of failure to cancel mortgage

**3-96** A lawyer must deliver to the Executive Director within 5 business days a report in a form approved by the Executive Committee when

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

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## Division 10 – Criminal charges

### Reporting criminal charges

- 3-97** (1) This rule applies to lawyers, articulated students, practitioners of foreign law and applicants.
- (2) Subject to subrule (4), a person who is charged with an offence under a federal or provincial statute must provide to the Executive Director written notice containing all relevant information as soon as practicable after each of the following events:
- (a) laying of the charge;
  - (b) disposition of the charge;
  - (c) sentencing in respect of the charge;
  - (d) commencement of an appeal of the verdict or sentence;
  - (e) disposition of the appeal.
- (3) A person charged with an offence must provide the Executive Director with a copy of any statement of the particulars of the charge immediately on receipt.
- (4) No notification is required under subrule (2) if a person is issued or served with a ticket as defined in the *Contraventions Act* (Canada) or a violation ticket as defined in the *Offence Act*.

## Division 11 – Client Identification and Verification

### Definitions

- 3-98** (1) In this division,
- “**client**” includes
- (a) another party that a lawyer’s client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer, and
  - (b) in Rules 3-102 to 3-105, an individual who instructs the lawyer on behalf of a client in relation to a financial transaction;
- “**financial institution**” means
- (a) an authorized foreign bank within the meaning of section 2 [*Definitions*] of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* applies,
  - (b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act,
  - (c) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
  - (d) a company to which the *Trust and Loan Companies Act* (Canada) applies,
  - (e) a trust company or loan company regulated by a provincial Act,

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(f) a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public, or

(g) an organization controlled by a financial institution;

**“financial transaction”** means the receipt, payment or transfer of money on behalf of a client or giving instructions on behalf of a client in respect of the receipt, payment or transfer of money;

**“interjurisdictional lawyer”** means a member of a governing body who is authorized to practise law in another Canadian jurisdiction;

**“money”** means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or interest in them;

**“organization”** means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;

**“public authority”** means

- (a) a department or agent of Her Majesty in right of Canada or of a province or territory,
- (b) a municipality or regional district or a municipal body incorporated under the law of another province or a territory, or an agent of any of them,
- (c) a college, institute, university or school district,
- (d) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the *Excise Tax Act* (Canada) or an agent of the organization,
- (e) an organization established or continued under an Act of Canada or of a province or territory for a public purpose, or
- (f) an organization controlled by a public authority;

**“reporting issuer”** means an organization that is

- (a) a reporting issuer within the meaning of the securities law of any province or territory of Canada,
- (b) a corporation whose shares are traded on a stock exchange that is prescribed by the *Income Tax Act* (Canada) and operates in a country that is a member of the Financial Action Task Force on Money Laundering, or
- (c) controlled by a reporting issuer;

**“securities dealer”** means a person or entity that is authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services.

(2) In this division, a person controls an organization if the person, directly or indirectly, has the power to elect a majority of the directors or equivalent body of the organization by virtue of

- (a) ownership or direction over voting securities of the organization,
- (b) being or controlling the general partner of a limited partnership, or

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(c) being a trustee of or occupying a similar position in the organization.

### Application

- 3-99** (1) Subject to subrule (2), this division applies to a lawyer who is retained by a client to provide legal services.
- (2) Rules 3-100 to 3-108 do not apply when a lawyer provides legal services
- (a) on behalf of his or her employer,
  - (b) that do not involve a financial transaction in the following circumstances:
    - (i) as part of a duty counsel program sponsored by a non-profit organization;
    - (ii) in the form of pro bono summary advice, or
  - (c) if another lawyer or an interjurisdictional lawyer who has complied with Rules 3-100 to 3-108 or the equivalent provisions of a governing body
    - (i) engages the lawyer to provide legal services to the client as an agent, or
    - (ii) refers a matter to the lawyer for the provision of legal services.
- (3) In this division, the responsibilities of a lawyer may be fulfilled by the lawyer's firm, including members or employees of the firm conducting business in another Canadian jurisdiction.

### Client identification

- 3-100** (1) A lawyer who is retained by a client to provide legal services must make reasonable efforts to obtain and, if obtained, record all of the following information that is applicable:
- (a) the client's full name, business address and business telephone number;
  - (b) if the client is an individual, the client's home address, home telephone number and occupation;
  - (c) if the client is an organization, the name, position and contact information for individuals who give instructions with respect to the matter for which the lawyer is retained;
  - (d) if the client is an organization other than a financial institution, public authority or reporting issuer,
    - (i) the general nature of the type of business or activity engaged in by the client, and
    - (ii) the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number.
- (2) When a lawyer has obtained and recorded the information concerning the identity of a client under subrule (1), the lawyer is not required subsequently to obtain and record that information about the same individual or organization.

### Exemptions

- 3-101** Rules 3-102 to 3-106 do not apply

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- (a) if the client is
  - (i) a financial institution,
  - (ii) a public authority,
  - (iii) a reporting issuer, or
  - (iv) an individual who instructs the lawyer on behalf of a client described in subparagraph (i) to (iii),
- (b) when a lawyer
  - (i) pays money to or receives money from any of the following acting as a principal:
    - (A) a financial institution;
    - (B) a public authority;
    - (C) a reporting issuer,
  - (ii) receives money paid from the trust account of another lawyer or an interjurisdictional lawyer,
  - (iii) receives money from a peace officer, law enforcement agency or other public official acting in an official capacity, or
  - (iv) pays or receives money
    - (A) pursuant to the order of a court or other tribunal,
    - (B) to pay a fine or penalty,
    - (C) as a settlement of any legal or administrative proceeding, or
    - (D) for professional fees, disbursements, expenses or bail, or
- (c) to a transaction in which all funds involved are transferred by electronic transmission, provided
  - (i) the transfer occurs between financial institutions or financial entities headquartered in and operating in countries that are members of the Financial Action Task Force,
  - (ii) neither the sending nor the receiving account holders handle or transfer the funds, and
  - (iii) the transmission record contains
    - (A) a reference number,
    - (B) the date,
    - (C) the transfer amount,
    - (D) the currency, and
    - (E) the names of the sending and receiving account holders and the sending and receiving entities.

### Verification

- 3-102** (1) When a lawyer provides legal services in respect of a financial transaction, including a non-face-to-face transaction, the lawyer must take reasonable steps to verify the

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identity of the client using what the lawyer reasonably considers to be reliable, independent source documents, data or information.

- (2) For the purposes of subrule (1), independent source documents may include
- (a) if the client is an individual, valid original government-issued identification, including a driver's licence, birth certificate, provincial or territorial health insurance card, passport or similar record,
  - (b) if the client is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors where applicable, such as
    - (i) a certificate of corporate status issued by a public authority,
    - (ii) a copy obtained from a public authority of a record that the organization is required to file annually under applicable legislation, or
    - (iii) a copy of a similar record obtained from a public authority that confirms the organization's existence, and
  - (c) if the client is an organization that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.

### Identifying directors, shareholders and owners

**3-103** When a lawyer provides legal services in respect of a financial transaction for a client that is an organization referred to in Rule 3-102 (2) (b) or (c) [*Verification*], the lawyer must make reasonable efforts to obtain, and if obtained, record

- (a) the name and occupation of all directors of the organization, other than an organization that is a securities dealer, and
- (b) the name, address and occupation of all persons who own 25 per cent or more of the organization or of the shares of the organization.

### Client identification and verification in non-face-to-face transactions

- 3-104** (1) This rule applies when a lawyer provides legal services in respect of a financial transaction for a client who is an individual not physically present before the lawyer.
- (2) If the client is present elsewhere in Canada, the lawyer must verify the client's identity by obtaining an attestation from a commissioner of oaths for a jurisdiction in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in Rule 3-102 (2) (a) [*Verification*].
- (3) For the purpose of subrule (2), an attestation must be produced on a legible photocopy of the document and must include
- (a) the name, profession and address of the person providing the attestation,
  - (b) the signature of the person providing the attestation, and

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- (c) the type and number of the identifying document provided by the client.
- (4) For the purpose of subrule (2), a guarantor must be a person engaged in one of the following occupations in Canada:
  - (a) dentist;
  - (b) medical doctor;
  - (c) chiropractor;
  - (d) judge;
  - (e) magistrate;
  - (f) lawyer;
  - (g) notary (in Quebec);
  - (h) notary public;
  - (i) optometrist;
  - (j) pharmacist;
  - (k) professional accountant (Chartered Accountant, Certified General Accountant, Certified Management Accountant, Accredited Public Accountant, Public Accountant or Registered Public Accountant);
  - (l) professional engineer;
  - (m) veterinarian.
  - (n) architect;
  - (o) peace officer;
  - (p) paralegal licensee in Ontario;
  - (q) registered nurse;
  - (r) school principal.
- (5) If the client is not present in Canada, the lawyer must rely on an agent to obtain the information required to verify the identity of the client under Rule 3-102 [*Verification*], which may be attested to in a form similar to that described in this Rule, provided the lawyer and the agent have an agreement or arrangement in writing for this purpose.
- (6) A lawyer who enters into an agreement or arrangement referred to in subrule (5) must obtain from the agent the information obtained by the agent under that agreement or arrangement.

### Timing of verification for individuals

- 3-105** (1) At the time that a lawyer provides legal services in respect of a financial transaction, the lawyer must verify the identity of a client who is an individual.
- (2) When a lawyer has verified the identity of an individual, the lawyer is not required subsequently to verify that same identity if the lawyer recognizes that person.

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### Timing of verification for organizations

- 3-106** (1) A lawyer must verify the identity of a client that is an organization within 60 days of engaging in a financial transaction.
- (2) When a lawyer has verified the identity of a client that is an organization and obtained and recorded information under Rule 3-103 [*Identifying directors, shareholders and owners*], the lawyer is not required subsequently to verify that identity or obtain and record that information.

### Record keeping and retention

- 3-107** (1) A lawyer must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of Rule 3-102 (1) [*Verification*].
- (2) The documents referred to in subrule (1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.
- (3) A lawyer must retain a record of the information and any documents obtained for the purposes of Rules 3-100 [*Client identification*] and 3-103 [*Identifying directors, shareholders and owners*] and copies of all documents received for the purposes of Rule 3-102 (2) [*Verification*] for the longer of
- (a) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing services to the client, and
  - (b) a period of at least 6 years following completion of the work for which the lawyer was retained.

### Existing matters

- 3-108** Rules 3-99 to 3-107 do not apply to matters for which a lawyer was retained before December 31, 2008, but they do apply to all matters for which he or she is retained after that time, regardless of whether the client is a new or existing client.

### Criminal activity

- 3-109** (1) If, in the course of obtaining the information and taking the steps required in Rule 3-100 [*Client identification*], 3-102 (2) [*Verification*] or 3-103 [*Identifying directors, shareholders and owners*], or while retained by a client, a lawyer knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.
- (2) This rule applies to all matters for which a lawyer is retained before or after this division comes into force.



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## PART 4 – DISCIPLINE

### Interpretation and application

**4-1** (1) In this part,

“**conduct meeting**” means a meeting that a lawyer is required to attend under Rule 4-4

(1) (c) [*Action on complaints*];

“**conduct review**” means a meeting with a conduct review subcommittee that a lawyer is required to attend under Rule 4-4 (1) (d).

- (2) This part applies to a former lawyer, an articled student, a visiting lawyer permitted to practise law under Rules 2-16 to 2-20 and a practitioner of foreign law as it does to a lawyer, with the necessary changes and so far as it is applicable.
- (3) This part must be interpreted in a manner consistent with standards of simplicity, fairness and expediency, and so as to provide maximum protection to the public and to lawyers.

### Discipline Committee

- 4-2** (1) For each calendar year, the President must appoint a Discipline Committee, including a chair and vice chair, both of whom must be Benchers.
- (2) The President may remove any person appointed under subrule (1).
- (3) At any time, the President may appoint a person to the Discipline Committee to replace a Committee member who resigns or otherwise ceases membership in the Committee, or to increase the number of members of the Committee.
- (4) Any function of the chair of the Discipline Committee under this part may be performed by the vice chair if the chair is not available for any reason, or by another Benchers member of the Committee designated by the President if neither the chair nor the vice-chair is available for any reason.

### Consideration of complaints by Committee

- 4-3** (1) The Discipline Committee must consider any complaint referred to it under these rules and may instruct the Executive Director to make or authorize further investigation that the Discipline Committee considers desirable.
- (2) If, in the view of the Executive Director and the chair of the Discipline Committee, there is a need to act before a meeting of the Committee can be arranged, the Executive Director may refer a complaint to the chair for consideration under Rule 4-5 [*Consideration of complaints by chair*].

### Action on complaints

- 4-4** (1) After its consideration under Rule 4-3 [*Consideration of complaints by Committee*], the Discipline Committee must
  - (a) decide that no further action be taken on the complaint,

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- (b) authorize the chair or other Bench member of the Discipline Committee to send a letter to the lawyer concerning the lawyer's conduct,
  - (c) require the lawyer to attend a meeting with one or more Benchers or lawyers to discuss the conduct of the lawyer,
  - (d) require the lawyer to appear before a Conduct Review Subcommittee, or
  - (e) direct that the Executive Director issue a citation against the lawyer under Rule 4-17 (1) [*Direction to issue, expand or rescind citation*].
- (2) In addition to the determination made under subrule (1), the Discipline Committee may refer any matter or any lawyer to the Practice Standards Committee.
  - (3) In addition to any action taken under subrules (1) and (2), if a complaint discloses that there may be grounds for revoking a law corporation's permit under Rule 9-11 [*Revocation of permits*], the Discipline Committee may order a hearing on the revocation of the law corporation's permit.
  - (4) At any time before the Discipline Committee makes a decision under Rule 4-13 (6) (a) to (c) [*Conduct Review Subcommittee report*], the Committee may resolve to rescind a decision made under subrule (1) (d) to require a lawyer to appear before a Conduct Review Subcommittee and substitute another decision under subrule (1).

### Consideration of complaints by chair

- 4-5** (1) The chair of the Discipline Committee must consider any complaint referred to him or her under these rules and may instruct the Executive Director to make or authorize further investigation that the chair considers desirable.
- (2) After considering a complaint under subrule (1), the chair of the Discipline Committee must
    - (a) direct that the Executive Director issue a citation against the lawyer under Rule 4-17(1) [*Direction to issue, expand or rescind citation*], or
    - (b) refer the complaint to the Discipline Committee.

### Continuation of membership during investigation or disciplinary proceedings

- 4-6** (1) In this rule, "**lawyer under investigation**" means a lawyer who is the subject of
- (a) an investigation under Part 3, Division 1, [*Complaints*] or
  - (b) a decision of the Discipline Committee under Rule 4-4 (1) (c) or (d) [*Action on complaints*].
- (2) A lawyer under investigation may not resign from membership in the Society without the consent of the Executive Director.
  - (3) A respondent may not resign from membership in the Society without the consent of the Discipline Committee.
  - (4) The Executive Director may direct that a lawyer under investigation who would otherwise have ceased to be a member of the Society for failure to pay the annual fee

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or a special assessment continue as a member not in good standing and not permitted to engage in the practice of law.

- (5) The Discipline Committee may, by resolution, direct that a respondent who would otherwise have ceased to be a member of the Society for failure to pay the annual fee or a special assessment continue as a member not in good standing and not permitted to engage in the practice of law.
- (6) A direction under subrule (4) or (5) may be made to continue in effect until stated conditions are fulfilled.
- (7) When a direction under subrule (4) or (5) expires on the fulfillment of all stated conditions or is rescinded by the Executive Director or Discipline Committee,
  - (a) the lawyer concerned ceases to be a member of the Society,
  - (b) if the rescission is in response to a request of the lawyer concerned, the Committee may impose conditions on the rescission.

### Notification

- 4-7** The Executive Director must notify the complainant and the lawyer or law corporation in writing of the determination of the Discipline Committee under Rule 4-4 [*Action on complaints*] or the chair under Rule 4-5 [*Consideration of complaints by the chair*].

### Confidentiality of Discipline Committee deliberations

- 4-8** (1) No one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these rules:
- (a) information and documents that form part of the consideration of a complaint under Rule 4-4 [*Action on complaints*] or 4-5 [*Consideration of complaints by chair*];
  - (b) the result of a consideration under Rule 4-4.
- (2) As an exception to subrule (1), the Executive Director may disclose information referred to in that subrule, with the consent of the lawyer, in responding to an enquiry made for the purpose of a potential judicial appointment.
- (3) No one is permitted to disclose a direction to issue a citation until the respondent is notified.
- (4) Despite subrule (3), the Executive Director may disclose to the public a direction to issue a citation, its subject matter and its status before the respondent is notified if
- (a) the identity of the respondent has already been disclosed to the public,
  - (b) the citation is in respect of an offence to which the respondent has pleaded guilty or of which the respondent has been found guilty, or
  - (c) the citation is based on a complaint that has become known to the public.
- (5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.

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- (6) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

### Conduct letter from the chair

- 4-9** (1) When a letter authorized under Rule 4-4 (1) (b) [*Action on complaints*] is sent to the lawyer, the Executive Director must provide the complainant with
- (a) a copy of the letter, or
  - (b) if directed by the Discipline Committee, a summary of the letter.
- (2) A letter authorized under Rule 4-4 (1) (b) [*Action on complaints*]
- (a) does not form part of the lawyer's professional conduct record, and
  - (b) is not admissible in the hearing of a citation under this part.

### Conduct meeting

- 4-10** (1) A conduct meeting must be held in private.
- (2) The Discipline Committee or the chair of the Discipline Committee may appoint one or more individuals who are Benchers, Life Benchers or lawyers to meet with a lawyer required to attend a conduct meeting under Rule 4-4 (1) (c) [*Action on complaints*].
- (3) No record of an order under Rule 4-4 (1) (c) [*Action on complaints*] or of the conduct meeting forms part of the lawyer's professional conduct record.
- (4) A Bencher or other lawyer who has participated in a conduct meeting is not permitted to testify in the hearing of a citation as to any statement made by the respondent during the conduct meeting, unless the respondent puts the matter in issue.

### Conduct Review Subcommittee

- 4-11** (1) The Discipline Committee or the chair of the Discipline Committee must appoint a Conduct Review Subcommittee to consider the conduct of a lawyer referred to the Subcommittee under Rule 4-4 (1) (d) [*Action on complaints*].
- (2) A Conduct Review Subcommittee
- (a) must include at least one lawyer,
  - (b) may include one or more appointed Benchers, and
  - (c) must be chaired by a Bencher or a Life Bencher.

### Conduct review

- 4-12** (1) A conduct review is an informal proceeding at which the lawyer
- (a) must appear personally, and
  - (b) may be represented by counsel.
- (2) Subject to subrule (3), a conduct review must be conducted in private.

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- (3) The Conduct Review Subcommittee may, in its discretion, permit the complainant to be present at all or part of the meeting, with or without the right to speak at the meeting.

### Conduct Review Subcommittee report

#### 4-13 (1) The Conduct Review Subcommittee must

- (a) prepare a written report of the factual background, the Subcommittee's conclusions and any recommendations, and
  - (b) deliver a copy of that report to the lawyer, together with written notice that the lawyer has 30 days from the date of the notice to notify the chair of the Subcommittee in writing of any dispute as to the contents of the report and the reasons he or she disputes the contents of the report.
- (2) If the Subcommittee considers it necessary for the effective consideration of the lawyer's dispute, it may order a further meeting.
- (3) If a further meeting is ordered under subrule (2), Rule 4-12 [*Conduct review*] applies.
- (4) The Subcommittee must consider the lawyer's dispute and
- (a) amend its report as it considers appropriate, or
  - (b) forward its report to the Discipline Committee without amendment.
- (5) The Subcommittee must notify the lawyer in writing of its decision under subrule (4) and, if the report is amended, provide a copy of the amended report to
- (a) the lawyer, and
  - (b) the Discipline Committee.
- (6) After considering the Conduct Review Subcommittee's report, the Discipline Committee must do one or more of the following:
- (a) decide to take no further action on the complaint;
  - (b) refer the lawyer to the Practice Standards Committee;
  - (c) direct that a citation be issued against the lawyer under Rule 4-17 (1) [*Direction to issue, expand or rescind citation*];
  - (d) rescind the decision under Rule 4-4 (1) (d) [*Action on complaints*] to require the lawyer to appear before the Conduct Review Subcommittee, and substitute another decision under Rule 4-4 (1).
- (7) A member of the Discipline Committee who has participated in the Conduct Review Subcommittee is not, for that reason, precluded from participating in and voting on a decision under subrule (6).
- (8) After making its decision under subrule (6), the Discipline Committee must
- (a) notify the lawyer and the complainant of its decision, and
  - (b) subject to Rule 4-14 [*Privilege and confidentiality*], deliver a copy or summary of the report to the complainant.

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### Privilege and confidentiality

- 4-14** In complying with Rule 4-13 [*Conduct Review Subcommittee report*], the Discipline Committee and the Conduct Review Subcommittee must not disclose to the complainant information subject to the solicitor and client privilege of a client, other than the complainant, or other confidential information that the complainant is not entitled to receive.

### Publication and disclosure

- 4-15** (1) The Executive Director may publish and circulate to the profession a summary of the circumstances of a matter that has been the subject of a conduct review.
- (2) A summary published under subrule (1) must not identify the lawyer or complainant unless that person consents in writing to being identified.
- (3) If a complaint giving rise to a conduct review is known to the public or if a conduct review is ordered in a matter that was the subject of a citation that has been rescinded, the Executive Director may disclose
- (a) the fact that the lawyer is or has been required to appear before a Conduct Review Subcommittee, and
  - (b) the decision of the Discipline Committee under Rule 4-13 (6) [*Conduct Review Subcommittee report*].
- (4) Subject to subrule (5), the Executive Director may disclose the report of a Conduct Review Subcommittee that has been considered by a hearing panel as part of a lawyer's professional conduct record under Rule 4-44 (5) [*Disciplinary action*].
- (5) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

### Evidence of conduct review at the hearing of a citation

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

### Direction to issue, expand or rescind citation

- 4-17** (1) The Discipline Committee or the chair of the Committee may order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer.
- (2) After a hearing has been ordered under subrule (1), the Discipline Committee may direct the Executive Director to add an allegation to a citation.

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- (3) At any time before a panel makes a determination under Rule 4-44 [*Disciplinary action*], the Discipline Committee may rescind a citation or an allegation in a citation and substitute another decision under Rule 4-4(1) [*Action on complaints*].

### Contents of citation

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

### Notice of citation

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

### Disclosure of citation

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

### Amending an allegation in a citation

- 4-21** (1) Discipline counsel may amend an allegation contained in a citation
- (a) before the hearing begins, by giving written notice to the respondent and the Executive Director, and
  - (b) after the hearing has begun, with the consent of the respondent.
- (2) The panel may amend a citation after the hearing has begun
- (a) on the application of a party, or
  - (b) on its own motion.

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- (3) The panel must not amend a citation under subrule (2) unless the respondent and discipline counsel have been given the opportunity to make submissions respecting the proposed amendment.

### Severance and joinder

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

### Interim suspension or practice conditions

- 4-23** (1) In Rules 4-23 to 4-25, “**proceeding**” means the proceeding required under subrule (4).
- (2) If there has been a direction under Rule 4-17 (1) [*Direction to issue, expand or rescind citation*] to issue a citation, 3 or more Benchers may do any of the following:
- (a) in any case not referred to in paragraph (b), impose conditions or limitations on the practice of a respondent who is a lawyer or on the enrolment of a respondent who is an articulated student;
  - (b) suspend a respondent who is a lawyer, if, on the balance of probabilities, the Benchers present consider that the continued practice of the respondent will be dangerous to the public or the respondent’s clients;
  - (c) suspend the enrolment of a respondent who is an articulated student if the Benchers present consider, on the balance of probabilities, that the continuation of the student’s articles will be dangerous to the public or a lawyer’s clients.
- (3) The Benchers referred to in subrule (2) must not include a member of the Discipline Committee.
- (4) Before Benchers take action under this rule, there must be a proceeding at which 3 or more Benchers and discipline counsel must be present.



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- (5) The proceeding referred to in subrule (4) may take place without notice to the respondent if the majority of Benchers present are satisfied that notice would not be in the public interest.
- (6) The respondent and respondent's counsel may be present at a proceeding.
- (7) All proceedings under this rule must be recorded by a court reporter.
- (8) Subject to the Act and these rules, the Benchers present may determine the practice and procedure to be followed at a proceeding.
- (9) Unless the Benchers present order otherwise, the proceeding is not open to the public.
- (10) The respondent or discipline counsel may request an adjournment of a proceeding.
- (11) Rule 4-40 [*Adjournment*] applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.
- (12) Despite subrule (11), the Executive Director is not required to notify a complainant of a request made under subrule (10).
- (13) After a proceeding has begun, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.
- (14) An order made under subrule (2) or varied under subrule (15) is effective until the first of
  - (a) final disposition of the citation,
  - (b) variation or further variation under subrule (15), or
  - (c) a contrary order under Rule 4-26 [*Review of interim suspension of practice conditions*].
- (15) An order made under subrule (2) may be varied by the Benchers who made it, or a majority of them, on the application of the respondent or discipline counsel.
- (16) On an application to vary an order under subrule (15),
  - (a) both the respondent and discipline counsel must be given a reasonable opportunity to make submissions in writing,
  - (b) the Benchers considering an application under subrule (15) may allow oral submissions if, in their discretion, it is appropriate to do so.
  - (c) if, for any reason, a Bencher who participated in making the order is unable to participate in the decision, the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of the Bencher.

### Notification of respondent

- 4-24** When an order is made under Rule 4-23 (2) [*Interim suspension or practice conditions*] without notice to the respondent, the Executive Director must immediately notify the respondent in writing, that
- (a) the order has been made,

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- (b) the respondent is entitled, on request, to a transcript of the proceeding under Rule 4-23 (4), and
- (c) the respondent may apply under Rule 4-26 [*Review of interim suspension or practice conditions*] to have the order rescinded or varied.

### Disclosure

- 4-25** (1) Unless an order has been made under Rule 4-23 (2) [*Interim suspension or practice conditions*], no one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these rules:
- (a) the fact that a Committee or an individual has referred a matter for consideration by 3 or more Benchers under Rule 4-23;
  - (b) the scheduling of a proceeding under Rule 4-23;
  - (c) the fact that a proceeding has taken place.
- (2) When an order has been made or refused under Rule 4-23 (2) [*Interim suspension or practice conditions*], the Executive Director may, on request, disclose the fact of the order or refusal and the reasons for it.

### Review of interim suspension or practice conditions

- 4-26** (1) If an order has been made under Rule 4-23 (2) [*Interim suspension or practice conditions*], the respondent may apply in writing to the President at any time for rescission or variation of the order.
- (2) An application under subrule (1) must be heard as soon as practicable and, if the respondent has been suspended without notice, not later than 7 days after the date on which it is received by the Society, unless the respondent consents to a longer time.
- (3) When application is made under subrule (1), the President must appoint a new panel under Rule 4-39 [*Appointment of panel*].
- (4) A panel appointed under subrule (3) must not include a person who
- (a) participated in the decision that authorized the issuance of the citation,
  - (b) was one of the Benchers who made the order under review, or
  - (c) is part of a panel assigned to hear the citation.
- (5) A hearing under this rule is open to the public, but the panel may exclude some or all members of the public in any circumstances it considers appropriate.
- (6) On application by anyone, the panel may make the following orders to protect the interests of any person:
- (a) an order that specific information not be disclosed;
  - (b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

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- (7) All proceedings at a hearing under this rule must be recorded by a court reporter, and any person may obtain, at his or her expense, a transcript of any part of the hearing that he or she was entitled to attend.
- (8) The respondent and discipline counsel may call witnesses to testify who
  - (a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and
  - (b) are subject to cross-examination.
- (9) If the order under Rule 4-23 (2) [*Interim suspension or practice conditions*] took effect without notice to the respondent, witnesses called by discipline counsel must testify first, followed by witnesses called by the respondent.
- (10) If subrule (9) does not apply, witnesses called by the respondent must testify first, followed by witnesses called by discipline counsel.
- (11) The panel may
  - (a) accept an agreed statement of facts, and
  - (b) admit any other evidence it considers appropriate.
- (12) Following completion of the evidence, the panel must
  - (a) invite the respondent and discipline counsel to make submissions on the issues to be decided by the panel,
  - (b) decide by majority vote whether cause has been shown by the appropriate party under subrule (13) or (14), as the case may be, and
  - (c) make an order if required under subrule (13) or (14).
- (13) If an order has been made under Rule 4-23 (2) [*Interim suspension or practice conditions*] with notice to the respondent, the panel must rescind or vary the order if cause is shown on the balance of probabilities by or on behalf of the respondent.
- (14) If an order has been made under Rule 4-23 (2) [*Interim suspension or practice conditions*] without notice to the respondent, the panel must rescind or vary the order, unless discipline counsel shows cause, on the balance of probabilities, why the order should not be rescinded or varied.

### Appointment of discipline counsel

- 4-27** The Executive Director must appoint a lawyer employed by the Society or retain another lawyer to represent the Society when
- (a) a direction to issue a citation is made under Rule 4-17 [*Direction to issue, expand or rescind citation*],
  - (b) a person initiates a review under section 47 [*Review on the record*],
  - (c) a person appeals a decision to the Court of Appeal under section 48 [*Appeal*], or
  - (d) the Society is a respondent in any other action involving the investigation of a complaint or the discipline of a lawyer.

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### Notice to admit

- 4-28** (1) At any time, but not less than 45 days before a date set for the hearing of a citation, the respondent or discipline counsel may request the other party to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document.
- (2) A request made under subrule (1) must
- (a) be made in writing in a document clearly marked “Notice to Admit” and served in accordance with Rule 10-1 [*Service and notice*], and
  - (b) include a complete description of the fact, the truth of which is to be admitted, or attach a copy of the document, the authenticity of which is to be admitted.
- (3) A party may make more than one request under subrule (1).
- (4) A respondent or discipline counsel who receives a request made under subrule (1) must respond within 21 days by serving a response on the other party in accordance with Rule 10-1 [*Service and notice*].
- (5) The time for response under subrule (4) may be extended by agreement of the parties or by an order under Rule 4-36 [*Preliminary questions*] or 4-38 [*Pre-hearing conference*].
- (6) A response under subrule (4) must contain one of the following in respect of each fact described in the request and each document attached to the request:
- (a) an admission of the truth of the fact or the authenticity of the document attached to the request;
  - (b) a statement that the party making the response does not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.
- (7) If a party who has been served with a request does not respond in accordance with this rule, the party is deemed, for the purposes of the hearing only, to admit the truth of the fact described in the request or the authenticity of the document attached to the request.
- (8) If a party does not admit the truth of a fact or the authenticity of a document under this rule, and the truth of the fact or authenticity of the document is proven in the hearing, the panel may consider the refusal when exercising its discretion respecting costs under Rule 5-11 [*Costs of hearings*].
- (9) A party who has admitted or is deemed to have admitted the truth of a fact or the authenticity of a document under this rule may withdraw the admission with the consent of the other party or with leave granted on an application
- (a) before the hearing has begun, under Rule 4-36 [*Preliminary questions*] or 4-38 [*Pre-hearing conference*], or
  - (b) after the hearing has begun, to the hearing panel.

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### Conditional admissions

- 4-29** (1) A respondent may, at least 14 days before the date set for a hearing under this part, tender to the Discipline Committee a conditional admission of a discipline violation.
- (2) The chair of the Discipline Committee may waive the 14-day time limit in subrule (1).
- (3) The Discipline Committee may, in its discretion,
- (a) accept the conditional admission,
  - (b) accept the conditional admission subject to any undertaking that the Committee requires the respondent to give in order to protect the public interest, or
  - (c) reject the conditional admission.
- (4) If the Discipline Committee accepts a conditional admission tendered under this rule,
- (a) those parts of the citation to which the conditional admission applies are resolved,
  - (b) the Executive Director must
    - (i) record the respondent's admission on the respondent's professional conduct record, and
    - (ii) notify the respondent and the complainant of the disposition, and
  - (c) subject to solicitor and client privilege and confidentiality, the Executive Director may disclose the reasons for the Committee's decision.
- (5) A respondent who undertakes under this rule not to practise law is a person who has ceased to be a member of the Society as a result of disciplinary proceedings under section 15 (3) [*Authority to practise law*].

### Conditional admission and consent to disciplinary action

- 4-30** (1) A respondent may, at least 14 days before the date set for a hearing under this part, tender to the Discipline Committee a conditional admission of a discipline violation and the respondent's consent to a specified disciplinary action.
- (2) The chair of the Discipline Committee may waive the 14-day limit in subrule (1).
- (3) The Discipline Committee may, in its discretion, accept or reject a conditional admission and proposed disciplinary action.
- (4) If the Discipline Committee accepts the conditional admission and proposed disciplinary action, it must instruct discipline counsel to recommend its acceptance to the hearing panel.
- (5) If the panel accepts the respondent's proposed disciplinary action it must
- (a) instruct the Executive Director to record the lawyer's admission on the lawyer's professional conduct record,
  - (b) impose the disciplinary action that the respondent has proposed, and
  - (c) notify the respondent and the complainant of the disposition.

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### Rejection of admissions

- 4-31** (1) A conditional admission tendered under Rule 4-29 [*Conditional admissions*] must not be used against the respondent in any proceeding under this part or Part 5 [*Hearings and appeals*] unless the admission is accepted by the Discipline Committee.
- (2) A conditional admission tendered under Rule 4-30 [*Conditional admission and consent to disciplinary action*] must not be used against the respondent in any proceeding under this part unless
- (a) the admission is accepted by the Discipline Committee, and
  - (b) the admission and proposed disciplinary action is accepted by a hearing panel.
- (3) If a panel rejects the respondent's proposed disciplinary action tendered in accordance with Rule 4-30 [*Conditional admission and consent to disciplinary action*], it must advise the chair of the Discipline Committee of its decision and proceed no further with the hearing of the citation.
- (4) On receipt of a notification under subrule (3), the chair of the Discipline Committee must instruct discipline counsel to proceed to set a date for the hearing of the citation.
- (5) When a panel rejects a proposed disciplinary action tendered in accordance with Rule 4-30 [*Conditional admission and consent to disciplinary action*], no member of that panel is permitted to sit on the panel that subsequently hears the citation.

### Notice of hearing

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

### Summary hearing

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

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

### **Demand for disclosure of evidence**

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

### **Application for details of the circumstances**

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

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

### Preliminary questions

- 4-36** (1) Before a hearing begins, the respondent or discipline counsel may apply for the determination of a question relevant to the hearing by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it,
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
- (3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:
- (a) appoint a panel to determine the question;
  - (b) refer the question to a prehearing conference;
  - (c) refer the question to the panel at the hearing of the citation.
- (4) The President may designate another Benchers to exercise the discretion under subrule (3).
- (5) A panel appointed under subrule (3) (a) is not seized of the citation or any question pertaining to the citation other than that referred under that provision.

### Compelling witnesses and production of documents

- 4-37** (1) Before a hearing begins, the respondent or discipline counsel may apply for an order under section 44 (4) [*Witnesses*] by delivering to the Executive Director and to the other party written notice setting out the substance of the application and the grounds for it.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
- (3) When an application is made under subrule (1), after considering any submissions, the President must
- (a) make the order requested or another order consistent with section 44 (4) [*Witnesses*], or
  - (b) refuse the application.
- (4) The President may designate another Benchers to make a decision under subrule (3).



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- (5) On the motion of the respondent or discipline counsel, the President or another Benchers designated by the President may apply to the Supreme Court under section 44 (5) [*Witnesses*] to enforce an order made under subrule (3).

### Pre-hearing conference

- 4-38** (1) The President may order a pre-hearing conference at any time before the hearing of a citation begins, at the request of the respondent or discipline counsel, or on the President's own initiative.
- (2) When the President orders a conference under subrule (1), the President must
- (a) set the date, time and place of the conference, and
  - (b) designate a Benchers to preside at the conference.
- (3) The Executive Director must notify the respondent and discipline counsel of the time and place of the conference.
- (4) Discipline counsel must be present at the conference.
- (5) The respondent may attend the conference in person, through counsel or both.
- (6) If the respondent fails to attend the conference, the Benchers presiding may proceed with the conference in the absence of the respondent and may make any order under this rule, if the Benchers is satisfied that the respondent had notice of the conference.
- (7) Any person may participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this rule.
- (8) The conference may consider
- (a) the simplification of the issues,
  - (b) the necessity or desirability of amendments to the citation,
  - (c) the possibility of obtaining admissions that might facilitate the hearing,
  - (d) the discovery and production of documents,
  - (e) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public, or that exhibits and other evidence be excluded from public access,
  - (f) setting a date for the hearing to begin, and
  - (g) any other matters that may aid in the disposition of the citation.
- (9) The respondent or discipline counsel may apply to the Benchers presiding at the conference for an order
- (a) for discovery and production of documents,
  - (b) to withhold the identity or contact information of a witness,
  - (c) to adjourn the hearing of the citation,
  - (d) for severance of allegations or joinder of citations under Rule 4-22 [*Severance and joinder*],

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- (e) for disclosure of the details of the circumstances of misconduct alleged in a citation under Rule 4-35 [*Application for details of the circumstances*], or
  - (f) concerning any other matters that may aid in the disposition of the citation.
- (10) The Benchers presiding at a pre-hearing conference may
- (a) adjourn the conference generally or to a specified date, time and place,
  - (b) set a date for the hearing to begin, and
  - (c) allow or dismiss an application made under subrule (9) or referred to the conference under this part.

### Appointment of panel

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

### Adjournment

- 4-40** (1) Before a hearing begins, the respondent or discipline counsel may apply for an order that the hearing be adjourned by delivering to the Executive Director and the other party written notice setting out the grounds for the application.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
- (3) Before the hearing begins, the President must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.
- (4) The President may
- (a) designate another Benchers to make a determination under subrule (3), or
  - (b) refer the application to a prehearing conference.
- (5) After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.
- (6) When an adjournment is granted under this rule, the Executive Director must notify the complainant.
- (7) Rule 4-32 [*Notice of hearing*] does not apply when a hearing is adjourned and re-set for another date.

### Preliminary matters

- 4-41** (1) Before hearing any evidence on the allegations set out in the citation, the panel must determine whether
- (a) the citation was served in accordance with Rule 4-19 [*Notice of citation*], or
  - (b) the respondent waives any of the requirements of Rule 4-19.

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

### Evidence of respondent

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

### Submissions and determination

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

### Disciplinary action

- 4-44** (1) Following a determination under Rule 4-43 [*Submissions and determination*] adverse to the respondent, the panel must
- (a) invite the respondent and discipline counsel to make submissions as to disciplinary action,
  - (b) take one or more of the actions referred to in section 38 (5) or (6) [*Discipline hearings*],
  - (c) include in its decision under this rule
    - (i) any order, declaration or imposition of conditions under section 38(7), and
    - (ii) any order under Rule 5-11 [*Costs of hearings*] on the costs of the hearing, including any order respecting time to pay,
  - (d) prepare a written record, with reasons, of its action taken under subrule (b) and any action taken under subrule (c),
  - (e) if it imposes a fine, set the date by which payment to the Society must be completed, and

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

### Discipline proceedings involving members of other governing bodies

- 4-45** (1) The Executive Director must send written notice of the action to every governing body of which the person concerned is known to be a member when
- (a) a citation is authorized under Rule 4-17 [*Direction to issue, expand or rescind citation*],
  - (b) a disciplinary action is imposed under Rule 4-44 [*Disciplinary action*], or
  - (c) a conditional admission tendered under Rule 4-29 [*Conditional admissions*] is accepted by the Discipline Committee.
- (2) When a citation is authorized against a lawyer who is a member of a governing body or when a governing body initiates disciplinary proceedings against a member of the Society, the Discipline Committee must consult with the governing body about the

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manner in which disciplinary proceedings are to be taken and the Society is bound by any agreement the Discipline Committee makes with the other governing body.

- (3) The Discipline Committee may agree that the venue of disciplinary proceedings be changed to or from that of the Society, if it is in the public interest or if there is a substantial savings in cost or improvement in the convenience of any person without compromising the public interest.
- (4) The Discipline Committee may take action under Rule 4-4 [*Action on complaints*] against a lawyer who
  - (a) has violated a prohibition against practice imposed by a governing body,
  - (b) is the subject of a declaration by a governing body under a provision similar to Rule 4-44 (3) (d) [*Disciplinary action*], or
  - (c) has made an admission that is accepted under a provision similar to Rule 4-29 [*Conditional admission*].
- (5) The fact that a lawyer concerned is or has been the subject of disciplinary proceedings by a governing body does not preclude any disciplinary action for the same or related conduct under this part.
- (6) In a proceeding under this part, the filing of a duly certified copy of the disciplinary decision of a governing body against a lawyer found guilty of misconduct is proof of the lawyer's guilt.

### Discipline involving lawyers practising in other jurisdictions

- 4-46** (1) If it is alleged that a member of the Society has committed misconduct while practising temporarily in another Canadian jurisdiction under provisions equivalent to Rules 2-15 to 2-27 [*Inter-jurisdictional practice*], the Discipline Committee will
- (a) consult with the governing body concerned respecting the manner in which disciplinary proceedings will be conducted, and
  - (b) subject to subrule (2), assume responsibility for the conduct of the disciplinary proceedings under this part.
- (2) The Discipline Committee may agree to allow the governing body concerned to assume responsibility for the conduct of disciplinary proceedings under subrule (1), including the expenses of the proceeding.
  - (3) In deciding whether to agree under subrule (2), the primary considerations will be the public interest, convenience and cost.
  - (4) To the extent that is reasonable in the circumstances, the Executive Director must do the following at the request of a governing body that is investigating the conduct of a member or former member of the Society or a visiting lawyer who has provided legal services:
    - (a) provide all relevant information and documentation respecting the lawyer or visiting lawyer as is reasonable in the circumstances;
    - (b) co-operate fully in the investigation and any citation and hearing.

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- (5) Subrule (4) applies when the Society agrees with a governing body under subrule (2).
- (6) When the Executive Director provides information or documentation to a governing body under subrule (4) or (5), the Executive Director may inform any person whose personal, confidential or privileged information may be included of that fact and the reasons for it.

### Public notice of suspension or disbarment

- 4-47** (1) When a person is suspended under this part or Part 5 [*Hearings and Appeals*], is disbarred or, as a result of disciplinary proceedings, resigns from membership in the Society or otherwise ceases to be a member of the Society as a result of disciplinary proceedings, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation by means including but not limited to the following:
- (a) publication of a notice in
    - (i) the British Columbia Gazette,
    - (ii) a newspaper of general circulation in each municipality and each district referred to in Rule 1-21 [*Regional election of Benchers*], in which the person maintained a law office, and
    - (iii) the Society website, and
  - (b) notifying the following:
    - (i) the Registrar of the Supreme Court;
    - (ii) the Public Guardian and Trustee.
- (2) When a person is suspended under Part 2 [*Membership and Authority to Practise Law*] or 3 [*Protection of the Public*], the Executive Director may take any of the steps referred to in subrule (1).
- (3) A lawyer who is suspended under this part or Part 5 [*Hearings and Appeals*] must inform all clients who reasonably expect the lawyer to attend to their affairs during the period of the suspension and clients or prospective clients who inquire about the availability of the lawyer's services during the suspension period of the following:
- (a) the period during which the lawyer will not be practising;
  - (b) the arrangements the lawyer has put in place to protect the clients' interests while the lawyer will not be practising;
  - (c) the fact that the lawyer is not practising during the relevant period because of the suspension.
- (4) A panel that suspends a lawyer may relieve the lawyer of any of the obligations set out in subrule (3) if the panel is satisfied that it is consistent with the public interest and that imposing the obligation would be unreasonable in the circumstances.

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### Publication of disciplinary action

- 4-48** (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken
- (a) at the conclusion of the facts and determination portion of a hearing of a citation,
  - (b) at the conclusion of the disciplinary action portion of a hearing of a citation,
  - (c) at the conclusion of a hearing of a citation under Rule 4-33 [*Summary hearing*],
  - (d) at the conclusion of a hearing before a review board under section 47 [*Review on the record*],
  - (e) at the conclusion of an appeal to the Court of Appeal under section 48 [*Appeal*],
  - (f) when an order is made or refused under Rule 4-26 (13) or (14) [*Review of interim suspension or practice conditions*],
  - (g) when a lawyer or former lawyer is suspended or disbarred under Rule 4-52 [*Conviction*], or
  - (h) when an admission is accepted under Rule 4-29 [*Conditional admissions*] or 4-30 [*Conditional admission and consent to disciplinary action*].
- (2) The Executive Director may publish and circulate to the profession a summary of any decision, reasons and action taken not enumerated in subrule (1), other than
- (a) a decision not to accept a conditional admission under Rule 4-29 [*Conditional admissions*] or 4-30 [*Conditional admission and consent to disciplinary action*], or
  - (b) any decision under Rule 4-23 (2) [*Interim suspension or practice conditions*].
- (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.

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- (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.

### 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.



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### 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.

### Investigation of books and accounts

- 4-55** (1) If the chair of the Discipline Committee reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that an investigation be made of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.
- (2) When electronic records have been produced or copied pursuant to an order under this rule, the lawyer concerned may request that a specific record be excluded from the investigation on the basis that it contains personal information that is not relevant to the investigation.
- (3) The lawyer must make a request under subrule (2) in writing to a person designated under subrule (6) within 7 days of receiving a copy of the order under this rule.
- (4) An order under this rule that permits the production or copying of electronic records must provide for a method of evaluating and adjudicating exclusion requests made under subrule (2).
- (5) A request under subrule (2) must be refused unless the records in question are retained in a system of storage of electronic records that permits the segregation of personal information in a practical manner in order to comply with the request.
- (6) When an order is made under subrule (1),

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- (a) the Executive Director must designate one or more persons to conduct the investigation, and
- (b) the lawyer or former lawyer concerned must
  - (i) immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence regardless of the form in which they are kept,
  - (ii) provide any explanations that the persons designated under paragraph (a) require for the purpose of the investigation,
  - (iii) assist the persons designated under paragraph (a) to access, in a comprehensible form, records in the lawyer's possession or control that may contain information related to the lawyer's practice by providing all information necessary for that purpose, including but not limited to
    - (A) passwords, and
    - (B) encryption keys, and
  - (iv) not alter, delete, destroy, remove or otherwise interfere with any book, record or account within the scope of the investigation without the written consent of the Executive Director.

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## PART 5 – HEARINGS AND APPEALS

### Application

**5-1** This part applies to

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

### Hearing panels

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

(2) A panel may consist of one Benchers who is a lawyer if

- (a) no facts are in dispute,
- (b) the hearing is to consider a conditional admission under Rule 4-30 [*Conditional admission and consent to disciplinary action*],
- (c) the hearing proceeds under Rule 4-33 [*Summary hearing*],
- (d) the hearing is to consider a preliminary question under Rule 4-36 [*Preliminary questions*],
- (e) it is not otherwise possible, in the opinion of the President, to convene a panel in a reasonable period of time, or
- (f) one or more of the original panel members cannot complete a hearing that has begun.

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

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

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

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

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

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

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### Panel member unable to continue

- 5-3** (1) Despite Rule 5-2 [*Hearing panels*], if a member of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may order that the panel continue with the remaining members.
- (2) Despite Rule 5-2 [*Hearing panels*], if the chair of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may appoint another member of the hearing panel who is a lawyer as chair of the hearing panel, whether or not the lawyer is a current Benchers.

### Disqualification

- 5-4** (1) The following persons must not participate in a panel hearing a citation:
- (a) a person who participated in the decision that authorized issuing the citation;
  - (b) a Benchers who made an order under Rules 3-9 to 3-11 or Rule 4-23 [*Interim suspension or practice conditions*] regarding the respondent;
  - (c) a member of a panel that heard an application under Rule 4-26 [*Review of interim suspension or practice conditions*] to rescind or vary an interim suspension or practice condition or limitation in respect of the respondent.
- (2) A person who participated in the decision to order the hearing on an application for enrolment as an articulated student, for call and admission or for reinstatement must not participate in the panel on that hearing.
- (3) A person must not appear as counsel for any party for three years after
- (a) serving as a Benchers, or
  - (b) the completion of a hearing in which the person was a member of the panel.

### Compelling witnesses and production of documents

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

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### Procedure

- 5-6** (1) Subject to the Act and these Rules, the panel may determine the practice and procedure to be followed at a hearing.
- (2) Before a court reporter begins reporting the proceedings of a hearing, the chair of the panel must ensure that the reporter takes an oath or makes a solemn affirmation to faithfully and accurately report and transcribe the proceedings.
- (3) The applicant, respondent or counsel for the Society may call witnesses to testify.
- (4) All witnesses, including a respondent ordered to give evidence under section 41 (2) (a) [*Panels*],
- (a) must take an oath or make a solemn affirmation, if competent to do so, before testifying, and
  - (b) are subject to cross-examination.
- (5) The panel may make inquiries of a witness as it considers desirable.
- (6) The hearing panel may accept any of the following as evidence:
- (a) an agreed statement of facts;
  - (b) oral evidence;
  - (c) affidavit evidence;
  - (d) evidence tendered in a form agreed to by the respondent or applicant and Society counsel;
  - (e) an admission made or deemed to be made under Rule 4-28 [*Notice to admit*];
  - (f) any other evidence it considers appropriate.

### Communication with Ombudsperson confidential

- 5-7** (1) This rule is to be interpreted in a way that will facilitate the Ombudsperson assisting in the resolution of disputes through communication without prejudice to the rights of any person.
- (2) Communication between the Ombudsperson acting in that capacity and any person receiving or seeking assistance from the Ombudsperson is confidential and must remain confidential in order to foster an effective relationship between the Ombudsperson and that individual.
- (3) The Ombudsperson must hold in strict confidence all information acquired in that capacity from participants.
- (4) In a proceeding
- (a) no one is permitted to give evidence about any discussion or other communication with the Ombudsperson in that capacity, and
  - (b) no record can be admitted in evidence or disclosed under Rule 4-34 [*Demand for disclosure of evidence*] or 4-35 [*Application for details of the circumstances*] if it was produced

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- (i) by or under the direction of the Ombudsperson in that capacity, or
- (ii) by another person while receiving or seeking assistance from the Ombudsperson, unless the record would otherwise be admissible or subject to disclosure under Rule 4-34 [*Demand for disclosure of evidence*] or 4-35 [*Application for details of the circumstances*].

### Public hearing

- 5-8** (1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public in any circumstances it considers appropriate.
- (2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:
- (a) an order that specific information not be disclosed;
  - (b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).
- (3) Despite the exclusion of the public under subrule (1) in a hearing on a citation, the complainant and one other person chosen by the complainant may remain in attendance during the hearing, unless the panel orders otherwise.
- (4) Except as required under Rule 5-9 [*Transcript and exhibits*], when a hearing is in progress, no one is permitted to possess or operate any device for photographing, recording or broadcasting in the hearing room without the permission of the panel or review board, which the panel or review board in its discretion may refuse or grant, with or without conditions or restrictions.
- (5) When a panel or review board makes an order or declines to make an order under this rule, the panel or review board must give written reasons for its decision.

### Transcript and exhibits

- 5-9** (1) All proceedings at a hearing must be recorded by a court reporter, and any person may obtain, at his or her expense, a transcript pertaining to any part of the hearing that he or she was entitled to attend.
- (2) Subject to solicitor-client privilege or an order under Rule 5-8 (2) [*Public hearing*], any person may obtain, at his or her own expense, a copy of an exhibit entered in evidence when a hearing is open to the public.

### Decision

- 5-10** (1) A decision of a hearing panel is made by majority vote.
- (2) On request, the Executive Director must disclose a panel's written reasons for its decision, subject to the protection of solicitor and client privilege and confidentiality.
- (3) When a hearing panel gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

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### Costs of hearings

- 5-11** (1) A panel may order that an applicant or respondent pay the costs of a hearing referred to in Rule 5-1 [*Application*], and may set a time for payment.
- (2) A review board may order that an applicant or respondent pay the costs of a review under section 47, and may set a time for payment.
- (3) Subject to subrule (4), the panel or review board must have regard to the tariff of costs in Schedule 4 [*Tariff for hearing and review costs*] to these Rules in calculating the costs payable by an applicant, a respondent or the Society.
- (4) A panel or review board may order that the Society, an applicant or a respondent recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4 [*Tariff for hearing and review costs*] if, in the judgment of the panel or review board, it is reasonable and appropriate to so order.
- (5) The cost of disbursements that are reasonably incurred may be added to costs payable under this Rule.
- (6) In the tariff in Schedule 4 [*Tariff for hearing and review costs*],
- (a) one day of hearing includes a day in which the hearing or proceeding takes 2 and one-half hours or more, and
  - (b) for a day that includes less than 2 and one-half hours of hearing, one-half the number of units or amount payable applies.
- (7) If no adverse finding is made against the applicant, the panel or review board has the discretion to direct that the applicant be awarded costs.
- (8) If the citation is dismissed or rescinded after the hearing has begun, the panel or review board has the discretion to direct that the respondent be awarded costs in accordance with subrules (3) to (6).
- (9) Costs deposited under Rule 2-92 [*Security for costs*] must be applied to costs ordered under this Rule.
- (10) An applicant must not be enrolled, called and admitted or reinstated until the costs ordered under this Rule or the Act are paid in full.
- (11) As an exception to subrule (10), the Credentials Committee may direct that an applicant be enrolled, called and admitted or reinstated even though costs ordered under this rule have not been paid in full and may make the direction subject to any conditions that the Committee finds appropriate.

### Application to vary certain orders

- 5-12** (1) An applicant or respondent may apply in writing to the Executive Director for
- (a) an extension of time
    - (i) to pay a fine or the amount owing under Rule 5-11 [*Costs of hearings*], or
    - (ii) to fulfill a condition imposed under section 22 [*Credentials hearings*], 38 [*Discipline hearings*], or 47 [*Review on the record*],

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

### Failure to pay costs or fulfill practice condition

- 5-13** (1) An applicant or respondent must do the following by the date set by a hearing panel, review board or Committee or extended under Rule 5-12 [*Application to vary certain orders*]:
- (a) pay in full a fine or the amount owing under Rule 5-11 [*Costs of hearings*];
  - (b) fulfill a practice condition as imposed under section 21 [*Admission, reinstatement and requalification*], 22 [*Credentials hearings*], 27 [*Practice standards*], 32 [*Financial responsibility*], 38 [*Discipline hearings*] or 47 [*Review on the record*], as accepted under section 19 [*Applications for enrollment, call and admission, or reinstatement*], or as varied under these Rules.
- (2) If, on December 31, an applicant or respondent is in breach of subrule (1), the Executive Director must not issue to the applicant or respondent a practising certificate or a non-practising or retired membership certificate, and the applicant or respondent is not permitted to engage in the practice of law.

### Recovery of money owed to the Society

- 5-14** (1) A lawyer or former lawyer who is liable to pay money as follows must pay to the Society the full amount owing by the date set by the Discipline Committee:



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- (a) costs of an audit or investigation;
  - (b) an assessment under Rule 3-80 [*Late filing of trust report*].
- (2) A lawyer who has not paid the full amount owing under subrule (1) by the date set or extended by the Discipline Committee is in breach of these Rules and, if any part of the amount owing remains unpaid by December 31 following the making of the order, the Executive Director must not issue a practising certificate to the lawyer unless the Benchers order otherwise.

### Reviews and appeals

#### Review by review board

- 5-15** (1) In Rules 5-15 to 5-28, “**review**” means a review of a hearing panel decision by a review board under section 47 [*Review on the record*].
- (2) Subject to the Act and these Rules, a review board may determine the practice and procedure to be followed at a review.
- (3) Delivery of documents to a respondent or applicant under Rules 5-14 to 5-26 may be effected by delivery to counsel representing the respondent or the applicant.
- (4) If the review board finds that there are special circumstances and hears evidence under section 47 (4) [*Review on the record*], the Rules that apply to the hearing of evidence before a hearing panel apply.

#### Review boards

- 5-16** (1) When a review is initiated under Rule 5-19 [*Initiating a review*], the President must establish a review board consisting of
- (a) an odd number of persons, and
  - (b) more persons than the hearing panel that made the decision under review.
- (2) A review board must be chaired by a Benchers who is a lawyer.
- (3) Review board members must be permanent residents of British Columbia over the age of majority.
- (4) The chair of a review board who ceases to be a Benchers may, with the consent of the President, continue to chair the review board, and the review board may complete any hearing or hearings already scheduled or begun.
- (5) Two or more review boards may proceed with separate matters at the same time.
- (6) The President may refer a matter that is before a review board to another review board, fill a vacancy on a review board or terminate an appointment to a review board.
- (7) Unless otherwise provided in the Act and these Rules, a review board must decide any matter by a majority, and the decision of the majority is the decision of the review board.

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### Disqualification

**5-17** The following must not participate in a review board reviewing the decision of a hearing panel:

- (a) a member of the hearing panel;
- (b) a person who was disqualified under Rule 5-4 [*Disqualification*] from participation in the hearing panel.

### Review board member unable to continue

- 5-18** (1) Despite Rule 5-16 [*Review boards*], if a member of a review board cannot, for any reason, complete a review that has begun, the President may order that the review board continue with the remaining members, whether or not the board consists of an odd number of persons.
- (2) Despite Rule 5-16 [*Review boards*], if the chair of a review board cannot, for any reason, complete a review that has begun, the President may appoint another member of the review board who is a lawyer as chair of the hearing panel, whether or not the lawyer is a current Benchers.

### Initiating a review

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

### Stay of order pending review

- 5-20** (1) When a review is initiated under Rule 5-19 [*Initiating a review*], the order of the panel or the Practice Standards Committee with respect to costs is stayed.

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- (2) When the Credentials Committee initiates a review under Rule 5-19 (3) [*Initiating a review*], an order of the hearing panel to call and admit or reinstate the applicant is stayed.
- (3) When a review has been initiated under Rule 5-19 [*Initiating a review*], any party to the review may apply to the President for a stay of any order not referred to in subrule (1) or (2).
- (4) The President may designate another Benchers to make a determination under subrule (3).

### Notice of review

**5-21** A notice of review must contain the following in summary form:

- (a) a clear indication of the decision to be reviewed by the review board;
- (b) the nature of the order sought;
- (c) the issues to be considered on the review.

### Record of credentials hearing

**5-22** (1) Unless counsel for the applicant and for the Society agree otherwise, the record for a review of a credentials decision consists of the following:

- (a) the application;
- (b) a transcript of the proceedings before the panel;
- (c) exhibits admitted in evidence by the panel;
- (d) any written arguments or submissions received by the panel;
- (e) the panel's written reasons for any decision;
- (f) the notice of review.

- (2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

### Record of discipline hearing

**5-23** (1) Unless counsel for the respondent and for the Society agree otherwise, the record for a review of a discipline decision consists of the following:

- (a) the citation;
- (b) a transcript of the proceedings before the panel;
- (c) exhibits admitted in evidence by the panel;
- (d) any written arguments or submissions received by the panel;
- (e) the panel's written reasons for any decision;
- (f) the notice of review.

- (2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

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### Record of an order for costs by the Practice Standards Committee

- 5-24** (1) Unless counsel for the lawyer and for the Society agree otherwise, the record for a review of an order for costs under Rule 3-25 [*Costs*] consists of the following:
- (a) the order;
  - (b) all correspondence between the Society and the lawyer relating to the assessment and ordering of costs;
  - (c) the Committee's written reasons for any decision on costs;
  - (d) the notice of review.
- (2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

### Pre-review conference

- 5-25** (1) The President may order a pre-review conference at any time before the hearing on a review, at the request of the applicant, respondent or counsel for the Law Society, or on the President's own initiative.
- (2) When a conference has been ordered under subrule (1), the President must
- (a) set the date, time and place of the conference, and
  - (b) designate a Benchers to preside at the conference.
- (3) Counsel representing the Society must be present at the conference.
- (4) The Executive Director must notify the applicant or the respondent, as the case may be, or his or her counsel, of the time and place of the conference.
- (5) The applicant or the respondent, as the case may be, may attend the conference, in person, through counsel or both.
- (6) If the applicant or the respondent, as the case may be, fails to attend the conference, the Benchers presiding may proceed with the conference in the absence of that party and may make any order under this Rule, if the Benchers is satisfied that the party had been notified of the conference.
- (7) If the Benchers presiding at a pre-review conference considers it appropriate, he or she may allow any person to participate in the conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this Rule.
- (8) The conference may consider
- (a) the simplification of the issues,
  - (b) any issues concerning the record to be reviewed,
  - (c) the possibility of agreement on any issues in the review,
  - (d) the exchange of written arguments or outlines of argument and of authorities,

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- (e) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public or that exhibits and other evidence be excluded from public access,
  - (f) setting a date for the review, and
  - (g) any other matters that may aid in the disposition of the review.
- (9) The Benchers presiding at a pre-review conference may
- (a) adjourn the conference generally or to a specified date, time and place,
  - (b) order the exchange of written arguments or outlines of argument and of authorities, and set deadlines for that exchange,
  - (c) set a date for the review, and
  - (d) make any order or allow or dismiss any application consistent with this Rule.

### Adjournment

- 5-26** (1) Before a hearing on a review commences, the applicant, respondent or counsel for the Society may apply for an order that the hearing be adjourned by delivering to the Executive Director and to the other party written notice setting out the grounds for the application.
- (2) The Executive Director must promptly notify the President of an application under subrule (1).
- (3) Before the hearing begins, the President must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.
- (4) The President may
- (a) designate another Benchers to make a determination under subrule (3), or
  - (b) refer the application to a pre-review conference.
- (5) After a hearing has commenced, the President or other Benchers presiding may adjourn the hearing, with or without conditions, to a specified date, time and place.

### Decision on review

- 5-27** (1) The decision of the review board on a review is made by majority vote.
- (2) The review board must prepare written reasons for its decision on a review.
- (3) When the review board gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.
- (4) The Executive Director must promptly deliver a copy of the review board's written reasons prepared under subrule (2) to the applicant or respondent and counsel for the Society.
- (5) On request, the Executive Director must disclose the review board's written reasons for its decision.

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### Inactive reviews

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

### Appeal to Court of Appeal

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

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## PART 6 – CUSTODIANSHIPS

### Co-operation in conduct of custodianship

- 6-1** A lawyer who is the subject of a custodianship order made under Part 6 of the Act must
- (a) co-operate with the custodian in the conduct of the custodianship, and
  - (b) deliver to the custodian property, documents and information that may be reasonably necessary to facilitate the conduct of the custodianship.

### Report of possible claim

- 6-2** Unless the lawyer has already done so, a custodian must report the following in writing to the Executive Director:
- (a) any act or omission caused by the lawyer of which the custodian becomes aware that may render the lawyer, in the lawyer's professional capacity, liable to a client or other person;
  - (b) any circumstance that the custodian could reasonably expect to be the basis of a claim or suit against the lawyer.

### Acting for lawyer's clients

- 6-3** The custodian of a lawyer's practice must not, until discharged as custodian, act for a client of the lawyer on any matter that the lawyer had acted on.

### Acquiring lawyer's practice

- 6-4** A person who has at any time acted as custodian of a lawyer's practice must not bid on or acquire the lawyer's practice.

### Notice of custodianship order

- 6-5** When a custodianship order is made, the Executive Director may publish to the profession and the public generally, in a form that appears appropriate to the Executive Director, the following information:
- (a) the name of the lawyer who is the subject of a custodianship order;
  - (b) the name and contact information of the custodian;
  - (c) the reasons for the custodianship order.

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## PART 8 – LAWYERS’ FEES

### Reasonable remuneration

- 8-1** (1) A lawyer who enters into a contingent fee agreement with a client must ensure that, under the circumstances existing at the time the agreement is entered into,
- (a) the agreement is fair, and
  - (b) the lawyer’s remuneration provided for in the agreement is reasonable.
- (2) A lawyer who prepares a bill for fees earned under a contingent fee agreement must ensure that the total fee payable by the client
- (a) does not exceed the remuneration provided for in the agreement, and
  - (b) is reasonable under the circumstances existing at the time the bill is prepared.

### Maximum remuneration in personal injury actions

- 8-2** (1) Subject to the court’s approval of higher remuneration under section 66 (7) [*Contingent fee agreement*], the maximum remuneration to which a lawyer is entitled under a contingent fee agreement for representing a plaintiff up to and including all matters pertaining to the trial of an action is as follows:
- (a) in a claim for personal injury or wrongful death arising out of the use or operation of a motor vehicle, 33 1/3% of the amount recovered;
  - (b) in any other claim for personal injury or wrongful death, 40% of the amount recovered.
- (2) Despite subrule (1), a contingent fee agreement may provide that the lawyer may elect to forego any remuneration based on a proportion of the amount recovered and receive instead an amount equal to any costs awarded to the client by order of a court.
- (3) This rule does not prevent a lawyer and client from making a separate agreement for payment beyond the amount specified in subrule (1) to compensate the lawyer for representing the client in an appeal from a trial judgment pronounced in the proceeding for which the lawyer was retained.

### Form and content of contingent fee agreements

- 8-3** A contingent fee agreement must
- (a) be in writing,
  - (b) state that the person who entered into the agreement with the lawyer may, within 3 months after the agreement was made or the retainer between the solicitor and client was terminated by either party, apply to a district registrar of the Supreme Court of British Columbia to have the agreement examined, even if the person has made payment to the lawyer under the agreement, and
  - (c) not include a provision that
    - (i) the lawyer is not liable for negligence or is relieved from any responsibility to which a lawyer would otherwise be subject,



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- (ii) the claim or cause of action that is the subject matter of the agreement cannot be abandoned, discontinued or settled without the consent of the lawyer, a law firm or a law corporation, or
- (iii) the client may not change lawyers before the conclusion of the claim or cause of action that is the subject matter of the agreement.

### Statement of rules in contingent fee agreements

- 8-4** (1) A contingent fee agreement between a lawyer and a plaintiff in a claim for personal injury or wrongful death arising out of the use or operation of a motor vehicle must include the following statement, prominently placed:

Under the Rules of the Law Society of British Columbia, without court approval, a lawyer may charge a maximum of 33 1/3% of the total amount recovered in a claim for personal injury or wrongful death arising out of the use of a motor vehicle.

The percentage limit applies to all matters related to the trial of a lawsuit, but does not include any appeal. A lawyer and a client may make a separate agreement for legal fees for an appeal.

Fees charged by different lawyers vary.

- (2) A contingent fee agreement between a lawyer and a plaintiff in a claim for personal injury or wrongful death not affected by subrule (1) must include the following statement, prominently placed:

Under the Rules of the Law Society of British Columbia, without court approval, a lawyer may charge a maximum of 40% of the total amount recovered in a claim for personal injury or wrongful death.

The percentage limit applies to all matters related to the trial of a lawsuit, but does not include any appeal. A lawyer and a client may make a separate agreement for legal fees for an appeal.

Fees charged by different lawyers vary.

- (3) If a contingent fee agreement includes a provision permitted under Rule 8-2 (2) [*Maximum remuneration in personal injury actions*], the statement required under subrule (1) or (2) must include the following:

The Law Society Rules allow a lawyer and client to agree that the lawyer may choose to charge the amount of costs awarded instead of a percentage of the amount recovered.

# LAW SOCIETY RULES 2015

## PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

### Division 1 – Law Corporations

#### Corporate name

**9-1** A corporation must use a name

- (a) under which no other corporation holds a valid law corporation permit under this division,
- (b) that does not so nearly resembles the name of another corporation holding a valid law corporation permit under this division that it is likely to confuse or mislead the public,
- (c) that complies with the *Code of Professional Conduct*, section 4.2 [Marketing], and
- (d) that includes one of the following phrases:
  - (i) “law corporation”;
  - (ii) “law ULC”;
  - (iii) “law unlimited liability company.”

#### Corporate name certificate

- 9-2** (1) A lawyer may apply to the Executive Director, in a form approved by the Executive Committee, for a certificate that the Society does not object to the incorporation of a company as a law corporation under a proposed name.
- (2) On receipt of an application under subrule (1), the Executive Director must either
- (a) issue a certificate to the lawyer if the Executive Director is satisfied that the intended name complies with Rule 9-1 [Corporate name], or
  - (b) reject the application.
- (3) The Executive Director must notify the lawyer in writing of his or her decision under subrule (2).

#### Review of Executive Director’s decision

- 9-3** (1) A lawyer whose application is rejected under Rule 9-2 [Corporate name certificate] may apply in writing to the Ethics Committee for a review.
- (2) After considering any submissions received from the lawyer and from the Executive Director, the Ethics Committee must
- (a) direct the Executive Director to issue a certificate to the lawyer if it is satisfied that the intended name complies with Rule 9-1 [Corporate name], or
  - (b) reject the application.
- (3) The Ethics Committee must notify the lawyer and the Executive Director in writing of its decision under this Rule.

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### Law corporation permit

- 9-4** A company may apply to the Executive Director for a law corporation permit by delivering to the Executive Director
- (a) a completed permit application in a form approved by the Executive Committee,
  - (b) a true copy of the certificate of incorporation of the company and any other certificates that reflect a change in name or status, and
  - (c) the fee specified in Schedule 1.

### Issuance of permit

- 9-5** (1) Subject to section 82 [*Law corporation permit*], the Executive Director must issue a law corporation permit to a company that has complied with the Act and these rules.
- (2) Subject to subrule (3), a law corporation permit issued under subrule (1) is valid from the effective date shown on it.
- (3) A permit issued to a law corporation ceases to be valid if
- (a) it is revoked under Rule 9-11 [*Revocation of permits*],
  - (b) a practising lawyer who is a voting shareholder in the law corporation dies or otherwise ceases to be a practising lawyer, and no provision is made in the articles of the law corporation for the immediate and automatic disposition of that person's shares in that case,
  - (c) another law corporation that is a voting shareholder in the law corporation ceases to be registered as a company under the *Business Corporations Act* or ceases to hold a valid law corporation permit and no provision is made in the articles of the law corporation for the immediate and automatic disposition of the other law corporation's shares in that case, or
  - (d) the corporation surrenders the permit to the Executive Director.

### Change of corporate name

- 9-6** (1) A law corporation may apply to the Executive Director in a form approved by the Executive Committee for a certificate that the Society does not object to a specific change of name for the law corporation.
- (2) Rules 9-1 to 9-3 apply to an application under subrule (1), with the necessary changes and so far as they are applicable.
- (3) A law corporation must not apply for a change of name under the *Business Corporations Act* unless it has been granted the certificate referred to in subrule (1).
- (4) The Executive Director must issue a new permit to a law corporation that has
- (a) obtained the certificate referred to in subrule (1),
  - (b) delivered to the Executive Director a true copy of the certificate of the Registrar of Companies showing the change of name and the date it is effective, and
  - (c) paid the fee specified in Schedule 1.

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- (5) Subject to Rule 9-5 (3) [*Issuance of permit*], a law corporation permit issued under subrule (4) is valid until the date on which the permit that it replaces would have expired.

### Public disclosure of corporate status

- 9-7** When a lawyer or law firm provides legal services to the public through a law corporation, all advertising for the lawyer or law firm must indicate that the law corporation provides the legal services.

### Corporate information

- 9-8** A law corporation must deliver to the Executive Director copies of its Articles, Notice of Articles and amendments to its Articles or Notice of Articles
- (a) when applying for a permit, and
  - (b) immediately on adoption of new or amended Articles or Notice of Articles.

### Disclosure of corporate information

- 9-9** (1) All information and documents received by the Society under this division are confidential, and no person is permitted to disclose them to any person.
- (2) As an exception to subrule (1), the Society may
- (a) use information and documents for a purpose consistent with the Act and these rules,
  - (b) disclose information and documents to a governing body, and
  - (c) disclose the following information, on request, to any person:
    - (i) the name of a corporation;
    - (ii) a corporation's place of business;
    - (iii) whether a company has a valid law corporation permit;
    - (iv) whether a specified lawyer is an employee or a voting shareholder of a corporation;
    - (v) whether a specified law corporation is a voting shareholder of a law corporation.

### Notice of change in corporate information

- 9-10** The president of a company or his or her designate must promptly advise the Executive Director in writing of any change to the information contained in the permit application or renewal permit application most recently delivered to the Society.

### Revocation of permits

- 9-11** (1) After a hearing, a panel may revoke a law corporation's permit if
- (a) in the course of providing legal services the corporation does anything that, if done by a lawyer, would be professional misconduct or conduct unbecoming a lawyer,

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- (b) the corporation contravenes the Act or a rule, or
  - (c) the corporation ceases to comply with a condition of qualification referred to in section 81 [*Authorized and prohibited activities of law corporations*] or a condition under this division or section 82 [*Law corporation permit*].
- (2) Instead of revoking a law corporation permit under subrule (1), a panel may do one or more of the following:
  - (a) reprimand one or more of the voting shareholders of a law corporation;
  - (b) impose a fine on the law corporation in an amount not exceeding \$50,000;
  - (c) impose conditions or limitations under which the law corporation may continue to provide legal services to the public.
- (3) Any shareholder, director, officer or employee of or contractor to a law corporation may be
  - (a) compelled to give evidence at a proceeding under this division or under Part 5 [*Hearings and appeals*], or
  - (b) required to produce any file or record in that person's possession or control that is relevant to matters raised in the proceeding.
- (4) To the extent reasonably possible, Parts 4 [*Discipline*] and 5 [*Hearings and appeals*] apply to notice of a hearing on the revocation of a law corporation permit and to the hearing as they apply to a citation and the hearing of the citation.
- (5) If a hearing has been ordered on the revocation of a law corporation permit and a citation has been directed to be issued against a shareholder, director, officer or employee of the corporation holding the permit, the Discipline Committee may direct that the citation and the question of the revocation of the law corporation permit be heard together.
- (6) When the Discipline Committee has directed that a citation and the question of the revocation of a law corporation permit be heard together, the panel conducting the hearing may order that they be heard separately.
- (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.

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## 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.

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- (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.
- (2) When a firm is continued as a limited liability partnership, the firm must promptly take reasonable steps to notify in writing each existing client of the firm of the change and the effect of a limited liability partnership in respect of the liability of partners.
- (3) The notice required under subrule (2) must include a statement to the following effect, prominently placed:

The partners in a limited liability partnership are not personally liable for the negligent acts or omissions of another partner or an employee unless the partner knew of the negligent act or omission and did not take reasonable steps to prevent it. Each partner is personally liable for his or her own actions, and the partnership continues to be liable for the negligence of its partners, associates and employees. Accordingly, there is no reduction or limitation on the liability of the partnership.

## LAW SOCIETY RULES 2015

- (4) When a firm is registered as an extraprovincial limited liability partnership under Part 6 [*Limited Liability Partnerships*] of the *Partnership Act*, the firm must promptly take reasonable steps to notify in writing each existing client of the firm in British Columbia of the registration and any change, resulting from the registration, in the liability of the partners.
- (5) Subrule (4) does not apply to a client outside of British Columbia if the firm provides legal services to the client primarily through lawyers outside of British Columbia.
- (6) The notice required under subrule (2) or (4) may be
  - (a) mailed by regular or registered mail to the client at the client's last known address,
  - (b) delivered personally to the client,
  - (c) transmitted by electronic facsimile to the client at the client's last known electronic facsimile number,
  - (d) transmitted by electronic mail to the client at the client's last known electronic mail address, or
  - (e) published in a newspaper distributed in the area in which the client resides or carries on business.

### Change in LLP information and annual reports

**9-18** A limited liability partnership must deliver to the Executive Director copies of the following at the same time that they are filed under Part 6 [*Limited Liability Partnerships*] of the *Partnership Act*:

- (a) an annual report;
- (b) an amendment to the registration statement.

### Disclosure of LLP information

- 9-19** (1) All information and documents received by the Society under this division are confidential, and no person is permitted to disclose them to any person.
- (2) As an exception to subrule (1), the Society may
- (a) use information and documents for a purpose consistent with the Act and these rules,
  - (b) disclose information and documents to a governing body, and
  - (c) disclose to any person on request the name and place of business of a limited liability partnership.

### Notification of non-compliance

**9-20** With the consent of the Credentials Committee, the Executive Director may notify the Registrar of Companies if the Executive Director becomes aware of the failure of a limited liability partnership or one or more of its partners to maintain compliance with the requirements of Part 6 [*Limited Liability Partnerships*] of the *Partnership Act*.



# LAW SOCIETY RULES 2015

## PART 10 – GENERAL

### Service and notice

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

### Duty not to disclose

- 10-2** A person performing any duty or fulfilling any function under the Act or these rules who receives or becomes privy to any confidential information, including privileged information,

## LAW SOCIETY RULES 2015

- (a) has the same duty that a lawyer has to a client not to disclose that information, and
- (b) must not disclose and cannot be required to disclose that information except as authorized by the Act, these rules or an order of a court.

### Records

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

### Security of records

- 10-4** (1) A lawyer must protect his or her records and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.

## **LAW SOCIETY RULES 2015**

- (2) A lawyer must immediately notify the Executive Director in writing of all the relevant circumstances if the lawyer has reason to believe that
- (a) he or she has lost custody or control of any of the lawyer's records for any reason,
  - (b) anyone has improperly accessed or copied any of the lawyer's records, or
  - (c) a third party has failed to destroy records completely and permanently despite instructions from the lawyer to do so.

# LAW SOCIETY RULES 2015

## SCHEDULE 1 – 2015 LAW SOCIETY FEES AND ASSESSMENTS

<b>A. Annual fee</b>		<b>\$</b>
1.	Practice fee (Rule 2-105 [ <i>Annual practising fees</i> ]) .....	1,992.00
2.	Liability insurance base assessment (which may be increased or decreased in individual cases in accordance with Rule 3-40 (1) [ <i>Annual insurance fee</i> ]):	
(a)	full-time practice .....	1,750.00
(b)	part-time practice .....	875.00
3.	Liability insurance surcharge (Rule 3-44 (2) [ <i>Deductible, surcharge and reimbursement</i> ]) .....	1,000.00
4.	Late payment fee for practising lawyers (Rule 2-108 (3) [ <i>Late payment</i> ]) .....	100.00
5.	Retired member fee (Rule 2-4 (3) [ <i>Retired members</i> ]) .....	75.00
6.	Late payment fee for retired members (Rule 2-108 (4)) .....	nil
7.	Non-practising member fee (Rule 2-3 (2) [ <i>Non-practising members</i> ]) .....	300.00
8.	Late payment fee for non-practising members (Rule 2-108 (5)) .....	25.00
9.	Administration fee (R. 2-116 (3) [ <i>Refund on exemption during practice year</i> ]) .....	50.00
<b>B. Trust administration fee</b>		
1.	Each client matter subject to fee (Rule 2-110 (1) [ <i>Trust administration fee</i> ]) ..	15.00
<b>C. Special assessments</b>		
<b>D. Articled student fees</b>		
1.	Application fee for enrolment in admission program (Rules 2-54 (1) (e) [ <i>Enrolment in the admission program</i> ] and 2-62 (1) (b) [ <i>Part-time articles</i> ]) ..	250.00
2.	Application fee for temporary articles (R. 2-70 (1) (c) [ <i>Temporary articles</i> ]) ..	125.00
3.	Application fee for temporary articles (legal clinic) (Rule 2-70 (1) (c)) .....	25.00
4.	Training course registration (Rule 2-72 (4) (a) [ <i>Training course</i> ])	
	until August 31, 2015.....	2,250.00
	effective September 1, 2015 .....	2,500.00
5.	Remedial work (Rule 2-74 (8) [ <i>Review by Credentials Committee</i> ]):	
(a)	for each piece of work .....	50.00
(b)	for repeating the training course	
	until August 31, 2015.....	3,500.00
	effective September 1, 2015 .....	3,900.00
<b>E. Transfer fees</b>		
1.	Application fee for transfer from another Canadian province or territory – investigation fee (Rule 2-79 (1) (f) [ <i>Transfer from another Canadian jurisdiction</i> ]) .....	1,125.00
2.	Transfer or qualification examination (Rules 2-79 (6) and 2-89 (6) [ <i>Returning to practice after an absence</i> ]) .....	300.00

# LAW SOCIETY RULES 2015

<b>F. Call and admission fees</b>	<b>\$</b>
1. After enrolment in admission program (Rule 2-77 (1) (c) [ <i>First call and admission</i> ]) .....	200.00
2. After transfer from another Canadian province or territory (Rule 2-79 (1) (f) [ <i>Transfer from another Canadian jurisdiction</i> ]) .....	200.00
<b>G. Reinstatement fees</b>	
1. Application fee following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-85 (1)(b) [ <i>Reinstatement of former lawyer</i> ]) .....	600.00
2. Application fee following 3 years or more as a former member (Rule 2-85 (1) (b)) .....	500.00
3. Application fee in all other cases (Rule 2-85 (1) (b)) .....	415.00
<b>H. Change of status fees</b>	
1. Application fee to become retired member (Rule 2-4 (2) (b) [ <i>Retired members</i> ]) .....	30.00
2. Application fee to become non-practising member (Rule 2-3 (1) (b) [ <i>Non-practising members</i> ]) .....	60.00
3. Application fee for non-practising or retired member applying for practising certificate (Rule 2-5 (1) (b)) .....	60.00
<b>I. Inter-jurisdictional practice fees</b>	
1. Application fee (Rule 2-19 (3) (b) [ <i>Inter-jurisdictional practice permit</i> ]) .....	500.00
2. Renewal of permit (Rule 2-19 (3) (b)) .....	100.00
<b>J. Corporation and limited liability partnership fees</b>	
1. Permit fee for law corporation (Rule 9-4 (c) [ <i>Law corporation permit</i> ]) .....	300.00
2. New permit on change of name fee (Rule 9-6 (4) (c) [ <i>Change of corporate name</i> ]) .....	75.00
3. LLP registration fee (Rule 9-15 (1) [ <i>Notice of application for registration</i> ]) ....	300.00
<b>K. Practitioners of foreign law</b>	
1. Application fee for practitioners of foreign law (Rule 2-29 (1) (b) [ <i>Practitioners of foreign law</i> ]) .....	600.00
2. Permit renewal fee for practitioners of foreign law (Rules 2-29 (1) (b) and 2-34 (2) (c) [ <i>Renewal of permit</i> ]) .....	125.00
3. Late payment fee (Rule 2-34 (6)) .....	100.00
<b>L. Late fees</b>	
1. Trust report late filing fee (Rule 3-80 (2) (b) [ <i>Late filing of trust report</i> ]) .....	200.00
2. Professional development late completion fee (Rule 3-31 (1) (c) [ <i>Late completion of professional development</i> ]) .....	500.00
3. Professional development late reporting fee (Rule 3-31 (3) (b)) .....	200.00
<b>M. Multi-disciplinary practice fees</b>	
1. Application fee (Rule 2-40 (1) (b) [ <i>Application to practise law in MDP</i> ]).....	300.00

## LAW SOCIETY RULES 2015

- |    |  |          |
|----|--|----------|
| 2. | Application fee per proposed non-lawyer member of MDP<br>(Rules 2-40 (1) (c) and 2-42 (2) [ <i>Changes in MDP</i> ]) ..... | 1,125.00 |
|----|--|----------|

**Note:** The federal goods and services tax applies to Law Society fees and assessments.

# LAW SOCIETY RULES 2015

## SCHEDULE 2 – 2015 PRORATED FEES AND ASSESSMENTS FOR PRACTISING LAWYERS

[Rules 2-77 (1) *[First call and admission]*, 2-79 (1) *[Transfer from another Canadian jurisdiction]*, 2-85 (4) *[Reinstatement of a former lawyer]*, and 3-45 (1) and (2) *[Application for insurance coverage]*]

	Law Society fee	Liability insurance assessment	
		Payable prior to call	Payable by June 30
Full-time insurance			
January	1,992.00	875.00	875.00
February	1,823.73	729.17	875.00
March	1,660.00	583.33	875.00
April	1,491.72	437.50	875.00
May	1,328.00	291.67	875.00
June	1,159.70	145.83	875.00
July	996.00	875.00	0.00
August	827.73	729.17	0.00
September	664.00	583.33	0.00
October	495.72	437.50	0.00
November	332.00	291.67	0.00
December	163.70	145.83	0.00
Part-time insurance			
January	1,992.00	437.50	437.50
February	1,823.73	364.58	437.50
March	1,660.00	291.67	437.50
April	1,491.72	218.75	437.50
May	1,328.00	145.83	437.50
June	1,159.70	100.00	437.50
July	996.00	437.50	0.00
August	827.73	364.58	0.00
September	664.00	291.67	0.00
October	495.72	218.75	0.00
November	332.00	145.83	0.00
December	163.70	100.00	0.00

**Note:** The federal goods and services tax applies to Law Society fees and assessments.

# LAW SOCIETY RULES 2015

## SCHEDULE 3 – 2015 PRORATED FEES FOR NON-PRACTISING AND RETIRED MEMBERS

[Rules 2-3 (1) *[Non-practising members]*, 2-4 (2) *[Retired members]*  
and 2-85 (5) *[Reinstatement of a former lawyer]*]

	Non-practising members fee	Retired members fee
January	300.00	75.00
February	275.00	68.75
March	250.00	62.50
April	225.00	56.25
May	200.00	50.00
June	175.00	43.75
July	150.00	37.50
August	125.00	31.25
September	100.00	25.00
October	75.00	18.75
November	50.00	12.50
December	25.00	6.25

**Note:** The federal goods and services tax applies to Law Society fees and assessments.



# LAW SOCIETY RULES 2015

## SCHEDULE 4 – TARIFF FOR HEARING AND REVIEW COSTS

[Rule 5-11 [*Costs of hearings*]]

Item no.	Description	Number of units
<b>Citation hearing</b>		
1.	Preparation/amendment of citation, correspondence, conferences, instructions, investigations or negotiations after the authorization of the citation to the completion of the discipline hearing, for which provision is not made elsewhere	Minimum 1 Maximum 10
2.	Proceeding under s. 26.01 [ <i>Suspension during investigation</i> ], 26.02 [ <i>Medical examination</i> ] or 39 [ <i>Suspension</i> ] and any application to rescind or vary an order under the Rules, for each day of hearing	30
3.	Disclosure under Rule 4-34 [ <i>Demand for disclosure of evidence</i> ]	Minimum 5 Maximum 20
4.	Application for particulars/preparation of particulars under Rule 4-35 [ <i>Application for details of the circumstances</i> ]	Minimum 1 Maximum 5
5.	Application to adjourn under Rule 4-40 [ <i>Adjournment</i> ] • if made more than 14 days prior to the scheduled hearing date • if made less than 14 days prior to the scheduled hearing date	1 3
6.	Pre-hearing conference	Minimum 1 Maximum 5
7.	Preparation of agreed statement of facts • if signed more than 21 days prior to hearing date • if signed less than 21 days prior to hearing date • delivered to Respondent and not signed	Min. 5 to max. 15 Min. 10 to max. 20 Min. 10 to max. 20
8.	Preparation of affidavits	Minimum 5 Maximum 20
9.	Preparation of Notice to Admit	Minimum 5 Maximum 20
10.	Preparation of response to Notice to Admit	Minimum 5 Maximum 20
11.	All process and correspondence associated with retaining and consulting an expert for the purpose of obtaining opinion(s) for use in the proceeding	Minimum 2 Maximum 10
12.	All process and communication associated with contacting, interviewing and issuing summons to all witnesses	Minimum 2 Maximum 10
13.	Interlocutory or preliminary motion for which provision is not made elsewhere, for each day of hearing	10
14.	Preparation for interlocutory or preliminary motion, per day of hearing	20

## LAW SOCIETY RULES 2015

Item no.	Description	Number of units
15.	Attendance at hearing, for each day of hearing, including preparation not otherwise provided for in tariff	30
16.	Written submissions, where no oral hearing held	Minimum 5 Maximum 15
<b>S. 47 review</b>		
17.	Giving or receiving notice under Rule 5-21 [ <i>Notice of review</i> ], correspondence, conferences, instructions, investigations or negotiations after review initiated, for which provision is not made elsewhere	Minimum 1 Maximum 3
18.	Preparation and settlement of hearing record under Rule 5-23 [ <i>Record of discipline hearing</i> ]	Minimum 5 Maximum 10
19.	Pre-review conference	Minimum 1 Maximum 5
20.	Application to adjourn under Rule 5-26 [ <i>Adjournment</i> ] • If made more than 14 days prior to the scheduled hearing date • If made less than 14 days prior to the scheduled hearing date	1 3
21.	Procedural or preliminary issues, including an application to admit evidence under Rule 5-23 (2) [ <i>Record of discipline hearing</i> ], per day of hearing	10
22.	Preparation and delivery of written submissions	Minimum 5 Maximum 15
23.	Attendance at hearing, per day of hearing, including preparation not otherwise provided for in the tariff	30
<b>Summary hearings</b>		
24.	Each day of hearing	\$2,000
<b>Hearings under Rule 4-30 [<i>Conditional admission and consent to disciplinary action</i>]</b>		
25.	Complete hearing, based on the following factors: (a) complexity of matter; (b) number and nature of allegations; and (c) the time at which respondent elected to make conditional admission relative to scheduled hearing and amount of pre-hearing preparation required.	\$1,000 to \$3,500
<b>Credentials hearings</b>		
26.	Each day of hearing	\$2,000

**Value of units:**

Scale A, for matters of ordinary difficulty: \$100 per unit

Scale B, for matters of more than ordinary difficulty: \$150 per unit

# LAW SOCIETY RULES 2015

## SCHEDULE 5 – FORM OF SUMMONS

[Rule 5-5 (4) *[Compelling witnesses and production of documents]*]

**IN THE MATTER OF THE LEGAL PROFESSION ACT**

**AND**

**IN THE MATTER OF A HEARING CONCERNING**

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**(As the case may be: a member of the Law Society of British Columbia/  
an articulated student/an applicant for enrolment/call and admission/reinstatement)**

### SUMMONS

TO: .

**TAKE NOTICE** that you are required to attend to testify as a witness at the time, date and place set out below.

Time: \_\_\_\_\_

Date: \_\_\_\_\_

Place: The Law Society of British Columbia  
845 Cambie Street  
Vancouver BC V6B 4Z9 (or other venue)

Dated at \_\_\_\_\_, \_\_\_\_\_  
Party/Counsel

this day of \_\_\_\_\_, 20\_\_\_\_

## HISTORICAL NOTES

### RULE 1 -- DEFINITIONS

Definition	Legislative history
“Act”	1998
“admission program”	1998
“advertising”	09/2004

## LAW SOCIETY RULES 2015

Definition	Legislative history
“agreed statement of facts”	04/2009
“applicant”	1998
“appointed Benchers”	09/2009
“articled student”	1998
“articling agreement”	03/2003
“articling start date”	1998
“articling term”	1998
“Barreau”	12/2013
“Benchers”	1998
“chair”	1998
“Chambre”	12/2013
“company”	1998; 05/2004
“complainant”	1998
“complaint”	1998
“conduct unbecoming a lawyer”	09/1999; 09/2012
“costs”	1998
“disbarred lawyer”	1998
“disciplinary record”	06/2013
“discipline violation”	1998; 09/1999
“enrolment start date”	1998
“Executive Committee”	1998
“Executive Director”	1998
“fiduciary property”	03/2015
“firm”	1998; 09/2004; 10/2006; 12/2009
“foreign jurisdiction”	1998
“Foundation”	1998
“funds”	1998
“general”	1998
“general funds”	1998/03/2015
“governing body”	1998
“inter-jurisdictional law firm”	1998
“inter-jurisdictional practice”	06/2001
“investigate”	1998
“law clerk”	1998
“lawyer”	1998
“limited liability partnership” or “LLP”	09/2004
“metadata”	10/2014
“multi-disciplinary practice” or “MDP”	12/2009
“National Mobility Agreement”	12/2011; 12/2013
“net interest”	1998
“officer”	1998
“Ombudsperson”	1998; 05/2000
“panel”	1998
“practice review”	1998

## LAW SOCIETY RULES 2015

Definition	Legislative history
“practice year”	1998
“practitioner of foreign law”	1998; 06/2013
“principal”	1998
“pro bono legal services”	06/2012
“professional conduct record”	1998; 09/2007; 04/2008; 11/2008; 09/2012; 10/2012
“professional corporation”	12/2009
“Protocol”	1998
“provide foreign legal services”	06/2013
“qualification examination”	1998; 06/2006
“reciprocating governing body”	12/2011
“record”	10/2014
“remedial program”	1998
“respondent”	1998; 09/2012
“review board”	09/2012
“rule” or “subrule”	1998
“Second Vice-President-elect”	1998
“section”	1998
“Society”	1998
“suspension”	1998
“Territorial Mobility Agreement”	12/2011
“training course”	1998
“trust funds”	1998; 02/2006; 03/2015
“valuables”	03/2015
“vice-chair”	1998
“visiting lawyer”	11/1999

## PART 1 – ORGANIZATION

### DIVISION 1 - LAW SOCIETY

2015 Rule number	Previous Rule number	Historical notes
1-1	1-1	1998; 12/1999; 09/2009; 12/2009
1-2	1-1.1	12/2009
1-3	1-1.2	12/2009; 12/2012
1-4	1-2	1998; 12/2009
1-5	1-3	1998; 07/2007; 10/2011; 11/2013
1-6	1-4	1998
1-7	1-5	1998; 09/2009
1-8	1-6	1998; 03/2011; 06/2012
1-9	1-7	1998; 09/2009
1-10	1-8	1998
1-11	1-9	1998; 12/2003

## LAW SOCIETY RULES 2015

2015 Rule number	Previous Rule number	Historical notes
1-12	1-10	1998
1-13	1-11	1998
1-14	1-12	1998
1-15	1-14	1998
1-16	1-15	1998
1-17	1-16	1998
1-18	1-17	1998; 09/2013
1-19	1-18	1998
1-20	1-19	1998
1-21	1-20	1998
1-22	1-21	1998; 12/2009
1-23	1-22	1998
1-24	1-23	1998
1-25	1-24	1998
1-26	1-25	1998
1-27	1-26	1998; 09/2009
1-28	1-26.1	09/2009
1-29	1-27	1998
1-30	1-28	1998
1-31	1-29	1998
1-32	1-30	1998
1-33	1-31	1998; 09/2009
1-34	1-32	1998
1-35	1-33	1998
1-36	1-34	1998
1-37	1-35	1998
1-38	1-36	1998
1-39	1-38	1998; 10/2001
1-40	1-37	1998
1-41	1-39	1998; 11/2007; 09/2009; 12/2009; 06/2011
1-42	1-40	1998
1-43	1-41	1998
1-44	1-42	1998
1-45	1-43	1998; 07/2004
1-46	1-44	1998
1-47	1-45	1998; 09/2008
1-48	1-46	1998

### DIVISION 2 - COMMITTEES

## LAW SOCIETY RULES 2015

2015 Rule number	Previous Rule number	Historical notes
1-49	1-47	1998
1-50	1-48	1998; 09/2009; 09/2013
1-51	1-49	1998; 09/2013

### DIVISION 3 – LAW SOCIETY RULES

2015 Rule number	Previous Rule number	Historical notes
1-52	1-50	1998; 01/2013

## PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

### DIVISION 1 – PRACTICE OF LAW

2015 Rule number	Previous Rule number	Historical notes
2-1	2-1	1998; 04/2010
2-2	2-2	1998; 10/2006; 07/2008; 03/2010; 06/2012
2-3	2-3	1998; 07/2004
2-4	2-4	1998; 07/2004
2-5	2-4.1	06/2006; 07/2013
2-6	2-4.2	06/2012; 01/2013
2-7	2-5	1998; 11/1999; 04/2010
2-8	2-6	1998; 09/2003
2-9	2-7	1998
2-10	2-8	1998; 09/2003
2-11	2-9	1998
2-12	2-9.1	10/2004
2-13	2-9.2	07/2012; 12/2012
2-14	2-10	1998; 02/2006; 12/2009
2-15	2-10.1	11/1999; 05/2003; 11/2006; 12/2011; 06/2013
2-16	2-10.2	11/1999; 06/2001; 05/2003
2-17	2-10.21	05/2003
2-18	2-10.3	11/1999; 05/2003; 06/2003
2-19	2-11	1998; 11/1999; 06/2001; 05/2003; 12/2011
2-20	2-12	1998; 11/1999
2-21	2-13	1998; 11/1999; 05/2003
2-22	2-14	1998; 11/1999; 06/2001; 05/2003
2-23	2-14.1	05/2003; 12/2012

## LAW SOCIETY RULES 2015

2015 Rule number	Previous Rule number	Historical notes
2-24	2-15	1998; 11/1999; 06/2001; 05/2003; 10/2003; 07/2012; 12/2012
2-25	2-16	1998; 11/1999; 06/2001; 05/2003; 12/2013
2-26	2-17	1998
2-27	2-17.1	05/2003
2-28	2-17.2	06/2013
2-29	2-18	1998; 12/2011; 07/2012; 06/2013
2-30	2-19	1998; 12/2012; 06/2013
2-31	2-19.1	06/2013
2-32	2-20	1998
2-33	2-21	1998; 12/2012
2-34	2-22	1998
2-35	2-22.1	04/2010; 03/2012; 12/2013
2-36	2-22.2	04/2010; 03/2012; 12/2012; 12/2013
2-37	2-23	1998; 11/1999; 12/2003
2-38	2-23.1	12/2009
2-39	2-23.2	12/2009; 12/2012
2-40	2-23.3	12/2009; 06/2010
2-41	2-23.4	12/2009; 07/2012
2-42	2-23.5	12/2009; 12/2011
2-43	2-23.6	12/2009; 07/2012; 09/2012
2-44	2-23.7	12/2009; 12/2012
2-45	2-23.8	12/2009
2-46	2-23.9	12/2009; 12/2012
2-47	2-23.10	12/2009
2-48	2-23.11	12/2009
2-49	2-23.12	12/2009

### DIVISION 2 – ADMISSION AND REINSTATEMENT

2015 Rule number	Previous Rule number	Historical notes
2-50	2-24	1998; 06/2011
2-51	2-25	1998
2-52	2-26	1998; 11/1999; 03/2003; 09/2012; 09/2014
2-53	2-26.1	02/2004; 06/2005; 12/2009; 07/2012
2-54	2-27	1998; 11/1999; 09/2001; 03/2003; 12/2011; 09/2013
2-55	2-28	1998; 03/2004
2-56	2-29	1998; 11/1999; 03/2005
2-57	2-30	1998; 03/2003; 03/2005; 04/2005
2-58	2-31	1998
2-59	2-32	1998; 03/2003; 12/2009
2-60	2-32.01	05/2011



## LAW SOCIETY RULES 2015

2015 Rule number	Previous Rule number	Historical notes
2-61	2-32.1	03/2003
2-62	2-33	1998; 03/2003; 12/2011
2-63	2-34	1998
2-64	2-36	1998
2-65	2-37	1998
2-66	2-38	1998; 07/2012
2-67	2-39	1998
2-68	2-40	1998
2-69	2-41	1998; 09/2001
2-70	2-42	1998, 09/2001; 03/2003; 12/2011
2-71	2-43	1998; 06/2010; 05/2011
2-72	2-44	1998; 03/2003; 03/2004
2-73	2-44.1	05/2001; 03/2003
2-74	2-45	1998; 03/2003; 03/2004; 05/2007
2-75	2-46	1998; 11/1999
2-76	2-47	1998
2-77	2-48	1998; 11/1999; 05/2002; 03/2003, 06/2012; 09/2012
2-78	2-48.1	11/2009
2-79	2-49	1998; 11/1999; 05/2003; 06/2006; 12/2011; 12/2012; 12/2013
2-80	2-49.1	11/1999; 07/2004
2-81	2-49.2	05/2003; 11/2006
2-82	2-49.3	04/2010; 12/2011; 03/2012; 06/2012; 12/2013
2-83	2-50	1998
2-84	2-51	1998; 11/1999; 04/2010
2-85	2-52	1998; 05/2003; 12/2003; 07/2004; 02/2006; 06/2006; 12/2011; 06/2012
2-86	2-53	1998; 09/2012
2-87	2-54	1998; 05/2009; 07/2012
2-88	2-55	1998; 06/2006; 12/2011
2-89	2-57; 2-58	1998; 11/1999; 05/2000; 06/2006
2-90	2-59	1998; 06/2006; 11/2010
2-91	2-61	1998
2-92	2-62	1998; 06/2003
2-93	2-63	1998; 09/2012
2-94	2-63.01	12/2013
2-95	2-63.02	12/2013
2-96	2-63.1	02/2004; 12/2013
2-97	2-64	1998
2-98	2-65	1998; 10/2007
2-99	2-66	1998
2-100	2-67	1998
2-101	2-68	1998; 07/2007
2-102	2-68.1	01/2012
2-103	2-52(11); 2-69.1	1998; 02/2004; 01/2014

## LAW SOCIETY RULES 2015

2015 Rule number	Previous Rule number	Historical notes
2-104	2-69.2	02/2004; 07/2012; 09/2012

### DIVISION 3 – FEES AND ASSESSMENTS

2015 Rule number	Previous Rule number	Historical notes
2-105	2-70	1998; 05/2004; 06/2012
2-106	2-71	1998
2-107	2-71.1	12/2011
2-108	2-72	1998; 05/2004
2-109	2-72.1	10/2004
2-110	2-72.2	10/2004
2-111	2-72.3	10/2004
2-112	2-72.4	10/2004
2-113	2-72.5	10/2004
2-114	2-73	1998
2-115	2-74	1998; 06/2012
2-116	2-75	1998; 05/2004
2-117	2-77	1998; 12/2003; 03/2005; 07/2006; 07/2012
2-118	2-78	1998

## PART 3 – PROTECTION OF THE PUBLIC

### DIVISION 1 – COMPLAINTS

2015 Rule number	Previous Rule number	Historical notes
3-1	3-1	1998; 11/1999
3-2	3-2	1998
3-3	3-3	1998; 10/2003; 02/2004; 06/2005; 07/2007; 09/2010
3-4	3-4	1998; 09/1999
3-5	3-5	1998; 06/2011; 06/2012
3-6	3-5.01	10/2014
3-7	3-5.1	06/2011
3-8	3-6	1998; 07/2007; 10/2010
3-9	3-7	1998; 10/2007
3-10	3-7.1	03/2010; 09/2012
3-11	3-7.2	09/2012
3-12	3-7.3	09/2012

## LAW SOCIETY RULES 2015

2015 Rule number	Previous Rule number	Historical notes
3-13	3-8	1998; 09/2009
3-14	3-9	1998; 10/2003; 10/2007; 09/2009

### DIVISION 2 – PRACTICE STANDARDS

2015 Rule number	Previous Rule number	Historical notes
3-15	3-10	1998; 06/2011
3-16	3-11	1998
3-17	3-12	1998; 07/2007; 10/2010
3-18	3-13	1998; 06/2012; 07/2013
3-19	3-14	1998; 07/2007; 09/2007
3-20	3-14.1	09/2007; 09/2014
3-21	3-14 (6) and (6.1)	1998; 07/2007; 09/2007; 10/2010
3-22	3-15	1998
3-23	3-16	1998; 02/2004; 06/2005; 09/2007
3-24	3-17	1998; 10/2007
3-25	3-18	1998

### DIVISION 3 – EDUCATION

2015 Rule number	Previous Rule number	Historical notes
3-26	3-18.1	10/2006; 10/2007; 11/2009
3-27	3-18.11	07/2008
3-28	3-18.2	10/2006; 07/2007; 10/2007; 07/2008
3-29	3-18.3	07/2008; 12/2009; 12/2011
3-30	3-18.31	11/2009; 07/2012
3-31	3-18.4	07/2008; 12/2011
3-32	3-18.5	07/2008

### DIVISION 4 – SPECIALIZATION AND RESTRICTED PRACTICE

2015 Rule number	Previous Rule number	Historical notes
3-33	3-18.6	01/2013
3-34	3-19	1998; 12/2012

## LAW SOCIETY RULES 2015

2015 Rule number	Previous Rule number	Historical notes
3-35	3-20	1998; 05/2009; 01/2013
3-36	3-20.1	01/2013
3-37	3-20.2	01/2013
3-38	3-20.3	01/2013

### DIVISION 5 – INSURANCE

2015 Rule number	Previous Rule number	Historical notes
3-39	3-21	1998; 11/1999; 07/2012
3-40	3-22	1998; 06/2003
3-41	3-23	1998; 05/2000; 07/2004
3-42	3-24	1998
3-43	3-25	1998; 05/2003; 04/2010; 03/2012; 06/2012; 12/2013
3-44	3-26	1998; 03/2005; 07/2006
3-45	3-27	1998; 06/2006
3-46	3-27.1	07/2006

### DIVISION 6 – FINANCIAL RESPONSIBILITY

2015 Rule number	Previous Rule number	Historical notes
3-47	1; 3-44	1998; 12/2003; 12/2009
3-48	3-43	1998; 11/1999
3-49	3-43.1	09/2006; 10/2014
3-50	3-44	1998; 12/2003; 05/2005; 09/2006; 07/2007
3-51	3-45	1998; 12/2003; 05/2004; 09/2006
3-52	3-46	1998; 12/2003; 05/2005; 06/2005

### DIVISION 7 – TRUST ACCOUNTS AND OTHER CLIENT PROPERTY

2015 Rule number	Previous Rule number	Historical notes
3-53	3-47	1998; 12/2003; 04/2004; 06/2005; 09/2006; 03/2015
3-54	3-48	1998; 12/2003
3-55	3-48.1	03/2015
3-56	3-49	1998; 12/2003
3-57	3-50	1998

## LAW SOCIETY RULES 2015

<b>2015 Rule number</b>	<b>Previous Rule number</b>	<b>Historical notes</b>
3-58	3-51	1998; 12/2003; 02/2006
3-59	3-51.1	04/2004; 06/2005; 11/2009
3-60	3-52	1998; 12/2003
3-61	3-53	1998
3-62	3-54	1998
3-63	3-55	1998
3-64	3-56	1998; 02/2003; 03/2004; 05/2004; 06/2005; 07/2009; 11/2009
3-65	3-57	1998; 03/2002; 12/2009; 07/2010; 04/2011; 03/2015
3-66	3-58	1998; 02/2006
3-67	3-59	1998; 12/2003; 05/2004; 10/2014
3-68	3-60	1998; 12/2003; 06/2005
3-69	3-61	1998; 12/2003
3-70	3-61.1	06/2005; 10/2014
3-71	3-62	1998; 12/2003; 10/2014
3-72	3-63	1998; 12/2003; 05/2004
3-73	3-65	1998; 12/2003; 04/2006; 10/2014
3-74	3-66	1998; 12/2003
3-75	3-68	1998; 12/2003; 10/2014; 03/2015
3-76	3-69	1998; 12/2003
3-77	3-70	1998
3-78	3-71	1998; 12/2003
3-79	3-72	1998; 05/2003; 12/2003; 02/2006
3-80	3-74	1998; 05/2003; 12/2003; 02/2006
3-81	3-74.1	05/2003; 12/2003; 02/2006; 09/2006; 03/2015
3-82	3-75	1998; 12/2003; 09/2006
3-83	3-77	1998; 12/2003
3-84	3-78	1998; 05/2003; 12/2003; 02/2006
3-85	3-79	1998; 09/2006
3-86	3-79.1	09/2006
3-87	3-80	1998; 12/2003; 02/2006

### DIVISION 8 – UNCLAIMED TRUST MONEY

<b>2015 Rule number</b>	<b>Previous Rule number</b>	<b>Historical notes</b>
3-88	3-81	1998
3-89	3-82	1998; 03/2015
3-90	3-83	1998; 05/2004
3-91	3-84	1998; 03/2015
3-92	3-85	1998; 03/2015
3-93	3-86	1998; 03/2015
3-94	3-87	1998; 03/2015

## LAW SOCIETY RULES 2015

### DIVISION 9 – REAL ESTATE PRACTICE

2015 Rule number	Previous Rule number	Historical notes
3-95	3-88	02/2003
3-96	3-89	02/2003

### DIVISION 10 – CRIMINAL CHARGES

2015 Rule number	Previous Rule number	Historical notes
3-97	3-90	05/2003; 06/2007

### DIVISION 11 – CLIENT IDENTIFICATION AND VERIFICATION

2015 Rule number	Previous Rule number	Historical notes
3-98	3-91	11/2008; 12/2008; 01/2009
3-99	3-92	11/2008; 12/2008
3-100	3-93	11/2008; 12/2008
3-101	9-94	11/2008; 12/2008
3-102	3-95	11/2008; 12/2008
3-103	3-96	11/2008
3-104	3-97	11/2008; 12/2008
3-105	3-98	11/2008
3-106	3-99	11/2008
3-107	3-100	11/2008
3-108	3-101	11/2008
3-109	3-102	11/2008; 12/2008

### PART 4 – DISCIPLINE

2015 Rule number	Previous Rule number	Historical notes
4-1	4-1	1998; 11/1999; 07/2005
4-2	4-2	1998; 07/2007; 06/2011
4-3	4-3	1998; 07/2007; 10/2010
4-4	4-4	1998; 07/2005; 10/2010
4-5	4-4.1	07/2007; 10/2010

## LAW SOCIETY RULES 2015

2015 Rule number	Previous Rule number	Historical notes
4-6	4-4.2	06/2012; 07/2013
4-7	4-5	1998; 07/2007
4-8	4-6	1998; 05/2003; 02/2004; 10/2010
4-9	4-6.1	07/2005
4-10	4-6.2	07/2005; 07/2012
4-11	4-7	1998; 09/2009
4-12	4-8	1998; 09/1999
4-13	4-9	1998; 07/2005; 10/2007; 10/2010; 10/2011
4-14	4-10	1998; 07/2005
4-15	4-11	1998; 10/2003
4-16	4-12	1998
4-17	4-13	1998; 04/2008; 10/2010
4-18	4-14	1998
4-19	4-15	1998; 09/1999; 09/2007; 10/2010; 04/2013
4-20	4-16	1998; 02/2003; 05/2003
4-21	4-16.1	10/2010
4-22	4-16.2	10/2010
4-23	4-17	1998; 10/2001; 10/2006; 03/2010; 10/2010; 09/2012
4-24	4-18	1998
4-25	4-18.1	10/2006
4-26	4-19	1998; 09/1999; 10/2006; 04/2009; 09/2012
4-27	4-20	1998; 09/2012
4-28	4-20.1	04/2013
4-29	4-21	1998; 02/2003; 05/2003; 10/2007
4-30	4-22	1998; 10/2007
4-31	4-23	1998; 02/2003
4-32	4-24	1998; 10/2010
4-33	4-24.1	07/2007; 04/2009; 12/2009; 10/2010; 04/2013
4-34	4-25	1998; 09/1999; 10/2010
4-35	4-26	1998; 10/2010
4-36	4-26.1	10/2010
4-37	4-26.2	12/2013
4-38	4-27	1998; 05/2003; 10/2010; 12/2013
4-39	4-28	1998
4-40	4-29	1998; 09/1999; 10/2006; 10/2007; 04/2009; 10/2010
4-41	4-30	1998; 10/2010; 04/2013; 06/2014
4-42	4-32	1998; 10/2010
4-43	4-34	1998; 07/2007; 10/2010
4-44	4-35	1998; 03/2005; 07/2007; 04/2008; 03/2010; 10/2010; 06/2012; 07/2012
4-45	4-36	1998; 09/1999; 06/2001; 10/2010
4-46	4-36.1	07/2003; 10/2003
4-47	4-37	1998; 03/1999; 10/2006; 04/2007; 11/2007
4-48	4-38	1998; 05/2003; 10/2006; 07/2007; 12/2009; 10/2010; 09/2012; 01/2014

## LAW SOCIETY RULES 2015

2015 Rule number	Previous Rule number	Historical notes
4-49	4-38.1	05/2003; 02/2004; 10/2006; 12/2009; 10/2010
4-50	4-38.2	06/2005; 07/2012
4-51	4-39	1998
4-52	4-40	1998; 06/2012
4-53	4-41	1998; 04/2013
4-54	4-42	1998
4-55	4-43	1998; 10/2010; 12/2010; 07/2011; 10/2014

## PART 5 – HEARINGS AND APPEALS

2015 Rule number	Previous Rule number	Historical notes
5-1	5-1	1998; 05/2002; 09/2012
5-2	5-2	1998; 09/2005; 07/2007; 10/2010; 09/2012
5-3	5-2.1	03/2015
5-4	5-3	1998; 02/2002; 09/2012; 09/2012
5-5	5-4	1998; 10/2010; 07/2011; 07/2012; 12/2013
5-6	5-5	1998; 04/2009; 10/2010; 04/2013
5-7	4-33	1998
5-8	5-6	1998; 05/2003; 06/2012; 12/2012
5-9	5-7	1998; 05/2003
5-10	5-8	1998; 05/2003
5-11	5-9	1998; 03/1999; 06/1999; 09/1999; 06/2007; 10/2010; 04/2012; 09/2012; 01/2013
5-12	5-10	1998; 06/2007; 09/2007; 09/2012; 12/2012; 09/2014
5-13	5-10.1	09/2014
5-14	5-11	1998; 12/2003; 07/2008; 06/2012
5-15	5-12	1998; 05/2002; 07/2007; 10/2007; 09/2012; 12/2012
5-16	5-12.1	09/2012
5-17	5-12.2	09/2012
5-18	5-12.3	03/2015
5-19	5-13	1998; 09/1999; 05/2002; 07/2007; 10/2007; 10/2010; 12/2010; 09/2012
5-20	5-14	1998; 06/1999; 09/1999; 05/2002; 09/2012; 04/2013
5-21	5-15	05/2002; 10/2007; 09/2012
5-22	5-16	05/2002; 07/2007; 10/2007; 07/2012; 09/2012
5-23	5-17	05/2002; 07/2007; 10/2007; 07/2012; 09/2012
5-24	5-17.1	09/2012
5-25	5-18	05/2002; 05/2003; 04/2009; 10/2010
5-26	5-19	05/2002; 10/2007; 10/2010; 09/2012
5-27	5-20	07/2007; 09/2012
5-28	5-21	10/2007



## LAW SOCIETY RULES 2015

2015 Rule number	Previous Rule number	Historical notes
5-29	5-22	09/2012

### PART 6 – CUSTODIANSHIPS

2015 Rule number	Previous Rule number	Historical notes
6-1	6-1	1998
6-2	6-2	1998
6-3	6-3	1998
6-4	6-4	1998
6-5	6-5	05/2005

### PART 7 – LAW FOUNDATION

No rules

### PART 8 – LAWYERS’ FEES

2015 Rule number	Previous Rule number	Historical notes
8-1	8-1	1998
8-2	8-2	1998; 04/2007
8-3	8-3	1998; 09/1999
8-4	8-4	1998; 04/2007

### PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

#### DIVISION 1 – LAW CORPORATIONS

2015 Rule number	Previous Rule number	Historical notes
9-1	9-1	1998; 09/2004; 11/2009; 12/2012; 04/2013
9-2	9-2	1998
9-3	9-3	1998

## LAW SOCIETY RULES 2015

2015 Rule number	Previous Rule number	Historical notes
9-4	9-4	1998; 09/1999
9-5	9-5	1998; 05/2004; 12/2004
9-6	9-6	1998; 05/2004
9-7	9-7	1998; 09/2004
9-8	9-8	1998; 03/1999; 09/2004; 12/2004
9-9	9-9	1998; 09/2004
9-10	9-10	1998
9-11	9-11	1998; 09/2004; 06/2005

### DIVISION 2 – LIMITED LIABILITY PARTNERSHIPS

2015 Rule number	Previous Rule number	Historical notes
9-12	9-12	09/2004
9-13	9-13	09/2004; 04/2005
9-14	9-14	09/2004; 11/2009; 12/2012
9-15	9-15	09/2004; 04/2005; 07/2006; 12/2009
9-16	9-16	09/2004; 07/2006
9-17	9-17	09/2004; 12/2004
9-18	9-18	09/2004
9-19	9-19	09/2004
9-20	9-20	09/2004

### PART 10 – GENERAL

2015 Rule number	Previous Rule number	Historical notes
10-1	10-1	1998; 10/2007; 10/2010; 04/2013; 01/2014]
10-2	10-2	1998
10-3	10-4	10/2014
10-4	10-5	10/2014

The Law Society  
*of British Columbia*



## **Staff Calls to the Lawyers Assistance Program**

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March 2015

Prepared for: Benchers

Prepared by: Deborah Armour, Chief Legal Officer  
Michael Lucas, Manager, Policy and Legal Services

Purpose: Decision in Principle

## Resolution

That the Benchers:

1. authorize the Executive Director to contact the Lawyers Assistance Program (“LAP”) concerning a lawyer that staff has identified to be displaying indicia of problems on which LAP could offer assistance; and
2. approve in principle an amendment to the Rules that will permit the Executive Director to make the contact. The Executive Director may delegate that responsibility to appropriate staff.

## Synopsis

1. Given the nature of the work done by the Professional Regulation and Practice Standards Departments in particular, Law Society staff often witness lawyers experiencing issues where it is believed the Lawyers Assistance Program (“LAP”) could provide meaningful assistance. Such issues include suspected mental health and addiction issues. In some cases it is believed there is a significant threat to the lawyer including the risk of suicide. This puts additional stress on staff who currently have no way to immediately address such issues, other than calling law enforcement in cases of imminent danger. Law Society rules as currently drafted prevent staff from providing information to LAP about individuals in need of assistance. Being able to do so would provide opportunities to proactively address many issues that otherwise develop into more significant problems requiring regulatory action. Being able to make such calls is therefore in the public interest and, it is believed, could result in much needed assistance to struggling lawyers.
2. By contacting LAP, staff would simply be taking steps that are currently open to lawyers generally with the same requirements applying. There would be no communication back from LAP to the Law Society. Typically LAP would require at least one further contact before taking any steps. Calls to LAP by the Law Society would in many cases be in situations where disciplinary steps were not seen to be appropriate, but there could be some cases where disciplinary action is being or may be pursued.

## Background

3. The Professional Regulation Department receives 1000 to 1200 complaints a year. 80 to 85% of those are closed at the staff level. While a number of files are closed as not disclosing proof of professional misconduct, many of the closed files give rise to concerns about the lawyer. Staff remediate where appropriate in an attempt to avoid such issues in the future, often referring lawyers to relevant sections of our website and other resources including the

Small Firm Practice Course, the Practice Refresher Course or the Communications Toolkit – all developed by the Law Society to assist lawyers and thereby proactively regulate.

4. Many complaints received relate to lawyers who are exhibiting concerning behaviours where the most effective response is not a current remedial resource. Such behaviours include an inability to meet deadlines, to respond appropriately to clients and other lawyers and generally to cope with the demands of practice. The underlying causes of such behaviours can often be mental health issues including depression, anxiety and addictions. These sorts of issues can often be dealt with effectively through LAP.
5. LAP is an organization of members of the BC legal community (lawyers, judges, support staff, etc.), independent of the Law Society. The program assists individuals within the legal community who suffer from drug and alcohol dependency, depression, stress, and other personal issues. It provides “confidential outreach, education, support and referrals” to members of the legal community. A lawyer may contact LAP directly for assistance. LAP itself will contact a lawyer when they have received 2 independent referrals about an individual.
6. It has been noted in the past in presentations made to the Benchers by LAP’s Executive Director Derek LaCroix, QC that many lawyers in serious distress will not voluntarily ask for or seek help. Mr. LaCroix has also noted that early detection and intervention greatly improves the rate of successful recovery.
7. In October, 2001, the Benchers approved in principle a recommendation made by the Practice Standards Committee that a rule be created to allow that Committee, in appropriate cases, to provide LAP with the name and any other necessary information of a lawyer who had been the subject of a meeting with the Committee or to a Practice Review.
8. The matter returned to the Benchers in December 2001 together with a draft proposed rule amendment that would permit such disclosure. Mr. McDiarmid, then chair of the Practice Standards Committee, outlined the request from the Practice Standards Committee for an amendment to the Law Society Rules that would permit the Committee, in appropriate cases, to provide to LAP the name of a lawyer, and any other necessary information, who has been the subject of a Review by the Committee. He said the Practice Standards Committee thought this rule change would provide an additional tool needed to protect both the public and members. Concerns about confidentiality, our relation with LAP and member perception were raised during the Bencher discussion and Mr. McDiarmid noted the Practice Standards Committee had debated all the points that had been raised and concluded that the benefits to the public and the member would outweigh the potential harms. In his view it was important to remember that many people suffering from the kind of problems contemplated are in denial and the somewhat heavy-handed responses available to the Law Society may do more harm than good, whereas the LAP may be able to assist the member. Nevertheless, the motion did not receive the necessary two-thirds support to pass.

9. The current examination of the issue is approached from the point of view as to whether *staff* should be able to contact LAP. The Board of LAP has advised the Chief Legal Officer that it would accept calls from Law Society staff concerning members of the legal profession who are, or who are perceived by staff to be, demonstrating behaviour that suggests they are suffering from difficulties. (See attached letter from Derek LaCroix). The information being disclosed would, essentially, be information that others could also have observed. It would not necessarily be unique to the Law Society. These calls to LAP from Law Society staff would be treated exactly as would calls from any other person, would be kept strictly confidential by LAP, and LAP would not report back to the Law Society. LAP confirms that generally it will need at least two independent calls before outreach with the lawyer is attempted.
10. In most cases the concerns staff have about particular lawyers come as a result of behaviours observed in dealing with complaints. LAP seeks enough information to enable it to understand the behaviour of concern and to follow up with the lawyer in question. It is anticipated that the substance of referrals to LAP would be in the nature of sharing those observations.

## Evaluation Criteria

11. In the course of employment at the Law Society, staff routinely comes into contact with members of the legal community, most of whom are, of course, lawyers. Most of the interaction is in connection with matters relating to regulatory issues, usually through professional conduct or disciplinary investigations or practice standards matters. During such interactions, there are often telling indications of concerning behaviours – the type of “life issues” that can affect a lawyer’s ability to practise law. Sometimes these issues are admitted directly by the lawyer under investigation. Sometimes the evidence is circumstantial, but is such that it leaves staff with the strong inference of substance abuse, addictions, or mental health concerns.
12. The public interest will be well-served where lawyers who suffer from mental health or addiction problems to a degree that adversely affects their ability to practise law obtain assistance with their issues. Often the complaint that has given rise to the contact with the Law Society is not serious enough to attract a disciplinary result. The lawyer will thus be continuing to practise law. If there are addiction or mental health issues that go unchecked, the risk of harm to clients and to the lawyer increases. Even if the lawyer’s conduct does result in a disciplinary result, the lawyer may still be able to practise law and mental health or addiction issues should be dealt with. The possibility of immediate assistance being offered to the lawyer through LAP could alleviate considerable distress and future complaints.

13. If staff lawyers have identified indicators of these types of problems, but without sufficient real evidence to address the matter through a regulatory result, there is currently little that can be done given the confidentiality requirements over the information obtained. Should staff therefore be able to contact an organization that may be able to offer assistance to the lawyer, that in turn will protect clients? It is not likely in the public interest to ignore an avenue that could assist in ameliorating issues that prevent a lawyer from practising law in a competent manner.
14. Many lawyers who are afflicted with these issues are in a state of denial as to the existence of a problem. While staff could and does recommend directly to a lawyer that the lawyer contact LAP him or herself, there is no guarantee that the lawyer will do so.

### ***Public Interest***

15. The Law Society's object and duty is to protect the public interest in the administration of justice by, inter alia, ensuring the honour and competence of lawyers. It is in the public interest that lawyers practise law free from any substance abuse, addiction or mental health issues that put clients at risk. The Law Society was an integral part of the process through which LAP was created. Having been involved in the creation of a program designed to help lawyers facing issues that interfered with their well-being and, by extension, their ability to practise law and act for their clients in an effective, competent manner, it may seem strange that the Law Society would not itself seek to make calls to LAP where indications present themselves concerning issues with which LAP could assist.
16. When assessing the public interest, the question to ask is "isn't the public interest better served by creating opportunities for lawyers who may be in need of assistance with mental health, addiction or substance abuse problems?" Would the Law Society be serving the public interest by staying silent with information that, if shared with LAP, could result in assistance to a lawyer whose practice was suffering due to these problems?
17. Moreover, the Law Society's reputation with the public could suffer if it were known that the Law Society does not reach out to LAP where Law Society staff have these concerns, particularly if they could affect the lawyer's practise and relationship with clients or other justice system participants.

### ***Program Effectiveness***

18. In the past, concerns have been raised that if lawyers believe that the Law Society will communicate with LAP, lawyers may not be as forthcoming in providing information to investigators. If this were the case, the effectiveness of regulatory programs could be compromised. Regulatory staff do not believe there is a real risk in this regard. As contemplated above, in most instances the substance of s staff calls to LAP would be based on staff's observations of behaviours giving rise to concerns, not information coming from

the lawyer or a third party. In these cases, the information being disclosed would be information about behaviours that others could also have observed, and would therefore not be information unique to the Law Society<sup>1</sup>.

### ***Member Relations***

19. Concerns have been expressed in past discussions of this issue about how lawyers would perceive a policy decision to allow the Law Society to contact LAP based on information it had gathered about a lawyer in the course of that lawyer's engagement with the Law Society. It has been said that some may view such a decision as an unwarranted intrusion into the personal lives of lawyers.
20. This concern is ameliorated somewhat if one considers that any call to LAP is itself treated confidentially by LAP. The Law Society would never know what, if any action resulted from its call to LAP.
21. The concern then is really one about how lawyers would react to their regulatory body acting in a way that some would characterize as paternalistic.
22. Again, this can be countered by recognizing that proactive regulation is very effective. Dealing with issues before they become regulatory problems, thereby reducing harm to the public, is a most legitimate regulatory exercise. In addition, part of the Law Society's object and duty is to support and assist lawyers in fulfilling their duties in the practice of law. If Law Society staff members have identified concerns about a lawyer with which LAP could help, one could logically argue that it would be consistent with the Law Society's duties as expressed in s. 3(e) of the *Legal Profession Act* to assist the lawyer by calling LAP.

### ***Relationship between LAP and the Law Society***

23. While the Law Society had a role to play in the creation of LAP, LAP and the Law Society are independent organizations. LAP shares no information about its specific activities with the Law Society, and guards the confidentiality of its processes and dealings with lawyers very carefully.
24. Some thought therefore needs to be given to whether calls by Law Society staff to LAP will create a perception of a tie between LAP and the Law Society. If the process is simply a call by staff with a concern about behaviour of the lawyer that could have been noted by others, and if there is no report back from LAP to the Law Society, this perception is addressed.

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<sup>1</sup> Different considerations would be required, however, where the information giving rise to the concern came from the lawyer only in the course of being investigated, such as through an admission to staff.



Nevertheless, procedures should be put in place to ensure the disclosure of only the necessary information to make an effective referral.

### ***Legal Issues***

25. The disclosure of information by the Law Society to third parties raises legal issues.

26. Section 88(3) of the *Legal Profession Act* says:

(3) A person who, during the course of an investigation, audit, inquiry or hearing under this Act, acquires information or records that are confidential or subject to solicitor client privilege must not disclose that information or those records to any person except for a purpose contemplated by this Act or the rules.

Rule 3-3(1) of the Law Society Rules says:

**3-3 (1)** No one is permitted to disclose any information or records that form part of the Executive Director's investigation of a complaint or the Complainants' Review Committee's review of it except for the purpose of complying with the objectives of the Act or with these Rules.

Section 33 of the *Freedom of Information and Protection of Privacy Act (FOIPPA)* says:

**33** A public body may disclose personal information in its custody or under its control only as permitted under section 33.1, 33.2 or 33.3.

27. “Personal Information” is defined in that Act as follows:

**"personal information"** means recorded information about an identifiable individual other than contact information.

28. Reading these three enactments together, information gathered by the Law Society about a lawyer beyond the lawyer's name and business address is “personal information” that may not be disclosed unless there is a provision in sections 33.1, 33.2 or 33.3 of the *FOIPPA* that permits disclosure. Regardless of *FOIPPA*, information gathered by the Law Society that is confidential cannot be disclosed except for a purpose contemplated by the *Legal Profession Act* or the Law Society Rules, and any information gathered by the Law Society in the course of the investigation of a complaint cannot be disclosed except for the purpose of complying with the objectives of the *Act* or Rules.

29. One of the permissions for the disclosure of personal information under *FOIPPA* is found in s. 33.1(c), which permits the disclosure of information in accordance with an enactment of British Columbia or Canada that authorizes or requires its disclosure. “Enactments” include both primary and subordinate legislation, such as regulations under an Act. Law Society rules are legally regulations under the *Legal Profession Act*, so they constitute an “enactment.” Therefore, Law Society Rules that authorize the disclosure of information meet the requirements of s. 33.1. The Law Society could consequently pass a rule

authorizing the disclosure of information to LAP in specific circumstances that would address the otherwise general prohibition of such information under *FOIPPA*.

30. Disclosure of confidential information gathered in accordance with the *Legal Profession Act* or pursuant to an investigation that may not otherwise be disclosed by virtue of s.88(3) or Rule 3-3(1) can be disclosed for the purpose of complying with the *Act* or the Rules. The Law Society could, therefore, create a rule authorizing disclosure of information that will meet the requirements of *FOIPPA* that permit disclosure. That Rule should be connected to fulfilling a purpose of complying with the *Act* or Rules, but as described above, such disclosure could be done for the purpose of complying with s. 3(e) of the *Legal Profession Act*.
31. Because the Law Society is governed by *FOIPPA*, it is possible that should someone (such as the lawyer under investigation) make an *FOI* request about whether staff called LAP concerning the lawyer's behaviour, the Law Society could not refuse to answer the question. A rule change such as that described above would inform everyone that a call by staff to LAP was possible.

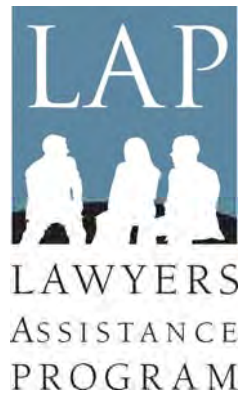
## Conclusion

32. There is a valid policy rationale for amending the rules to permit staff to contact LAP in appropriate cases. Being able to do so fulfils important regulatory ends because it allows the Law Society to proactively address issues before they develop into conduct that requires regulatory action. The proposed action is in the public interest, and is, as described above, consistent with s. 3(e) of the *Legal Profession Act*. It is also consistent with the Strategic Plan, because it makes the Law Society a more effective regulator.
33. Turning a blind eye to indicia of concern where help could be made available is not in the public interest or in the interests of the lawyers themselves. The Law Society ought to take steps to protect the public by assisting lawyers in fulfilling their duties in the practice of law, and if staff lawyers are concerned about the well-being of a lawyer but cannot themselves do anything directly, a referral to an organization that can seems only to make sense.

## Subsequent Steps

34. If the Benchers agree in principle that staff should be able to contact LAP regarding lawyers about whom they have concerns about mental health, addiction or substance abuse issues, the matter will need to be referred to the Act and Rules Committee for the necessary rule changes, which will then be returned to the Benchers for approval at a later date.

35. Once the changes are made, we anticipate directing staff to consult with a Manager prior to making contact with LAP, so that we can work towards a consistent approach and track the number of contacts.



March 9, 2015

The Law Society of British Columbia  
8<sup>th</sup> Floor  
845 Cambie Street  
Vancouver, B.C.  
V6B 4Z9

Attention: Deb Armour

Dear Deb,

I want to confirm that the Board of the LAPBC has agreed that we will accept calls from employees of the Law Society of B.C. concerning members of the legal profession who are, or might be, having difficulties. I want to confirm that these calls will be treated exactly the same as calls from any other person. They will be kept strictly confidential, we will not report back to the caller and generally we will need at least two independent calls before we do an outreach. All these calls are important as the caller never knows if there will be a second call or if they are the second call.

I appreciate your assistance in this regard. I hope this is of assistance to you. If you have any questions or would like to discuss this please contact me at 685-2131.

Yours truly,

A handwritten signature in cursive script, reading "Derek C. LaCroix".

Derek C. LaCroix QC  
Executive Director  
Lawyers Assistance Program of B.C.

## Law Firm Regulation Task Force

### A Working Statement of Objectives

The Law Society recognizes that the lawyer-firm relationship involves aspects of proximity, responsibility, and interdependence, which make firms especially significant entities for the effective regulation of the legal profession. At the same time, some activities of law firms may transcend the responsibility of any individual lawyer. Consequently the Law Society has obtained legislative authority to regulate firms of any size and organizational structure.

The Law Firm Regulation Task Force has been given the mandate to develop for the Benchers a framework for the regulation of law firms and has settled, as a starting point for its discussions, on the following objectives. The Task Force acknowledges that such a framework must be responsive to the realities of legal practice in firms of various sizes, geographical locations and practice areas, and recognizes that before any final decisions are made, the profession would be consulted to help the Task Force devise an appropriate and practical framework for regulation of law firms.

Accordingly, the Task Force plans to create a draft regulatory framework for such entities:

1. to enhance the regulation of the legal profession by expanding the regulatory horizon beyond individual lawyers to include the entities that provide legal services;
2. to enhance regulation by identifying areas of responsibility for law firms that reflect the importance of their role and by identifying opportunities for the development of standards for centralized functions that support the delivery of legal services, such as conflicts management and accounting;
3. to engage law firms in ensuring compliance with regulatory requirements and efforts to maintain and, if necessary, to improve the professional standards and competence of lawyers who practise in the firm; and
4. to establish responsibilities for communication, both within law firms and between firms and the Law Society, to ensure appropriate attention is brought to all matters involving regulatory standards and professional obligations.



## **CEO's Report to the Benchers**

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April 2015

Prepared for: Benchers

Prepared by: Timothy E. McGee

## **Magna Carta Essay Contest**

Consistent with our strategic goal of raising public awareness of the importance of the rule of law and the proper administration of justice, the Law Society is hosting an essay writing contest in honour of the 800th anniversary of the Magna Carta.

The essay topic is “Magna Carta and its relevance to Canada in the 21st Century.” The competition is open to students in a BC public high school in the 2014/15 academic year who are currently enrolled in, or have taken, Law 12 and/or Civics Studies 11 courses. Students are asked to submit an essay that demonstrates an understanding of the significance of the Magna Carta to the rule of law, human rights and democratic principles.

Composition of the judging panel is being finalized, with the proposed participation of President Walker, a representative from our Rule of Law and Lawyer Independence Advisory Committee, an interested Bencher and lay Bencher, and a representative from the education community.

A first review of the submissions will be done by LSBC policy and communications staff who will identify qualifying entries for the judging panel. The judging panel will determine the short list, from which it will then choose the winning entries.

The first prize winner will receive an award of \$1,000 and will be invited to a special presentation ceremony at the Attorney General’s Magna Carta event scheduled for late July; the runner up will receive \$500.

## **Report on Federation Meeting, Ottawa, March 25 to 28, 2015**

The Law Society of BC was represented by Gavin Hume, QC (Council member), Ken Walker, QC, David Crossin, QC, Herman Van Ommen, QC, Miriam Kresivo, QC, and Lynal Doerksen, together with Tim McGee, QC, Alan Treleaven and Adam Whitcombe.

## **Federation Governance Review**

The major theme of the meeting was Federation Governance Review. The meeting included focused consultation sessions with Bencher attendees, Council members, and CEOs, followed by a Friday and Saturday workshop that explored options for change.

The Friday and Saturday workshops focused on the following questions:

(i) *Workshop A: What is the Federation and What Should It Be?*

Workshop A was designed to elicit discussion about the role and mission of a national body in the context of the public interest issues and challenges being faced today. The discussion included the characterization of the Federation's role on a continuum from being a coordinator to supporting law societies in fulfilling their regulatory functions, what each role entails, and where the Federation is or might be on the scale from independence to responsiveness.

*Question A-1: What is the optimum role for the Federation in the law societies' public interest regulation of lawyers and legal services delivery in 2015?*

*Question A-2: How should the Federation proceed when there is no consensus?*

(ii) *Workshop B: Decision Making and Leadership*

In workshop B, the structure of the Federation was explored and, in particular, the roles of individuals and groups who are presently or could be involved in decision making in the future, including law societies and their leadership, Council including its leadership and committees, and Federation management and staff. Issues discussed included the Federation presidential term, rotation policy, and criteria for selecting key individuals involved in governance.

*Question B-3: Within the Federation, where should decision making reside?*

*Question B-4: How do we ensure the most effective leadership of the Federation?*

(iii) *Workshop C: Law Society Engagement and Resources*

Two themes were dealt with in workshop C: the need to effectively engage and have two-way communication with law societies, and issues of funding and resourcing the Federation. Discussions included consideration of funding generally, funding when activities are asymmetrical, and what other kinds of resources and support are possible.

*Question C-5: How do we effectively engage with and ensure effective dialogue with law societies?*

*Question C-6: How do we ensure financial and material support for the Federation?*

## **Next Steps**

The information gathered at the meeting will now be considered by the Federation Governance Review Committee, which will formulate recommendations to serve as a basis for the next round of law societies' consultations. Further information is available by referring to the *Governance Review Committee Report on Phase I: Field Visits to Canada's Law Societies, March 13, 2015*. [Appendix A]



## **Council Meeting and Decisions**

### **National Requirement Review Committee**

The National Requirement specifying the competencies that graduates of Canadian common law programs must have and the learning resources that law schools must provide was adopted by Canada's law societies in 2010, and came into force in 2015. The National Requirement applies to graduates of all Canadian common law programs, and to assessment by the National Committee on Accreditation of the qualifications of internationally trained applicants and graduates of Canadian civil law degree programs who wish to be admitted to a law society in a common law jurisdiction. It also applies to applications for the approval of new Canadian common law degree programs.

Subsequent to adoption of the National Requirement, law societies approved recommendations for its implementation, including a recommendation to establish the Canadian Common Law Program Approval Committee (the "Approval Committee") to assess compliance with the National Requirement. Law societies also approved a recommendation that the National Requirement be reviewed at least every five years, with the first review to be completed by 2018.

A number of factors influenced Federation Council's decision to proceed with a review of the National Requirement sooner rather than later. The Federation's Special Advisory Committee on Trinity Western University's Proposed School of Law recommended in its fall 2014 report that the Federation consider the possibility of adding a non-discrimination provision to the National Requirement, and Council agreed that this recommendation should be explored.

Federation Council, at its June 2014 meeting, approved a recommendation to establish the National Requirement Review Committee to conduct a full review of the National Requirement. Council also voted to establish a Working Group with a mandate to make recommendations on detailed terms of reference for the Review Committee.

The Working Group, which was appointed by the Federation Executive following the June 2014 meeting, provided a report with recommended terms of reference for the Review Committee. The recommended terms of reference for the Review Committee were approved by Council in October 2014.

The terms of reference provide that the Review Committee members and Chair be appointed by the Federation Executive. The Federation Executive undertook extensive consultations with respect to the composition of the Review Committee.

Overall, the Federation Executive heard that because of the significance of the work of the Review Committee and its far-reaching implications for law societies in the

common law jurisdictions, as well as for the law schools, it would be important that the Review Committee membership include individuals with experience in law society regulation, and be seen to be reflective of all of the regions in the jurisdictions served by law schools that offer common law programs. For this purpose, the Executive considers there to be four such regions: British Columbia, the Prairies, Ontario and Atlantic Canada.

On March 26 Federation Council unanimously approved the following resolution:

- (a) The Review Committee will report to Council no later than May 2015 with a proposed strategy and work plan for accomplishing its mandate on the non-discrimination provision;
- (b) The Review Committee will report to Council no later than May 2015 with a proposed outline for the initial evaluation of the National Requirement, including the timeline, process and resource requirements for the review;
- (c) The Review Committee will have eight members as follows:
  - (i) One member with experience in law society regulation who shall be the Chair and who shall not act in a representative capacity for any law society,
  - (ii) Four members with experience in law society regulation, four of whom shall be appointed to represent law societies in common law jurisdictions served by at least one law school that offers a common law program. One such member shall be named in respect of each of the following regions: British Columbia, the Prairie region, Ontario and the Atlantic region,
  - (iii) Two members with experience in the legal academy in Canada,
  - (iv) One member who is a law society senior staff member with specific expertise in admissions-related issues;
- (d) The Chairs of the Approval Committee and the National Committee on Accreditation or his or her respective designates will be appointed to the Committee ex officio without voting rights, to ensure that there is ongoing communication and advice between the Approval Committee, the National Committee on Accreditation and the Review Committee.

The Federation Executive has appointed the following individuals to the Review Committee:

- Thomas G. Conway, Federation President, Chair,
- Herman Van Ommen, Q.C. (Law Society of British Columbia),
- Kevin Feth, Q.C. (Law Society of Alberta),
- Peter Wardle (Law Society of Upper Canada),
- Tilly Pillay, Q.C. (Nova Scotia Barristers' Society),
- Shauna Van Praagh (Faculty of Law, McGill University),

- Trevor Farrow (Osgoode Hall Law School),
- Diana Miles (Executive Director, Professional Development and Competence, Law Society of Upper Canada).

## **Litigation Intervention: AG Canada v. Chambre des notaires du Québec**

Federation Council approved the recommendation of the Litigation Committee that the Federation seek leave to intervene in the Supreme Court of Canada in the matter of *Attorney General of Canada et al v. Chambre des notaires du Québec et al*. The case raises important issues about the scope of solicitor-client privilege in the context of demands from the Minister of National Revenue (Canada Revenue Agency) for the production of documents by members of the legal profession.

## **Anti- Terrorism Act 2015 (Bill C-51)**

At its meeting on March 19, the Executive Committee considered the provisions contained in Bill C-51 (the Anti-Terrorism Act 2015). We had learned that the Federation of Law Societies would not be making a submission to the Parliamentary Standing Committee that was studying the Bill.

After consideration, the Committee determined that provisions in Bill C-51 that would amend the *Canadian Security Intelligence Services Act* to permit CSIS officials to apply for judicial authorization to violate the law or freedoms guaranteed by the *Charter* in the course of taking measures to prevent threats to the security of Canada risked violating the “rights and freedoms of all persons” and therefore engaged the Law Society’s mandate in s. 3 of the *Legal Profession Act*.

The Committee determined that the concerns it identified merited making a submission from the Law Society to the Parliamentary Standing Committee. The Committee, together with the assistance of Mr. Lucas, therefore prepared a submission, which was circulated to the Benchers by email during the week of March 23.

The submission was received by the Parliamentary Standing Committee on March 23 and, we trust, was considered by the Committee members together with all other submissions. The Parliamentary Standing Committee is currently undertaking a section-by-section review of the Bill and, we understand, some amendments are being considered, although it is unclear whether amendments to the *Canadian Security Intelligence Services Act* that we addressed are among those under consideration.

## Operational Updates

### First Quarter Financial Results

The financial results for the three month period ending March 31, 2015 are currently being finalized and will be reviewed at the Finance and Audit Committee meeting next Thursday.

We will be sending the draft results to the Finance and Audit Committee and to the Benchers next week. We will provide for discussion at next week's meeting and / or at the meeting in May.

### Staff Forum – March 23

During the year we hold a series of Staff Forums which bring together all employees to hear about and discuss important matters affecting the Law Society and our work. Our first Staff Forum for 2015 was held on March 23 and we broke into 2 groups for panel discussions. The first panel comprised the chairs of our 3 new staff working groups for 2015; Thomas Kampioni and Donna Embree for the Computer Literacy Working Group, Bernice Chong for the Values and Code of Conduct Working Group, and Michael Lucas for the Public Issues Voice Working Group. The panel also included Taylore Ashleigh, Chair of our Knowledge Management Working Group which was formed last year. The working group chairs briefed everyone on the mandates and work plans for their respective groups indicating that reports and recommendations will be delivered during the year. The idea of staff working groups proved highly successful when it was introduced last year. Because participation in the working groups is open to all staff regardless of department or background we are seeing a remarkable cross-pollination of ideas through the diversity of the volunteers. I look forward to reporting to you on progress of the groups throughout the year.

The second panel was focused on 3 of our key strategic initiatives for 2015. Leading off the discussion was our President Ken Walker QC who introduced our strategic initiative to develop a unified regulatory regime for non-lawyer legal service providers (Initiative 1-1(a)), Herman Van Ommen QC followed with a discussion about our strategic initiative to examine the regulation of law firms (Initiative 2-2 (b)), and this was followed by Alan Treleaven outlining the strategic initiative being led by the Lawyer Education Advisory Committee to examine how to improve the admission, education and continuing competency of students and lawyers (Initiative 2-1). There was lively interaction and feedback on all topics and even a few laughs.

I would particularly like to thank Ken and Herman for taking the time to participate in the Staff Forum. Your presence and insights were well received and much appreciated by all.

## **Under New Management**

I am pleased to advise the Benchers that Kensi Gounden, Manager of the Practice Standards Department, has assumed additional responsibility as Manager of the Practice Advice Department. Kensi's new title is Manager, Standards, Professional Development and Practice Advice. The Practice Advice Department formerly reported directly to Alan Treleaven. Alan will continue to have overall responsibility for the two groups in his role as Director, Education and Practice.

Kensi has been a very effective manager of the Practice Standards group and he has also played a key role in several innovative and important projects at the Law Society over the years including the design, development and implementation of our on-line learning tools, and the Core Process Review, which led to many operational efficiency improvements both large and small. Most importantly, this new role will allow a greater managerial focus and support for these two very important departments and their outstanding staff.

Please join me in wishing Kensi the best as he takes on his new responsibilities.

Timothy E. McGee  
Chief Executive Officer

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

## **FEDERATION GOVERNANCE REVIEW 2015**

**Governance Review Committee**

### **Report on Phase I: Field Visits to Canada's Law Societies**

**March 13, 2015**

## **INTRODUCTION: WHY A GOVERNANCE REVIEW?**

In June 2014, the Council of the Federation established a Governance Review Committee.<sup>1</sup> A governance review was considered necessary for a number of reasons:

- Increasing frequency of issues requiring a pan-Canadian response
- Uncertainty regarding the Federation's role
- Lack of understanding among many members of the legal profession regarding the purpose of the Federation
- Expectations among members of the public that lawyers in different parts of Canada should be governed according to similar principles and standards
- Uncertainty regarding the role and the fiduciary responsibilities of Council members, and questions as to the ability of Council to provide effective leadership to the Federation
- Questions related to the presidential rotation policy
- Questions concerning the role of the Presidents and elected officials of member law societies in Federation governance
- Ambiguity regarding the relationship of CEOs to the Federation and their role in its governance
- Questions as to whether the national office was adequately resourced to carry out its mandate.

## **WHAT WE DID**

Once appointed, our Committee developed a work program with three objectives: first, to *listen* to law societies across Canada, ensuring that there was full opportunity for them to express their views; second, to provide a setting for the exchange of views *among* law societies; and third, to develop recommendations for consideration by law societies. We also wanted to move the entire review process forward at a pace that was neither too quick (thereby stifling opportunities for input) nor too slow (thereby losing momentum and spending more time than necessary on this enterprise).

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<sup>1</sup> The committee members are:

(a) Marie-Claude Bélanger-Richard, Federation Past-President (Chair);  
 (b) Jeff Hirsch, Federation Vice President;  
 (c) Sheila Greene, Council member for the Law Society of Newfoundland and Labrador;  
 (d) Sheila MacPherson, Council member for the Law Society of the Northwest Territories;  
 (e) Steve Raby, Council member for the Law Society of Alberta;  
 (f) Johanne Brodeur, former Bâtonnière of the Barreau du Québec;  
 (g) Robert Lapper, CEO, Law Society of Upper Canada; and  
 (h) Tim McGee, CEO, Law Society of British Columbia.

The Committee is supported by Jonathan Herman, Federation CEO and by Tim Plumptre and Associates, a consulting firm specializing in governance work with particular expertise in the governance of federations.

To realize these objectives, we divided our work into three phases. Phase I involved the planning and implementation of cross Canada consultations with all law societies from September through February 2015. This document reports on the results of that work. Phase II involves a workshop in Ottawa, which is being organized in lieu of the Federation conference. This is scheduled for March 25-28. Details about this event are being finalized. Subject to the results of Phase II, we anticipate further consultations in Phase III (April to June). Once those are completed, we expect to draw together the strands of all previous work with a view to holding a meeting in June when it may be possible to reach consensus on some or all of the issues deemed most salient.

Since August 2014, the Governance Review Committee has met on four occasions in person and seven times by teleconference. Our Committee will be supplementing its consultations thus far with interviews with former Presidents and Council members, as well as with other Federation committee members and the Federation's senior management team.

Our law society meetings and consultations took us to Iqaluit, Vancouver, Whitehorse, Fredericton, Yellowknife, Calgary, Montreal and Toronto. On two of these visits (Fredericton and Calgary) we met with regional groups of law societies.

In every instance, we were greeted with courtesy, consideration, and generosity and we wish to thank all law societies for their cordial reception and the care that they took to make sure that our visits were productive and insightful. We were typically able to spend from 3 to 4 hours with local leaders. In most instances, the participants in our conversations included local law society Presidents, current Council members, and CEOs, complemented in many cases by other interested benchers.

In our view, the exchanges were thorough, cordial, candid and constructive. We invited participants to set the agenda so that we could be sure that we were hearing what they wanted to say, and that we were not imposing our own framework on the conversations. In every case, before the session closed, we asked if there was anything else participants wished to discuss, to ensure that we had covered all the necessary subjects.

### **IN A NUTSHELL**

*In every jurisdiction, we heard frequent comments to the effect that the Federation is a valuable vehicle. Law societies seem to appreciate that, in principle, there are times when it makes sense for them to work collectively on certain issues of common interest. Many participants commented favourably on various initiatives the Federation has undertaken in recent years and several jurisdictions spoke of the value it has provided to them.*

*However, despite these considerations, some law societies have developed significant concerns with respect to the Federation. Some concerns relate to what the Federation does — its mission or purpose — while others relate to how it goes about its work. We learned about serious problems of communication as well as concerns regarding a lack of transparency in Federation decision-making. The consequence is that trust in the Federation has been shaken, particularly in the view of some of the larger law societies.*

*We believe it is in the interests of all law societies to address these concerns, and we also believe they need to be dealt with on a priority basis. How should this be done? We were frequently reminded in our consultations that the "Federation is us", in the sense that it is a shared enterprise of all law societies. In light of this, it would seem to be incumbent upon all of us to take whatever steps may be needed so that mutual trust may be restored, and the Federation can carry out its important work with renewed confidence.*



## **PURPOSE AND STRUCTURE OF THIS REPORT**

The main purpose of this document is to share what we heard during the process in a manner that is true to our participants and balanced. We heard a great variety of views.

A second purpose is to provide a framework that leaders of Canada's law societies, coming together at the March workshop, will be able to use to discuss the future of the Federation and the governance structures and processes best suited to its mission. We have not sought here to suggest how the future should unfold. The only signposts we have provided take the form of a few very high level questions at the conclusion of this document, which, in our judgment, will help to focus debate on the most important issues. Participants in the workshop will not have to confine their discussions to these matters – they may think of others more urgent or more salient – but having listened to law society leaders from coast to coast, we felt it was incumbent upon us to provide some suggestions to prompt our discussions in March.

The main themes of the report are as follows:

- The Role of the Federation
- Decision-making
- Communication
- Roles and relationships
- Smaller jurisdictions
- Finances

A few basic facts about the Federation may be found in the Appendix. We include this because so many of our participants made comments such as, "I know very little about the Federation." We have not included any other background material because most relevant documentation may readily be found in the extensive briefing note sent to all participants in preparation for our field visits. This material is available on the Federation's intranet.

## **ROLE OF THE FEDERATION**

In the briefing note provided to law societies, we included a draft agenda for our conversation with them. The first item in that agenda was entitled "The Big Picture". This was an invitation to start the conversation by talking about the basic question of the role of the Federation. While we always emphasized that the sequence of the conversation was up to the law society that we were visiting, most chose to address the question of role or purpose first.

Discussions on this topic gave rise to a wide variety of views. Some participants did not know what the Federation does, particularly those who had not had much exposure to it. They had no strong views about its role but were interested to learn more about it. Others, however, had definite views about what it does or what it should do. The fundamental question was, should the Federation simply be a coordinator whose role is to respond to requests from members to facilitate collaborative initiatives among them, or should it have a more proactive role such as identifying emerging issues that members might wish to consider, facilitating discussion of those issues, and, with appropriate authority from members, taking on certain regulatory functions?

A related issue was the source of the Federation's authority. Most participants understood that any authority it exercised had to derive from its members, and that its power in any domain related specifically to what had been delegated by those members.

Discussions of delegation were complicated by the fact that the legislative framework under which each law society functions differs from one jurisdiction to another. In some jurisdictions, the legislation is seen to permit a law society to delegate certain powers to another entity, whereas in others, the framework provided by the legislation is more restrictive.

At the root of discussions about the Federation's role were competing visions of what kind of organization was needed, and whose interests it should be serving. At one end of the spectrum was the view put forward in one of our visits that the Federation exists solely to serve the interests of law societies. An alternative view was that the Federation's role is to serve the public interest.<sup>2</sup> One law society President expressed that view like this, "This is where the Federation needs to go, we need leaders to guide the Federation ... reminding ourselves to ask, what best serves the public interest?"

Some participants said that to determine what the Federation's role should be, we need to take account of the evolving context within which both it and law societies are carrying out their work. This was expressed as follows in one of our field visits: "The role of the Federation, like that of local law societies, is changing rapidly; issues like ABS, access to justice, and the delivery of legal services are on the horizon or in play already. The Federation needs to reflect on these changes." In another meeting, it was argued that the environment is becoming increasingly complex and that interactions with government agencies and other organizations are constantly growing. Likewise there are more and more lawyers in the country, and more types of practice. All this was making it very hard for law societies to keep up with the issues. The Federation was seen as a vehicle to help deal with this complexity and to cope with the widening range of national or global issues affecting the regulation of the profession.

Individuals who subscribed to these views seemed sympathetic to the idea that it would be in the interests of the public, bit by bit, to accord the Federation more responsibilities, thereby gradually creating a greater degree of harmonization across the country. Also, proponents of this view pointed out that having the Federation take on certain responsibilities was efficient, in that it diminished the duplication of work that would otherwise take place when different jurisdictions worked on similar issues.

What gave rise to serious concerns for some participants was the notion that the Federation might start taking on issues on its own, or pursuing issues in a manner not envisaged when the delegation of authority was granted. The divisive Trinity Western University experience clearly amplified sensitivities on this matter. There seemed to be a shared view in many of our sessions that it was acceptable for the Federation to move forward on behalf of members on an issue of national concern *as long as it had been clearly mandated by law societies to do so*. Where problems would tend to emerge would be if the Federation took action without such a mandate, if the mandate was less than clearly conferred, or if a mandate, once conferred, was subsequently rescinded — particularly if that were to take place without there being a clear understanding at the Federation level or among other law societies that this had occurred.

<sup>2</sup> The Federation has adopted a Vision Statement and a Mission Statement. Both start with the phrase, "Acting in the public interest." It also has a Values Statement which reads in part, "The Federation ... fulfills its mission in a manner which is focused on the public interest...."

Some law society leaders thought the Federation should not be proactive; it should never lead on an issue. One suggested a slightly modified approach, namely, that the Federation should be a ‘puller not a pusher’, i.e., once an issue gains momentum, then the Federation should be pulling everyone along to get to the decision point on the issue, but it shouldn't be pushing provincial and territorial law societies into dealing with the issue if there was no appetite on their part to do so.

In some sessions it was pointed out that there was much to be gained by providing both governors and members of the profession with the opportunity to be exposed to the work of the Federation. If this could occur, there would be a better understanding of its value and role. As one participant put it, “Magic happens when benchers go to Federation meetings” as this widens their perspective. In another meeting, the following view was expressed: “[Most benchers] lack understanding of the breadth of national issues. More needs to be done to educate them.”

In the same session, it was suggested that perhaps the Federation should develop a regional education and training program that could provide information on the Federation and its governance, and explain the value of integrating the work of separate jurisdictions on issues of shared interest. As one CEO put it, “We have been below par on collaboration. Often we establish a local committee to address an issue, but we don't do enough to see how to address the issue collaboratively. It's not always easy. Can the Federation be a place where we come together to work?” In this regard, the Standing Committee on National Discipline Standards was cited as an example of excellent collaboration across jurisdictions at the staff level.

A worrisome theme that surfaced in several meetings was the perceived gulf between some law society leaders and the Federation. The notion that “the Federation is us” does not always seem to be well understood — or it is not seen to be credible by some. Concerns were expressed about a ‘we and they’ culture that was thought to prevail in some law societies, including at the staff level. This is seen as an impediment to collaboration. One participant said, “We have to come to understand the value of working together and the fact that the Federation is in effect all law societies agreeing to work together.” Another observed, “We need to get to a place where the Federation influences how national problems are addressed together.” Participants wondered what could be done to break down barriers of this kind; it was suggested that face-to-face interaction was one important way to help address this issue both at the political and the staff levels.

Discussions related to the role of the Federation sometimes seemed to get entangled due to lack of clarity or agreement regarding the meaning of the word “regulator.” Some participants thought the Federation was moving in the direction of becoming a national regulator, and that it needed to be staffed by individuals who had specific regulatory expertise. They pointed out that the Federation had been assigned the authority to carry out regulatory functions in the specific areas of international credential evaluation and the assessment of law school programs. They thought that as new issues arose it would be in the interests of both the profession and the public for the Federation to be accorded similar responsibilities in other areas - this was the direction in which, by force of circumstance perhaps, the Federation needed to move.

Others were strongly opposed to the idea of the Federation acting as regulator, maintaining that it should simply be a coordinator or a facilitator. Despite the fact that the Federation had, in effect, been allocated a controlling role in respect of certain aspects of admission to the profession in the common law jurisdictions - a regulatory or quasi-regulatory role - they took exception when they heard the Federation described as a regulator. They considered this misleading or even offensive in light of the fact that regulatory powers in relation

to the legal profession are allocated by legislation to law societies. In the minds of these individuals, the Federation seemed to be appropriating powers that were at the core of the mandate of local law societies.

It was not always clear whether debates over this matter were rooted in a fundamentally different view of the Federation's role, or whether it arose simply because the term "regulator" had not been not clearly defined, and may have been understood differently by different individuals.

In summary, there are a number of issues related to the role of the Federation that would benefit from consideration by law societies within the context of the governance review.

## **DECISION-MAKING**

In principle, the Federation serves as the vehicle through which law societies act collectively, and where members can decide upon which matters they wish to collaborate. The concept is that all law societies have an equal voice; nothing gets done unless everyone agrees, and consensus rules. However, representatives of both small and large jurisdictions expressed doubts as to whether this was an accurate description of how the decision-making process really works. They pointed out that their Council members often felt that the issues under discussion had been decided in advance; decisions seemed to be made behind closed doors. Several jurisdictions spoke about their sense of disengagement from the Federation. In the case of some smaller jurisdictions, many of the issues discussed at Council were said to be of little or no interest to them.

Concerning the modalities of decision-making, one participant stated, "The voting structure is incomprehensible to me." It was pointed out that a lot of the substantive work of the Federation is done in committees, and that by the time issues reach the level of Council, they have usually been thoroughly worked over. This then raised questions about the role of Council: was it a real decision-making body, or just a rubber stamp for work completed in committees? (We return to this issue in the section of this report on Roles and Relationships.)

There was a fairly general view that the way in which decisions are taken in the Federation is opaque. Participants wondered how priorities are set. "Where do they come from?" said one. "Who sets them?" Smaller jurisdictions thought that they had little or no ability to affect the Federation's agendas and were not invited to help shape them. Even in larger jurisdictions, many participants did not always seem to know where decisions regarding Federation priorities or agendas were taken or who was involved. Was this done by Council, by the Presidents of law societies or by CEOs? They had little or no idea. In general, participants seemed to agree that the Federation needed a better, more explicit process or mechanism to engage leaders substantively in discussions relating to the setting of the Federation's agendas and decision-making.

The following comment was made in one of our sessions with respect to who has influence over decisions: "Some people play big time, always, and some don't. Some law societies don't play much for various reasons: too busy, too small, cannot keep up, they have weak participants on Council, or Council members who are imperfectly plugged into their law society activities." The decision-making process was characterized as "organic", and somewhat different depending upon the issue in play.

## ***Asymmetry***

The question of consensus decision-making came up in relation to the situation where some law societies might want to move forward on an emerging issue, such as ABS, while others might not see that as a priority, or might not be ready to participate. If consensus on moving forward could not be achieved, would that stall work indefinitely?

A solution to this dilemma discussed during our meetings was the idea of asymmetry. That is: if a group of law societies wishes to move ahead on a particular matter they could do so under the auspices of the Federation even though other law societies might not wish to come on board at that time. In our discussions, we found that most participants seemed receptive to the idea of pursuing asymmetrical strategies on certain issues.

One of the smaller jurisdictions suggested that it would be desirable to have “opt in” (or “opt out”) provisions, anticipating that they might want to join into an asymmetrical initiative later. “Remember to set things up so it would be easy for us to buy in at some future point,” they said. An issue that could arise in the event that a law society wanted to “buy in” later was the matter of cost allocation, but this question was not discussed in any depth in our visits.

In summary, there was quite widespread concern about where key decisions related to the Federation’s agenda and priorities were taken, when they occurred, or who was involved. In theory, Council was supposed to play a guiding role, but as some participants said, “Council is really a rubber stamp. Decision-making is done elsewhere.” Most people seemed to agree that more transparency was needed, and that it would be helpful to have a documented process or system defining how priorities should be set and who should do this.

## **COMMUNICATION**

An issue frequently cited during our regional visits was the lack of knowledge of the Federation. Although it seeks to serve the collective interests of the profession, the great majority of benchers and other members of the profession across the country appear to have little understanding of what it does or why it does it. As we visited the different members of the Federation, we heard about this again and again. As one provincial Chair commented, “The value proposition of the Federation is not well understood,” while a bencher from another law society stated, “I know very little about it – how it operates and what it does is a mystery.” This kind observation was voiced, in some instances, by benchers who were also Council members. As one said, “It is very opaque. It is a bit of a mystery.”

The consequence is that the Federation often seems to be viewed with indifference, perhaps tinged with a bit of suspicion since it may be seen more as a financial drain than an asset to the law societies. It is not widely perceived as a vehicle that supports the profession, despite, for example, its efforts to advance an issue such as mobility, which is of direct benefit to practising lawyers.

In some of our meetings, it was suggested that more needed to be done to dispel misinformation and to establish a stronger “brand” for the Federation. In this connection, one initiative proposed was that the Federation might mount a touring education program to visit different law societies, explain what the Federation does and how it works. Such sessions might also be used to encourage participation by local benchers in Federation committee work and other activities. An initiative of this kind, however, has financial consequences.



The combined problems of inadequate knowledge and poor communication are very serious and their negative impacts are manifest in a variety of areas such as:

- Decisions by law societies regarding whom to appoint as representatives to Council;
- Council members' understanding – or lack thereof – regarding their role and responsibilities;
- The flow of information with respect to the issues facing the Federation through CEOs and/ or Council members back to law society leaders and benchers;
- Concerns related to the budget of the Federation, and questions about its accountability to law societies;
- The attitude of some law societies toward the work of the Federation and their willingness – or not -- to support its activities; and
- Pervasive concerns about a lack of transparency and a sense that 'insiders' are running things.

## **ROLES AND RELATIONSHIPS**

### ***Council***

There are a number of uncertainties with respect to the roles and relationships of key players in the Federation. At centre stage is the Council. According to the Federation's bylaw, its role is to "manage or supervise the management of the activities and affairs of the Federation" (Section 5.01).

The bylaw of the Federation is silent on the matter of the role of the Presidents of law societies in governance. A previous review of Federation governance conducted in 2002 stated, "Many board members are not sufficiently engaged in the day-to-day affairs of the Societies they represent." This report established a Council in lieu of the then Board of Directors, and suggested that "Council shall consist of delegations from each member Society, consisting of the head of the Society (President or equivalent - or his/her designate), the Vice-President and the CEO." It was expected that Council would meet "two or at most three times per year"<sup>3</sup> and in between, a "Planning and Priorities Committee" would oversee Federation affairs.<sup>4</sup>

Today, the idea of "delegations" from law societies to Council has been abandoned, and law society Presidents do not attend Council meetings in any formal capacity. The current Council consists of 17 members of whom 14 are Directors appointed by their law society. Most Directors are past Presidents. There are no consistent approaches among law societies with

<sup>3</sup> Final Report of the Committee on Governance & Administration – February 26, 2002, p. 4. This report dealt with many issues discussed in the present document, including insufficient engagement of some board members in the affairs of their local societies, the need for more involvement of CEOs in the Federation, the impact of globalization, the need for different skills sets to face changes affecting the Federation, the composition of Council, frequency of Council meetings, the role, term and mode of appointment of the president, and asymmetrical initiatives.

<sup>4</sup> This committee was to be composed of the President, one representative each from Ontario, Quebec, the Western provinces and the Atlantic provinces as well as the Federation Vice President, two law society CEOs elected by a "CEO Caucus", and the Federation CEO.

respect to (1) qualifications or competencies to be a Director, (2) the process of selection of a prospective Director or (3) the term of appointment of a Director to the Council.

Council currently meets four times per year. There is no formal Planning and Priorities Committee; between Council meetings an Executive Committee meets from time to time but it has no formal executive authority. Its role is to provide advice to Council and monitor Federation activities.<sup>5</sup>

Many participants in our discussions thought Council was ineffectual. Some members of Council told us there is often not much debate around the Council table. The quality of discussion was said to be limited, and we were told Council members did not seem to be motivated to express views very openly or candidly.

A factor that may contribute to the sense that Council does not serve much purpose is the prevalent culture at the Federation with respect to consensus decision-making. The accepted tradition is not to bring any significant matter forward to Council unless it is known that there is a broad base of support, if not full consensus, regarding the question. Areas of potential disagreement are sorted out prior to Council, and if agreement cannot be reached, the issue is simply kept off the agenda. This practice would seem to contribute to the sense of opacity surrounding decision-making; in addition, it may help to explain why several participants told us that there is often an absence of meaningful debate around the Council table. If consensus has to be achieved pre-Council rather than at Council, what is left for Council to do?

Overall, it would appear that there are significant questions to be asked about Council with regard to its role, its position in the Federation's decision-making process and its composition. As the President of one law society we visited asked, "Is Council really useful?"

A board of directors, such as the Council of the Federation, is only as strong as the people who sit around the table. Participants suggested a number of conditions that would have to be met if Council were to work well. Some had to do with the qualities and attributes of Council members, while others related to the connection of those members to their law society:

- Council members would have to be clear regarding their responsibilities and their fiduciary role, perhaps in part thanks to briefing provided by either the Federation itself or their law society<sup>6</sup>
- They would need to understand the role of the Federation
- Law societies would need to select high quality Council members who would have the intelligence, skills and personal characteristics to be able to play their role effectively, and to enjoy the confidence of their colleagues.
- Council members would want to be in regular and close contact with the leadership of their law society, and would take steps to ensure that in respect of any important issues before Council, local leaders and in some cases benchers would be informed, and if necessary, engaged.

<sup>5</sup> This committee comprises the President, the Vice President and President-elect, the Vice President, the Past President and the CEO. It was informal until 2014 when it was formally established. Only the Vice President is a voting member of Council as he or she continues to wear a representative hat as a "Director" during the Vice President's first year on the Executive ladder.

<sup>6</sup> It was noted in our discussions that there is a possible tension between the role that Council members play as representatives of their law society and their fiduciary responsibilities as members of Council.

- They would enjoy the trust of their colleagues on the law society executive
- They would come to Council meetings well prepared and briefed to take part in discussions; they would inform their leadership and if necessary the other benchers at their home law society on the results of significant discussions at Council.

Participants told us these conditions are not always met. Apparently some law societies may not pay much attention to the quality of their representation on Council, nor do they ensure that there are effective linkages from the Council member to the local leadership. This situation seems similar to the one that prevailed 13 years ago, which led to the previous review of Federation governance cited above.

There was some discussion about the possibility of having some outside group vet the individual(s) that law societies might propose as members of Council. While most participants thought it would be a good idea for the Federation to articulate a list of capabilities or qualities that it would be desirable to see in Council members, there was not much support for the idea of some external vetting process.

It is interesting, in this connection, to note that the following procedure is apparently followed in Manitoba with regard to the appointment of its President. “We have a nominating committee with a mandate to identify candidates who demonstrate the skills we need to lead our law society. At least two candidates are presented to our benchers who then select the President through secret ballot.” One participant wondered if a process something like this might be a model for the selection of Council representatives in future.

Participants in our discussions raised questions about Council’s agenda. If many of its agenda items involve approving committee reports that have previously benefited from exhaustive study, what value-added could Council provide? Some other questions raised were: Is Council focusing its attention primarily on strategic or operational issues? Some participants stated that the Federation spends more time than it should on operational issues. Could more of this operational work be carried out by staff, or under contract? Is it necessary for Council to meet four times a year, as it currently does, in order to fulfil its responsibilities? Should the primary role of Council members be to ensure that their law society is fully informed of Federation activities and that all such activities have the political support of their home law society?

### **Committees**

Concerns about a lack of transparency were expressed with respect to how committees are populated. Just as Council’s agenda was perceived to evolve in mysterious ways, so too was the way in which individuals were appointed to Federation committees. As one participant put it, “I would like to be able to volunteer and put my name forward – but I have no idea how to do that, or where there may be opportunities. The Federation does not know enough about the skills and backgrounds of its Council members.”

There were also questions that arose in instances where a bencher or a staff member of a local law society was working on an issue in committee on behalf of the Federation. What, some individuals asked, is the responsibility of that individual to report back to the parent law society on progress? Do such individuals sit on a committee in a personal or professional capacity, or are they expected to secure, and represent, the views of their law society in relation to that issue as work progresses?



### ***The President of the Federation***

Among the factors that gave rise to this governance review were questions with respect to the qualifications and mode of appointment of the President. For many years, the Federation has appointed its President through a policy of rotation from one region to the next. Participants in our consultations told us that while sometimes excellent individuals have been appointed, in other cases the post has been filled, and the Federation has thus been guided, by persons of indifferent capabilities, ill-suited to the demands of the job. In light of the growing pressures that some believe the Federation is likely to be facing in future, some leaders have suggested it may be time to consider changes to the tradition of appointment through rotation.

Several participants expressed bafflement with respect to how the process of appointing the President worked. It seems that there is no formal mechanism to deal with this. What typically happens, we were told, is that there is “a lot of politicking” after which a decision emerges. Participants we spoke with complained that they found the process opaque and lacking in transparency.

In the course of our consultations, we discussed this issue with every law society. In a few law societies, presidential rotation was the most important issue on their agenda. This is what they wanted to be heard on first, and they wanted the current system retained. However in other jurisdictions, this matter was seen as a side issue of relatively low importance in relation to other matters the Federation needed to address. The latter jurisdictions had some interest in the issue of rotation, but not to the same extent as the former ones.

Several law societies definitely did not want to break with tradition, and they attached great importance to their ability to “take their turn” to place someone at the helm of the Federation. In Northern jurisdictions, law society leaders saw presidential appointment as a way of helping to ensure that other law societies understand the special circumstances of the North. However in our discussion with them it emerged that policies with regard to presidential rotation are unclear and susceptible to different interpretations.

Some law societies recognized that the rotation system might lead periodically to the appointment of a person who was not entirely up to the job. Overall, however, we found there were mixed opinions regarding the idea of presidential rotation. Some jurisdictions did not share in the enthusiasm for rotation. As one person put it, “The job of Federation President is simply too important to be given to the next one in line or to the jurisdiction that has its turn.” Some jurisdictions thought that rotation might be combined in some way with a process whereby considerations of competency were also taken into account. (We did not hear any specific proposals as to how this might be done.)

Another issue was the length of the President’s term. The President currently serves a one-year term, and then becomes Past President. The Past President remains a member of the Federation executive for one year. Some participants thought a one-year term for the President was too short. Changing every year was disruptive to the leadership of the Federation and undermined the ability of the incumbent to provide strategic guidance or to build and sustain important relationships on behalf of the Federation.

Some individuals we spoke with pointed out that the job of the President is becoming more and more onerous, and wondered whether the position should become appointed (on the basis of merit) and full-time rather than part-time and largely voluntary. The *Chambre des notaires du Québec* has had a full-time President for many years. The *Barreau du Québec* has

recently decided their Bâtonnier(e) should occupy a full-time position, and the pay associated with that position is now equivalent to that of a Superior Court judge (\$285,000). This contrasts with the remuneration provided to the President of the Federation, who receives an honorarium of \$50,000 even though some think the responsibilities associated with the position could – or should – engage the incumbent on a full-time basis.

One of our participants outlined his understanding of the elements of the president's job. "We are in a period of accelerated evolution in the Federation," he said. "The President must now deal with:

- Change management;
- Setting strategic direction for the Federation;
- Implementing the strategic plan;
- Assessing and reassessing the regulatory environment;
- Meeting many communication demands (strong communication skills are needed);
- Serving as a consensus builder; and
- Being an ambassador for the Federation in conversations with different law societies."

To this list might be added the need to foster and maintain relationships with key players in the justice system in Canada, leading the deliberations of the Executive Committee of the Federation, overseeing the preparation of agendas and chairing Council meetings, participating in the planning and implementation of Federation conferences and similar events, overseeing the work of the CEO of the Federation, and taking part in assorted representational activities on behalf of the Federation, including a significant amount of international travel.

In summary, there has been considerable debate in recent months on the question of the extent to which competence should be a consideration in appointments in light of the wide range of Presidential responsibilities.

### ***The Presidents of Canada's Law Societies***

As noted previously, the current bylaw makes no provision for the formal involvement of Presidents in the governance of the Federation. There was a sense in many of our conversations that the lack of connection to Presidents was somehow wrong. Participants felt that Presidents certainly needed to know what was going on, and there also seemed to be a common view that, if there were important decisions to be taken related to the work of the Federation, Presidents would need to be well informed if not directly engaged.

There seems little doubt that law societies need to be engaged in, or connected to, Federation governance. However it was not clear in our discussions that current Presidents thought the solution was for them to assume positions on the Federation's governing body, thereby establishing a "Council of Presidents" or something similar. The governance arrangements recommended 13 years ago provided for the establishment of a Council attended by "delegations" each of which had one vote. The delegation consisted of three individuals from each law society; the President was one of those delegates (the Vice President and the CEO were the two other members).

It is not clear whether this recommendation was fully implemented, or how it worked out in practice. However the idea of sending a “delegation” to a Council that sat only two times per year has clearly been abandoned. Was there a problem with the recommendation itself, or was the implementation flawed? We do not know.

What we do know is that today, law societies appoint a single representative to the Federation Council. As discussed previously, there are difficulties associated the way this approach works at present. It would seem that some kind of change to governance arrangements, as they relate to law society Presidents, seems desirable so that they feel adequately informed, and sufficiently engaged in those decisions that have a significant impact on their jurisdiction.

### ***CEOs’ Role in the Federation***

The CEOs of law societies are generally thought to play a highly important role in the affairs of the Federation. In most if not all law societies, the local executive places great reliance on their CEO to manage key relationships and all the major files, and generally support the local President. In contrast to CEOs, Presidents turn over annually in most cases. CEOs are required to become highly knowledgeable and engaged in the functions of their law society. In addition, they take part in an informal network of CEOs in which information is shared on a wide range of issues.

The scope and scale of CEO responsibilities varies by jurisdiction. In some of the smaller jurisdictions, there may be only one or two local staff members in addition to the CEO. As a result, benchers carry out a great deal of the work that needs to be done on behalf of the law society, work that might otherwise be done by staff, at least in the larger jurisdictions. (Several CEOs from smaller jurisdictions told us they feel swamped and have great difficulty keeping up with all the demands placed upon them.) In contrast, some CEOs have significant staff contingents.

From a practical point of view, the CEO community falls into two camps. On the one hand there are the law societies with larger staffs — this group would include Ontario, Quebec, British Columbia, Alberta, and perhaps Manitoba and Nova Scotia — then there are all the others. The CEO from one of the larger law societies contrasted his job with that of the smaller jurisdictions saying, “Our job in a bigger law society is to deliver the goods.” In other words, his job was essentially managerial, and he could rely on his staff to get the necessary work done. By contrast, the job of the CEO in smaller jurisdictions is very hands-on and operational; the principal challenge seems to be for the CEO to keep his or her nose above water. In the larger law societies, CEOs have more resources to engage, and thus more time to consider broader national issues than do their colleagues elsewhere. Hence, they tend informally if not formally to exercise a greater degree of influence over the affairs of the Federation.

There were some significantly different views with respect to the role of CEOs in governance. Currently, like law society Presidents, they have no formal status. There were participants in our discussions who thought that CEOs were most knowledgeable about the Federation. If governance arrangements were to be changed in some way, then CEOs should take on a more defined role in the governance process. Some of our participants thought this would represent, more or less, a formalization of how things tend to work informally now.

Certainly, there is a fairly widespread impression that much of what goes on in the Federation currently results from collaboration among the most influential law society CEOs, working in cooperation with the CEO of the Federation. The President of one law society made

the following observation: “CEOs are the most logical group of people to have a voice in governance – they bring the voice of the law society forward in a consistent way and their job is to know the will of their benchers, and what their priorities are.”

Another President made the following observations. “The right way to design an organization is from the mission and strategic objectives up. In the case of the Federation, there is now much more stress on harmonization, on economies of scale, there is more awareness of cost of duplication on operational matters, there are rising standards of quality for regulators and practitioners. All of this is operational – so why are operational people not on the board of directors of the Federation? Might it be possible to have an asymmetrical board with some CEOs as members? Some CEOs could be selected from among their colleagues to play this role.”

On the other hand, some other participants did not like the idea that CEOs should have any formal role in Federation governance. To the extent that some CEOs were perhaps doing so informally at present, this in their view was a problem. They did not like the lack of transparency that characterized this type of decision-making, the informal control that was apparently being exercised, the somewhat “clubby” nature of these arrangements, and the exclusion of political leaders who, in their view, ought to be in charge of things. Yet at the same time, many of them recognized that the CEO community, collectively, is the most knowledgeable about issues facing the legal profession in Canada.

### **SMALLER JURISDICTIONS**

During our consultations, we visited all Northern jurisdictions and met with representatives of other small law societies at group meetings in Fredericton and Calgary. We learned that all seemed to hold the Federation in high regard and value their relationship to it. At the same time, some said they were having difficulty expressing their voice and playing an effective role in the Federation.

Representatives of smaller jurisdictions made the following comments about their relationship to the Federation:

- They tended to characterize their law society as small and struggling, with little awareness of the Federation and a fairly prevalent “why should we care?” attitude among local benchers.
- Those benchers of smaller law societies that did become involved with the Federation saw real value in it, indicating that they learned a lot at Federation meetings and made useful contacts.
- Smaller law societies typically don’t have time to keep up with the range of issues confronting the profession, including new ones like the impact of cloud computing. They find it helpful to be able to rely on larger law societies to lead the way on such issues, and to keep in touch with developments through their membership in the Federation.
- They often feel somewhat distant or disengaged from the “Federation process;” much of what is discussed at the Federation is remote from their interests or inaccessible. As a result, much of the conversation relevant to their interests tends to take place in the corridors at Council meetings or other Federation events. “We need to have our conversations at the national forum, not in the corridors,” said one representative. “The

most valuable part of Council meetings are the Northern Caucus meetings.”

- In one of our meetings, one participant wondered whether smaller law societies might be able to act as a group and send someone to Council. “There is huge merit for Presidents to get together, but not necessarily at the Federation Council.”
- Not all Northern jurisdictions are the same. Participants counselled against assuming that the Yukon, the Northwest Territories and Nunavut are all cut from the same cloth or share a common culture.
- Representatives of larger law societies need to understand that initiatives that may make sense for them may not always work well in smaller ones. For example, one participant from a small jurisdiction said that their big concern with respect to national admissions standards was not so much the implementation of the standards through bar admission. Rather, given the small number of admissions of new lawyers, ongoing competence was viewed as a higher priority.
- The “flood” of information from the Federation is very hard to cope with; people do not have time to read it all. Could the Federation scale down the volume or focus mainly on things that are really relevant for small jurisdictions?

A suggestion that came up on two or three occasions in our conversations with representatives of small jurisdictions was that a new staff position might be established at the national office of the Federation with responsibilities for liaison with such jurisdictions. This individual might be able to facilitate communication with the Federation on issues of specific interest to smaller jurisdictions, to be a voice for them at the national level, and to winnow down the flood of information that goes to them currently, providing a kind of digest tailored to small jurisdictions’ interests.

## **FINANCES**

In several meetings, we explored the issue of financing the activities of the Federation. Not surprisingly, responses varied depending on several factors, including the size of the law society, the state of relations between the Federation and that law society, and the general views of law society leaders with regard to the role of the Federation now and in future.

Smaller law societies did not have much concern about the possibility of increases in local levies to support the Federation. Such a change would not have much effect on their budgets. As one Northern participant said, “Small dollar increases represent huge value to us. For example, the cost to us to try to update the Model Code would be prohibitive. There are economies of scale within the Federation that are very valuable.”

Representatives of law societies who had a strong belief in the value of a national Federation and who saw value in having an effective vehicle to address national issues harmoniously tended to be supportive of providing adequate finances for the Federation. This was particularly true where participants thought that there would be increasing demands upon the Federation because of the growing prevalence of national issues. A participant in one of the regional meetings made the following comment: “It falls to each of us to advocate for a stronger Federation with local benchers. We are now starting to realize savings arising from the national capacity. The levy for the Federation is not seen as very high at present.”



Other jurisdictions emphasized the importance of good communication between the Federation and local law societies on financial matters. Discussion on this issue in one jurisdiction underlined the need for effective internal communication on financial matters within the law society as well, for example among the CEO, the President and the Council member, and in some instances with all benchers. Where there is a breakdown in internal communications, serious problems can ensue. For example, this may make it difficult to have a factually based discussion of the budget of the Federation within the law society, and it could also have a damaging impact on relations between the Federation and the law society in question.

Perhaps reflecting the problems of lack of information or inadequate communications alluded to above, there were concerns expressed in some law societies about the accountability of the Federation on financial matters, and the need to ensure that there is ‘bang for the buck’ when allocations are made to it by its members. It was noted in discussions on finances that if the Federation was looking for an increase in its budget, it needed to make its case clearly, and well in advance of debate within law societies, many of which have different fiscal years and electoral cycles.

Another matter that may warrant further consideration as the future unfolds is the question of ‘who pays’ when projects of the Federation are seen to be beneficial to some law societies but not others. The most salient example of this is Quebec. There, it is widely thought that a fair amount of the Federation’s activities are uniquely focused on the interests of common law jurisdictions. Participants in Quebec told us that their benchers are dubious about the value of the Federation to their jurisdiction. Although some members of the bar see real value in there being a “national voice for the whole profession”, a question that is often heard is, “What’s in it for us?”

The relationship of the Federation to Quebec may be seen as an early example of asymmetry, in that the levy for CanLII in that province is lower than elsewhere in Canada. As in the case of other provinces, Quebec leaders seemed open to the concept of more asymmetrical initiatives to be undertaken by the Federation. However, the policy with respect to “who pays” when an initiative benefits some jurisdictions but not others is one that may have to be explored in connection with the concept of asymmetry.

## **CONCLUSION**

Our Committee wants this report to serve the central purpose of sharing the results of our consultations with the law societies and to provide law society leaders with a starting point from which to share their views as to what the path ahead should look like.

We believe the Federation must improve its governance both internally and with law societies. We also believe that the way to address this is by starting with ‘big picture’ questions. Below, we outline some questions, which we hope may provide a focus for our discussions at the upcoming Federation workshop. These questions are:

1. What role do law societies want the Federation to play in future?
2. If the answer to the first question depends on the subject matter, can law societies agree on the Federation’s role in some specific areas?
3. In those areas where law societies cannot agree on the role of the Federation, how, if at

all, should the Federation proceed in an asymmetric fashion with the support of willing law societies?

4. Who should play a role in governing the Federation?
5. Whether or not there is asymmetry, how should the funding and resourcing be done?
6. Who should set the Federation's priorities?
7. What steps, taken by whom, can strengthen confidence in the Federation and restore trust where it may have been damaged as a result of unclear roles, opaque decision-making processes, or inadequate communications?



## **APPENDIX**

### **FEDERATION QUICK FACTS**

#### **1. HISTORY AND HEAD OFFICE**

- (a) 1926 – founded as an annual conference of law society leaders
- (b) 1972 – incorporated as a non-profit corporation
- (c) 1984 – head office located in the offices of the Barreau du Québec
- (d) 2003 - major governance reform
- (e) 2006 – hired first Chief Executive Officer, moved head office to Ottawa

#### **2. GOVERNANCE STRUCTURE**

- (a) Canada Not-for-Profit Corporation (continued in 2014)
- (b) Voluntary association of 14 member law societies with equal voting weight
- (c) Governing Body – Council of 17 individuals, of whom 14 are voting Directors, nominated by their law society. Four meetings per year.
- (d) Decision making – formally by majority, in practice by consensus
- (d) Executive – President, Vice President and President-elect, Vice President, CEO
- (f) President (one year term, part-time) selected on the basis of a regional rotation with entry on the Executive ladder as Vice President

#### **3. KEY INITIATIVES**

- (a) ***Decision-Making, of a Regulatory Nature***
  - (i) National Committee on Accreditation – international credentials assessment
  - (ii) Approval Committee – common law program approvals
- (b) ***Policy-Making, of a Coordinating or Advisory Nature***
  - (i) National and Territorial Mobility Agreements
  - (ii) Model Code of Professional Conduct
  - (iii) National Discipline Standards



- (iv) National Admission Standards
- (v) National Requirement Review Committee (beginning 2015)
- (c) ***Other Initiatives***
  - (i) Standing Committee on Access to Legal Services
  - (ii) CanLII (separate non-profit corporation)
  - (iii) National Criminal Law Program
  - (iv) National Family Law Program
  - (v) Court interventions
  - (vi) Two national conferences per year for top law society leaders

#### 4. **FINANCIAL AND HUMAN RESOURCES**

- (a) ***General Operations***
  - (i) Budget: \$2.4 million, financed by levies paid proportionately by law societies (\$28.50 per FTE beginning July 2015)
  - (ii) Personnel: 8 full-time employees, supplemented by law society staff for certain initiatives (eg: Approval Committee assisted by staff seconded from LSUC).
- (b) ***National Committee on Accreditation***
  - (i) Budget: \$2.3 million, financed on a cost-recovery basis from applicants
  - (ii) Personnel: 7 full-time employees
- (c) ***CanLII***
  - (i) Budget: \$2.8 million, financed by levies paid by law societies (\$36 per FTE for common law jurisdictions, \$24 per FTE for the Barreau du Québec, \$16.77 for the Chambre des notaires du Québec)
  - (ii) Personnel: 2, including full time President and CEO located in Ottawa. Primary operations carried out by contract with LexUM in Montreal
- (d) ***National Criminal Law and National Family Law Programs***
  - (i) Budget: \$400-500K per program, financed on a cost-recovery basis from registrants
  - (iii) Personnel: 1 contract employee for each program

## MEMO

**To: Dean Jeremy Webber**  
**From: Heather Wiltse, Law Careers Officer**  
**Date: 16/07/2014**  
**Re: Report on UVic Law 2012 and 2013 Graduates**



### INTRODUCTION

The purposes of this report was to analyze how many UVic law graduates are working in the legal profession and understand the challenges that law students are facing when looking for employment. Statistics had not been properly collected in the Law Careers office prior to 2013, so I have contacted grads of 2012 and followed up with grads of 2013, as well as conducted LinkedIn and Google searches, to get a better picture of where our grads are located. The initial statistics from these years are presented in **Appendix A and B**. The statistics for the class of 2012 were collected during the summer of 2013. The statistics for the class of 2013 were collected between May-November of 2013. Final numbers for the June 2014 graduating class (**Appendix C**) are not yet complete, given the time when the survey was sent out to students, relative to the normal cycle of the articling hiring process. Final statistics for the class of 2014 will be available in December 2014.

As the first set of statistics we received from students were quite vague, we decided to collect further information from the grads of 2012 and 2013. The Law Careers Office sent emails to both classes in February of 2014 and collected responses over the following months. We asked the grads some very specific questions about their articling experiences and what they were expecting as they became associate lawyers. **See Appendix D and E** for the questions that were sent out to the respective years. Ultimately, we wanted to know how students were doing in their articles/associate positions, how difficult positions were to find, were they earning enough money to live on, and were there any improper behaviours or expectations by the firms.

For grads of 2012, 35/134 responded to our follow up survey. We sent 2 reminders but did not receive any more responses. Some students also did not answer all questions that were asked.

For grads of 2013 23/134 responded to the follow up survey. We sent 2 reminders but did not receive any more responses. Some students also did not answer all questions that were asked.

## RESPONSES TO THE QUESTIONS SENT TO STUDENTS

### When did you secure your articling position?

	2012	2013	
During OCIs	9	During OCIs	5
Summer 2011(After second year)	15	Summer 2012	3
Fall/Spring 2011/12 (During third year)	3	Fall/Spring 2012/13	6
Summer 2012(after graduation)	7	Summer 2013 (after graduation)	6
Fall 2012/Spring 2013	1	Fall 2013/Spring 2014	3

### How many articling applications did you send out?

It appears that the earlier the students secured their jobs, the fewer applications they sent out. However, some students who secured positions through OCIs sent out 50-80 applications through that process. Students who did not secure their positions until after graduation sent out approximately 30-80, with several students reporting they sent out over 150 applications.

### ARTICLING SALARIES: What was your articling salary?

	2012	Number of students	2013	Number of students
Government BC	52,000	2	53,000	2
Vancouver Large Firm	50,000	9	50,000	3
Toronto Large Firm	72,000	3	90,000	3
Calgary Large Firm	65,000	1	67,000	1
Victoria BC	From free -35,000 (4 students were not paid their salary when attending PLTC. 2 students also had to pay their own PLTC fees)	10	From free-35,000	4
Lower mainland smaller firm	28,800-45,000	5	25,000-75,000	3
Vancouver Island Firm	30,000 (but only paid ½ wage during PLTC) Courtney	1	30,000	1
Alberta smaller firm	42,000 (Grand Prairie)	1	33,600 and 42,000(Edmonton and Vermilion)	2
Small Ontario firm	n/a	n/a	45-50,000	2
Unreported		3		2

**DID YOU RECEIVE ANY INAPPROPRIATE ARTICLING SALARY OFFERS**

From the responses that I received, all the inappropriate salary offers came from Victoria firms. Articling salaries in Victoria were the lowest in the province. Some students who were articling in Victoria were not earning enough to live on, and make their student loan payments. Some students were also not paid a wage during PLTC, so for 10 weeks that they were articling, they did not have an income.

Five students in 2013 had been asked to work for free. Four of those firms were in Victoria and the location of the fifth firm was not reported. One student in Victoria accepted a position where they were not paid for their full articling year. This student was only able to do so as they had the support of their family.

Two students who articulated in Victoria reported that while they were paid for their articling year, their firms were considering hiring students for free for the next articling year. The firms had been approached by students who were willing to work for free and they thought such arrangements would work well.

A positive trend in the Victoria market that was noted was that students that had completed co-op terms with Victoria firms were often hired back. These positions were usually well paid with reasonable expectations.

**First Year Associate Salaries: What is or do you expect your first year associate salary to be?**

	<b>2012 and 2013</b>
<b>Government BC</b>	72,000
<b>Vancouver Large Firm</b>	87,000
<b>Toronto Large Firm</b>	100,000
<b>Calgary Large Firm</b>	98,000
<b>Victoria BC</b>	Many of the Victoria firms offered a fee split of 50/50. Two students reported that they were still only making \$2,500/mos. Others however were earning between 35,000-50,000
<b>Lower mainland smaller firm</b>	55,000-60,000
<b>Vancouver Island Firm</b>	45,000-65,000
<b>Alberta smaller firm</b>	84,000

The majority of first year associate salaries that were reported appeared to be adequate, except for several Victoria firms. Victoria was the only city where students reported that they did not receive a salary, but a fee split, either 60/40 or 50/50. Due to these arrangements, several students were still only earning 2,200-2,500/month.

Of the 35 students from 2012 that responded to the survey, 23 were still at the same firm that they articulated with, 3 were not practicing, and 9 were at new firms. The majority of 2013 grads did not know if they would be hired back as associates at the time the survey was completed.

**APPENDIX A****UVic Law Grads 2012 (June & Nov)****Class of 128 grads**

Data was collected by student reporting and the LCO conducting searches through Google and LinkedIn

**Secured Articles: 90**

<b>Private Practice:</b>	<b>74</b>
Large Firms (OCI participants)	23
Small-mid sized firms	51
<b>Government:</b>	<b>14</b>
<b>Public Interest:</b>	<b>2</b>

**Clerkships: 12 (but 13 secured clerkships)**

Clerkships & Articles: (4/5 with large firms)	5
Clerkship that fulfills articling	6
Only clerkship	1 (secured two clerkships BCCA and SCC)

**Decided not to pursue articling: 7**

**Seeking Articles: 4**

**Status Unknown: 15** (did not respond to 2 follow up emails)

**Clerkship positions**

Alberta Queens Bench	1
BCSC:	3
BCCA	2
Federal Court	2
Ontario Superior Court	2
Quebec CA	1
Tax Court of Canada	1
SCC	2

**Appendix B****UVic Law Grads 2013 (June and November)**

Stats collected as of December 2013

**Class of 120 students**

Data was collected by student reporting and the LCO conducting searches through Google and LinkedIn

<b>Secured Articles:</b>	<b>87</b>
<b>Clerkship and Articles</b>	<b>9</b>
<b>Clerkship fulfills Articles</b>	<b>4</b>
<b>Total:</b>	<b>100</b>
<hr/>	
<b>OTHER Law related:</b>	<b>2</b>
<b>Graduate Studies</b>	<b>2</b>
<b>Seeking Articles:</b>	<b>10</b>
<b>Status Unknown:</b>	<b>6</b>

**Articling/Articling and Clerkship composed of the Following Positions**

<b>Private Practice</b>	<b>73</b>
<b>Government</b>	<b>16</b>
<b>Public Interest</b>	<b>7</b>

**Clerkship positions**

Alberta Queens Bench	1
BCSC:	6
BCCA	1
Federal Court	3
Tax Court of Canada	1
SCC	2

**Appendix C****UVic Law Grads 2014 (June only)**

Stats collected May 2014, responses are still being collected

**Class of 118 students**

Data was collected by student reporting and the LCO conducting searches through Google and LinkedIn



<b>Secured Articles:</b>	<b>67</b>
<b>Clerkship and Articles</b>	<b>11</b>
<b>Clerkship only</b>	<b>1</b>

<b>Total:</b>	<b>79</b>
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<b>OTHER Law related:</b>	<b>2</b>
<b>Non Law Job</b>	<b>2</b>
<b>Graduate Studies</b>	<b>1</b>
<b>Seeking Articles:</b>	<b>14</b>
<b>Status Unknown:</b>	<b>20</b>

**Articling/Articling and Clerkship composed of the Following Positions****Private Practice****Government****Public Interest****Clerkship positions**

Alberta Queens Bench

BCSC:

BCCA

Federal Court

Tax Court of Canada

SCC

**APPENDIX D**

The email to the grads of 2012 was:

*Greetings from the UVic Law Careers Office. I am writing to find out how your articling experience went and to find out if and where you are currently practicing law. We want to ensure we know what is happening in the job market and that we are providing the best support for our graduates that we can. Any information you provide to us about your personal experience will remain anonymous.*

1. *Did you article? If yes, where?*
2. *When did you secure your 2012-2013 articling position?*
3. *Approximately how many applications did you send out before securing your current position?*
4. *During salary negotiations for your articling term, did any firm ask you to work for free, or for a wage that you could not live on? If yes, did you accept this position?*
5. *What was your articling salary? Were you paid during your time at PLTC? Did your firm pay the costs for attending PLTC?*
6. *Are you working at the same firm that you articulated with? If no, why?*
7. *If you aren't working at the firm you articulated with, where are you working?*
8. *If you are currently working as an associate, do you receive a salary or is your wage based on a fee split arrangement? Approximately how much are you earning during your first year as an associate?*
9. *What sessions/information do you wish you would have been provided about articling and the practice of law during your time at law school?*
10. *Is there anything else you would like to share about your experience as an articulated student and/or junior associate?*



**APPENDIX E**

The email to the grads of 2013 was:

*Greetings from the UVic Law Careers Office. I am writing to find out how your articling experience has gone thus far and I would be grateful if you could also provide me with information about your experience searching for articles. We want to ensure we know what is happening in the job market and that we are providing the best support for our graduates that we can. Any information you provide to us about your personal experience will remain anonymous.*

1. *When did you secure your 2013-2014 articling position?*
2. *Approximately how many applications did you send out before securing your current position?*
3. *During salary negotiations, did any firm ask you to work for free, or for a wage that you could not live on? If yes, did you accept this position?*
4. *What is your articling salary?*
5. *Do you have a plan for employment after your articling year?*
6. *If you become an associate with your firm, will you receive a salary, or will your wage be based on a fee split? Do you know how much this will be?*
7. *What sessions/information do you wish you would have been provided about articling and the practice of law during your time at law school?*
8. *Is there anything else you would like to share about your experience searching for articles and/or your articling year?*

*Thank you for taking the time to provide us with feedback. If you could respond to me by March 7, 2014 it would be appreciated.*



# Memo

To: Benchers  
From: Alan Treleaven  
Date: March 30, 2015  
Subject: **National Committee on Accreditation Update**

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At the Benchers meeting on January 30, 2015, Benchers requested updated statistical information on the National Committee on Accreditation (“NCA”). Deborah Wolfe, the Federation’s Manager of the NCA, has provided further information, which is included in this update.

## **NCA UPDATE TO FEDERATION COUNCIL, March 11, 2015**

Graeme Mitchell, QC (Saskatchewan), Chair of the NCA, provided the following NCA update to the Federation Council for its March 26, 2015 meeting in Ottawa.

### ***BACKGROUND***

- 1. The NCA is a standing committee of the Federation of Law Societies of Canada and is made up of six individuals representing the Council of Canadian Law Deans, the practicing bar, and the law societies.*
- 2. The NCA’s primary mandate is to assess the legal education and professional experience of persons whose legal education and professional experience were obtained outside of Canada, or in a Canadian civil law program, and who wish to be admitted to a common law bar in Canada.*
- 3. Upon completion of its assessment, the NCA issues a report to the applicant describing the scope and extent of any further legal education that the applicant needs to complete to demonstrate that his/her legal education and training is equivalent to that provided by an approved faculty of law in Canada.*
- 4. Once the applicant has successfully completed the NCA’s requirements, the NCA issues a Certificate of Qualification. Most law societies in Canada accept the NCA’s Certificate of Qualification to access their bar admissions process.*

## **ASSESSMENTS**

5. *In the first eight months of the NCA's 2014/2015 year, 847 assessments have been received. This is consistent with the number of assessments received by the end of February last year.*

6. *In the first eight months of 2014/2015, 692 Certificates of Qualification have been issued as a result of the examination sessions in May, August and October as well as the summer and fall courses applicants completed in law school. The January exam session is typically the largest of the year and will likely result in a significant number of Certificates being issued before year end.*

## **APPEALS**

7. *NCA applicants dissatisfied with their assessments may submit an appeal, which will be considered by a panel made up of NCA members. To date in 2014/2015, three appeal panels sat and considered a total of eleven appeals, eight of which were dismissed and two of which were fully or partially granted. One appellant was given the opportunity to provide additional documentation to the Managing Director for review within the next 12 months. The next appeal panel will sit in March 2015 to consider three appeals.*

## **EXAMINATIONS**

8. *To date in 2014/2015, three exam sessions have been held. In August, 1,035 exams were written in 20 Canadian exam sites and 11 outside Canada. In October, 1,214 exams were written in 19 Canadian exam sites and 8 outside Canada. In January, 1,475 exams were written in 15 Canadian exam sites and 10 outside Canada.*

9. *The NCA Exam Policy Committee is currently considering several issues including developing a professional integrity policy, offering NCA exams by computer, and contributing to the development of online modules on Canadian legal research.*

## **POLICY**

10. *The NCA approved a new Assessment Policy, effective January 1, 2015, which brings the policies into compliance with the National Requirement. The first assessments under the new policy were completed in February 2015.*

## **A LOOK AHEAD**

11. *In 2015, the NCA will review the policy for the assessment of Canadian civil law graduates, given the 2013 National Mobility Agreement enhancing the mobility between Quebec and the common law provinces. The NCA will also develop online modules on Canadian legal research to enhance the assessment of applicants' competencies in this important skill.*

## **FREQUENCY OF CANADIANS STUDYING LAW ABROAD AND RETURNING TO CANADA**

Benchers have requested information about the frequency of Canadian students studying law outside of the country and then returning to Canada to practise law.

The NCA has provided the following chart for the NCA's most recent year, July 1, 2013 to June 30, 2014. Although the NCA does not know where the students apply for admission in Canada, this chart shows where the applicants ask the NCA to send their NCA Certificates of Qualification.

<b>Law Society</b>	<b>Percent</b>	<b>Number</b>
Ontario	76%	548
BC	22%	160
Alberta	22%	155
Saskatchewan	5%	33
Manitoba	4%	31
Nova Scotia	3%	20
New Brunswick	1%	9
Yukon	1%	9
Newfoundland	1%	8
PEI	1%	8
NWT	1%	8
Nunavut	1%	6
New York	0%	3
<b>TOTALS</b>	<b>139%*</b>	<b>998*</b>

\*NOTE: Some NCA applicants identify multiple law societies.

\*NOTE: Not all NCA applicants identify a law society.

The NCA does not know whether its applicants are Canadians or immigrants because they are not asked whether they are Canadians who went to law school outside of Canada. However, the NCA does know that most Canadians go to school in England, the USA and Australia (in that order), and that most of the people coming from other jurisdictions are immigrants. Some Canadians, however, attend law school in New Zealand, Hong Kong, Ireland and India, and some people immigrate from England, the USA and Australia.

## PROFILE OF NCA CERTIFICANTS IN BC's ADMISSION PROGRAM

Similarly, the Law Society of BC knows which applicants to the Admission Program (PLTC and articling) are NCA certificants, but not whether they NCA are Canadians or immigrants because they are not asked.

The following projections are for 2015 enrolment in the Law Society of BC Admission Program, and are subject to adjustment throughout the year.

### *STUDENT STATISTICS BY 2015 PLTC SESSION*

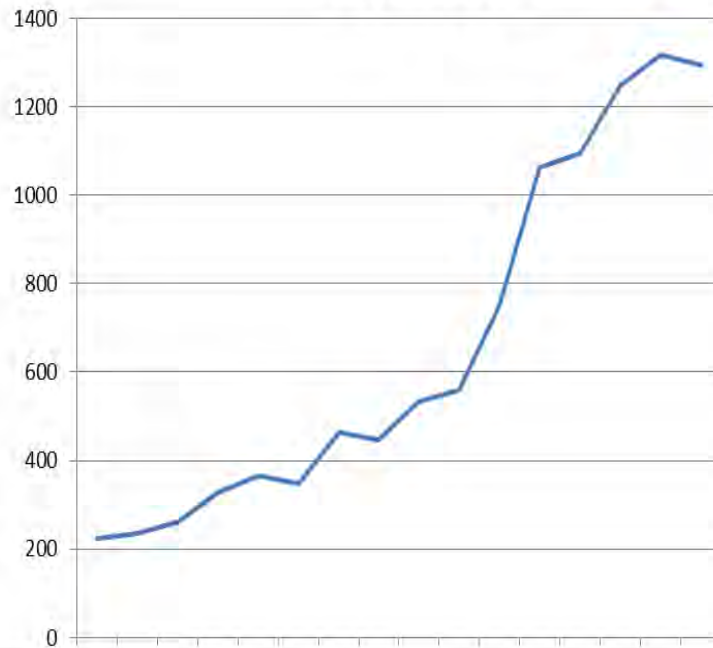
		<b>TOTAL</b>	<b>NCA</b>	<b>UVic</b>	<b>UBC</b>	<b>OTHER</b>	<b>TRU</b>
<b>Projections are approximate as of March 30, 2015</b>	<b>Feb</b>	139	51	14	39	29	6
	<b>May</b>	142	22	11	54	53	2
	<b>May (Vic)</b>	42	6	28	1	5	2
	<b>May (K)</b>	25	3	1	2	4	15
	<b>Sept</b>	132	30	21	36	34	11
	<b>Totals</b>	480	112	75	132	125	36

Of the total number of students in the BC Admission Program from 2010 to 2015, NCA certificants comprise the following percentages: 2015 – 23.3% (projected), 2014 – 18.3%, 2013 – 20.3%, 2012 – 14.6%, 2011 – 14.6%, 2010 – 13%.

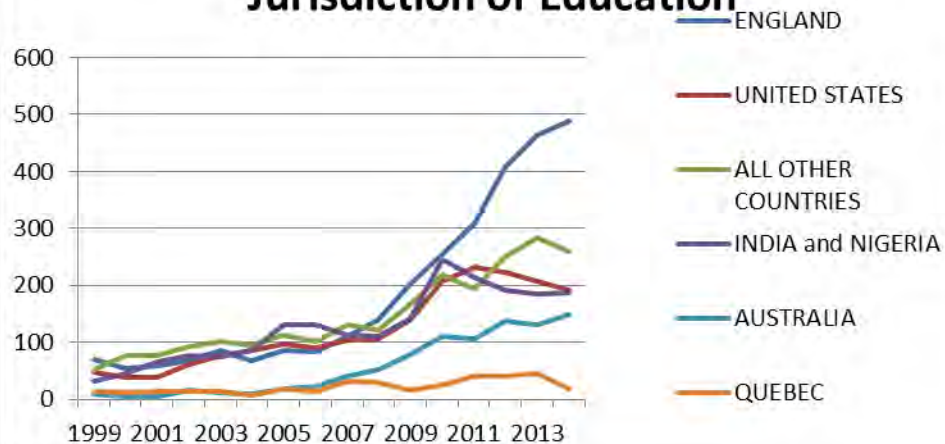
## OVERVIEW OF NCA APPLICATIONS AND CERTIFICATES GRANTED

In the following six NCA charts, the fourth chart (of six) shows Certificates of Qualification issued over time organized according to three categories: (1) England, USA and Australia, (2) Quebec, and (3) all other jurisdictions. The numbers for 2013/2014 were 551 from Category 1 (England, USA and Australia) out of a total of 779 Certificates issued. Therefore, the NCA estimates that approximately 60% to 70% of its Certificates are issued to Canadians, while estimating that only 50% of the applicants are Canadian.

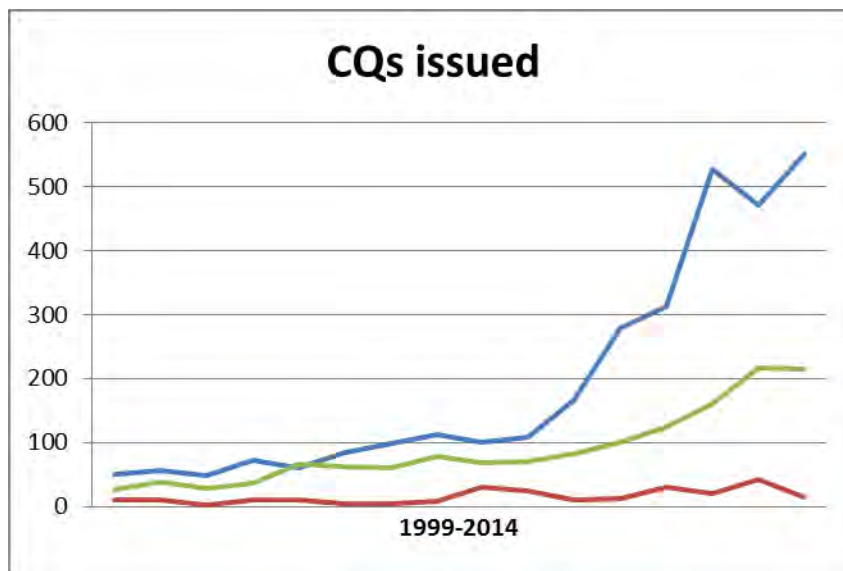
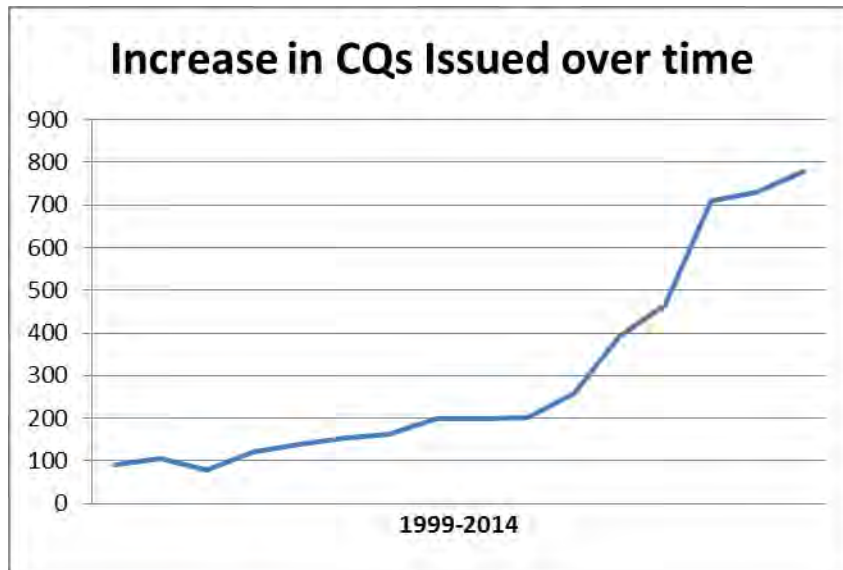
### Applications received per year 1999-2014



### Number of Applicants per Year by Jurisdiction of Education

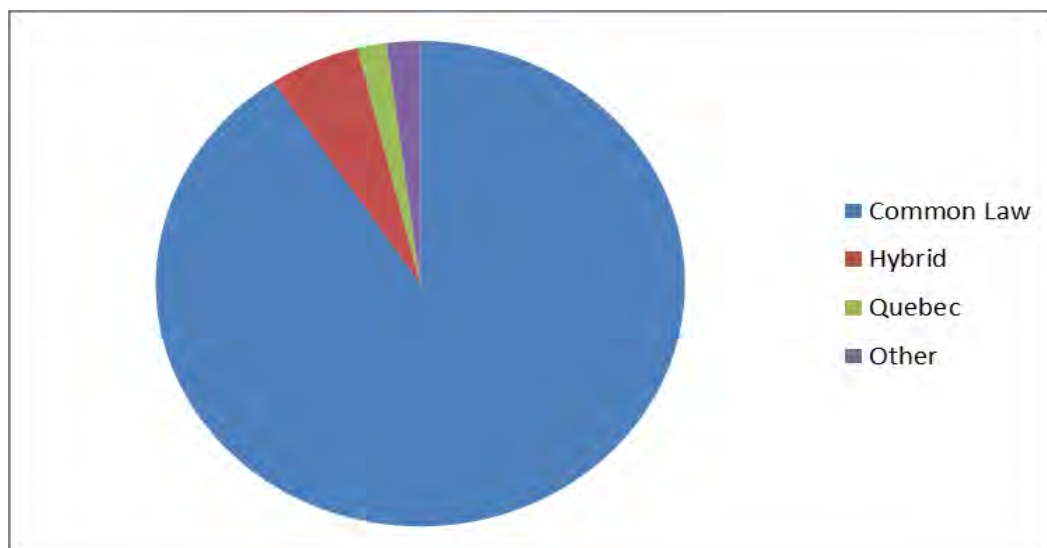


## Certificates of Qualification

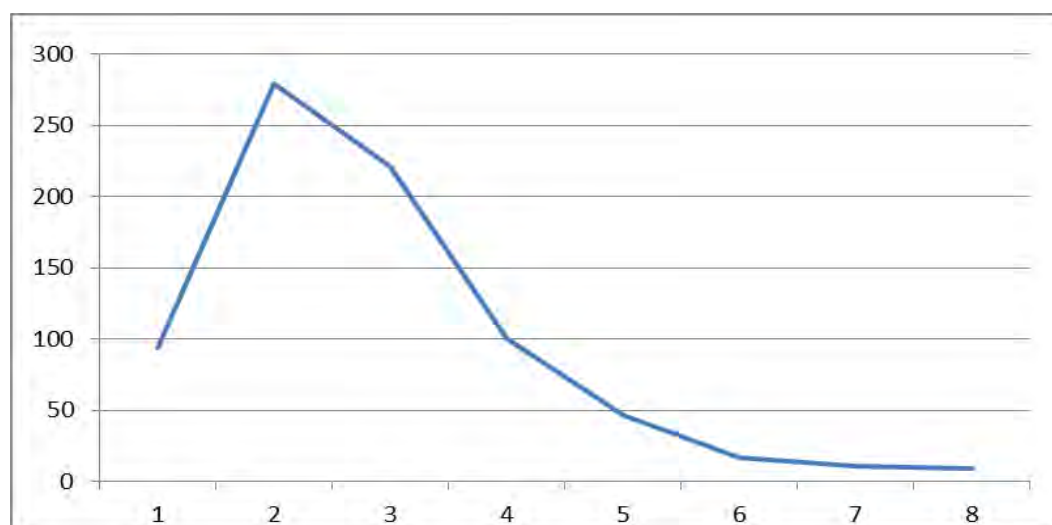


Blue: Australia, England and US  
 Green: Quebec  
 Red: All others

## Legal Tradition of Certificates Issued



## Years to Earn a Certificate







# Memo

To: Memorandum To Benchers  
From: Alan Treleaven  
Date: March 31, 2015  
Subject: Small Firm Practice Course update

President Walker has requested a Benchers update on the Law Society of British Columbia's Small Firm Practice Course.

In 2013, there were 565 members who recorded CPD credit for the course. For 2014 the number rose to 653.

The course is rated very highly by its users. In 2014, the users rated the Course as follows.

- Excellent 45%
- Good or Very Good 42%
- Average 11%
- Below Average 1%
- Poor 1%

## Background

The Small Firm Practice Course can be accessed free of charge through the Law Society website, and is available 24/7.

The Law Society developed the Small Firm Practice Course on the recommendation of the Lawyer Education Task Force. As the Task Force noted in its 2005 report, "A solid ability to manage one's practice is a key component to a lawyer's ability to practise law competently and effectively."

Designed to be self-paced and self-testing, the course offers concise modules on key practice issues of interest to sole practitioners and small firm lawyers, ranging from practice management to trust accounting to technology issues and various pitfalls of practice. Each course module is made up of written material, a self-test, and additional resources. Some modules have additional learning aids such as slideshows and self-assessment tools called "challenges." The entire course takes approximately six to eight hours to complete.

The Law Society Rules make the course mandatory for lawyers practising in a "small firm," requiring those lawyers to complete the course within six months after commencing practice in a small firm setting.

Lawyers who are required to take this course as a requirement of practice must obtain 100% on all quizzes (repeat attempts are allowed).

Lawyers who are not required to take the course as a mandatory condition of practice can nevertheless take the course for educational purposes and are entitled to claim CPD credit according to the time spent taking the course.

Lawyers who take this course only for CPD credit are not required to obtain any particular grade for any of the quizzes.

## **CPD Credit Information - Small Firm Practice Course**

The Small Firm Practice Course is approved for up to six hours of CPD credit. The course also cover off the two hour professional responsibility, ethics, and practice management requirement. Credits can be claimed according to the time actually spent on the course, subject to the limit that a maximum of six hours of CPD credit can be claimed.

Lawyers need not complete the full course in order to claim MCPD credit for time spent on the course. For example, if 4.5 additional CPD hours are required to meet the annual requirement, then 4.5 hours can be spent on the course and credit claimed for the time spent. However, lawyers must complete the test component for a module worked on to claim CPD credit for the time spent working on that module.

## **Small Firm Practice Course Modules**

### **1. Accounting System Learning Module**

*Understanding trust accounting is essential to law practice, which includes knowing about running an accounting system.*

### **2. Trust Account Essentials Learning Module**

*Learn the requirements of a lawyer's trust accounting system, from how to deposit and withdraw trust funds to what to do if you discover a trust shortfall.*

### **3. Trust Filing and Trust Applications Learning Module**

*Learn the requirements of filing Trust Reports and Trust Administration Fees with the Law Society.*

### **4. Taxation and Employee Deductions Learning Module**

*Among the taxation and business issues related to the practice of law are federal employee payroll deductions for income tax, Canada Pension Plan, and Employment Insurance, as well as WorkSafeBC requirements.*

### **5. PST (Provincial Sales Tax) Learning Module**

*Familiarize yourself with some of the important taxation and business issues related to the practice of law and the Provincial Sales Tax.*

## 6. GST (Goods and Services Tax) Learning Module

*Familiarize yourself with some of the important taxation and business issues related to the practice of law and the Goods and Services Tax.*

## 7. Retainers Learning Module

*Identify the types of retainers and what they should include, as well as the requirements of contingency fee agreements.*

## 8. File Retention and Disposal Learning Module

*Why you need to keep your closed files and for how long, and how to close and destroy files.*

## 9. Coverage During Absence Learning Module

*Appreciate the importance of arranging for coverage during absences from work as well as establishing a system to ensure continuity in the event of catastrophic risk.*

## 10. Withdrawal of Service Learning Module

*Recognize the circumstances in which a lawyer must withdraw services and those in which a lawyer may withdraw services, and learn the procedure for withdrawing services.*

## 11. Conflicts Learning Module

*Learn how to recognize conflicts of interest, how to prevent them from occurring, and what might happen if they do occur.*

## 12. Client Screening Learning Module

*Client screening is a process that can help ensure you are not taking on the wrong clients for your practice, and that clients are not taking on the wrong lawyer for their cause.*

## 13. Difficult Clients Learning Module

*Learn how to identify various types of difficult clients and principles for dealing with them.*

## 14. File Management and Diary Systems Learning Module

*Learn the importance of setting up a file management system, managing your time, and having proper limitation/bring forward systems in place.*

## 15. Delegation of Tasks and Supervision Learning Module

*Recognize what tasks may and may not be delegated to legal assistants, and understand the supervision responsibilities you have over your non-lawyer staff members.*

## 16. Avoiding Fraud learning Module

*Learn to recognize the types of frauds and scams that can involve lawyers, and how to manage the risks of fraud.*

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