

# MEMBER'S MANUAL

The Law Society  
of British Columbia



## AMENDMENT PAGES

2015: No. 3 December

### Highlights

**Law Society Rules 2015:** Amendments are made consequential to proclamation, on June 24, 2015, of Part 5 of the *Chartered Professional Accountants Act*, SBC 2015, c. 1 (definition of “qualified CPA” and Rules 1-10(2), 3-81(5), 3-82(1) and 3-104(4): pp. 17, 23, 143 and 156); electronic voting is permitted in Benchers elections and referenda (Rules 1-5(6), 1-6(4) and (6), 1-25(1), (1.1), (1.2) and (2), 1-27(1) to (4), 1-27.1, 1-29, 1-31(1) and (4), 1-32, 1-36(1), 1-37, 1-40(2) and 1-43; pp. 20 and 21 and 30 to 36); notices of general meetings may be distributed electronically and appointed Benchers may attend and speak as of right at general meetings (Rules 1-8(5) and (7), 1-9(2), 1-11(5) and (6) and 1-13(1) and (2): pp. 22 to 25); minor corrections are made to the new Law Society Rules 2015 (Rules 2-115(1), 3-66(3) and 5-12(4): pp. 99, 135 and 192); fees are updated for 2016 (Schedules 1, 2 and 3: pp. 217 to 221).

*Note that historical notes are now published only in the HTML version of the Rules (available on our website at [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca) > Publications > Law Society Rules 2015). Historical notes are no longer published in the print copy or the PDF.*

**Code of Professional Conduct for British Columbia:** A lawyer must promptly notify the client, other counsel and the court or tribunal of the lawyer’s withdrawal from a file (rule 3.7-9; p. 53); with the supervising lawyer’s permission, designated paralegals may represent clients at family law mediations (rule 6.1-3.3 and commentary: p. 76) and guidance is provided to those supervising lawyers, including on recognizing family violence and giving legal advice (Appendix B commentary and Appendix E, “Screening for family violence” and “Designated paralegals giving legal advice”: pp. 102.2 and 115); Rule references are updated to reflect the new Law Society Rules 2015, which came into effect on July 1, 2015 (rule 3.4-17, commentary [5], 3.6-8, commentary [3] and 6.1-3.3, commentary [1]; pp. 36, 48 and 76).

**Insurance Policies:** Insurance Policy No. LPL 16-01-01 replaces Policy No. LPL 15-01-01. Refer to the Spring 2016 *Insurance Issues: Program Report* for details of the policy revisions.

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

Manual section	Existing pages to be removed	Amendment pages to be inserted
Law Society Rules 2015	17 – 26	17 – 26
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<b>Manual section</b>	<b>Existing pages to be removed</b>	<b>Amendment pages to be inserted</b>
Code of Professional Conduct for British Columbia	35 – 36 47 – 48 53 – 54 75 – 76 102.1 – 102.2 115 – 116	35 – 36 47 – 48 53 – 54 75 – 76 102.1 – 102.4 115 – 116
Insurance Policies	Policy No. LPL 15-01-01 (1 – 28)	Policy No. LPL 16-01-01 (1 – 28)

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

**Updates:** This amendment package updates the *Member's Manual* to **December 7, 2015**. The previous amendment package was 2015: No. 2 June.

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

**Website:** The *Legal Profession Act*, Law Society Rules and *Code of Professional Conduct for British Columbia* can be accessed in the Publications section of the Law Society website at [lawsociety.bc.ca](http://lawsociety.bc.ca) in both HTML (for online use) and PDF (for printout, including printout of *Member's Manual* replacement pages).

Refer to the Law Society website for the most current versions of the Act, Rules and Code.

## MEMBER'S MANUAL CONTENTS CHECKLIST

2015: No. 3 December

The following list of pages and tabs can be used to verify that your *Member's Manual* is complete and up to date.

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**“qualified CPA”** means a person in public accounting practice who is permitted to perform audit engagements by the Organization of Chartered Professional Accountants of British Columbia;

**“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 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 Benchler 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;

**“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.

## **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.

## 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 ballot of all members, the next general meeting or December 31, whichever comes first, and



- (b) if the next general meeting or a 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.
- (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 make available 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 provided 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 ballots is completed, the Executive Director must declare whether the President or Vice-President, as the case may be, ceases to hold office.

### **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, by electronic or other means, distribute to Benchers and members of the Society in good standing 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, by electronic or other means, make available to Benchers and members of the Society in good standing
- (a) 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) 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 Bencher or a member of the Society in good standing to act as local chair of a location where the President is not present.
- (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 qualified CPA.
- (3) A Bencher, Life Bencher 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
  - (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, by electronic or other means, distribute to Benchers and members of the Society in good standing 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 Bencher or 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.

### **Procedure at general meeting**

- 1-13** (1) Benchers, 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) appointed Benchers and persons 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.
- (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.

### **Regional election of Benchers**

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

### **Qualifications of candidate**

- 1-22** (1) To be eligible to be a candidate for election as a Bencher, a member of the Society must
- (a) be in good standing at the time of nomination,
  - (b) 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 a Bencher election.
- (1.1) A member of the Society must not cast a vote or attempt to cast a vote that he or she is not entitled to cast.
  - (1.2) A member of the Society must not enable or assist a person
    - (a) to vote in the place of the member, or
    - (b) to cast a vote that the person is not entitled to cast.
  - (2) 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 a Bencher election.
  - (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 make available to each member of the Society whose name is on the voter list prepared under Rule 1-26 [*Voter list*]
- (a) a ballot containing, in the order determined under Rule 1-28 [*Order of names on ballot*], the names of all candidates in the district in which the member is entitled to vote and stating the number of Benchers to be elected in that district,
  - (b) instructions on marking of the ballot 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 make the material referred to in subrule (1) available to any member of the Society or the non-receipt of the material does not invalidate an election.

- (3) For a ballot to be valid, the voter must
  - (a) vote in accordance with the instructions provided with the ballot,
  - (b) not vote for more candidates than the number of Benchers to be elected in the district,
  - (c) place the ballot 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 to a voter who informs the Executive Director in writing that the original ballot 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.

### **Electronic voting**

- 1-27.1** (1) The Executive Committee may authorize the Executive Director to conduct a Bencher election partly or entirely by electronic means.
- (2) The Executive Director
    - (a) may retain a contractor to assist in any part of an election conducted electronically,
    - (b) must ensure that votes cast electronically remain secret, and
    - (c) must take reasonable security measures to ensure that only members entitled to vote can do so.
  - (3) A ballot may be produced electronically and, to cast a valid vote, a member must indicate his or her vote in accordance with instructions accompanying the ballot.
  - (4) Rules 1-20 to 1-44 apply, with the necessary changes and so far as they are applicable, to an election conducted partly or entirely by electronic means.

### **Order of names on ballot**

- 1-28** (1) The order of names on a ballot under this division must be determined by lot in accordance with this rule.
- (2) The Executive Director must notify all candidates as to the date, time and place when the determination is to be made.
  - (3) The procedure for the determination is as follows:
    - (a) the name of each candidate is written on a separate piece of paper, as similar as possible to all other pieces prepared for the determination;

- (b) the pieces of paper are folded in a uniform manner in such a way that the names of the candidates are not visible;
- (c) the pieces of paper are placed in a container that is sufficiently large to allow them to be shaken for the purpose of making their distribution random, and the container is shaken for this purpose;
- (d) the Executive Director withdraws the papers one at a time;
- (e) the name on the first paper drawn is the first name on the ballot, the name on the second paper is the second, and so on until the placing of all candidates' names on the ballot has been determined.

### **Rejection of ballots**

- 1-29** (1) A ballot 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 provided 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 Bencher is to be elected and there are more than 2 candidates, voting must be by an alternative vote ballot on which voters may indicate their preference for candidates.
- (2) When an alternative vote ballot is conducted under subrule (1), the ballots in that election must be counted according to the following procedure:
- (a) on the first count, each voter's first preference is recorded in favour of the candidate preferred;
  - (b) on the second count, the candidate who received the least votes on the first count is eliminated and that candidate's first count ballots are distributed among the remaining candidates according to the second preferences indicated;
  - (c) on each subsequent count, the candidate who received the least votes in the preceding count is eliminated, and that candidate's ballots are distributed among the remaining candidates according to the next preferences indicated;
  - (d) the first candidate to receive a majority of votes on any count is elected.

### Scrutineers

- 1-31** (1) The Executive Director is a scrutineer for each Bencher election.
- (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.
- (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 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 ballots of a voter who submits more than one ballot must be rejected;
  - (b) each voter declaration is read, and the ballot of a voter who has not completed and signed the declaration correctly is rejected;
  - (c) the ballot envelopes containing ballots are separated by district, and mixed to prevent identification of voters;
  - (d) for each district, the ballot envelopes are opened and the ballots removed;
  - (e) ballots 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.

### 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.

### **Review by Executive Committee**

- 1-36** (1) A candidate who is not elected in a Bencher election 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 ballots and other documents of a Bencher 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.
- (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 a Bencher election apply, with the necessary changes and so far as they are applicable, to a referendum under this rule, except that the votes need not be reported 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
  - (c) when more than one Bencher 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.

**1-43** [rescinded 12/2015]

#### **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.

### **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.



### **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 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.

- (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),
  - (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 (2) [*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).
- (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.

- (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 CPA 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 qualified CPA.
- (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.

- (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.

- (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 constituting 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
  - (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 Professional 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.

#### **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.



## Decision

- 5-10** (1) A decision of a hearing panel is made by majority vote.
- (2) On request, the Executive Director must disclose a panel's written reasons for its decision, subject to the protection of solicitor and client privilege and confidentiality.
- (3) When a hearing panel gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

## Costs of hearings

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

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

### **Application to vary certain orders**

- 5-12** (1) An applicant or respondent may apply in writing to the 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*],
  - (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:
- (a) the same panel that made the order;
  - (b) a new panel;
  - (c) the Discipline Committee;
  - (d) the Credentials Committee.
- (5) The panel or Committee that hears an application under subrule (1) must
- (a) dismiss it,
  - (b) extend to a specified date the time for payment,
  - (c) vary the conditions imposed, or extend to a specified date the fulfillment of the conditions, or
  - (d) specify a new date for the start of a period of suspension imposed under section 38 [*Discipline hearings*] or 47 [*Review on the record*].
- (6) If, in the view of the President and the chair of the Committee to which an application is referred under subrule (4) (c) or (d), there is a need to act on the application before a meeting of the Committee can be arranged, the chair of the Committee may hear the application and make the determination under subrule (5).
- (7) An application under this rule does not stay the order that the applicant seeks to vary.

## SCHEDULE 1 – 2016 LAW SOCIETY FEES AND ASSESSMENTS

<b>A. Annual fee</b>	<b>\$</b>
1. Practice fee (Rule 2-105 [ <i>Annual practising fees</i> ]) .....	2,057.09
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> ]) .....	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 .....	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

<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>		<b>\$</b>
1. Application fee (Rule 2-40 (1) (b) [ <i>Application to practise law in MDP</i> ].....		300.00
2. Application fee per proposed non-lawyer member of MDP (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.

**SCHEDULE 2 – 2016 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 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
<b>Full-time insurance</b>			
January	2,057.09	875.00	875.00
February	1,883.40	729.17	875.00
March	1,714.24	583.33	875.00
April	1,540.52	437.50	875.00
May	1,371.40	291.67	875.00
June	1,197.67	145.83	875.00
July	1,028.56	875.00	0.00
August	854.84	729.17	0.00
September	685.69	583.33	0.00
October	511.98	437.50	0.00
November	342.87	291.67	0.00
December	169.11	145.83	0.00
<b>Part-time insurance</b>			
January	2,057.09	437.50	437.50
February	1,883.40	364.58	437.50
March	1,714.24	291.67	437.50
April	1,540.52	218.75	437.50
May	1,371.40	145.83	437.50
June	1,197.67	100.00	437.50
July	1,028.56	437.50	0.00
August	854.84	364.58	0.00
September	685.69	291.67	0.00
October	511.98	218.75	0.00
November	342.87	145.83	0.00
December	169.11	100.00	0.00

**Note:** The federal goods and services tax applies to Law Society fees and assessments.

**SCHEDULE 3 – 2016 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 former lawyer]*]

	<b>Non-practising members fee</b>	<b>Retired members fee</b>
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.

**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> ] <ul style="list-style-type: none"> <li>• if made more than 14 days prior to the scheduled hearing date</li> <li>• if made less than 14 days prior to the scheduled hearing date</li> </ul>	1 3
6.	Pre-hearing conference	Minimum 1 Maximum 5
7.	Preparation of agreed statement of facts <ul style="list-style-type: none"> <li>• if signed more than 21 days prior to hearing date</li> <li>• if signed less than 21 days prior to hearing date</li> <li>• delivered to Respondent and not signed</li> </ul>	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



**3.4-11.2** A lawyer must not provide limited legal services if the lawyer is aware of a conflict of interest and must cease providing limited legal services if at any time the lawyer becomes aware of a conflict of interest.

**3.4-11.3** A lawyer may provide limited legal services notwithstanding that another lawyer has provided limited legal services under the auspices of the same not-for-profit organization to a client adverse in interest to the lawyer’s client, provided no confidential information about a client is available to another client from the not-for-profit organization.

**3.4-11.4** If a lawyer keeps information obtained as a result of providing limited legal services confidential from the lawyer’s partners and associates, the information is not imputed to the partners or associates, and a partner or associate of the lawyer may

- (a) continue to act for another client adverse in interest to the client who is obtaining or has obtained limited legal services, and
- (b) act in future for another client adverse in interest to the client who is obtaining or has obtained limited legal services.

### **Conflicts from transfer between law firms**

#### **Application of rule**

**3.4-17** In rules 3.4-17 to 3.4-26:

“**confidential information**” means information that is not generally known to the public obtained from a client; and

“**matter**” means a case or client file, but does not include general “know-how” and, in the case of a government lawyer, does not include policy advice unless the advice relates to a particular case.

#### **Commentary**

[2] Rules 3.4-17 to 3.4-26 apply to lawyers sharing space. Treating space-sharing lawyers as a law firm recognizes

- (a) the concern that opposing clients may have about the appearance of proximity of lawyers sharing space, and
- (b) the risk that lawyers sharing space may be exposed inadvertently to confidential information of an opposing client.

[3] Rules 3.4-17 to 3.4-26 apply to lawyers transferring to or from government service and into or out of an in-house counsel position, but do not extend to purely internal transfers in which, after transfer, the employer remains the same.

[4] Rules 3.4-17 to 3.4-26 treat as one “law firm” such entities as the various legal services units of a government, a corporation with separate regional legal departments, an inter-provincial law firm and a legal aid program with many community law offices. The more autonomous that each such unit or office is, the easier it should be, in the event of a conflict, for the new firm to obtain the former client’s consent.

[5] See the definition of “MDP” in Rule 1 and Rules 2-38 to 2-49 of the Law Society Rules.

[[5] updated 07/2015]

**3.4-18** Rules 3.4-17 to 3.4-26 apply when a lawyer transfers from one law firm (“former law firm”) to another (“new law firm”), and either the transferring lawyer or the new law firm is aware at the time of the transfer or later discovers that:

- (a) the new law firm represents a client in a matter that is the same as or related to a matter in which the former law firm represents its client (“former client”);
- (b) the interests of those clients in that matter conflict; and
- (c) the transferring lawyer actually possesses relevant information respecting that matter.

**3.4-19** Rules 3.4-20 to 3.4-24 do not apply to a lawyer employed by a federal, provincial or territorial government who continues to be employed by that government after transferring from one department, ministry or agency to another.

### **Law firm disqualification**

**3.4-20** If the transferring lawyer actually possesses confidential information relevant to a matter referred to in rule 3.4-18 (a) respecting the former client that may prejudice the former client if disclosed to a member of the new law firm, the new law firm must cease its representation of its client in that matter unless:

- (a) the former client consents to the new law firm’s continued representation of its client; or
- (b) the new law firm can establish, in accordance with rule 3.4-25, when called upon to do so by a party adverse in interest, that
  - (i) it is reasonable that its representation of its client in the matter continue, having regard to all relevant circumstances, including:
    - (A) the adequacy and timing of the measures taken under clause (ii);
    - (B) the extent of prejudice to the affected clients; and

[2] Party-and-party costs received by a lawyer are the property of the client and should therefore be accounted for to the client. While an agreement that the lawyer will be entitled to costs is not uncommon, it does not affect the lawyer's obligation to disclose the costs to the client.

### **Joint retainer**

**3.6-4** If a lawyer acts for two or more clients in the same matter, the lawyer must divide the fees and disbursements equitably between them, unless there is an agreement by the clients otherwise.

### **Division of fees and referral fees**

**3.6-5** If there is consent from the client, fees for a matter may be divided between lawyers who are not in the same firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

**3.6-6** If a lawyer refers a matter to another lawyer because of the expertise and ability of the other lawyer to handle the matter, and the referral was not made because of a conflict of interest, the referring lawyer may accept, and the other lawyer may pay, a referral fee, provided that:

- (a) the fee is reasonable and does not increase the total amount of the fee charged to the client; and
- (b) the client is informed and consents.

**3.6-6.1** In rule 3.6-7, “**another lawyer**” includes a person who is:

- (a) a member of a recognized legal profession in any other jurisdiction; and
- (b) acting in compliance with the law and any rules of the legal profession of the other jurisdiction

**3.6-7** A lawyer must not:

- (a) directly or indirectly share, split or divide his or her fees with any person other than another lawyer; or
- (b) give any financial or other reward for the referral of clients or client matters to any person other than another lawyer.

**Commentary**

[1] This rule prohibits lawyers from entering into arrangements to compensate or reward non-lawyers for the referral of clients. It does not prevent a lawyer from engaging in promotional activities involving reasonable expenditures on promotional items or activities that might result in the referral of clients generally by a non-lawyer. Accordingly, this rule does not prohibit a lawyer from:

- (a) making an arrangement respecting the purchase and sale of a law practice when the consideration payable includes a percentage of revenues generated from the practice sold;
- (b) entering into a lease under which a landlord directly or indirectly shares in the fees or revenues generated by the law practice;
- (c) paying an employee for services, other than for referring clients, based on the revenue of the lawyer's firm or practice; or
- (d) occasionally entertaining potential referral sources by purchasing meals providing tickets to, or attending at, sporting or other activities or sponsoring client functions.

**Exception for multi-disciplinary practices**

**3.6-8** Despite rule 3.6-7, a lawyer permitted to practise in a multi-disciplinary practice (MDP) under the Law Society Rules may share fees, profits or revenue from the practice of law in the MDP with a non-lawyer member of the MDP only if all the owners of the MDP are individuals or professional corporations actively involved in the MDP's delivery of legal services to clients or in the management of the MDP.

**Commentary**

[2] This rule also allows a lawyer to share fees or profits of an MDP with a non-lawyer for the purpose of paying out the ownership interest of the non-lawyer acquired by the non-lawyer's active participation in the MDP's delivery of services to clients or in the management of the MDP.

[3] See also the definitions of "MDP" and "professional corporation" in Rule 1 and Rules 2-38 to 2-49 of the Law Society Rules.

[[3] updated 07/2015]

**3.7-6** If a lawyer is justified in withdrawing from a criminal case for reasons other than non-payment of fees and there is not a sufficient interval between a notice to the client of the lawyer's intention to withdraw and the date on which the case is to be tried to enable the client to obtain another lawyer and to enable such lawyer to prepare adequately for trial, the first lawyer, unless instructed otherwise by the client, should attempt to have the trial date adjourned and may withdraw from the case only with the permission of the court before which the case is to be tried.

**Commentary**

[1] If circumstances arise that, in the opinion of the lawyer, require an application to the court for leave to withdraw, the lawyer should promptly inform Crown counsel and the court of the intention to apply for leave in order to avoid or minimize any inconvenience to the court and witnesses.

**Obligatory withdrawal**

**3.7-7** A lawyer must withdraw if:

- (a) discharged by a client;
- (b) a client persists in instructing the lawyer to act contrary to professional ethics; or
- (c) the lawyer is not competent to continue to handle a matter.

**Manner of withdrawal**

**3.7-8** When a lawyer withdraws, the lawyer must try to minimize expense and avoid prejudice to the client and must do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor lawyer.

**3.7-9** On discharge or withdrawal, a lawyer must, as soon as practicable:

- (a) notify the client in writing, stating:
  - (i) the fact that the lawyer is no longer acting;
  - (ii) the reasons, if any, for the withdrawal; and
  - (iii) in the case of litigation, that the client should expect that the hearing or trial will proceed on the date scheduled and that the client should retain new counsel promptly;
- (a.1) notify in writing all other parties, including the Crown where appropriate, that the lawyer is no longer acting;
- (b) subject to the lawyer's right to a lien, deliver to or to the order of the client all papers and property to which the client is entitled;
- (c) subject to any applicable trust conditions, give the client all relevant information in connection with the case or matter;

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- (d) account for all funds of the client then held or previously dealt with, including the refunding of any remuneration not earned during the representation;
- (e) promptly render an account for outstanding fees and disbursements;
- (f) co-operate with the successor lawyer in the transfer of the file so as to minimize expense and avoid prejudice to the client; and
- (g) notify in writing the court registry where the lawyer's name appears as counsel for the client that the lawyer is no longer acting and comply with the applicable rules of court and any other requirements of the tribunal.

[amended 07/2015]

### Commentary

[1] If the lawyer who is discharged or withdraws is a member of a firm, the client should be notified that the lawyer and the firm are no longer acting for the client.

[3] The obligation to deliver papers and property is subject to a lawyer's right of lien. In the event of conflicting claims to such papers or property, the lawyer should make every effort to have the claimants settle the dispute.

[4] Co-operation with the successor lawyer will normally include providing any memoranda of fact and law that have been prepared by the lawyer in connection with the matter, but confidential information not clearly related to the matter should not be divulged without the written consent of the client.

[5] A lawyer acting for several clients in a case or matter who ceases to act for one or more of them should co-operate with the successor lawyer or lawyers to the extent required by the rules and should seek to avoid any unseemly rivalry, whether real or apparent.

### Confidentiality

**3.7-9.1** Subject to exceptions permitted by law, if the reason for withdrawal results from confidential communications between the lawyer and the client, the lawyer must not disclose the reason for the withdrawal unless the client consents.

### Commentary

[1] One such exception is that in *R. v. Cunningham*, 2010 SCC 10, which establishes that, in a criminal case, if the disclosure of information related to the payment of the lawyer's fees is unrelated to the merits of the case and does not prejudice the accused, the lawyer may properly disclose such information to the court. See para. 31:

## Chapter 6 – Relationship to Students, Employees, and Others

- (iii) the fact the person is a non-lawyer is disclosed, and
- (iv) the capacity in which the person signs the correspondence is indicated;
- (m) forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction;
- (n) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or
- (o) issue statements of account.

### Commentary

[1] A lawyer is responsible for any undertaking given or accepted and any trust condition accepted by a non-lawyer acting under his or her supervision.

[2] A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers or public officials or with the public generally, whether within or outside the offices of the law firm of employment.

[3] In real estate transactions using a system for the electronic submission or registration of documents, a lawyer who approves the electronic registration of documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

**6.1-3.1** The limitations imposed by rule 6.1-3 do not apply when a non-lawyer is:

- (a) a community advocate funded and designated by the Law Foundation;
- (b) a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and
- (c) with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.

**6.1-3.2** A lawyer may employ as a paralegal a person who

- (a) possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;
- (b) possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and
- (c) carries out his or her work in a competent and ethical manner.

### Commentary

[1] A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner.

[2] In arriving at this determination, lawyers should be guided by Appendix E.

[3] Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

**6.1-3.3** Despite rule 6.1-3, where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal

- (a) to give legal advice;
- (b) to represent clients before a court or tribunal, other than a family law arbitration, as permitted by the court or tribunal; or
- (c) to represent clients at a family law mediation.

[amended 12/2015]

### Commentary

[1] Law Society Rule 2-13 limits the number of designated paralegals performing the enhanced duties of giving legal advice, appearing in court or before a tribunal or appearing at a family law mediation.

[2] Where a designated paralegal performs the services in rule 6.1-3.3, the supervising lawyer must be available by telephone or other electronic means, and any agreement arising from a family law mediation must be subject to final review by the supervising lawyer.

[[1] updated 07/2015; [1] amended, [2] added 12/2015]

### Suspended or disbarred lawyers

**6.1-4** Without the express approval of the lawyer's governing body, a lawyer must not retain, occupy office space with, use the services of, partner or associate with or employ in any capacity having to do with the practice of law any person who, in any jurisdiction,

- (a) has been disbarred and struck off the Rolls,
- (b) is suspended,
- (c) has undertaken not to practise,
- (d) has been involved in disciplinary action and been permitted to resign and has not been reinstated or readmitted,
- (e) has failed to complete a Bar admission program for reasons relating to lack of good character and repute or fitness to be a member of the Bar,



**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.

[amended 01/2013, effective March 18, 2013; amended 04/2015]

**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:

## Code of Professional Conduct for British Columbia

- (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.

[added 01/2013, effective March 18, 2013]

### **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.

[added 01/2013, effective March 18, 2013]

**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.

[added 01/2013, effective March 18, 2013]

### **Commentary – designated paralegals and family law mediation**

[1] The purpose of this commentary is to provide guidance to supervising lawyers who are considering sending a designated paralegal to represent a client at a family law mediation.

[2] Designated paralegals are permitted to represent a client at family law mediations in circumstances the supervising lawyer deems appropriate. However, family law mediations present unique challenges and before permitting a paralegal to represent a client in such processes the supervising lawyer must:

- (a) determine whether the designated paralegal possesses the necessary skill and knowledge to act in the matter (consistent with the general obligation for determining whether to delegate work to the designated paralegal);
- (b) ensure that there is no prohibition at law that prevents the designated paralegal from representing the client. For example, consider the restrictions in the Notice to Mediate Regulations regarding who has the right to accompany a party to a mediation;
- (c) obtain the client's informed consent to the use of the designated paralegal.

[3] It is prudent for the supervising lawyer to advise the mediator and the other party, through their counsel if they are represented, that the designated paralegal will be representing the client and provide the name and contact information for the supervising lawyer.

[4] In addition to considering the process in Appendix E of the *BC Code*, lawyers should consider the following before permitting a designated paralegal to represent a client at a family law mediation:

- Mediation requires as much competency of the legal representative as is required before a court or tribunal. The supervising lawyer must bear this in mind when determining when it is appropriate to have a designated paralegal represent a client;
- Family law is a unique area of law in which many other areas of law intersect. In addition, clients are often dealing with considerable emotional stress and in some cases come from environments where family violence exists. It is an area of practice fraught with risks that both the lawyer and the designated paralegal need the skills and knowledge to identify and properly manage. Considerable skill is required to represent a client effectively at a family law mediation. A supervising lawyer should ensure the designated paralegal has received specific training in representing a client at a family law mediation. It is prudent to have the designated paralegal shadow the lawyer for several sessions and then have the lawyer shadow the designated paralegal for his or her first few sessions.

[5] Despite more family law matters being directed to consensual dispute resolution processes rather than to court, it remains essential that those processes and the settlements that arise in them be fair. It is important, therefore, for both the supervising lawyer and the designated paralegal to understand the case law surrounding circumstances in which settlement agreements have been set aside by the court on the grounds that the settlement was unfair.

[6] Lawyers must review any settlement agreement arising from a family law mediation where their designated paralegal represented the client, and such agreements are provisional until such time as the lawyer has signed off on it. This provides an opportunity for review and an additional safeguard for the client. The lawyer would also be prudent to advise the client about this process as a standard part of the retainer agreement.

[added 12/2015]

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## Appendix E – Supervision of Paralegals

- (c) Review the courses that the paralegal took and consider reviewing the course outline for relevant subject matters to assess what would have been covered in the course, consider total number of credit hours, etc.
  - (d) Ask the paralegal about the education experience.
2. Does the paralegal have other post-secondary education that may provide useful skills? Consider the reputation of the institution and review the paralegal's transcripts.
3. What work experience does the paralegal have, with particular importance being placed on legal work experience?:
- (a) Preference/weight should be given to work experience with the supervising lawyer and/or firm;
  - (b) If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;
  - (c) Does the paralegal have experience in the relevant area of law?
  - (d) What responsibilities has the paralegal undertaken in the past in dealing with legal matters?
4. What personal qualities does the paralegal possess that make him or her well-suited to take on enhanced roles:
- (a) How responsible, trustworthy and mature is the paralegal?
  - (b) Does the paralegal have good interpersonal and language skills?
  - (c) Is the paralegal efficient and well organized?
  - (d) Does the paralegal possess good interviewing and diagnostic skills?
  - (e) Does the paralegal display a strong understanding of both the substantive and procedural law governing the matter to be delegated?
  - (f) Does the paralegal strive for continuous self-improvement, rise to challenges, etc.?

### Screening for family violence

1. The *Family Law Act*, SBC 2011, c. 25 requires family dispute resolution professionals to screen for family violence. Lawyers who practise family law are strongly encouraged to take at least 14 hours of training in screening for family violence, and lawyers who are acting as family law mediators, arbitrators or parenting coordinators are required to take such training.

[added 12/2015]

2. While designated paralegals do not fall within the definition of family dispute resolution professionals, lawyers who delegate to designated paralegals the ability to give legal advice in family law or represent clients in the permitted forums are strongly encouraged to ensure the designated paralegal has at least 14 hours of training in screening for family violence.

[added 12/2015]

**3.** If a designated paralegal has reason to believe family violence may be present, it is essential the paralegal bring this to the supervising lawyer's attention so the lawyer can turn his or her mind to the issue and the potential risks associated with it.

[added 12/2015]

**Designated paralegals giving legal advice**

**1.** As part of the process of supervising a designated paralegal, a lawyer should instruct the designated paralegal as to the key aspects of what giving sound legal advice involves.

[added 12/2015]

**2.** Giving legal advice and independent legal advice involves consideration of process and of the content of the advice. As a matter of process the lawyer, or designated paralegal, must obtain the relevant factual information from the client. This requires the skill of focusing on necessary factual material, rather than an exhaustive and costly exploration of all potential facts no matter how tangential they may be. Once the lawyer, or designated paralegal, has the factual foundation, he or she advises the client of the legal rights, obligations and/or remedies that are suggested by the facts. Finally, the lawyer should make a recommendation as to the preferred course of conduct and explain in clear terms why the suggested course is preferred.

[added 12/2015]

**3.** When a lawyer is training a designated paralegal it is essential to instruct the paralegal as to the proper process for ensuring the paralegal is imparting sound and cost effective legal advice to the lawyer's client.

[added 12/2015]

**2016 BC LAWYERS' COMPULSORY PROFESSIONAL  
LIABILITY INSURANCE  
POLICY NUMBER: LPL 16-01-01**

INSURER:

**THE LSBC CAPTIVE INSURANCE COMPANY LTD.  
(the "Company")**

Administrative Offices, 8th Floor, 845 Cambie Street  
Vancouver, BC V6B 4Z9

ADMINISTRATOR:

**THE LAW SOCIETY OF BRITISH COLUMBIA  
(the "Law Society")**

INSURANCE CONSULTANT:

**JARDINE LLOYD THOMPSON CANADA INC.**

**DECLARATIONS**

- |     |                           |  |     |             |   |     |             |  |     |           |   |
|-----|---------------------------|--|-----|-------------|---|-----|-------------|--|-----|-----------|---|
| 1.  | <b>Individual Insured</b> | As defined in this policy.   |     |             |   |     |             |  |     |           |   |
| 2.  | <b>Policy Period</b>      | From January 1, 2016 to January 1, 2017 (12:01 a.m. standard time).  |     |             |   |     |             |  |     |           |   |
| 3.  | Limits of Liability       | <p>PART A: Professional Liability (for negligence)</p> <table border="0" style="width: 100%;"><tr><td style="width: 5%; vertical-align: top;">(a)</td><td style="width: 20%; vertical-align: top;">\$1,000,000</td><td>All <b>claims</b> arising out of an <b>error</b> for <b>damages, claims expenses</b> and deductibles.</td></tr><tr><td style="vertical-align: top;">(b)</td><td style="vertical-align: top;">\$2,000,000</td><td>Annual Aggregate Limit for <b>damages, claims expenses</b> and deductibles, including any payments under Part C.</td></tr></table> <p>PART B: Trust Protection (for dishonest appropriation)</p> <table border="0" style="width: 100%;"><tr><td style="width: 5%; vertical-align: top;">(c)</td><td style="width: 20%; vertical-align: top;">\$300,000</td><td>All <b>claims</b> for <b>damages</b> by a <b>claimant</b> arising out of an <b>error</b> or <b>related errors</b></td></tr></table> <p style="text-align: right; margin-right: 20px;">except for inter-jurisdictional practice as provided in Conditions 1.4.3 and 1.6.</p> | (a) | \$1,000,000 | All <b>claims</b> arising out of an <b>error</b> for <b>damages, claims expenses</b> and deductibles. | (b) | \$2,000,000 | Annual Aggregate Limit for <b>damages, claims expenses</b> and deductibles, including any payments under Part C. | (c) | \$300,000 | All <b>claims</b> for <b>damages</b> by a <b>claimant</b> arising out of an <b>error</b> or <b>related errors</b> |
| (a) | \$1,000,000               | All <b>claims</b> arising out of an <b>error</b> for <b>damages, claims expenses</b> and deductibles.  |     |             |   |     |             |  |     |           |   |
| (b) | \$2,000,000               | Annual Aggregate Limit for <b>damages, claims expenses</b> and deductibles, including any payments under Part C.   |     |             |   |     |             |  |     |           |   |
| (c) | \$300,000                 | All <b>claims</b> for <b>damages</b> by a <b>claimant</b> arising out of an <b>error</b> or <b>related errors</b>  |     |             |   |     |             |  |     |           |   |

## INSURANCE POLICIES

- (d) \$17,500,000 Profession-Wide Annual Aggregate Limit for all **claims** for **damages** and **claims expenses**.

PART C: Trust Shortage Liability (for reliance on fraudulent certified cheques)

- (e) \$500,000 All **claims** arising out of an **error** for **damages, claims expenses** and deductibles.

- (f) \$500,000 Annual Aggregate Limit for **damages, claims expenses** and deductibles.

- (g) \$500,000 **Law Firm** Annual Aggregate Limit for all **claims** for **damages, claims expenses** and deductibles.

- (h) \$2,000,000 Profession-Wide Annual Aggregate Limit for all **claims** for **damages, claims expenses** and deductibles.

4. Deductibles Applicable to PARTS A and C only

Part A: Professional Liability (for negligence)

- (a) \$5,000 Each **error** resulting in the payment of **damages**, except an **error** arising out of your performance of **sanctioned services** or a **protocol error**.

- (b) \$10,000 Each additional **error** reported within a three year period resulting in the payment of **damages**, except an **error** arising out of your performance of **sanctioned services** or a **protocol error**.

PART C: Trust Shortage Liability (for reliance on fraudulent certified cheques)

35% of the total amount of **damages** paid under this policy, subject to Condition 2.2.

5. Insurance Fee As agreed between the **Company** and the **Law Society**.

**This policy governs claims and potential claims reported in 2016 — read carefully.** Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act*.



## DEFINITIONS

For convenience, all defined words are in bold print. We, us or our refers to the **Company**. You, your or the **Insured** refers in Parts A and C to the **Individual Insured** or the **Additional Insured**, and in Part B to the **Individual Insured** or the **Innocent Insured**. Unless otherwise indicated, all specific statutory references are to statutes of British Columbia. In this policy:

**Additional Insured** means:

- (a) each **law firm** in which the **Individual Insured** is or was a partner, employee or associate counsel or that is or was liable for the **Individual Insured**;
- (b) each **law corporation**, law office management corporation and law office management limited partnership, which is or was owned wholly or partly, directly or indirectly, by the **Individual Insured** or his or her spouse, and each present or former officer, director, shareholder or limited partner thereof;
- (c) each present or former **member** who, at the time of the **error**, was insured by us and was the **Individual Insured's** partner or liable for the **Individual Insured**;
- (d) each present or former employee of the **Individual Insured**, or of any **law firm, law corporation, law office management corporation and law office management limited partnership** described in (a) or (b) above, provided such employee was acting within the scope of his or her duties and acting under the supervision of, in a supporting role to and not independent of the **Individual Insured**; and
- (e) each present or former **MDP partner** who, at the time of the **error**, was insured by us and a partner in a **multi-disciplinary practice** in which all of the members were in compliance with **Law Society Rules 2-38 through 2-49**.

**Apparent partnership** means: an expense sharing or other arrangement in which two or more **members** or **law corporations**, or a combination thereof, are or were held out to the public as partners whether or not the partnership in fact exists or existed.

**Canadian legal advisor** means: a member admitted as a Canadian legal advisor by the **Law Society**.

**Certificate** means: a certificate issued by the **Law Society** to a **member** as evidence of insurance under any previous plan of professional liability insurance for **members** of the **Law Society**.

**Claim** means: a demand for money, an action, a claim or institution of proceedings against you.

**Claimant** means:

- (a) under Part A or C: a person or **organization** who has made or may make a **claim**; or
- (b) under Part B: a person who has or alleges to have suffered a monetary loss, and who provides a statutory declaration relating to that loss in a form satisfactory to us.

## INSURANCE POLICIES

**Claims expenses** means:

- (a) fees and disbursements charged by defence counsel appointed by us; and
- (b) all other fees, costs and expenses incurred by us, or by you with our written consent, resulting from the investigation, adjustment, defence and appeal of a **claim** or potential **claim**, including all sums payable under Insuring Agreements A 2, B 2 and C 2. **Claims expenses** does not include salaries of our officers, directors and employees, or those of the **Law Society**.

**Common-law spouse** means: a person not married to the **Individual Insured**, who has lived with the **Individual Insured** in a marriage-like relationship, including a similar relationship between persons of the same gender, for a period of not less than one year.

**Compensation program** means: those statutory compensation programs as provided for by any current or former legislative act, including but not limited to: funds established to compensate victims of lawyer defalcation; the “Assurance Fund” as provided under the *Land Title Act*; similar funds as established for general public protection against loss consequent on the unlawful acts of third parties under other legislation as may now or subsequently be established; and any substantially similar or equivalent compensation programs established by any government.

**Confidentiality Protocol** means: the **Law Society’s** protocol for the preservation of confidentiality of professional liability insurance claims information, as amended from time to time.

**Damages** means:

- (a) under Part A: any compensatory damages award including any related pre-judgment or post-judgment interest or costs, settlement, or **repair costs**, relating to covered allegations. **Damages** does not include:
  - (i) an order of set-off or any order for the return or reimbursement of, or accounting for or disgorgement of, any property, benefit, legal fees or disbursements that you received, even if claimed as general damages;
  - (ii) any order for punitive, exemplary or aggravated damages;
  - (iii) any fine, sanction or penalty; or
  - (iv) any order for costs or indemnification for costs made against you in litigation in which you are not a party, or any order for special costs;
- (b) under Part B: any monetary award including any related pre-judgment or post-judgment interest or costs, or settlement, for the direct loss only of no more than the value of money or the **deemed value** of other property dishonestly appropriated. **Damages** does not include:
  - (i) any amount for which the **claimant** or **Insured**:
    - a. is entitled to claim indemnity under any other policy or form of insurance (including title insurance); or

## INSURANCE POLICIES

- b. has recourse through any **compensation program** or other source of recovery including set-offs whether legal or equitable;  
  
that would cover such loss in whole or in part in the absence of this policy as this coverage is intended to be last-resort insurance; or
- (ii) any order for costs or indemnification for costs made against you in litigation in which you are not a party, or any order for special costs; or
- (c) under Part C: any monetary award including any related pre-judgment or post-judgment interest or costs, or settlement, for the direct loss only of no more than the amount of the trust shortage.

**Deemed individual coverage period** means: any period after January 1, 2002, 12:01 a.m. standard time during which the **Individual Insured** was a **member** and was performing **sanctioned services**.

**Deemed value** means: the equivalent of the property's actual cash value or, if the property is not convertible into money, the actual cash value of the property at the time of dishonest appropriation.

**Error** means:

- (a) under Part A: an actual or alleged negligent act, negligent error or negligent omission, including a **protocol error**, or a **personal injury**. Where actual or alleged errors are related, they will be deemed to be one **error**. Errors are related when they:
  - (i) are logically or causally connected;
  - (ii) cause a single loss to one or more **claimants**;
  - (iii) occur in the course of the **Insured(s)** acting as an administrator, executor, guardian, trustee or committee; or
  - (iv) occur in relation to the same or similar underlying facts, events, transactions, activities or undertakings, which, without limiting the generality of the foregoing, include accidents, investment programs or schemes, loan agreements, offerings of ownership interest or debt, corporate reorganizations, tax plans, estates, real estate developments, leases, licences, commercial ventures and litigation matters;

regardless of whether they are made by more than one **Insured** or by **Insured(s)** acting in more than one capacity, occur at different times or in the course of more than one professional service, retainer or client matter, or give rise to **claims** by more than one **claimant**;

- (b) under Part B: a dishonest appropriation of money or other property, whether to the use of the **Individual Insured** or a third party, which was entrusted to and received by the **Individual Insured** in his or her capacity as a barrister and solicitor and in relation to the provision of **professional services** to others; or

## INSURANCE POLICIES

- (c) under Part C: a payment to a third party that, as a result of the deposit into a **trust account** of what purports and appears and the **Individual Insured** believes to be a genuine certified cheque, bank draft, credit union official cheque, **law firm** trust cheque or money order that ultimately proves to be counterfeit, forged or materially altered, creates an unintended shortage in client funds that are held in that **trust account** in connection with the performance of **professional services** for others.

**Family** means: spouse (including **common-law spouse**), children, parents or siblings.

**Individual coverage period** means: any period prior to January 1, 1971, 12:01 a.m. standard time during which the **Individual Insured** was a **member**, any period between January 1, 1971, 12:01 a.m. standard time and January 1, 1998, 12:01 a.m. standard time during which the **Individual Insured** was a **member** and held a **certificate**, and any period after January 1, 1998, 12:01 a.m. standard time for which the **Individual Insured** has paid the annual insurance fee.

**Individual Insured** means: each **member** or former **member** who made or allegedly made the **error** or, for the purposes of Part A of this policy only, each **MDP partner** or former **MDP partner** who made or allegedly made the **error**, provided that all of the members of the **multi-disciplinary practice** were in compliance with **Law Society** Rules 2-38 through 2-49 at the time of the **error**.

**Ineligible portion** means: that portion that equals the proportionate beneficial ownership of the **organization** held individually or collectively, directly or indirectly, at the time of the **error** by the persons listed in subparagraphs 6.2.1, 6.2.2 and 6.2.3 of Exclusion 6.2 of this policy.

**Innocent Insured** means: each present or former **member** who:

- (a) is or may be liable for the **Individual Insured**;
- (b) did not personally commit, participate in committing, or acquiesce in the **error**; and
- (c) was insured by us at the time of the **error**.

**Insured** means:

- (a) under Part A or Part C: an **Individual Insured** or **Additional Insured**; or
- (b) under Part B: an **Individual Insured** or **Innocent Insured**.

**Law corporation** means: a law corporation as defined in the *Legal Profession Act*.

**Law firm** means: a sole proprietorship owned by a **member**, a **law corporation**, a partnership of **members** or **law corporations** or a combination thereof, a **multi-disciplinary practice** or an **apparent partnership**.

**MDP partner** means: a non-lawyer partner in a **multi-disciplinary practice** in which permission to practise law was granted under Rule 2-41 of the **Law Society** Rules.

**Member** means: a member, other than a **Canadian legal advisor**, in good standing shown on the records of the **Law Society**.

**Multi-disciplinary practice** means: a multi-disciplinary practice as defined in the **Law Society** Rules.

## INSURANCE POLICIES

**Organization** means: any business, business venture, joint venture, proprietorship, partnership, limited partnership, cooperative, society, syndicate, corporation, association or any legal or commercial entity.

**Personal injury** means: malicious prosecution, libel or slander, or a publication or utterance in violation of an individual's right of privacy.

**Policy period** means: the period stated in Declaration 2.

**Professional services** means:

- (a) the practice of law as defined in the *Legal Profession Act*;
- (b) *pro bono* legal services;
- (c) acting as an Official Administrator, a custodian under Part 6 of the *Legal Profession Act*, an arbitrator, mediator or conciliator, by a **member**;
- (d) acting as:
  - (i) an administrator, executor, guardian, trustee or committee or in any similar fiduciary capacity;
  - (ii) a patent or trademark agent; or
  - (iii) agent for any record keeping or filing duty imposed by any provincial or federal statute;provided that such services are connected with and incidental to the **Individual Insured's** practice of law and, for the purposes of Part B of this policy only, the **Individual Insured** is also providing legal services;
- (e) performing any other activity deemed to be the practice of law by the **Law Society**; or
- (f) acting as an **MDP partner**, provided that such services support or supplement the practice of law by the **law firm** and are provided under the supervision of a **member**.

**Professional services** does not include:

- (a) the mere receipt and/or distribution of funds, from trust or otherwise; or
- (b) acting merely as a bailee.

**Protocol error** means: a building location defect that is not disclosed as a result of an opinion given in compliance with and pursuant to the terms and conditions of the Western Law Societies Conveyancing Protocol (British Columbia) issued by the **Law Society**, Version 2, February 2, 2001 as amended from time to time.

**Reciprocal Jurisdiction** means: the province, but not the territory, of a reciprocating governing body as defined in the **Law Society** Rules, other than the Barreau du Québec.

## INSURANCE POLICIES

**Related claimants** in Part B means: **claimants** are related if the money or other property dishonestly appropriated was jointly provided or jointly owned by the **claimants**.

**Related errors** in Part B means: **errors** are related if the money or other property dishonestly appropriated was received in relation to the provision of the same **professional services**, retainer or client matter.

**Repair costs** means: any costs, other than **claims expenses**, approved or paid by us, incurred attempting to avoid or mitigate a loss arising out of an **error**.

**Sanctioned services** means: *pro bono* legal services provided to an individual known to you only as a result of performing these services through a *pro bono* legal services program, provided that both the services and the program are approved for the purposes of this policy by the **Law Society**, and that the services are provided solely through the program.

**Trust account** means: a trust account operated pursuant to and in accordance with Part 3, Division 7, Trust Accounts and Other Client Property, of the **Law Society** Rules.

**Unauthorized practice** means: the practice of law by an **Individual Insured**:

- (a) in breach of an undertaking given to the **Law Society** or in contravention of a condition or limitation of practice imposed or agreed to under the **Law Society** Rules, for the purposes of Condition 3.3; or
- (b) in contravention of the rules of any other law society or bar, for the purposes of Exclusion 9.

## INSURANCE POLICIES

This policy is a contract between each **Insured** and the **Company**.

In consideration of the payment of the insurance fee and subject to the terms of this policy, we agree with you that:

### INSURING AGREEMENTS

#### PART A: PROFESSIONAL LIABILITY (FOR NEGLIGENCE)

##### 1. INSURING AGREEMENT A 1

We shall pay on your behalf all sums which you become legally obligated to pay as **damages** because of any **claim** first made against you and reported to us during the **policy period** arising out of an **error** by you in performing or failing to perform **professional services** for others.

##### 2. INSURING AGREEMENT A 2

2.1 With respect to any **claim** first made or suit first brought within Canada or the United States of America seeking **damages** for which you are entitled to indemnity under Part A of this policy, we shall have the right:

2.1.1 and the duty to defend any suit against you, even if any of the allegations of the suit are groundless, false or fraudulent; and

2.1.2 to select and instruct defence counsel and to investigate and settle any **claim** including the right to elicit, or instruct defence counsel to elicit, offers of settlement. If you object to any settlement recommended by us, we may:

(a) settle the **claim** without your consent and you will remain liable to pay the deductible stated in Declaration 4; or

(b) give you the right to negotiate or defend the **claim** or suit if you provide security for any **damages** for which you may be liable. The amount and form of security required will be determined by us, in our sole discretion. If we give you the right to negotiate or defend the **claim** or suit, any duty we may have had to defend the **claim** ceases and the **damages** and **claims expenses** in excess of the amount for which we could have settled will not be recoverable under this policy.

2.2 With respect to any **claim** that is made or suit that is brought elsewhere than within Canada or the United States of America seeking **damages** for which you are entitled to indemnity under Part A of this policy:

2.2.1 we shall have the right, but not the duty, to investigate, settle, defend or pay **claims expenses** in accordance with Insuring Agreement A 2.1.2; and

## INSURANCE POLICIES

- 2.2.2 if we elect not to investigate, settle or defend a **claim** or suit, you will, under our supervision, investigate and defend as is reasonably necessary and, if we deem prudent you will settle such **claim** or suit. Subject to Insuring Agreement A 2.3, we shall reimburse you for the reasonable cost of such investigation, settlement or defence.
- 2.3 For any part of a **claim** for which you are not entitled to coverage under Part A of this policy, you agree that you are responsible for:
- 2.3.1 any **claims expenses** that are solely or substantially attributable to that part; and
- 2.3.2 an equal or, if we agree, less than equal share of any **claims expenses** that are attributable both to that part, and any other part of the **claim** for which you are entitled to coverage under Part A.
- 2.4 The allocation of **claims expenses** under Insuring Agreement A 2.3 shall be determined following final determination of the **claim**.
- 2.5 Notwithstanding Insuring Agreement A 2.4 we may, at any time prior to final determination of a **claim**, require that you contribute, on an interim basis, to **claims expenses** in any proportion or amount that we determine is reasonable having regard to Insuring Agreement A 2.3. Any such payment, demand or failure to make a demand by us shall be without prejudice to our respective rights under Insuring Agreement A 2.4.
- 2.6 Any allocation or advancement of **claims expenses** shall not apply to or create any presumption with respect to the allocation between covered and uncovered loss.
- 2.7 Notwithstanding Exclusion 2, we shall have the right and the duty to defend, in accordance with Insuring Agreement A 2.1.2, any **claim** first made against you and reported to us during the **policy period** arising out of a **personal injury** while you were performing or failing to perform **professional services** for others.
- 2.8 Notwithstanding our obligations pursuant to Insuring Agreements A 2.1, A 2.2 and A 2.7, we may decline, at any time, to defend, continue to defend, investigate or pay **claims expenses** where we determine on reasonable grounds that a **claim** does not arise out of an **error** by you in performing or failing to perform **professional services** for others, or that you are not entitled to coverage for a **claim** because of any exclusion, breach of a condition or any other term of this policy. If you disagree with our decision you agree that, at the arbitration of the dispute, each of us may introduce evidence relating to the issues of coverage and your activities and that such evidence shall be considered by the arbitrator in making his or her determination of our respective obligations.

### 3. INSURING AGREEMENT A 3

- 3.1 Part A of this policy applies only to **claims** arising out of **errors** that occurred either during the **individual coverage period** or in relation to **sanctioned services** performed during the **deemed individual coverage period**, and provided that:



## INSURANCE POLICIES

- 3.1.1 the **claim** or potential **claim** is first made against you during the **policy period** and reported to us in writing during the **policy period**; and
- 3.1.2 you had no knowledge, prior to January 1, 1989 of the **claim** or of an **error** or circumstances occurring prior to January 1, 1986 which you knew or could have reasonably foreseen might be the basis of a **claim**.
- 3.2 A **claim** is first made against you during the **policy period** if during the **policy period**:
  - 3.2.1 you become aware of an **error** or any circumstance which could reasonably be expected to be the basis of a **claim**, however unmeritorious; or
  - 3.2.2 a **claim** is made against you seeking **damages** for which you are entitled to indemnity under this policy.
- 3.3 If Part A of this policy replaces, without interruption of coverage, a policy issued previously by us then a **claim** which was first made against you after January 1, 1989, and reported to us within the **policy period**, will be deemed to be first made against you within the **policy period** of this policy.
- 3.4 Except as provided in Condition 6, if you are not entitled to indemnity or a defence for a **claim**, Part A of this policy will not provide indemnity or a defence for such or similar **claim** to any other **Insured**.
- 3.5 Where the closest and most real connection to a **claim** or potential **claim** is with a **Reciprocal Jurisdiction**, and the scope of coverage provided by the **Reciprocal Jurisdiction's** compulsory lawyers professional liability insurance (the "**Reciprocal Jurisdiction's** policy") is broader than that provided by Part A of this policy, then we shall provide the same scope of coverage as that of the **Reciprocal Jurisdiction's** policy. For clarity, however, all **claims** and potential **claims** reported under Part A of this policy shall remain subject to the limits of liability stated in Condition 1 and the Declarations of this policy.

The determination of whether a **Reciprocal Jurisdiction** has the closest and most real connection to a **claim** or potential **claim** will be made by us, exercising our discretion reasonably, and considering whether at the time you were performing the **professional services** giving rise to the **claim**:

- (a) you were practicing the law of a **Reciprocal Jurisdiction**;
- (b) you were performing the **professional services** in a **Reciprocal Jurisdiction**;
- (c) your client was in a **Reciprocal Jurisdiction**; and
- (d) the subject matter of the **professional services** was located in or emanated from a **Reciprocal Jurisdiction**.

We will also consider where the proceedings, if any, to advance the **claim** are or are likely to be brought.

## INSURANCE POLICIES

This Insuring Agreement applies only if, at the time the **Individual Insured** was performing the **professional services** giving rise to a **claim**, the **Individual Insured** was practicing law either in accordance with the inter-jurisdictional practice provisions of the Rules of the **Law Society** and the **Reciprocal Jurisdiction's** law society or as a Canadian legal advisor member of the Barreau du Québec. This Insuring Agreement does not apply if coverage under Part A of this policy would be excluded or limited in any way by the application of Exclusion 7 or 11 to a **claim** or potential **claim**.

### **PART B: TRUST PROTECTION (FOR DISHONEST APPROPRIATION)**

#### **1. INSURING AGREEMENT B 1**

Notwithstanding Exclusions 1 and 2 of this policy, we shall pay on your behalf all sums which you become legally obligated to pay to a **claimant** as **damages** because of any **claim** first made against you and reported to us during the **policy period** arising out of an **error** by the **Individual Insured**, provided that the **error** is the sole cause of the **damages**.

#### **2. INSURING AGREEMENT B 2**

2.1 With respect to any **claim** first made or suit first brought seeking **damages** that are covered under Part B of this policy:

2.1.1 we shall have the right, but not the duty, to defend any suit against you;

2.1.2 if we elect to defend you, we shall have the right to:

- (a) select and instruct defence counsel; and
- (b) withdraw from the defence of the suit, without seeking or obtaining your consent, at any time that we, in our sole discretion, deem appropriate;

2.1.3 we shall have the right to investigate any **claim** or potential **claim**; and

2.1.4 we shall have the right to settle any **claim** without seeking or obtaining your consent, on such terms and conditions and at such time as we, in our sole discretion, deem appropriate.

#### **Coverage under this Part B shall only apply to:**

1. **Claims** arising out of **errors** that occurred while the **Individual Insured** was a **member**, and provided that the **claim** is first made against you during the **policy period** and reported to us during the **policy period**. A **claim** is first made against you during the **policy period** if during the **policy period**:

1.1 an **Innocent Insured** becomes aware of an **error** or any circumstance which could reasonably be expected to be the basis of a **claim**, however unmeritorious, or a **claim** is made against an **Innocent Insured** seeking **damages** that are covered under Part B of this policy;

## INSURANCE POLICIES

- 1.2 a **claim** is made against an **Individual Insured** seeking **damages** that are covered under Part B of this policy, and we deem notice of the **claim** given to us by a third party to be notice given by the **Individual Insured**; or
  - 1.3 the **Law Society** gives notice of a **claim** or potential **claim** against an **Individual Insured**, and we deem such notice to be notice given by the **Individual Insured**.
2. A **claim** seeking **damages** that are covered under Part B of this policy that is first made against you and of which written notice is given to us by the **claimant** within:
    - 2.1 six (6) months of the **claimant** becoming sufficiently aware of the facts underlying the occurrence of an **error** such that the **claimant** had the means of knowing that an **error** had occurred; and
    - 2.2 in any event, no more than ten (10) years of the time of the **error**.

We may, in our sole discretion, agree to extend the time limits set out in 2.1 and 2.2.

### **PART C: TRUST SHORTAGE LIABILITY (FOR RELIANCE ON FRAUDULENT CERTIFIED CHEQUES)**

#### **1. INSURING AGREEMENT C 1**

We shall pay on your behalf all sums which you become legally obligated to pay as **damages** because of any **claim** first made against you and reported to us during the **policy period** arising out of an **error** by you.

#### **2. INSURING AGREEMENT C 2**

- 2.1 With respect to any **claim** first made or suit first brought seeking **damages** that are covered under Part C of this policy:
  - 2.1.1 we shall have the right, but not the duty, to defend any suit against you;
  - 2.1.2 if we elect to defend you, we shall have the right to select and instruct defence counsel;
  - 2.1.3 we shall have the right to investigate any **claim** or potential **claim**; and
  - 2.1.4 we shall have the right to settle any **claim** including the right to elicit, or instruct defence counsel to elicit, offers of settlement. If you object to any settlement recommended by us, we may:
    - (a) settle the **claim** without your consent and you will remain liable to pay the deductible stated in Declaration 4; or
    - (b) give you the right to negotiate or, if we are defending, defend the **claim** or suit. In this event, the **damages** and **claims expenses** in excess of the

## INSURANCE POLICIES

amount for which we could have settled will not be recoverable under this policy.

### 3. INSURING AGREEMENT C 3

- 3.1 Part C of this policy applies only to **claims** arising out of **errors** that occurred during the **individual coverage period**, and provided that the **claim** or potential **claim** is first made against you during the **policy period** and reported to us in writing during the **policy period**.
- 3.2 A **claim** is first made against you during the **policy period** if during the **policy period**:
- 3.2.1 you first become aware of an **error** or any circumstance which could reasonably be expected to be the basis of a **claim**, however unmeritorious; or
- 3.2.2 a **claim** is made against you seeking **damages** for which you are entitled to indemnity under this policy.
- 3.3 If Part C of this policy replaces, without interruption of coverage, a policy issued previously by us then a **claim** which was first made against you after January 1, 2012, and reported to us within the **policy period**, will be deemed to be first made against you within the **policy period** of this policy.
- 3.4 Except as provided in Condition 6, if you are not entitled to indemnity or a defence for a **claim**, Part C of this policy will not provide indemnity or a defence for such or similar **claim** to any other **Insured**.

## EXCLUSIONS

This policy does not apply to:

1. a **claim** arising out of or in any way connected to your actual or alleged criminal act;
2. a **claim** arising out of or in any way connected to your actual or alleged dishonest, fraudulent or malicious act;
3. a **claim** arising out of or in any way connected to any injury to, physical contact with, sickness, disease or death of any person or injury to or destruction of any tangible property, including the loss of use thereof;
4. a **claim** arising out of or in any way connected to your activity as a fiduciary with respect to an employee benefit plan or pension plan;
5. a **claim** arising out of or in any way connected to your activities as an officer or director except your activities as an officer or director of a **law corporation** or law office management corporation;
6. a **claim**:
  - 6.1 arising out of an **error** of an **Individual Insured**, the payment of which would benefit, in whole or in part, directly or indirectly, the **Individual Insured** or the **Individual Insured's family** or **law firm**, provided that this Exclusion 6.1 does not apply to any benefit derived solely from the ownership of an **organization**; or
  - 6.2 by or in any way connected to any **organization** in which:
    - 6.2.1 the **Individual Insured**;
    - 6.2.2 the **Individual Insured's family**; or
    - 6.2.3 the partners, associates or associate counsel of the **Individual Insured** or of the **Individual Insured's law firm**;

individually or collectively, directly or indirectly, had at the time of the **error** or thereafter, effective management or control of the **organization** or beneficial ownership of the **organization** in an amount greater than ten per cent (10%), provided that with respect to any payment resulting from a **claim** that falls within Part B of this policy, this Exclusion 6.2 applies only to exclude the **ineligible portion** of such payment.
- 6.3 If a **claim** arises out of an **error** which occurred before January 1, 1991, **family** shall be read without the words “(including **common-law spouse**)” and “parents or siblings”.
7. a **claim** arising out of or in any way connected to your activity as an employee, dependent contractor or partner of any **organization** other than:

## INSURANCE POLICIES

- 7.1 a **law firm**; or
- 7.2 a trade union, society or not-for-profit **organization** that provides *pro bono* legal services to the public, provided that:
  - 7.2.1 the **claim** arises out of an **error** that occurred during the **individual coverage period**; and
  - 7.2.2 the **claim** is not brought against you by or on behalf of such trade union, society or not-for-profit **organization**;

except a **claim** that falls within Part B of this policy and is not brought against you by or on behalf of such **organization**; or

- 8. a **claim** against you where the **Individual Insured** is a member of any other jurisdiction's law society or bar, except a law society of another province or territory of Canada, arising out of or in any way connected to that **Individual Insured's** permanent practice in the other jurisdiction. For the purposes of Part B of this policy, this Exclusion 8 shall be read with the words "the Barreau du Québec" substituted for the words "a law society of another province or territory of Canada" and without the word "permanent".

With respect to Part A: Professional Liability (for negligence) only, the following additional exclusions apply.

Part A of the policy does not apply to:

- 9. a **claim** against you where the **Individual Insured** is engaged in **unauthorized practice**, arising out of or in any way connected to that **unauthorized practice**;
- 10. a **claim** arising out of or in any way connected to your provision of investment advice or investment services unless as a direct consequence of the performance of **professional services**;
- 11. a **claim** arising out of or in any way connected to:
  - 11.1 the dishonest appropriation of money or other property; or
  - 11.2 an **error** under Part C of this policy, or any other shortage of funds held in a **trust account** if that shortage is caused by or in any way connected to a dishonest or fraudulent act; or
- 12. a **claim** arising out of or in any way connected to the collection, use and/or disclosure of any information by a third party, or the receipt by or transmission to a third party of malware or malicious code.

## INSURANCE POLICIES

With respect to Part B: Trust Protection (for dishonest appropriation) only, the following additional exclusions apply.

Part B of this policy does not apply to:

13. a **claim** arising out of or in any way connected to the wrongful or unlawful conduct, fault or neglect of the **claimant** or the **claimant's** spouse (including **common-law spouse**);
14. a **claim** by an **organization** arising out of or in any way connected to the wrongful or unlawful conduct, fault or neglect of an officer, director, employee or agent of the **organization** or an individual who had, directly or indirectly, effective management or control of the **organization** or beneficial ownership of the **organization** in an amount greater than ten per cent (10%);
15. a **claim** where the money or property that was dishonestly appropriated had been unlawfully obtained by the **claimant**;
16. a **claim** brought by a **claimant** who:
  - 16.1 knew prior to the time of the **error** of any dishonest act by the **Individual Insured**; or
  - 16.2 committed, participated in committing, consented to expressly or impliedly, acquiesced in or was reckless or wilfully blind to the **error**; or
17. a **claim** arising out of or in any way connected to an investment, a purported investment or a Ponzi scheme.

With respect to Part C: Trust Shortage Liability (for reliance on fraudulent certified cheques) only, the following additional exclusions apply.

Part C of this policy does not apply to:

18. a **claim** arising out of or in any way connected to the wrongful or unlawful conduct of a present or former employee of the **law firm** or contractor for the **law firm**;
19. a **claim** arising out of circumstances in which you were required but failed to comply with the client identification and verification procedures set out in Part 3, Division 11, Client Identification and Verification, of the **Law Society** Rules; or
20. **errors** that occurred prior to January 1, 2012.

## CONDITIONS

### 1. LIMITS OF LIABILITY

#### 1.1 LIMIT OF LIABILITY PART A — EACH ERROR

1.1.1 The limit of liability stated in Declaration 3(a) shall be the maximum amount payable under Part A of this policy for all **damages, claims expenses** and deductibles for all **claims** arising out of an **error**.

1.1.2 If a **claim** or potential **claim** is reported to us by or on behalf of any **Insured** during the **policy period**, all additional **claims** or potential **claims** reported subsequently that arise out of the same **error** shall be:

- (a) part of the **claim** or potential **claim** first made and reported to us; and
- (b) deemed to be reported within this **policy period**;

and all such **claims** or potential **claims** shall be subject to the terms of this policy and to the one limit of liability applicable to the **claim** or potential **claim** first reported.

#### 1.2 LIMIT OF LIABILITY PART A — ANNUAL AGGREGATE LIMIT

1.2.1 The limit of liability stated in Declaration 3(b) is the maximum amount payable under Part A of this policy on behalf of each **Individual Insured**, including all related **Additional Insureds**, for all **damages, claims expenses** and deductibles arising out of all **claims** and potential **claims** first reported during the **policy period**.

1.2.2 All payments of **damages, claims expenses** and deductibles reduce the limits of our liability stated in Declarations 3(b) and 3(f).

#### 1.3 MULTIPLE INSUREDS, CLAIMS OR CLAIMANTS — PART A

Notwithstanding any other provision of this policy, one or more **claims** resulting from an **error** shall be subject to one limit of liability and shall not increase our limits of liability regardless of whether the **error** is made by more than one **Insured** or by **Insured(s)** acting in more than one capacity and regardless of whether the **claims** are made against more than one **Insured** or made by more than one **claimant**.

#### 1.4 LIMIT OF LIABILITY PART B — EACH ERROR

1.4.1 The limit of liability stated in Declaration 3(c) or, if Condition 1.4.3 applies, then as stated there, shall be the maximum amount payable under Part B of this policy for all **damages** for all **claims** by a **claimant** arising out of an **error** or **related errors**.



## INSURANCE POLICIES

1.4.2 If a **claim** or potential **claim** is reported to us by or on behalf of any **Insured** during the **policy period**, all additional **claims** or potential **claims** reported subsequently that arise out of the same **error** or **related errors** shall be:

- (a) part of the **claim** or potential **claim** first made and reported to us; and
- (b) deemed to be reported within this **policy period**;

and all such **claims** or potential **claims** shall be subject to the terms of this policy and to the limit of liability stated in Declaration 3(c) or, if Condition 1.4.3 applies, then as stated there, applicable to the **claim** or potential **claim** first reported.

1.4.3 If the **error** or **related errors** arise out of either your temporary practice in or with respect to the law of a **Reciprocal Jurisdiction** of which you are not a member, or your practice as a Canadian legal advisor member of the Barreau du Québec, the limit of liability stated in Declaration 3(c) shall be \$250,000, and Conditions 1.4.1, 1.4.2 and 1.5 shall be read as if the amount in Declaration 3(c) was \$250,000.

### 1.5 MULTIPLE INSUREDS, CLAIMS, CLAIMANTS OR ERRORS — PART B

One or more **claims**, resulting from an **error** or **related errors** made by one or more **Insureds**, made against one or more **Insureds** by a **claimant** or by **related claimants**, shall be subject to the one limit of liability stated in Declaration 3(c) or, if Condition 1.4.3 applies, then as stated there. In no case will the limit of coverage for an **error** or **related errors** exceed the limit set out in Declaration 3(c).

### 1.6 LIMIT OF LIABILITY PART B — INTER-JURISDICTIONAL PRACTICE ANNUAL AGGREGATE LIMIT

The limit of liability that is the maximum amount payable under Part B of this policy on behalf of each **Individual Insured**, including all related **Additional Insureds**, for all **damages** arising out of all **claims** and potential **claims** first reported during the **policy period** arising out of either your temporary practice in or with respect to the law of a **Reciprocal Jurisdiction** of which you are not a member, or your practice as a Canadian legal advisor member of the Barreau du Québec, is \$2,000,000. This limit shall be included within the limit set out in Declaration 3(d).

### 1.7 LIMIT OF LIABILITY PART B — PROFESSION-WIDE ANNUAL AGGREGATE LIMIT

1.7.1 The limit of liability stated in Declaration 3(d) is the maximum amount payable under this policy for the **policy period** on an aggregate basis for all **Insureds** covered by Part B of this policy. For clarity, all **Insureds** covered by Part B of this policy means all present and former **members** of the **Law Society**. All payments by us of **damages** and **claims expenses** arising out of all **claims** and potential **claims** first reported during the **policy period** reduce the Profession-Wide Aggregate Limit for that **policy period** in the amount of the payments.

## INSURANCE POLICIES

1.7.2 The **Individual Insureds** and **Innocent Insureds** agree that we may make payments of **damages** and **claims expenses** in reduction of the Profession-Wide Aggregate Limit, even though such payments will reduce or eliminate the limit otherwise available to **Individual Insureds** or **Innocent Insureds** for the **policy period**.

### 1.8 LIMIT OF LIABILITY PART C — EACH **ERROR**

1.8.1 The limit of liability stated in Declaration 3(e) shall be the maximum amount payable under Part C of this policy for all **damages**, **claims expenses** and deductibles for all **claims** arising out of an **error**.

1.8.2 If a **claim** or potential **claim** is reported to us by or on behalf of any **Insured** during the **policy period**, all additional **claims** or potential **claims** reported subsequently that arise out of the same **error** shall be:

- (a) part of the **claim** or potential **claim** first made and reported to us; and
- (b) deemed to be reported within this **policy period**;

and all such **claims** or potential **claims** shall be subject to the terms of this policy and to the one limit of liability applicable to the **claim** or potential **claim** first reported.

### 1.9 LIMIT OF LIABILITY PART C — ANNUAL AGGREGATE LIMIT

1.9.1 The limit of liability stated in Declaration 3(f) is the maximum amount payable under Part C of this policy on behalf of each **Individual Insured**, including all related **Additional Insureds**, for all **damages**, **claims expenses** and deductibles arising out of all **claims** and potential **claims** first reported during the **policy period**.

1.9.2 All payments of **damages**, **claims expenses** and deductibles reduce the limits of our liability stated in Declarations 3(b) and 3(f).

### 1.10 LIMIT OF LIABILITY PART C — **LAW FIRM** ANNUAL AGGREGATE LIMIT

The limit of liability stated in Declaration 3(g) is the maximum amount payable under this Part C of this policy for the **policy period** on an aggregate basis for all **Insureds** who, at the time of the **error**, were at the same **law firm**, for all **damages**, **claims expenses** and deductibles arising out of all **claims** and potential **claims** first reported during the **policy period**.

### 1.11 MULTIPLE **INSUREDS**, **CLAIMS** OR **CLAIMANTS** — PART C

Notwithstanding any other provision of this policy, one or more **claims** resulting from an **error** shall be subject to one limit of liability and shall not increase our limits of liability regardless of whether the **error** is made by more than one **Insured** or by **Insured(s)** acting in more than one capacity and regardless of whether the **claims** are made against more than one **Insured** or made by more than one **claimant**.

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### 1.12 LIMIT OF LIABILITY PART C — PROFESSION-WIDE ANNUAL AGGREGATE LIMIT

1.12.1 The limit of liability stated in Declaration 3(h) is the maximum amount payable under this policy for the **policy period** on an aggregate basis for all **Insureds** covered by Part C of this policy. For clarity, all **Insureds** covered by Part C of this policy means all present and former **members** of the **Law Society**. All payments by us of **damages** and **claims expenses** arising out of all **claims** and potential **claims** first reported during the **policy period** reduce the Profession-Wide Aggregate Limit for that **policy period** in the amount of the payments.

1.12.2 The **Individual Insureds** and **Additional Insureds** agree that we may make payments of **damages** and **claims expenses** in reduction of the Profession-Wide Aggregate Limit, even though such payments will reduce or eliminate the limit otherwise available to **Individual Insureds** or **Additional Insureds** for the **policy period**.

### 1.13 OBLIGATION TO PAY PART C

We shall not be obliged to pay any **damages** or **claims expenses**, or to undertake or continue the defence of any proceeding until you have complied with your obligation to eliminate a trust shortage under Rule 3-74 (1) of the **Law Society** Rules.

### 1.14 PRIORITY OF PAYMENTS

All **claims expenses** will be subtracted first from the applicable limit of our liability, with the remainder being the amount available to pay **damages**.

### 1.15 EXHAUSTION OF LIMITS

We shall not be obliged to pay any **damages** or **claims expenses**, or to undertake or continue the defence of any proceeding after the applicable limit of our liability has been exhausted by payment of **damages**, **claims expenses** and deductibles or after deposit of the balance of the applicable limit of our liability in a court of competent jurisdiction. In such a case, we shall have the right to withdraw from the further defence by tendering control of the defence to you.

## 2. DEDUCTIBLES

2.1 If **damages** are payable pursuant to Part A of this policy, you will pay the deductible stated in Declaration 4.

2.2 If **damages** are payable pursuant to Part C of this policy, you will pay the deductible stated in Declaration 4, reduced by the amount you are legally obligated to pay and have paid a savings institution to satisfy any overdraft created in the **trust account**.

2.3 Our obligation to pay **damages** applies only to **damages** in excess of the deductible and we shall be liable only for the difference between the deductible and the limit of liability.

## INSURANCE POLICIES

- 2.4 When one or more **claims** arising out of an **error** are made jointly or severally against two or more **law firms** or **Individual Insureds** at separate **law firms**, the deductible will apply separately to each **law firm**.
- 2.5 All the terms and conditions of this policy apply notwithstanding that the amount of the **claim**, potential **claim** or **damages** may be less than the deductible stated in Declaration 4.
- 2.6 If we request, you will make direct payments for **claims** or potential **claims** within the deductible to us or to other parties.
- 2.7 There is no deductible payable by you if **damages** or **claims expenses** are paid pursuant to Part B of this policy.

### 3. REIMBURSEMENT

- 3.1 **Damages** or **claims expenses** may be paid in excess of the limit of liability or within the deductible and you will repay such amounts to us on demand.
- 3.2 If you are not entitled to coverage for a **claim** or any part of a **claim** because of any exclusion, breach of a condition, or any other term of this policy and **damages** or **claims expenses** are paid on behalf of you or any other **Insured** pursuant to this policy, you will reimburse us for all such amounts on demand.
- 3.3 If you are engaged in **unauthorized practice** and a **claim** or any part of a **claim** that falls within Part A or C of this policy relates to the **unauthorized practice**, and **damages** or **claims expenses** are paid on behalf of you or any other **Insured** pursuant to this policy, the **Individual Insured** will reimburse us for all such amounts on demand.
- 3.4 If **damages** or **claims expenses** are paid on behalf of you or any other **Insured** pursuant to Part B of this policy:
  - 3.4.1 the **Individual Insured** will reimburse us for all such amounts on demand; and
  - 3.4.2 if any other **Insured** received a benefit from the **error**, that **Insured** will reimburse us on demand for the portion of the **damages** paid that is commensurate with the amount of the benefit.
- 3.5 In relation to Conditions 3.1, 3.2, 3.3 and 3.4:
  - 3.5.1 if payments are made on behalf of two or more of you, your liability to us will be joint and several; and
  - 3.5.2 the timing of any demand made shall be in our sole discretion.

## INSURANCE POLICIES

### 4. NOTICE OF CLAIM OR SUIT

- 4.1 If you become aware of an **error** or any circumstance which could reasonably be expected to be the basis of a **claim**, however unmeritorious, you will give written notice immediately, along with the fullest information obtainable, during the **policy period** to:

Lawyers Insurance Fund  
8<sup>th</sup> Floor, 845 Cambie Street  
Vancouver, BC V6B 4Z9  
Attention: Claims Manager  
Fax: 604-682-5842

Such notice is necessary to settle, or defend, any **claim** or anticipated **claim** against you which may be covered under this policy.

- 4.2 If a **claim** is made or suit is brought against you, you will forward immediately to us every demand, notice of civil claim or other process with the fullest information obtainable.
- 4.3 We may deem notice of an **error**, **claim** or potential **claim** given by a third party to be notice given by you.

### 5. ASSISTANCE AND COOPERATION

- 5.1 You will cooperate with us and with any counsel we retain and assist us in investigating coverage for and the facts and circumstances of **claims** and potential **claims**, in efforts to repair **errors**, in making settlements and in the conduct of suits. Upon request, you will also:

- 5.1.1 give written statements, information and documents to and meet with us or any counsel we retain for the purpose of determining or reviewing coverage;
- 5.1.2 provide information and documents as necessary to investigate and defend any **claim** or potential **claim**;
- 5.1.3 submit to examination and interview by us or any counsel we retain, under oath if we request;
- 5.1.4 attend hearings, examinations for discovery and trial;
- 5.1.5 assist in securing and giving evidence, including obtaining the attendance of witnesses in the conduct of suits; and
- 5.1.6 assist in effecting all rights of indemnity, contribution or apportionment available to you or us;

all without cost to us.

- 5.2 You will notify us immediately of any settlement offer made on any **claim** or potential **claim**.

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- 5.3 You will not, except at your own cost, admit liability, make any payment, settle a **claim** or potential **claim**, assume any obligation, directly or indirectly assist in making or proving a **claim** against you, take any other action that might prejudice our ability to avoid or minimize any **damages**, agree to arbitration or any similar means of resolution of any dispute, waive any rights or incur any expenses without our prior written consent.
- 5.4 We shall keep any information that you provide us confidential in accordance with the **Confidentiality Protocol**. You consent to any permitted disclosure, and agree that such disclosure does not constitute a waiver of privilege with respect to any third parties or, if it does, constitutes a limited waiver of privilege only for the purpose for which it is disclosed.

### 6. INNOCENT ADDITIONAL INSURED

- 6.1 Whenever coverage under Part A of this policy would be excluded, suspended or lost because of:

6.1.1 the application of Exclusion 1 or 2 to you; or

6.1.2 the failure to give timely notice in accordance with Condition 4;

we shall cover each **Additional Insured** who did not personally commit, participate in committing, acquiesce in or remain passive after having personal knowledge of the act or **error** which is the subject of the Exclusion or the breach of Condition 4 and provided that those **Additional Insureds** who are entitled to the benefit of this Condition comply with all conditions promptly.

- 6.2 Condition 6.1 does not apply if the act or **error** which is the subject of Exclusion 1 or 2 is an **error** for the purposes of Part B of this policy.

- 6.3 Where Exclusion 6.2 applies to a **claim** because, individually or collectively, directly or indirectly, the acquisition by you or your **family** of effective management or control or beneficial ownership greater than 10% of an **organization**:

6.3.1 occurred after the time of the **error**; and

6.3.2 was not related in any way to the legal services giving rise to the **error**;

then, pursuant to the terms of this policy, we shall cover your partners who were **members** at the time of the **error**, or the **law firm** employing you (excluding any **law corporation** wholly owned by you or your **family**) at the time of the **error**.

## INSURANCE POLICIES

### 7. CONFLICTS

Any duty that we may have to defend or indemnify you shall not give rise to an obligation on our part to pay any cost you may incur in relation to:

- 7.1 a dispute arising out of or in connection with this policy or the breach thereof; or
- 7.2 any other actual or potential conflict between us.

You agree that you are solely responsible for any such cost without recourse to us.

### 8. ARBITRATION OR MEDIATION

We shall be entitled to exercise all your rights in the choice of arbitrators or mediators and in the conduct of any arbitration or mediation proceeding involving a **claim** covered by this policy.

### 9. OTHER INSURANCE OR RECOURSE

- 9.1 This insurance is excess over any other valid and collectible insurance, or right of indemnity, whether primary, contributing, contingent or otherwise, and we will not pay any loss or **claim** until such insurance or recourse is exhausted.
- 9.2 Condition 9.1 does not apply to insurance specifically arranged to apply as excess insurance over the insurance provided by this policy.
- 9.3 If you or any non-**member** lawyer or non-lawyer partner practising in your law firm has lawyers professional liability insurance (other than insurance specifically arranged to apply as excess insurance over the insurance provided by this or any other Canadian jurisdiction's policy) under another Canadian jurisdiction's policy (or Canadian jurisdictions' policies) that applies to a **claim** covered by this policy, the total amount of insurance provided under these policies, together, will not exceed the total value of the **claim** or the most that is available under either (any one) of these policies alone, whichever is less. The decision as to which of these policies shall respond, or as to any allocation between (or amongst) the policies, shall be made by us together with the other Canadian jurisdiction, and you agree to be bound by the decision. For clarity, a **Reciprocal Jurisdiction** is also a Canadian jurisdiction.
- 9.4 To further clarify the intent and effect of the definition of **damages** under Part B, if the **Insured, claimant** or any other party at interest in any loss covered by Part B of this policy has any bond, right of indemnity, insurance or recourse to any other source of recovery including set-offs whether legal or equitable, which would cover such loss in whole or in part in the absence of this policy, this policy shall be null and void to the extent of the amount of such other bond, right of indemnity, insurance or recourse to any other source of recovery including set-offs whether legal or equitable; but this policy shall cover such loss, subject to its exclusions, conditions and other terms, only to the extent of the amount of such loss in excess of the amount of such other bond, right of indemnity, insurance or recourse to any other source of recovery including set-offs whether legal or equitable.

## INSURANCE POLICIES

### 10. PROCEEDINGS AGAINST US

10.1 No proceeding will lie against us unless, as a condition precedent, you have complied with all the terms of this policy, and until the amount of your obligation to pay has been finally determined either by judgment against you after actual trial or by binding arbitration ruling or by written agreement between you, the **claimant** and us. Neither you nor any other person shall have any right to join us in any proceeding against you.

10.2 All disputes arising out of or in connection with this policy or the breach thereof, except in relation to reimbursement as provided in Condition 3, and the allocation of **claims expenses** under Insuring Agreement A 2.4 shall be determined by arbitration in Vancouver, British Columbia, before a single arbitrator. You agree to keep all communications, meetings, evidence, materials and hearings relating to the arbitration, and any reasons or award arising from the arbitration, strictly confidential unless we agree otherwise or disclosure is required by law.

### 11. INSOLVENCY, BANKRUPTCY, INCAPACITY OR DEATH

Your insolvency, bankruptcy, incapacity or death will not relieve us or you or your estate of any of our respective obligations under this policy.

### 12. SUBROGATION

In the event of any payment under this policy, we shall be subrogated to all your rights of recovery against any person or **organization** and you will do whatever is necessary to secure such rights. You will do nothing after loss to prejudice such rights, and shall reasonably cooperate with us.

### 13. CHANGES

Nothing will effect a waiver or a change in any part of this policy or estop us from asserting any right under this policy, nor will the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by our authorized officer.

### 14. ASSIGNMENT

Your interest in this policy is not assignable.

### 15. RELEASE OF COVERAGE

We may, in our sole discretion, agree to allow you to assume all of our responsibilities and obligations under this policy and in so doing you shall release us from all such responsibilities and obligations.

### 16. INSURANCE FEE ADJUSTMENT

16.1 If you become insured during the **policy period**, the insurance fee payable will be determined by the **Law Society** and us on a *pro rata* basis.



## INSURANCE POLICIES

16.2 If, during the **policy period**, you cease to be a **member** or you are exempted from this compulsory professional liability insurance plan, the insurance fee will be adjusted by the **Law Society** and us on a short-rate basis.

16.3 If you are suspended or disbarred, the insurance fee will be deemed to be fully earned and will not be the subject of adjustment.

### 17. CANCELLATION OF POLICY

17.1 This policy may be cancelled by the **Law Society** on your behalf by giving us written notice stating when after the notice the cancellation shall be effective.

17.2 This policy may be cancelled by us by giving the **Law Society** not less than 30 days written notice of such cancellation.

17.3 If we cancel this policy, earned insurance fees will be computed on a *pro rata* basis.

### 18. APPLICABLE LAW

This policy, and any dispute arising out of or in connection with it or the breach thereof, will be exclusively governed by and interpreted in accordance with the laws of British Columbia and any applicable federal laws of Canada and, in the event any dispute is not governed by Condition 10.2 of this policy, it shall be submitted to and be subject to the exclusive jurisdiction of the Courts of British Columbia in Vancouver, British Columbia.

### 19. CURRENCY

The deductibles and limits are expressed in Canadian currency.

### 20. TERRITORY

This policy applies to **errors** occurring anywhere in the world.

IN WITNESS WHEREOF, we have caused this policy to be executed.

LSBC Captive Insurance Company Ltd.



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Susan I. Forbes, QC, Secretary

## INSURANCE POLICIES