

MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2018: No. 1 March

Highlights

Legal Profession Act: Many amendments made by the *Legal Profession Amendment Act, 2012* were effective upon Royal Assent on May 14, 2012, and several more were proclaimed later (see the May 2012 and January 1, 2013 [Highlights of Amendments to the Legal Profession Act](#)). The following come into effect on April 2, 2018: definition of “conduct unbecoming the profession” and sections 26(1), 34(1), (2) and (5), 36, 37(1), 38(4), (5), (6.1) and (7), 41(2), 42(1) and (2), 47(1) and (3), 61(4), 62(1) to (5), 63(1) to (4), (7), (8), (12) and (13) and 87(2) and (3) (pp. 5, 20, 27, 29, 30, 31, 34, 34.4, 39, 40 and 56).

Law Society Rules 2015:* The requirement that lawyers have at least seven years of call to the bar before qualifying to be a candidate in a Benchers election is removed (Rule 1-22(1): p. 29).

Note that at their December 8, 2017 meeting, the Benchers adopted rule amendments to allow lawyers to transfer trust funds electronically using an online banking platform. Those amendments are effective on July 1, 2018 and will be included in the June 2018 *Member's Manual* amendment package. In the meantime, they are available following the existing rules on the [Law Society website](#).

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

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

| Manual section | Existing pages to be removed | Amendment pages to be inserted |
|----------------------|------------------------------------------------------------------|------------------------------------------------------------------|
| Legal Profession Act | 5 – 6 19 – 20 27 – 34 34.3 – 34.4 39 – 42 55 – 58 | 5 – 6 19 – 20 27 – 34 34.3 – 34.4 39 – 42 55 – 58 |
| Law Society Rules | 29 – 30 | 29 – 30 |

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

Updates: This amendment package updates the *Member's Manual* to **February 15, 2018**. The previous amendment package was 2017: No. 3 December.

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

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

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

MEMBER'S MANUAL CONTENTS CHECKLIST

2018: No. 1 March

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

| Section of Manual | Pages | Dated | Section of Manual | Pages | Dated |
|-----------------------------------|----------------------|-----------|------------------------------------------------------------------------------|----------------------|-----------|
| Divider tab: LEGAL PROFESSION ACT | | | Text (<i>continued</i>) | 165 – 166 | [09/2016] |
| Title page | — | — | | 167 – 172 | [06/2015] |
| Table of Contents | 1 – 4 | [06/2016] | | 173 – 180 | [09/2016] |
| | 5 – 6 | [03/2018] | | 181 – 186 | [06/2015] |
| | 7 – 8 | [06/2016] | | 187 – 188 | [06/2016] |
| | 9 – 14 | [12/2012] | | 189 – 190 | [06/2015] |
| | 15 – 16 | [06/2016] | | 191 – 192 | [09/2016] |
| | 17 – 18 | [12/2012] | | 193 – 194 | [06/2016] |
| | 19 – 20 | [03/2018] | | 195 – 200 | [09/2016] |
| | 21 – 22 | [06/2016] | | 201 – 212 | [06/2015] |
| | 23 – 24 | [12/2012] | | 213 – 214 | [09/2016] |
| | 25 – 26 | [06/2016] | | 215 – 216 | [06/2015] |
| | 27 – 34 | [03/2018] | | 217 – 222 | [12/2017] |
| | 34.1 – 34.2 | [12/2012] | | 223 – 224 | [06/2015] |
| | 34.3 – 34.4 | [03/2018] | | | |
| | 34.5 – 34.6 | [12/2012] | Divider tab: CODE OF PROFESSIONAL CONDUCT / PROFESSIONAL CONDUCT HANDBOOK | | |
| | 35 – 36 | [09/2011] | Title page | — | — |
| | 36.1 – 36.2 | [07/07] | Table of Contents | i – vi | [06/2017] |
| | 37 – 38 | [12/98] | Introduction | vii – viii | [03/2017] |
| | 39 – 42 | [03/2018] | Text | 1 – 2 | [12/2013] |
| | 43 – 44 | [03/2013] | | 3 – 10 | [12/2012] |
| | 45 – 46 | [07/2010] | | 11 – 12 | [12/2016] |
| | 47 – 48 | [06/2016] | | 13 – 14 | [12/2013] |
| | 49 – 50 | [12/98] | | 14.1 – 14.2 | [03/2017] |
| | 51 – 54 | [12/2012] | | 15 – 16 | [06/2013] |
| | 55 – 58 | [03/2018] | | 17 – 24 | [12/2012] |
| | 59 – 60 | [09/2014] | | 24.1 – 24.2 | [12/2016] |
| | | | | 25 – 32 | [12/2012] |
| Divider tab: LAW SOCIETY RULES | | | | 33 – 38, 38.1 – 38.4 | [12/2016] |
| Title page | — | — | | 39 – 40 | [06/2013] |
| Table of Contents | 1 – 10 | [06/2017] | | 41 – 42 | [12/2012] |
| Text | 11 – 14 | [06/2015] | | 43 – 44 | [06/2013] |
| | 15 – 16 | [12/2017] | | 45 – 46 | [06/2015] |
| | 17 – 22 | [12/2015] | | 47 – 48 | [12/2015] |
| | 23 – 26, 26.1 – 26.2 | [06/2017] | | 49 – 52 | [12/2012] |
| | 27 – 28 | [06/2015] | | 53 – 56 | [03/2017] |
| | 29 – 30 | [03/2018] | | 57 – 58 | [12/2014] |
| | 31 – 38 | [12/2015] | | 59 – 62 | [12/2012] |
| | 39 – 42 | [06/2015] | | 63 – 64, 64.1 – 64.2 | [03/2017] |
| | 43 – 44 | [03/2017] | | 65 – 70 | [12/2012] |
| | 45 – 54 | [06/2017] | | 71 – 72 | [09/2014] |
| | 55 – 58 | [06/2015] | | 73 – 74 | [12/2012] |
| | 59 – 68 | [06/2017] | | 75 – 76 | [12/2015] |
| | 69 – 74 | [06/2015] | | 76.1 – 76.2 | [06/2013] |
| | 75 – 80 | [12/2017] | | 77 – 82 | [12/2012] |
| | 81 – 86 | [06/2017] | | 83 – 84, 84.1 – 84.2 | [12/2013] |
| | 87 – 88 | [12/2017] | | 85 – 96 | [12/2012] |
| | 89 – 94 | [09/2016] | | 97 – 98 | [06/2016] |
| | 95 – 98 | [06/2015] | | 99 – 100 | [12/2012] |
| | 99 – 100 | [06/2017] | | 101 – 102 | [03/2013] |
| | 101 – 114 | [06/2015] | | 102.1 – 102.4 | [12/2015] |
| | 115 – 116 | [12/2017] | | 103 – 106 | [03/2015] |
| | 117 – 118 | [03/2017] | | 107 – 108 | [12/2016] |
| | 119 – 124 | [06/2017] | | 109 – 112 | deleted |
| | 125 – 128 | [06/2015] | | 113 – 114 | [12/2012] |
| | 129 – 132 | [09/2016] | | 115 – 116 | [12/2015] |
| | 133 – 134 | [12/2017] | | | |
| | 135 – 136 | [12/2015] | Divider tab: INSURANCE POLICIES | | |
| | 137 – 140 | [06/2015] | Policy No. LPL 18-01-01 | 1 – 28 | [12/2017] |
| | 141 – 142 | [06/2017] | | | |
| | 143 – 144 | [12/2015] | Divider tab: ARTICLING | | |
| | 145 – 148 | [06/2015] | Text | 1 – 2 | [06/03] |
| | 149 – 150 | [12/2017] | | 3 – 4 | [07/09] |
| | 151 – 154 | [06/2015] | | 5 – 8 | [06/03] |
| | 155 – 156 | [12/2015] | | | |
| | 157 – 164 | [06/2015] | | | |

Definitions

1 (1) In this Act:

“**applicant**” means a person who has applied for

- (a) enrolment as an articulated student,
- (b) call and admission, or
- (c) reinstatement;

“**articled student**” means a person enrolled in the society’s admission program;

“**bencher**” means a person elected or appointed under Part 1 to serve as a member of the governing body of the society;

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

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

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

“**disbar**” means to declare that a lawyer or former lawyer is unsuitable to practise law and to terminate the lawyer’s membership in the society;

“**executive committee**” means the committee established under section 10;

“**executive director**” means the executive director or acting executive director of the society;

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

“**law corporation**” means a corporation that holds a valid permit under Part 9;

“**law firm**” means a legal entity or combination of legal entities carrying on the practice of law;

“**lawyer**” means a member of the society, and

- (a) in Part 2, Division 1, includes a member of the governing body of the legal profession in another province or territory of Canada who is authorized to practise law in that province or territory,
- (b) in Parts 4 to 6 and 10 includes a former member of the society, and
- (c) in Part 10 includes an articulated student;

“**member**” means a member of the society;

“**officer**” means the executive director, deputy executive director or other person appointed as an officer of the society by the benchers;

“**panel**” means a panel appointed in accordance with section 41;

LEGAL PROFESSION ACT

“practice of law” includes

- (a) appearing as counsel or advocate,
- (b) drawing, revising or settling
 - (i) a petition, memorandum, notice of articles or articles under the *Business Corporations Act*, or an application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body,
 - (ii) a document for use in a proceeding, judicial or extrajudicial,
 - (iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or a grant of administration or the estate of a deceased person,
 - (iv) a document relating in any way to a proceeding under a statute of Canada or British Columbia, or
 - (v) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office,
- (c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages,
- (d) agreeing to place at the disposal of another person the services of a lawyer,
- (e) giving legal advice,
- (f) making an offer to do anything referred to in paragraphs (a) to (e), and
- (g) making a representation by a person that he or she is qualified or entitled to do anything referred to in paragraphs (a) to (e),

but does not include

- (h) any of those acts if performed by a person who is not a lawyer and not for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed,
- (i) the drawing, revising or settling of an instrument by a public officer in the course of the officer’s duty,
- (j) the lawful practice of a notary public,
- (k) the usual business carried on by an insurance adjuster who is licensed under Division 2 of Part 6 of the *Financial Institutions Act*, or
- (l) agreeing to do something referred to in paragraph (d), if the agreement is made under a prepaid legal services plan or other liability insurance program;

“practising lawyer” means a member in good standing who holds or is entitled to hold a practising certificate;

“president” means the chief elected official of the society;

Failure to pay fee or penalty

- 25** (1) If a lawyer fails to pay the annual fee or a special assessment as required under this Act by the time that it is required to be paid, the lawyer ceases to be a member, unless the benchers otherwise direct, subject to rules made under section 23 (7).
- (2) The benchers may make rules providing for the suspension of a lawyer who fails to pay a fine, costs or a penalty by the time payment is required.

[2007-14-145]

PART 3 – PROTECTION OF THE PUBLIC

Complaints from the public

- 26** (1) A person who believes that
- (a) a lawyer, former lawyer or articled student has practised law incompetently or been guilty of professional misconduct, conduct unbecoming the profession or a breach of this Act or the rules, or
 - (b) a law firm has been guilty of professional misconduct, conduct unbecoming the profession or a breach of this Act or the rules
- may make a complaint to the society.
- (2) The benchers may make rules authorizing an investigation into the conduct of a law firm or the conduct or competence of a lawyer, former lawyer or articled student, whether or not a complaint has been received under subsection (1).
- (3) For the purposes of subsection (4), the benchers may designate an employee of the society or appoint a practising lawyer or a person whose qualifications are satisfactory to the benchers.
- (4) For the purposes of an investigation authorized by rules made under subsection (2), an employee designated or person appointed under subsection (3) may make an order requiring a person to do either or both of the following:
- (a) attend, in person or by electronic means, before the designated employee or appointed person to answer questions on oath or affirmation, or in any other manner;
 - (b) produce for the designated employee or appointed person a record or thing in the person's possession or control.
- (5) The society may apply to the Supreme Court for an order
- (a) directing a person to comply with an order made under subsection (4), or
 - (b) directing an officer or governing member of a person to cause the person to comply with an order made under subsection (4).
- (6) The failure or refusal of a person subject to an order under subsection (4) to
- (a) attend before the designated employee or appointed person,
 - (b) take an oath or make an affirmation,
 - (c) answer questions, or
 - (d) produce records or things in the person's possession or control
- makes the person, on application to the Supreme Court by the society, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

[2012-16-15]

Trust accounts

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

[2012-16-22]

Unclaimed trust money

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

LEGAL PROFESSION ACT

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

Restriction on suspended and disbarred lawyers

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

PART 4 – DISCIPLINE

Discipline rules

36 The benchers may make rules to do any of the following:

- (a) establish a discipline committee and delegate any or all authority and responsibility under this Part, other than rule-making authority, to that committee;
- (b) authorize an investigation of the books, records and accounts of a lawyer or law firm if there is reason to believe that the lawyer or law firm may have committed any misconduct, conduct unbecoming the profession, or a breach of this Act or the rules;
- (c) authorize an examination of the books, records and accounts of a lawyer or law firm;
- (d) require a lawyer or law firm to cooperate with an investigation or examination under paragraph (b) or (c), including producing records and other evidence and providing explanations on request;
- (e) require a lawyer or articulated student to appear before the benchers, a committee or other body to discuss the conduct or competence of the lawyer or articulated student;
- (e.1) require a representative of a law firm to appear before the benchers, a committee or other body to discuss the conduct of the firm;
- (f) authorize the ordering of a hearing into the conduct or competence of a lawyer or an articulated student, or the conduct of a law firm, by issuing a citation;
- (g) authorize the rescission of a citation;
- (h) permit the benchers to summarily suspend or disbar a lawyer convicted of an offence that was proceeded with by way of indictment or convicted in another jurisdiction of an offence that, in the opinion of the benchers, is equivalent to an offence that may be proceeded with by way of indictment.
- (i) establish a process for the protection of the privacy and the severing, destruction or return of personal, business or other records that are unrelated to an investigation or examination and that, in error or incidentally, form part of
 - (i) the books, records or accounts of a lawyer, an articulated student or a law firm authorized to be investigated or examined under a rule made under paragraph (b) or section 26, or
 - (ii) files or other records that are seized in accordance with an order of the Supreme Court under section 37.

[2012-16-24]

Search and seizure

- 37** (1) The society may apply to the Supreme Court for an order that the files or other records, wherever located, of or relating to a lawyer, an articled student or a law firm be seized from the person named in the order, if there are reasonable grounds to believe that a lawyer, articled student or law firm may have committed or will commit
- (a) any misconduct,
 - (b) conduct unbecoming the profession, or
 - (c) a breach of this Act or the rules.
- (2) An application under subsection (1) may be made without notice to anyone or on such notice as the judge requires.
- (3) If the application under subsection (1) is in relation to the conduct of an articled student, the order may be made in respect of the books, accounts, files or other records of the student's principal or the principal's firm.
- (4) In an application under subsection (1), the person making the application must state on oath or affirmation the grounds for believing the matter referred to in subsection (1) and the grounds for believing that the seizure will produce evidence relevant to that matter.
- (5) In an order under subsection (1), the court may
- (a) designate the person who will conduct the seizure and authorize that person to conduct it,
 - (b) state the time and place where the seizure will take place, and
 - (c) give any other directions that are necessary to carry out the seizure.

[2012-16-25]

Personal records in investigation or seizure

- 37.1** In conducting an investigation or examination of books, records or accounts under section 26 or rules made under section 36 (b) or in the seizure of files or other records in accordance with an order of the Supreme Court under section 37, the society may collect personal information unrelated to the investigation or examination that, in error or incidentally, is contained in those books, accounts, files or records, but the society must, subject to rules made under section 36 (i),
- (a) return that personal information if and as soon as practicable, or
 - (b) destroy the personal information.

[2012-16-26]

Discipline hearings

- 38** (1) This section applies to the hearing of a citation.
- (2) A hearing must be conducted before a panel.
- (3) A panel must
- (a) make a determination and take action according to this section,
 - (b) give written reasons for its determination about the conduct or competence of the respondent and any action taken against the respondent, and
 - (c) record in writing any order for costs.
- (4) After a hearing, a panel must do one of the following:
- (a) dismiss the citation;
 - (b) determine that the respondent has committed one or more of the following:
 - (i) professional misconduct;
 - (ii) conduct unbecoming the profession;
 - (iii) a breach of this Act or the rules;
 - (iv) incompetent performance of duties undertaken in the capacity of a lawyer;
 - (v) if the respondent is an individual who is not a member of the society, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming the profession, or a breach of this Act or the rules.
 - (c) [repealed]
- (5) If an adverse determination is made under subsection (4) against a respondent other than an articulated student or a law firm, the panel must do one or more of the following:
- (a) reprimand the respondent;
 - (b) fine the respondent an amount not exceeding \$50 000;
 - (c) impose conditions or limitations on the respondent's practice;
 - (d) suspend the respondent from the practice of law or from practice in one or more fields of law
 - (i) for a specified period of time,
 - (ii) until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection,
 - (iii) from a specified date until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection, or

LEGAL PROFESSION ACT

- (iv) for a specific minimum period of time and until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection;
 - (e) disbar the respondent;
 - (f) require the respondent to do one or more of the following:
 - (i) complete a remedial program to the satisfaction of the practice standards committee;
 - (ii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent is competent to practise law or to practise in one or more fields of law;
 - (iii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent's competence to practise law is not adversely affected by a physical or mental disability, or dependency on alcohol or drugs;
 - (iv) practise law only as a partner, employee or associate of one or more other lawyers;
 - (g) prohibit a respondent who is not a member but who is permitted to practise law under a rule made under section 16 (2) (a) or 17 (1) (a) from practising law in British Columbia indefinitely or for a specified period of time.
- (6) If an adverse determination is made under subsection (4) against an articulated student, the panel may do one or more of the following:
- (a) reprimand the articulated student;
 - (b) fine the articulated student an amount not exceeding \$5 000;
 - (c) extend the period that the articulated student is required to serve under articles;
 - (d) set aside the enrolment of the articulated student.
- (6.1) If an adverse determination is made under subsection (4) against a law firm, the panel may do one or both of the following:
- (a) reprimand the law firm;
 - (b) fine the law firm an amount not exceeding \$50 000.
- (7) In addition to its powers under subsections (5), (6) and (6.1), a panel may make any other orders and declarations and impose any conditions or limitations it considers appropriate.
- (8) A fine imposed under this Act may be recovered as a debt owing to the society and, when collected, it is the property of the society.

- (9) For the purpose of recovering a debt under subsection (8), the executive director may
- (a) issue a certificate stating that the fine is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and
 - (b) file the certificate with the Supreme Court.
- (10) A certificate filed under subsection (9) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it.

[2012-16-27; 2016-5-41]

Suspension

- 39** (1) The benchers may make rules permitting 3 or more benchers to do any of the following until the decision of a hearing panel or other disposition of the subject matter of the hearing:
- (a) suspend a respondent who is an individual, if the respondent's continued practice would be dangerous to the public or the respondent's clients;
 - (b) impose conditions or limitations on the practice of a respondent who is an individual;
 - (c) suspend the enrolment of a respondent who is an articled student;
 - (d) impose conditions or limitations on the enrolment of a respondent who is an articled student.
- (2) Rules made under subsection (1) must
- (a) provide for a proceeding to take place before an order is made,
 - (b) set out the term of a suspension, condition or limitation, and
 - (c) provide for review of an order made under subsection (1) and for confirmation, variation or rescission of the order.
- (3) Rules made under this section may provide for practice and procedure for a matter referred to in subsection (2) (a) and (c) and may specify that some or all practices and procedures in those proceedings may be determined by the benchers who are present at the proceeding.

[2012-16-28; 2016-5-41]

40 [repealed 2012-16-29]

PART 5 – HEARINGS AND APPEALS

Panels

- 41** (1) The benchers may make rules providing for any of the following:
- (a) the appointment and composition of panels;
 - (b) the practice and procedure for proceedings before panels.
- (2) A panel may order an applicant or respondent, or a representative of a respondent law firm, to do either or both of the following:
- (a) give evidence under oath or by affirmation;
 - (b) at any time before or during a hearing, produce all files and records that are in the possession of that person and that may be relevant to a matter under consideration.

[2012-16-30]

Failure to attend

- 42** (1) This section applies if an applicant, a respondent or the representative of a respondent law firm fails to attend or remain in attendance at
- (a) a hearing on an application for enrolment as an articled student, call and admission, or reinstatement,
 - (b) a hearing on a citation, or
 - (c) a review by a review board under section 47.
- (2) If satisfied that the applicant, respondent or representative of the respondent law firm has been served with notice of the hearing or review, the panel or the review board may proceed with the hearing or review in the absence of the applicant or respondent and make any order that the panel or the review board could have made in the presence of the applicant or respondent.

[2012-16-31; 2016-5-41]

Right to counsel

- 43** (1) An applicant, a respondent or a person who is the subject of a proceeding may appear at any hearing with counsel.
- (2) The society may employ or retain legal or other assistance in conducting an investigation under Part 2, 3 or 4 or on the issue of a citation and may be represented by counsel at any hearing.

[2012-16-32]

PART 5 – HEARINGS AND APPEALS

- (4) The failure of a person entitled under subsection (3) (b) to be present or represented by counsel during an examination or to examine the person referred to in subsection (3) (a) does not prevent the society from reading in the evidence from the examination at a hearing, if the examination has otherwise been conducted in accordance with the letter of request.
- (5) The society must send a letter of request issued under subsection (1),
 - (a) if an examination is to be held in Canada, to the Deputy Attorney General for the Province of British Columbia, or
 - (b) if an examination is to be held outside Canada, to the Under Secretary of State for Foreign Affairs of Canada.
- (6) A letter of request must have attached to it all of the following:
 - (a) any questions to be put to the person to be examined;
 - (b) if known, the name, address and telephone number of
 - (i) the solicitor or agent of the society,
 - (ii) the person to be examined, and
 - (iii) if applicable, the person entitled under subsection (3) (b) to be present or represented by counsel during the examination and to examine the person referred to in subsection (3) (a);
 - (c) a translation of the letter of request and any questions into the official language of the jurisdiction where the examination is to take place, if necessary, along with a certificate of the translator, bearing the full name and address of the translator, and certifying that the translation is a true and complete translation.
- (7) The society must file with the Deputy Attorney General for the Province of British Columbia or with the Under Secretary of State for Foreign Affairs of Canada, as the case may be, an undertaking to be responsible for any charge and expense incurred by either of them in relation to the letter of request and to pay them on receiving notification from them of the amount.
- (8) This section does not limit any power the society may have to obtain evidence outside British Columbia by any other means.
- (9) The making of an order by a judicial authority in accordance with a letter of request issued under subsection (1) does not determine whether evidence obtained under the order is admissible in evidence in a hearing.
- (10) Unless otherwise provided by this section, the practice and procedure for appointing a person, conducting an examination and certifying and returning the appointment under this section, as far as possible, is the same as the practice and procedure that govern similar matters in civil proceedings in the Supreme Court.

[2007-14-39]

Costs

- 46** (1) The benchers may make rules governing the assessment of costs by a panel, a review board or a committee under this Act including
- (a) the time allowed for payment of costs, and
 - (b) the extension of time for payment of costs.
- (2) If legal assistance employed by the benchers is provided by an employee of the society, the amount of costs that may be awarded under the rules in respect of that legal assistance may be the same as though the society had retained outside counsel.
- (3) The amount of costs ordered to be paid by a respondent or applicant under the rules may be recovered as a debt owing to the society and, when collected, the amount is the property of the society.
- (4) For the purpose of recovering a debt under subsection (3), the executive director may
- (a) issue a certificate stating that the amount of costs is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and
 - (b) file the certificate with the Supreme Court.
- (5) A certificate filed under subsection (4) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it.

[2012-16-35]

Review on the record

- 47** (1) Within 30 days after being notified of the decision of a panel under section 22 (3) or 38 (5), (6), (6.1) or (7), the applicant or respondent may apply in writing for a review on the record by a review board.
- (2) Within 30 days after the decision of a panel under section 22 (3), the credentials committee may refer the matter for a review on the record by a review board.
- (3) Within 30 days after the decision of a panel under section 38 (4), (5), (6), (6.1) or (7), the discipline committee may refer the matter for a review on the record by a review board.
- (3.1) Within 30 days after an order for costs assessed under a rule made under section 27 (2) (e) or 46, an applicant, a respondent or a lawyer who is the subject of the order may apply in writing for a review on the record by a review board.

PART 7 – LAW FOUNDATION

- (3) The foundation may employ or retain lawyers to advance the purposes of the foundation.
- (4) The funds of the foundation consist of the following:
 - (a) all money remitted to the foundation by or on behalf of lawyers and law firms under section 62 (2) or held in trust under section 63 (12);
 - (b) interest accruing from investment of the funds of the foundation;
 - (c) other money received by the foundation.
- (5) The board may pay out of the funds of the foundation the costs, charges and expenses
 - (a) involved in the administration of the foundation, and
 - (b) incurred by the board in carrying out the purposes of the foundation.
- (6) All money of the foundation must be paid into a savings institution designated under section 33 (3) (b) until invested or applied in accordance with this section, and that money must be used for the purposes of the foundation.
- (7) Money that is not immediately required for the purposes of the foundation may be invested in the name of the foundation by the board in any manner in which trustees are authorized to invest trust funds.
- (8) The accounts of the foundation must be audited annually by a chartered accountant or certified general accountant appointed for that purpose by the board.

[2012-16-38]

Interest on trust accounts

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

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

[2012-16-39]

Security and investment of trust funds

63 (1) In this section:

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

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

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

- (6) Money in a society trust account may be invested in
 - (a) securities of Canada or a province,
 - (b) securities, the payment of the principal and interest of which is guaranteed by Canada or a province, or
 - (c) guaranteed trust or investment certificates of the savings institution that has the pooled trust account.
- (7) Money earned on investments under subsection (6) may be used to
 - (a) purchase insurance in an amount that the society considers necessary to ensure that all lawyers' and law firms' trust cheques drawn on their pooled trust fund accounts will be honoured, and
 - (b) pay service and other similar charges in respect of services provided by the savings institution at which the society operates an account under subsection (5).
- (8) The society may pay money out of a society trust account to a person who has suffered a loss directly resulting from the inability or refusal of the savings institution to honour a lawyer's or law firm's trust cheque drawn on a pooled trust fund account, up to a maximum, in any year, set by the benchers.
- (9) The benchers must not pay out any money under subsection (8) unless they are satisfied that they will be reimbursed or indemnified, through agreements referred to in subsection (10) or the insurance purchased under subsection (7), for any money that has been paid out.
- (10) The society may enter into agreements with the Canada Deposit Insurance Corporation and the Credit Union Deposit Insurance Corporation of British Columbia respecting reimbursement or indemnity by those corporations of money that has been paid out under subsection (8).
- (11) The society may retain or employ a person to manage society trust accounts and may pay that person fees or remuneration out of interest earned on money in society trust accounts.
- (12) Subject to subsections (7), (8) and (11), all interest earned on money deposited into a society trust account is held in trust by the society for the benefit of the foundation, and the society is not liable to account to any client of any lawyer or law firm in respect of that interest.
- (13) Despite any agreement between a lawyer or law firm and a savings institution, if the pooled trust fund account of the lawyer or law firm is overdrawn by an amount exceeding \$1 000, the savings institution must, as soon as practicable, inform the society of the particulars.
- (14) Subsection (13) and the failure of a savings institution to comply with it has no effect on the civil liability of that savings institution to any person, and that liability, if any, must be determined as though that subsection were not in force.

[2012-16-40]

PART 8 – LAWYERS’ FEES

Definitions and interpretation

64 (1) In this Part:

“**agreement**” means a written contract respecting the fees, charges and disbursements to be paid to a lawyer or law firm for services provided or to be provided and includes a contingent fee agreement;

“**bill**” means a lawyer’s written statement of fees, charges and disbursements;

“**charges**” includes taxes on fees and disbursements and interest on fees and disbursements;

“**contingent fee agreement**” means an agreement that provides that payment to the lawyer for services provided depends, at least in part, on the happening of an event;

“**court**” means the Supreme Court;

“**person charged**” includes a person who has agreed to pay for legal services, whether or not the services were provided on the person’s behalf;

“**registrar**” means the registrar of the court.

(2) Unless otherwise ordered by the court, this Part, except sections 65, 66 (1), 68, 77, 78 and 79 (1), (2), (3), (6) and (7), does not apply to a class proceeding within the meaning of the *Class Proceedings Act*.

(3) This Part applies to a lawyer’s bill or agreement even though the lawyer has ceased to be a member of the society, if the lawyer was a member when the legal services were provided.

[2012-16-41]

Agreement for legal services

65 (1) A lawyer or law firm may enter into an agreement with any other person, requiring payment for services provided or to be provided by the lawyer or law firm.

(2) Subsection (1) applies despite any law or usage to the contrary.

(3) A provision in an agreement that the lawyer is not liable for negligence, or that the lawyer is relieved from responsibility to which the lawyer would otherwise be subject as a lawyer, is void.

(4) An agreement under this section may be signed on behalf of a lawyer or law firm by an authorized agent who is a practising lawyer.

Contingent fee agreement

66 (1) Section 65 applies to contingent fee agreements.

PART 10 – GENERAL

Enforcement

- 85** (1) A person commits an offence if the person
- (a) contravenes section 15, or
 - (b) uses or discloses information contrary to section 88 (3) or (4).
- (2) If an offence under this Act is committed by a corporation, each director, manager, secretary or other officer of that corporation who has assented to the commission of the offence is a party to that offence.
- (3) An information alleging an offence against this Act may be laid in the name of the society on oath or by affirmation of the executive director or of a person authorized by the benchers.
- (4) Section 5 of the *Offence Act* does not apply to this Act or to the rules.
- (5) The society may apply to the Supreme Court for an injunction restraining a person from contravening this Act or the rules.
- (6) The court may grant an injunction sought under subsection (5) if satisfied that there is reason to believe that there has been or will be a contravention of this Act or the rules.
- (7) The court may grant an interim injunction until the outcome of an action commenced under subsection (5).
- (8) On the application of the society or a person interested in the proceeding, the court in which a proceeding is brought may find a person in breach of section 15 (5) to be in contempt and may punish that person accordingly.

Protection against actions

- 86** (1) No action for damages lies against a person, for anything done or not done in good faith while acting or purporting to act on behalf of the society or the foundation under this Act.
- (2) The society or the foundation, as the case may be, must indemnify a person referred to in subsection (1) for any costs or expenses incurred by the person in any legal proceedings taken for anything done or not done in good faith while acting or purporting to act on behalf of the society or the foundation under this Act.

Certain matters privileged

- 87** (1) In this section:
- “**proceeding**” does not include a proceeding under Part 2, 3, 4 or 5;

- “**report**” includes any document, minute, note, correspondence or memorandum created or received by a person, committee, panel, review board or agent of the society in the course of an investigation, audit, inquiry or hearing, but does not include an original document that belongs to a complainant or respondent or to a person other than an employee or agent of the society.
- (2) If a person has made a complaint to the society respecting a lawyer or law firm, neither the society nor the complainant can be required to disclose or produce the complaint and the complaint is not admissible in any proceeding, except with the written consent of the complainant.
 - (3) If a lawyer or law firm responds to the society in respect of a complaint or investigation, none of the lawyer, the law firm or the society can be required to disclose or produce the response or a copy or summary of it, and the response or a copy or summary of it is not admissible in any proceeding, except with the written consent of the lawyer or law firm, even though the executive director may have delivered a copy or a summary of the response to the complainant.
 - (4) A report made under the authority of this Act or a record concerning an investigation, an audit, an inquiry, a hearing or a review must not be required to be produced and is not admissible in any proceeding except with the written consent of the executive director.
 - (5) Except with the consent of the executive director, the society, an employee or agent or former employee or agent of the society or a member or former member of a committee, panel or review board established or authorized under this Act
 - (a) must not be compelled to disclose information that the person has acquired during the course of an investigation, an audit, an inquiry, a hearing or a review or in the exercise of other powers or the performance of other duties under this Act, and
 - (b) is not competent to testify in a proceeding if testifying in that proceeding would result in the disclosure of information referred to in paragraph (a).

[2012-16-45]

Non-disclosure of privileged and confidential information

- 88** (1) [repealed]
- (1.1) A person who is required under this Act or the rules to provide information, files or records that are confidential or subject to a solicitor client privilege, must do so, despite the confidentiality or privilege.
 - (1.2) Information, files or records that are provided in accordance with subsection (1.3) are admissible in a proceeding under Part 2, 3, 4 or 5 of this Act, despite the confidentiality or privilege.

PART 10 – GENERAL

- (1.3) A lawyer who or a law firm that, in accordance with this Act and the rules, provides the society with any information, files or records that are confidential or subject to a solicitor client privilege is deemed conclusively not to have breached any duty or obligation that would otherwise have been owed to the society or the client not to disclose the information, files or records.
- (2) Despite section 14 of the *Freedom of Information and Protection of Privacy Act*, a person who, in the course of exercising powers or carrying out duties under this Act, acquires information, files or records that are confidential or are subject to solicitor client privilege has the same obligation respecting the disclosure of that information as the person from whom the information, files or records were obtained.
- (3) A person who, during the course of an investigation, audit, inquiry or hearing under this Act, acquires information or records that are confidential or subject to solicitor client privilege must not disclose that information or those records to any person except for a purpose contemplated by this Act or the rules.
- (4) A person who, during the course of an appeal under section 48 or an application under the *Judicial Review Procedure Act* respecting a matter under this Act, acquires information or records that are confidential or are subject to solicitor client privilege must not
 - (a) use the information other than for the purpose for which it was obtained, or
 - (b) disclose the information to any person.
- (5) The Court of Appeal, on an appeal under section 48, and the Supreme Court, on an application under the *Judicial Review Procedure Act* respecting a matter under this Act, may exclude members of the public from the hearing of the appeal or application if the court considers the exclusion is necessary to prevent the disclosure of information, files or records that are confidential or subject to solicitor client privilege.
- (6) In giving reasons for judgment on an appeal or application referred to in subsection (5), the Court of Appeal or the Supreme Court must take all reasonable precautions to avoid including in those reasons any information before the court on the appeal or application that is confidential or subject to solicitor client privilege.
- (7) Despite section 14 of the *Freedom of Information and Protection of Privacy Act*, the benchers may make rules for the purpose of ensuring the non-disclosure of any confidential information or information that, but for this Act, would be subject to solicitor client privilege, and the rules may be made applicable to any person who, in the course of any proceeding under this Act, would acquire the confidential or privileged information.
- (8) Section 47 (4) of the *Freedom of Information and Protection of Privacy Act* does not apply to information that, but for this Act and the production of the information to the commissioner under that Act, would be subject to solicitor client privilege.

[2012-16-46]

89 [repealed 2012-16-47]

Service

90 The benchers may make rules respecting service of documents under this Act.

[2007-14-145]

Law society insurance

91 (1) The benchers may purchase and maintain insurance protecting the society, the benchers, officers and employees of the society and former benchers, officers and employees against liability arising out of the operations or activities of the society and providing for indemnity with respect to any claims arising out of acts done or not done by those individuals in good faith while acting or purporting to act on behalf of the society.

(2) The benchers may enter into, on behalf of members, contracts of life, accident, income replacement and any other type of insurance that they consider will benefit the members.

Legal archives

92 (1) The benchers may make rules permitting a lawyer or law firm to deposit records in the possession of the lawyer or law firm in an archives, library or records management office in Canada.

(2) Rules made under this section may provide for

(a) the time after which the records may be deposited,

(b) the restrictions or limitations on public access that the lawyer or law firm may attach on depositing them, and

(c) circumstances under which the lawyer or law firm cannot be liable for disclosure of confidential or privileged information arising out of the deposit.

[2012-16-48]

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) [rescinded]
 - (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.