

# MEMBER'S MANUAL

The Law Society  
of British Columbia



## AMENDMENT PAGES

2020: No. 1 June

### Highlights

**Law Society Rules 2015:**\* In light of the COVID-19 pandemic, the Rules have been amended to give the Executive Director a discretion to extend the payment of the second instalment of the indemnity fee (Rules 2-105(3), 2-108(1) and (3) and 3-41(1): pp. 96 and 121); lawyers may use electronic documents or information obtained through public bodies, such as BC Online, to verify the identity of an organization (Rule 3-102(3.1): p. 155); the discretion to publish a citation is removed (Rule 4-20: p. 166) and a new rule establishes the criteria for anonymous publication of a citation (Rule 4-20.1: p. 166); the table of contents is updated (pp. 1-10).

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

**Updates:** This amendment package updates the *Member's Manual* to **June 15, 2020**. The previous amendment package was 2019: No. 4 December.

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

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

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



## MEMBER'S MANUAL CONTENTS CHECKLIST

2020: No. 1 June

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### **Publication of credentials decision**

- 2-103** (1) When a hearing panel or review board issues a final or interlocutory decision on an application under this division, the Executive Director must
- (a) publish and circulate to the profession a summary of the circumstances and decision of the hearing panel or review board,
  - (b) publish the full text of the decision on the Law Society website, and
  - (c) publish the final outcome of the hearing or review, including any conditions or limitations of practice or articles imposed or accepted.
- (1.1) When a court issues a decision on a judicial review of or appeal from a credentials decision, the Executive Director must circulate to the profession a summary of the decision.
- (2) and (3) [rescinded]
- (4) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

### **Anonymous publication**

- 2-104** (1) Except as required or allowed under this rule, a publication under Rule 2-103 (1) (a) or (b) [*Publication of credentials decision*] must not identify the applicant.
- (2) A publication under Rule 2-103 (1) (a) or (b) may identify the applicant if
- (a) the applicant consents in writing, or
  - (b) the subject matter of the application, including the identity of the applicant, is known to the public.
- (3) to (7) [rescinded]
- (8) A publication under Rule 2-103 (1) (a) or (b) must identify the applicant if the applicant is a disbarred lawyer applying for reinstatement.
- (9) A summary circulated under Rule 2-103 (1.1) may identify an applicant who is identified by the court.

### Division 3 – Fees and Assessments

#### Annual practising fees

- 2-105** (1) The annual practising fee and indemnity fee are payable in respect of each calendar year.
- (2) The date for payment of the annual practising fee and first indemnity fee instalment is November 30 of the year preceding the year for which they are payable.
- (3) The date for payment of the second indemnity fee instalment is prescribed under Rule 3-41 (1) [*Payment of annual indemnity fee by instalments*].

#### Assessments

- 2-106** (1) The Benchers may, by resolution, set a special assessment of all
- (a) practising lawyers,
  - (b) practising lawyers and applicants,
  - (c) members of the Society, or
  - (d) members of the Society and applicants.
- (2) A resolution under subrule (1) must set a date by which the assessment must be paid.

#### Application fees

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

#### Late payment

- 2-108** (1) A lawyer who fails to pay fees by the date required under Rule 2-105 (2) [*Annual practising fees*] but pays all of those fees before December 31 of the year preceding the year for which they are payable, together with the late payment fee under this rule, continues to be a member of the Society.
- (2) The Executive Director may extend the time for a lawyer or class of lawyers to pay fees or a special assessment and, if the lawyer pays
- (a) the annual practising fee or special assessment by the date to which the time is extended, and
  - (b) the late payment fee under this rule,
- the lawyer is deemed to be a member of the Society in good standing and to have been in good standing during the period of time that the lawyer's fee or special assessment was unpaid.



- (3) A lawyer, other than a retired or non-practising member, who has failed to pay the annual practising fee in accordance with Rule 2-105 (2) [*Annual practising fees*], is required to pay the late payment fee for practising lawyers specified in Schedule 1.
- (4) A retired member who has failed to pay the annual fee for retired members in accordance with Rule 2-4 [*Retired members*] is required to pay the late payment fee for retired members specified in Schedule 1.
- (5) A non-practising member who has failed to pay the annual fee for non-practising members in accordance with Rule 2-3 [*Non-practising members*] is required to pay the late payment fee for non-practising members specified in Schedule 1.
- (6) A lawyer who does not pay a special assessment by the date specified under Rule 2-106 (2) [*Assessments*] or extended under subrule (2) must pay a late payment fee of 20 per cent of the amount of the assessment.
- (7) When there are special circumstances, the Executive Director may, in his or her discretion, waive or reduce a late payment fee payable under this rule.

### **Definition and application**

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

### **Trust administration fee**

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

### **Late payment of trust administration fee**

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

### **Executive Director's discretion**

**2-112** The Executive Director may

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

### **Referral to Executive Committee**

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

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

### **Annual indemnity fee**

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

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

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

### **Indemnity fee credit**

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

### **Exemption from professional liability indemnification**

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

- (iii) if the client is an organization other than a financial institution, public body or reporting issuer
  - (A) the general nature of the type of business or activity engaged in by the client, and
  - (B) the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number.
- (2) When a lawyer has obtained and recorded the information concerning the identity of an individual client under subrule (1) (b), the lawyer is not required subsequently to obtain and record that information about the same individual unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

### Exemptions

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

- (a) if the client is
  - (i) a financial institution,
  - (ii) a public body,
  - (iii) a reporting issuer, or
  - (iv) an individual who instructs the lawyer on behalf of a client described in subparagraphs (i) to (iii),
- (b) when a lawyer
  - (i) pays money to or receives money from any of the following acting as a principal:
    - (A) a financial institution;
    - (B) a public body;
    - (C) a reporting issuer,
  - (ii) receives money paid from the trust account of another lawyer or an interjurisdictional lawyer,
  - (iii) receives money from a peace officer, law enforcement agency or other public official acting in an official capacity, or
  - (iv) pays or receives money
    - (A) [rescinded]
    - (B) to pay a fine, penalty or bail, or
    - (C) [rescinded]
    - (D) for professional fees, disbursements or expenses, or
- (c) to a transaction in which all funds involved are transferred by electronic transmission, provided
  - (i) the transfer occurs between financial institutions or financial entities headquartered in and operating in countries that are members of the Financial Action Task Force,

- (ii) neither the sending nor the receiving account holders handle or transfer the funds, and
- (iii) the transmission record contains
  - (A) a reference number,
  - (B) the date,
  - (C) the transfer amount,
  - (D) the currency, and
  - (E) the names of the sending and receiving account holders and the sending and receiving entities.

### **Requirement to verify client identity**

- 3-102** (1) When a lawyer provides legal services in respect of a financial transaction, the lawyer must
- (a) obtain from the client and record, with the applicable date, information about the source of money, and
  - (b) verify the identity of the client using documents or information described in subrule (2).
- (2) For the purposes of subrule (1), the client's identity must be verified by means of the following documents and information, provided that documents are valid, original and current and information is valid and current:
- (a) if the client is an individual
    - (i) an identification document issued by the government of Canada, a province or territory or a foreign government, other than a municipal government, that
      - (A) contains the individual's name and photograph, and
      - (B) is used in the physical presence of the client to verify that the name and photograph are those of the client,
    - (ii) information in the individual's credit file that is used to verify that the name, address and date of birth in the credit file are those of the individual, if that file is located in Canada and has been in existence for at least three years, or
    - (iii) any two of the following with respect to the individual:
      - (A) information from a reliable source that contains the individual's name and address that is used to verify that the name and address are of those of the individual;
      - (B) information from a reliable source that contains the individual's name and date of birth that is used to verify that the name and date of birth are those of the individual;
      - (C) information that contains the individual's name and confirms that the individual has a deposit account or a credit card or other loan amount with a financial institution that is used to verify that information;

- (b) if the client is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors where applicable, such as
    - (i) a certificate of corporate status issued by a public body,
    - (ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
    - (iii) a copy of a similar record obtained from a public body that confirms the organization's existence;
  - (c) if the client is an organization that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.
- (3) An electronic image of a document is not a document or information for the purposes of this rule.
- (3.1) Despite subrule (3), an electronic image of a document that is created by and obtained directly from a registry maintained by the government of Canada, a province or a territory or a foreign government, other than a municipal government, may be treated as a document or information for the purposes of subrule (2) (b).
- (4) For the purposes of subrule (2) (a) (iii)
- (a) the information referred to must be from different sources, and
  - (b) the individual, the lawyer or an agent is not a source.
- (5) To verify the identity of an individual who is under 12 years of age, the lawyer must verify the identity of a parent or guardian of the individual.
- (6) To verify the identity of an individual who is 12 years of age or over but less than 15 years of age, the lawyer may refer to information referred to in subrule (2) (a) (iii) (A) that contains the name and address of a parent or guardian of the individual and verifying that the address is that of the individual.

### **Requirement to identify directors, shareholders and owners**

- 3-103** (1) 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) [*Requirement to verify client identity*], the lawyer must
- (a) obtain and record, with the applicable date, the names of all directors of the organization, other than an organization that is a securities dealer, and
  - (b) make reasonable efforts to obtain and, if obtained, record with the applicable date
    - (i) the names and addresses of all persons who own, directly or indirectly, 25 per cent or more of the organization or of the shares of the organization,

- (ii) the names and addresses of all trustees and all known beneficiaries and settlors of the trust, and
  - (iii) information identifying the ownership, control and structure of the organization.
- (2) A lawyer must take reasonable measures to confirm the accuracy of information obtained under this rule.
- (3) A lawyer must keep a record, with the applicable dates, of the following:
  - (a) all efforts made under subrule (1) (b);
  - (b) all measures taken to confirm the accuracy of information obtained under this rule.
- (4) If a lawyer is not able to obtain the information referred to in subrule (1) or to confirm the accuracy of that information in accordance with subrule (2), the lawyer must
  - (a) take reasonable measures to ascertain the identity of the most senior managing officer of the organization,
  - (b) determine whether the following are consistent with the purpose of the retainer and the information obtained about the client as required by this rule:
    - (i) the client's information in respect of its activities;
    - (ii) the client's information in respect of the source of the money to be used in the financial transaction;
    - (iii) the client's instructions in respect of the transaction,
  - (c) assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct, and
  - (d) keep a record, with the applicable date, of the results of the determination and assessment under paragraphs (b) and (c).

### **Use of an agent for client verification**

- 3-104** (1) A lawyer may retain an agent to obtain the information required under Rule 3-102 [*Requirement to verify client identity*], provided the lawyer and the agent have an agreement or arrangement in writing for this purpose in compliance with this rule.
- (2) to (4) [rescinded 12/2019, effective 01/2020]
- (5) A lawyer must retain an agent to obtain the information required under Rule 3-102 [*Requirement to verify client identity*] to verify the person's identity and must have an agreement or arrangement in writing with the agent for that purpose if the client
- (a) is not present in Canada, and
  - (b) is not physically present before the lawyer.



- (4) Subject to subrule (5), the Executive Director may disclose the report of a Conduct Review Subcommittee that has been considered by a hearing panel as part of a lawyer’s professional conduct record under Rule 4-44 (5) [*Disciplinary action*].
- (5) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

**Evidence of conduct review at the hearing of a citation**

- 4-16** If a hearing is held on a citation issued following a conduct review concerning the same conduct referred to in the citation,
- (a) the Conduct Review Subcommittee’s written report is not admissible at the hearing, and
  - (b) no member of the Conduct Review Subcommittee is permitted to testify as to any statement made by the respondent during the conduct review, unless the respondent puts the matter in issue.

**Direction to issue, expand or rescind citation**

- 4-17** (1) The Discipline Committee or the chair of the Committee may order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer.
- (2) After a hearing has been ordered under subrule (1), the Discipline Committee may direct the Executive Director to add an allegation to a citation.
- (3) At any time before a panel makes a determination under Rule 4-44 [*Disciplinary action*], the Discipline Committee may rescind a citation or an allegation in a citation and substitute another decision under Rule 4-4 (1) [*Action on complaints*].

**Contents of citation**

- 4-18** (1) A citation may contain one or more allegations.
- (2) Each allegation in a citation must
- (a) be clear and specific enough to give the respondent notice of the misconduct alleged, and
  - (b) contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven against the respondent and to identify the transaction referred to.

**Notice of citation**

- 4-19** The Executive Director must serve a citation on the respondent
- (a) in accordance with Rule 10-1 [*Service and notice*], and
  - (b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.

### **Publication of citation**

- 4-20** (1) When there has been a direction to issue a citation, the Executive Director must publish on the Society's website the fact of the direction to issue the citation, the content of the citation and the status of the citation.
- (1.1) Publication under subrule (1) must not occur earlier than 7 clear days after the respondent has been notified of the direction to issue the citation.
- (2) The Executive Director may publish the outcome of a citation, including dismissal by a panel, rescission by the Discipline Committee or the acceptance of a conditional admission.
- (3) Publication under this rule may be made by means of the Society's website and any other means.
- (4) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.
- (5) Except as allowed under Rule 4-20.1 [*Anonymous publication of citation*], a publication under this rule must identify the respondent.

### **Anonymous publication of citation**

- 4-20.1** (1) A party or an individual affected may apply to the President for an order that publication under Rule 4-20 [*Publication of citation*] not identify the respondent.
- (2) When an application is made under this rule before publication under Rule 4-20, the publication must not identify the respondent until a decision on the application is issued.
- (3) On an application under this rule, where, in the judgment of the President, there are extraordinary circumstances that outweigh the public interest in the publication of the citation, the President may
- (a) grant the order, or
  - (b) order limitations on the content, means or timing of the publication.
- (4) The President may designate another Bencher to make a determination on an application under this rule.
- (5) The President or other Bencher making a determination on an application under this rule must state in writing the specific reasons for that decision.

### **Amending an allegation in a citation**

- 4-21** (1) Discipline counsel may amend an allegation contained in a citation
- (a) before the hearing begins, by giving written notice to the respondent and the President, and
  - (b) after the hearing has begun, with the consent of the respondent.

- (2) The panel may amend a citation after the hearing has begun
  - (a) on the application of a party, or
  - (b) on its own motion.
- (3) The panel must not amend a citation under subrule (2) unless the respondent and discipline counsel have been given the opportunity to make submissions respecting the proposed amendment.

**Severance and joinder**

- 4-22**
- (1) Before a hearing begins, the respondent or discipline counsel may apply in writing to the President for an order that
    - (a) one or more allegations in a citation be determined in a separate hearing from other allegations in the same citation, or
    - (b) two or more citations be determined in one hearing.
  - (2) An application under subrule (1) must
    - (a) be copied to the party not making the application, and
    - (b) state the grounds for the order sought.
  - (3) [rescinded]
  - (4) The President may
    - (a) allow the application with or without conditions,
    - (b) designate another Bencher to make a determination, or
    - (c) refer the application to a pre-hearing conference.

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