The Law Society of British Columbia

AMENDMENT PAGES

2022: No. 1 January

Highlights

Law Society Rules 2015:*

- *Effective January 1, 2022*, there are numerous reforms to the procedures of the Law Society Tribunal, including: consolidation of the Tribunal hearing rules into a single "Part" of the Rules; mandatory publication of all Tribunal decisions, except in extraordinary circumstances dictated by the public interest; the roles of "Tribunal Chair" and "motions adjudicator" are established; standardized process for any orders before a hearing starts and for variation of any order; certain terminology has been clarified (definitions of agreed statement of facts, disciplinary record, interim action board, motions adjudicator, Ombudsperson, professional conduct record, respondent, Tribunal, Tribunal Chair and Tribunal Office, and Rules 1-48(1), 2-91(1.1), (1.2) and (2), 2-92(3) and (4), 2-93 to 2-102, 3-10(1) to (3), (5), (6), (8), (9) and (12), 3-11(2), 3-12(1) to (3) and (5) to (14), 3-12.1 to 3-12.3, 4-20.1(1) and (3) to (5), 4-21 to 4-44, 4-45(1), (4) and (5), 4-48(1) to (3), 4-49(2), 4-56, 4-57, 5-1(1), 5-1.1 to 5-1.4, 5-2(1) to (3), (5), (5.1) and (7), 5-3, 5-4(1) and (2), 5-4.1 to 5-4.8, 5.5(2.1), (3) and (5) to (7), 5-5.1 to 5-5.3, 5-6(1) to (4) and (6), 5-6.1 to 5-6.6, 5-7, 5-8(3), 5-9(1), 5-11(5), (9) and (10), 5-12(1), (2.1) and (4) to (6), 5-13, 5-14, 5-15(2) and (2.1), 5-16(1), (4) and (6), 5-18(1) and (2), 5-19(1), (2) and (4) to (6), 5-19.1, 5-20(3) and (4), 5-22(1), 5-23(1), 5-24(1), 5-24.1(1), (1.1) and (3) to (6), 5-24.2, 5-25(1) to (3), (6), (7) and (9), 5-26(1) and (3) to (5), 5-27(4), 5-28(1), (3) and (4), 5-28.1, 10-1(1) to (3) and (7.1) and 10-2.1, items 4 and 25 in Schedule 4, and Schedule 5: pp. 11-17, 38, 90-91, 105-108.2, 166-198, 213-214 and 222-224).
- The Indigenous intercultural course is now mandatory (Rules 3-26, 3-28.1 and 3-28.2: pp. 115-116).
- If the Benchers fail to elect four members to the Executive Committee or if a position becomes vacant before September of any year, an election must be held "promptly" rather than at the next Bencher meeting; if the reason for the election is a tie vote, then the election will only be among those candidates with tied votes (Rule 1-41(11) and (11.1): p. 37).
- Transfers from other jurisdictions and, for a period of time to be determined by the Executive Director, articled students awaiting their first call have the option whether to be presented to the Supreme Court in accordance with Rule 2-84 (Rule 2-84(2.1), (5) and (6): p. 84).
- Fees are updated for 2022 (Schedules 1, 2 and 3: pp. 217 to 221).

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

Code of Professional Conduct for British Columbia: Commentaries have been amended to remove gendered language, to update references and to correct minor grammar and punctuation issues (rules 2.2-1 commentary [1], 3.1-2 commentary [13], 3.2-1 commentary [4], 3.2-7 commentary [3], 3.2-8 commentaries [1], [4] and [5], 3.2-9 commentary [1], 3.4-1 commentaries [6] and [8], 3.4-2 commentary [7], 3.4-18 commentary [1], 3.4-29 commentary [3], 3.7-1 commentaries [6], [7] and [9], 5.1-2 commentary [3], 5.5-6 commentary [1], 6.1-1 commentary [1], 6.1-3 commentary [1], 6.2-2 commentary [1], 7.1-2 commentary [3], 7.2-7 commentary [2], 7.2-8 commentary [2], 7.2-11 commentary [3], 7.2-12 commentary [1], Appendix A, Rule 1 commentaries [3], [7], [8], [10], [12], [14], [17] and [20] and Appendix B commentaries [2], [4] and [6]: pp. 6, 12, 13, 17-19, 26, 29, 37, 40, 50, 64, 69, 73, 75, 79, 81, 85, 86, 88, 88.1, 95-98 and 102.2-102.3).

[continued over]

Indemnification Policy: Indemnification Policy No. LPL 22-01-01 replaces Policy No. LPL 21-01-01; Business Innocent Covered Party (BIC) Endorsement #1 and Part C Retention Endorsement #2 attach to Policy No. LPL 22-01-01 and replace the previous BIC Endorsement. Refer to the upcoming *Program Report* from the Lawyers Indemnity Fund 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	11 – 18 37 – 38 83 – 86 89 – 94 105 – 106, 106.1 – 106.2, 107 – 108 115 – 116 165 – 166, 166.1 – 166.2, 167 – 192, 192.1 – 192.2, 193 – 200 213 – 224	11 – 18 37 – 38 83 – 86 89 – 92 *[93 – 94 deleted]* 105 – 108, 108.1 – 108.4 115 – 116, 116.1 – 116.2 165 – 198 *[199 – 200 deleted]* 213 – 224
Code of Professional Conduct for British Columbia	5 – 8 11 – 14 17 – 20 25 – 30 37 – 38 *[38.1 – 38.4 remain]* 39 – 40 49 – 52 63 – 64 69 – 70 73 – 76, 76.1 – 76.2, 77 – 84, 84.1 – 84.2, 85 – 88 95 – 98 102.1 – 102.4	5 – 8 11 – 14 17 – 20 25 – 30 37 – 38 39 – 40 49 – 52 63 – 64 69 – 70 73 – 88, 88.1 – 88.2 95 – 98 102.1 – 102.4
Indemnification Policies	Policy No. LPL 21-01-01 (1 – 32) BIC Endorsement #1 (1 – 3)	Policy No. LPL 22-01-01 (1 – 32) BIC Endorsement #1 (1 – 3) Part C Retention Endorsement #2

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

Updates: This amendment package updates the *Member's Manual* to **December 31, 2021**. The previous amendment package was 2021: No. 2 July.

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.

Website: The 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 Rules and Code.

MEMBER’S MANUAL CONTENTS CHECKLIST

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RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

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

"admission program" means the program for articled students administered by the Society or its agents, commencing on an articled student's enrolment start date and including the period during which the student is

(a) articled to a principal, or

(b) registered in the training course;

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

"agreed statement of facts" means a written statement of facts signed by Law Society counsel and by or on behalf of an applicant or respondent;

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

"appointed Bencher" means a person appointed as a Bencher under section 5 *[Appointed benchers]*;

"articled student" means a person who is enrolled in the admission program;

"articling agreement" means a contract in the prescribed form executed by an applicant for enrolment and the applicant's prospective principal;

"articling start date" means the date on which an articled student begins employment with the student's principal;

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

"Barreau" means the Barreau du Québec;

"Bencher" does not include the Attorney General unless expressly stated;

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

"Chambre" means the Chambre des notaires du Québec;

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

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

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

“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;

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

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

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

(a) any action taken by a governing body as a result of

(i) professional misconduct,

(ii) incompetence,

(iii) conduct unbecoming the profession,

(iv) lack of physical or mental capacity to engage in the practice of law, or

(v) any other breach of a lawyer’s professional responsibilities;

(b) disbarment;

(c) a lawyer’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings, including resignation as a term of a consent agreement;

(d) restrictions or limits on a lawyer’s entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;

(e) any interim suspension or restriction or limits on a lawyer’s entitlement to practise imposed pending the outcome of a disciplinary hearing.

“discipline violation” means any of the following:

(a) professional misconduct;

(b) conduct unbecoming the profession;

(c) a breach of the Act or these rules;

(d) incompetent performance of duties undertaken by a lawyer in the capacity of a lawyer;

(e) conduct that would constitute professional misconduct, conduct unbecoming the profession or a contravention of the Act or these rules if done by a lawyer or law firm;

"enrolment start date" means the date on which an articled student's enrolment in the admission program becomes effective;

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

"Executive Director" [rescinded]

"fiduciary property" means

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

but does not include

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

"firm" [rescinded – see **"law firm"** or **"firm"**]

"foreign jurisdiction" means a country other than Canada or an internal jurisdiction of a country other than Canada;

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

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

"general" in relation to accounts, books, records and transactions means those pertaining to general funds;

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

(a) trust funds, or

(b) fiduciary property;

"governing body" means the governing body of the legal profession in another province or territory of Canada;

"interim action board" means a board appointed under Rule 3-10 *[Interim suspension or practice conditions]*;

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

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

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

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

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

“lawyer” means a member of the Society;

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

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

(a) creation date;

(b) modification dates;

(c) printing information;

(d) pre-edit data from earlier drafts;

(e) identity of an individual responsible for creating, modifying or printing the record;

“motions adjudicator” means a lawyer Bencher designated by the Tribunal Chair to decide a matter or conduct a pre-hearing or pre-review conference under these rules;

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

(a) is owned by at least one lawyer or law corporation and at least one individual non-lawyer or professional corporation that is not a law corporation, and

(b) provides to the public legal services supported or supplemented by the services of another profession, trade or occupation;

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

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

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

“Ombudsperson” means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articled students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers and includes anyone employed to assist the Ombudsperson in that capacity;

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

“practice management course” means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study;

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

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

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

“prescribed form” means a form approved by the Executive Director;

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

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

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

(a) an order under Rule 2-57 (5) *[Principals]*, prohibiting the lawyer from acting as a principal for an articled student;

(b) any conditions or limitations of practice or articles accepted or imposed under the Act or these rules;

(c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;

(d) a decision by the Credentials Committee to reject an application for an inter-jurisdictional practice permit;

(d.1) a consent agreement to resolve a complaint under Rule 3-7.1 *[Resolution by consent agreement]*;

(e) any suspension or disbarment under the Act or these rules, including resignation requiring consent under Rule 4-6 *[Continuation of membership during investigation or disciplinary proceedings]*;

(f) recommendations made by the Practice Standards Committee under Rule 3-19 *[Action by Practice Standards Committee]*;

(g) an admission accepted by the Discipline Committee under Rule 4-29 *[Conditional admission]*;

(h) an admission accepted and disciplinary action imposed by a hearing panel under Rule 5-6.5 *[Admission and consent to disciplinary action]*;

(i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-13 *[Conduct Review Subcommittee report]*, and any written dispute of that report considered by the Committee;

(j) a decision made under section 38 (4) (b) *[Discipline hearings]*;

(k) an action taken under section 38 (5), (6) or (7);

(l) an action taken by a review board under section 47 *[Review on the record]*;

(m) a payment made from the former special compensation fund on account of misappropriation or wrongful conversion by the lawyer;

(n) an order for costs made against the lawyer under Part 5 *[Tribunal, Hearings and Appeals]*;

(o) any failure to pay any fine, costs or penalty imposed under the Act or these rules by the time that it is to be paid;

(p) the outcome of an application made by the lawyer under the *Judicial Review Procedure Act* concerning a decision taken under the Act or these rules, including a predecessor of either;

(q) the outcome of an appeal under section 48 *[Appeal]*;

(r) any disciplinary or remedial action taken by a governing body or body regulating the legal profession in any other jurisdiction;

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

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

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

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

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

“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 on the record]*

and includes a representative of a respondent law firm;

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

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

“Second Vice-President-elect” means the Bencher elected under Rule 1-19 *[Second Vice-President-elect]*, from the time of the election until the Bencher 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;

“Tribunal” means persons or bodies performing the adjudicative function of the Society or providing legal or adminsitrative support to that function;

“Tribunal Chair” means the Bencher appointed under Rule 5-1.3 *[Tribunal Chair]*;

“Tribunal Office” means the principal place of business of the Tribunal;

“trust funds” means funds directly related to legal services provided by a lawyer or law firm received in trust by the lawyer or law firm acting in that capacity, 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 or law firm 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.

(6) Benchers in office on the date specified under subrule (5) are eligible to vote for the Executive Committee as follows:

(a) all Benchers are eligible to vote for elected Benchers;

(b) appointed Benchers are eligible to vote for appointed Benchers.

(7) to (9) [rescinded; (8) moved to (2.1)]

(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 4 members of the Executive Committee under subrule (1), or if a vacancy occurs on or before August 31 of any year, the Benchers or the appointed Benchers, as the case may be, must promptly hold an election to fill the vacancy.

(11.1) Despite subrule (3), when a tie vote causes an election under subrule (11) the candidates who were tied are the only candidates.

(12) The Executive Director may conduct an election for members of the Executive Committee partly or entirely by electronic means.

(13) This rule applies, with the necessary changes and so far as applicable, to an election conducted partly or entirely by electronic means.

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

Executive Director’s delegate

1-44.1 (1) Any power or authority delegated to the Executive Director under these rules may be exercised by the Executive Director’s delegate.

(2) In the absence of evidence to the contrary, a person employed or retained by the Society is the Executive Director's delegate when acting within the scope of the person's employment or retainer to exercise a power or authority delegated to the Executive Director under these rules.

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 a lawyer employed by 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.

(3) To qualify for call and admission, an applicant under this rule must certify, in the prescribed form, that the applicant has reviewed and understands all of the materials reasonably required by the Executive Director.

(4) A lawyer called and admitted under this rule has no greater rights as a member of the Society than

(a) the lawyer has as a member of the governing body of the lawyer's home jurisdiction, or

(b) any other member of the Society in similar circumstances.

Transfer as Canadian legal advisor

2-82 (1) Subject to subrule (3), a member of the Chambre may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:

(a) a completed application for call and admission as a Canadian legal adviser in the prescribed form, including written consent for the release of relevant information to the Society;

(b) a certificate of character;

(c) a certificate of standing from the Chambre and each other body regulating the legal profession, in any jurisdiction, in which the applicant is or has been a member of the legal profession;

(d) a professional liability indemnity application or exemption form;

(e) the following fees:

(i) the application fee and call and admission fees specified in Schedule 1;

(ii) the prorated practice fee specified in Schedule 2;

(iii) the prorated annual indemnity fee specified in Schedule 2, unless exempt under Rule 3-43 *[Exemption from professional liability indemnification]*;

(f) any other information and documents required by the Act or these rules that are requested by the Credentials Committee or the Benchers.

(2) Subject to subrule (1), Rules 2-79 to 2-84 apply, with any necessary changes, to an application for call and admission on transfer as a Canadian legal adviser.

(3) This rule applies to those members of the Chambre who have earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Chambre.

Consideration of application for call and admission

2-83 (1) The Executive Director must consider an application for call and admission by a person meeting the requirements under this division, and may conduct or authorize any person to conduct an investigation concerning the application.

(2) On an application for call and admission, the Executive Director may

(a) authorize the call and admission of the applicant without conditions or limitations, or

(b) refer the application to the Credentials Committee.

(3) When the Executive Director refers an application to the Credentials Committee under subrule (2), the Committee may

(a) authorize the call and admission of the applicant without conditions or limitations,

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

(c) order a hearing.

Barristers and solicitors' oath and presentation in court

2-84 (1) The Executive Director must maintain the barristers and solicitors' roll in paper or electronic form, or a combination of both.

(2) Every lawyer who is called to the Bar of British Columbia and admitted as a solicitor of the Supreme Court must,

(a) before beginning the practice of law, take the barristers and solicitors' oath in a form approved by the Benchers before a judge of the Provincial Court or a superior court in British Columbia or before a practising lawyer, and

(b) be presented in open court before one or more of the judges of the Supreme Court.

(2.1) Despite subrule (2)

(a) a lawyer who has been called and admitted in another Canadian jurisdiction before taking the barristers' and solicitors' oath under subrule (2) (a) is permitted but not required to be presented in open court under subrule (2) (b), and

(b) the Executive Director may exempt a lawyer or a category of lawyers from the requirement to be presented in open court under subrule (2) (b).

(3) The Executive Director must enter in the barristers and solicitors' roll the full names of all persons who are called as barristers and admitted as solicitors.

(4) On proof that an applicant who has otherwise qualified for call and admission has taken the oath required under subrule (2) (a), the Executive Director must issue to the applicant a practising certificate, a non-practising certificate or a Canadian legal advisor certificate, as the case may be.

(5) The Executive Director must not renew a practising certificate issued under subrule (4) unless the lawyer has been presented in open court if required under this rule.

(6) Despite subrule (5)

(a) the Executive Director may renew a certificate issued under subrule (4) on or after September 1 of the same year as its expiry, and

(b) the Benchers may, by resolution, extend the time for a lawyer or a category of lawyers to be presented in open court.

Reinstatement

Reinstatement of former lawyer

2-85 (1) A former lawyer may apply for reinstatement as a member of the Society by delivering the following to the Executive Director:

(a) an application for reinstatement in the prescribed form, including written consent for the release of relevant information to the Society;

(b) the appropriate application fee specified in Schedule 1.

(2) An applicant for reinstatement may apply for the following status on reinstatement:

(a) practising lawyer, only if the applicant has met the conditions for practising law under Rule 2-89 *[Returning to practice after an absence]*;

(b) non-practising member on compliance with Rule 2-3 *[Non-practising members]*;

(c) retired member if the lawyer is qualified under Rule 2-4 (1) *[Retired members]* and on compliance with Rule 2-4 (2) and (3).

(3) On an application under subrule (2) (c), the Executive Director may waive payment of all or part of the application fee on any conditions that the Executive Director considers appropriate.

(4) The Executive Director may issue a practising certificate to an applicant on reinstatement on payment of the following:

(a) the prorated practice fee specified in Schedule 2;

(b) the prorated annual indemnity fee specified in Schedule 2, unless exempt under Rule 3-43 *[Exemption from professional liability indemnification]*;

(c) any surcharge for which the lawyer is liable under Rule 3-44 (2) *[Deductible, surcharge and reimbursement]*.

(5) The Executive Director may issue a non-practising or retired member certificate to an applicant on reinstatement on payment of the appropriate prorated fee specified in Schedule 3.

(6) Subject to subrule (7), the Executive Director must consider an application for reinstatement of a former lawyer and may conduct or authorize any person to conduct an investigation concerning the application.

(7) The Executive Director must not consider an application for reinstatement of a former lawyer unless the former lawyer has

(a) submitted all trust reports required under Rules 3-79 *[Trust report]* and 3-84 (1) *[Former lawyers]*,

(b) paid all assessments accrued under Rule 3-80 *[Late filing of trust report]* before and after the former lawyer ceased to be a member of the Society unless the Executive Director waives all of the assessments under Rule 3-80 (3) and any conditions have been fulfilled, and

(c) paid all costs of trust reports ordered under Rule 3-81 (6) *[Failure to file trust report]*.

(8) If an applicant for reinstatement is a disbarred lawyer, the Executive Director must refer the application to the Credentials Committee.

(9) On an application for reinstatement to which subrules (7) and (8) do not apply, the Executive Director may

(a) reinstate the applicant without conditions or limitations, or

(b) refer the application to the Credentials Committee for consideration.

(10) Subject to subrule (11), when the Executive Director refers an application for reinstatement to the Credentials Committee under subrule (9), the Committee may

(a) reinstate the applicant without conditions or limitations,

(b) reinstate the applicant with conditions or limitations on the applicant's practice if the applicant consents in writing to those conditions or limitations, or

(c) order a hearing.

(11) The Credentials Committee must order a hearing in the following circumstances:

(a) section 19(3) applies;

(b) the Committee cannot reach another disposition of the matter under subrule (10);

(c) the Committee resolves to order a hearing.

(12) An applicant for reinstatement must give written notice of the application as directed by the Executive Director, and persons so notified may appear in person or by counsel at the hearing and be heard on the application.

Subsequent application for reinstatement

2-86 A person whose application for reinstatement is rejected under section 22 (3) *[Credentials hearings]* may not make a new application for reinstatement until the earlier of the following:

(a) 2 years after the date on which the application was rejected;

(b) the date set by the panel when the application was rejected or by the review board on a review under Part 5 *[Tribunal, Hearings and Appeals]*.

Conditions on returning to practice

2-90 (1) A lawyer or applicant who has spent a period of 7 years or more not engaged in the practice of law must not practise law without the permission of the Credentials Committee.

(2) Subrule (1) applies

(a) despite any other rule, and

(b) whether or not the lawyer holds or is entitled to hold a practising certificate.

(3) A lawyer or applicant must apply in writing to the Credentials Committee for permission to practise law under subrule (1).

(4) An application under subrule (3) may be combined with an application under Rule 2-89 (3) *[Returning to practice of law after an absence]*.

(5) As a condition of permission to practise law under subrule (1), the Credentials Committee may require one or more of the following:

(a) successful completion of all or part of one or more of the following:

(i) the admission program;

(ii) another course offered by the Society or a provider approved by the Society;

(b) a written undertaking to do any or all of the following:

(i) practise law in British Columbia immediately on being granted permission;

(ii) not practise law as a sole practitioner;

(iii) practise law only in a situation approved by the Committee for a period set by the Committee, not exceeding 2 years;

(iv) successfully complete the training course or a part of the training course within a period set by the Committee, not exceeding one year from the date permission is granted;

(v) practise law only in specified areas;

(vi) not practise law in specified areas.

(6) Despite Rule 2-52 (3) *[Powers of Credentials Committee]*, the Credentials Committee may vary a condition under subrule (5) (a) without the consent of the lawyer concerned.

(7) On the written application of the lawyer, the Credentials Committee may allow a variation of an undertaking given under subrule (5) (b).

Credentials hearings

Notice to applicant

2-91 (1) When a hearing is ordered under this division, the Executive Director must promptly notify the applicant in writing of

(a) the purpose of the hearing,

(b) [rescinded]

(c) the circumstances to be inquired into at the hearing, and

(d) the amount of security for costs set by the Credentials Committee under Rule 2-92 *[Security for costs]*.

(1.1) and (1.2) [rescinded]

(2) The notice referred to in subrule (1) must be served

(a) in accordance with Rule 10-1 *[Service and notice]*, and

(b) not less than 30 days before the date set for the hearing, unless the applicant consents in writing to a shorter period.

Security for costs

2-92 (1) When the Credentials Committee orders a hearing under this division, it must set an amount to be deposited by the applicant as security for costs.

(2) In setting the amount to be deposited as security for costs under this rule, the Credentials Committee may take into account the circumstances of the matter, including but not limited to, the applicant's

(a) ability to pay, and

(b) likelihood of success in the hearing.

(3) The amount to be deposited as security for costs must not exceed an amount that approximates the amount that the panel may order to be paid under Rule 5-11 *[Costs of hearings]*.

(4) On application by the applicant or Law Society counsel, the Credentials Committee may vary the amount to be deposited as security for costs under this rule.

(5) If, 15 days before the date set for a hearing, the applicant has not deposited with the Executive Director the security for costs set under this rule, the hearing is adjourned.

(6) Before the time set for depositing security for costs under subrule (5), an applicant may apply to the Credentials Committee for an extension of time, and the Committee may, in its discretion, grant all or part of the extension applied for.

Law Society counsel

2-93 The Executive Director must appoint a lawyer employed by the Society or retain another lawyer to represent the Society when

(a) a hearing is ordered under this division,

(b) a review is initiated under section 47 *[Review on the record]*,

(c) an applicant appeals a decision to the Court of Appeal under section 48 *[Appeal]*, or

(d) the Society is a respondent in any other action involving an application relating to sections 19 to 22 or this division.

2-94 to 2-101 [rescinded]

Inactive applications

2-102 (1) When the Credentials Committee has ordered a hearing and the applicant has taken no steps for one year to bring the application to a hearing, the application is deemed abandoned.

(2) When an application is abandoned under this rule, Law Society counsel may apply for an order that some or all of the funds paid under Rule 2-92 *[Security for costs]* as security for costs be retained by the Society.

(3) An application under subrule (2) is made by filing with the Tribunal and delivering to the applicant written notice of the application.

(4) On an application under subrule (3), a motions adjudicator may order that some or all of the funds deposited as security for costs be retained by the Society, and the remainder, if any, be refunded to the applicant.

(5) [rescinded]

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(4) Despite subrule (3), the Executive Director may refer a complaint to the chair of the Discipline Committee if the complaint concerns only allegations that the lawyer has done one or more of the following:

(a) breached a rule;

(b) breached an undertaking given to the Society;

(c) failed to respond to a communication from the Society;

(d) breached an order made under the Act or these rules.

Notifying the parties

3-9 (1) When a decision has been made under Rule 3-8 *[Action after investigation]*, the Executive Director must notify the complainant and the lawyer in writing of the disposition.

(2) When the Executive Director takes no further action on a complaint under Rule 3-8 (1) *[Action after investigation]*, notice to the complainant under subrule (1) must include

(a) the reason for the decision, and

(b) instructions on how to apply for a review of the decision under Rule 3-14 *[Review by Complainants' Review Committee]*.

Division 1.1 – Extraordinary action to protect public

Interim suspension or practice conditions

3-10 (1) Under this rule, an interim action board may make an order with respect to a lawyer or articled student who is the subject of

(a) an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, or

(b) a citation under Part 4 *[Discipline]*.

(1.1) When a proceeding is initiated under Rule 3-12 (3) *[Public protection proceeding]*, the President must appoint an interim action board, consisting of 3 or more Benchers who are not members of the Discipline Committee.

(2) If satisfied, on reasonable grounds, that extraordinary action is necessary to protect the public, an interim action board may

(a) impose conditions or limitations on the practice of a lawyer or on the enrolment of an articled student, or

(b) suspend a lawyer or the enrolment of an articled student.

(3) An order made under subrule (2) or varied under Rule 3-12 *[Public protection proceeding]* is effective until the first of

(a) final disposition of the existing citation or any citation authorized under Part 4 *[Discipline]* arising from the investigation, or

(b) rescission, variation or further variation under Rule 3-12.

(4) Subject to an order under subrule (6), when a condition or limitation is imposed under this rule on the practice of a lawyer or the enrolment of an articled student, the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation.

(5) An interim action board that makes an order under subrule (2) (a) must consider the extent to which disclosure of the existence and content of the order should be made public.

(6) Where, in the judgment of the interim action board that made an order under subrule (2) (a), there are extraordinary circumstances that outweigh the public interest in the disclosure of the order, the board may make an order

(a) that the Executive Director not disclose all or part of the order, or

(b) placing limitations on the content, means or timing of disclosure.

(7) An order made under subrule (6) does not apply to disclosure of information for the purposes of

(a) enforcement of the order,

(b) investigation and consideration of a complaint under this part or Part 4 *[Discipline]* or a proceeding under Part 5 *[Tribunal, Hearings and Appeals]*, or

(c) obtaining and executing an order under Part 6 *[Custodianships]*.

(8) An interim action board must give written reasons for an order under subrule (6).

(9) An order under subrule (6) may be made by a majority of the interim action board.

(10) If the Executive Director discloses the existence of a condition or limitation under subrule (2) (a) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

(11) Subrule (10) does not apply to a decision of a hearing panel or a review board.

(12) This rule is subject to the requirement to publish discipline decisions under Rule 4-48 (2) *[Publication of discipline decisions]*.

Medical examination

3-11 (1) This rule applies to a lawyer or articled student who is the subject of

(a) an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, or

(b) a citation under Part 4 *[Discipline]*.

(2) An interim action board that is of the opinion, on reasonable grounds, that the order is likely necessary to protect the public may make an order requiring a lawyer or articled student to

(a) submit to an examination by a medical practitioner specified by the interim action board, and

(b) instruct the medical practitioner to report to the Executive Director on the ability of the lawyer to practise law or, in the case of an articled student, the ability of the student to complete articles.

(3) The Executive Director may deliver a copy of the report of a medical practitioner under this rule to the Discipline Committee or the Practice Standards Committee.

(4) The report of a medical practitioner under this rule

(a) may be used for any purpose consistent with the Act and these rules, and

(b) is admissible in any hearing or proceeding under the Act and these rules.

Public protection proceeding

3-12 (1) [rescinded]

(2) Before an interim action board takes action under Rule 3-10 *[Interim suspension or practice conditions]* or 3-11 *[Medical examination]*, there must be a proceeding before the board at which Law Society counsel is present.

(3) The proceeding referred to in subrule (2)

(a) must be initiated on the application of one of the following:

(i) the Discipline Committee;

(ii) the Practice Standards Committee;

(iii) the Executive Director, and

(b) may take place without notice to the lawyer or articled student if the interim action board is satisfied, on reasonable grounds, that notice would not be in the public interest.

(4) The lawyer or articled student and counsel for the lawyer or articled student may be present at a proceeding under this rule.

(5) All proceedings under this rule must be recorded by a court reporter or by other means.

(6) Subject to the Act and these rules, the interim action board may determine the practice and procedure to be followed.

(7) Unless the interim action board orders otherwise, the proceeding is not open to the public.

(8) A party may request an adjournment of a proceeding conducted under this rule.

(9) Rule 5-5.2 *[Adjournment]* applies to an application for an adjournment made before the proceeding begins as if it were a hearing.

(10) [rescinded]

(11) After a proceeding has begun, the interim action board may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.

(12) On the application of a party, the interim action board may rescind or vary an order made or previously varied under this rule.

(13) On an application under subrule (12) to vary or rescind an order,

(a) each party must be given a reasonable opportunity to make submissions in writing, and

(b) the interim action board may allow oral submissions if, in the board's discretion, it is appropriate to do so.

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

Notice to lawyer or articled student

3-12.1 When an order is made under Rule 3-10 (2) *[Interim suspension or practice conditions]* without notice to the lawyer or articled student, the Executive Director must immediately notify the lawyer or articled student in writing, that

(a) the order has been made,

(b) the lawyer or articled student is entitled, on request, to a transcript of the proceeding under Rule 3-12*[Public protection proceeding]*, and

(c) the lawyer or articled student may apply under Rule 3-12.3 *[Review of interim suspension or practice conditions]* to have the order rescinded or varied.

Non-disclosure

3-12.2 (1) Unless an order is made under Rule 3-10 (2) *[Interim suspension or pratice conditions]*, no one is permitted to disclose that a proceeding was initiated, scheduled or took place under this division except for the purpose of complying with the objects of the Act or with these rules.

(2) When an order has been made or refused under Rule 3-10 (2) *[Interim suspension or practice conditions]*, before publication of the decision is permitted under Rule 4-48 (2) *[Publication of discipline decisions]*, the Executive Director may, on request, disclose the fact of the order or refusal and the reasons for it.

Review of interim suspension or practice conditions

3-12.3 (1) If an order has been made under Rule 3-10 (2) *[Interim suspension or practice conditions]*, the lawyer or articled student may apply in writing to the Tribunal at any time for rescission or variation of the order.

(2) An application under subrule (1) must be heard as soon as practicable and, if the lawyer or articled student has been suspended without notice, not later than 7 days after the date on which it is received by the Tribunal, unless the lawyer or articled student consents to a longer time.

(3) When application is made under subrule (1), the Tribunal Chair must appoint a panel under Part 5 *[Tribunal, Hearings and Appeals]*.

(4) The panel appointed under subrule (3) must not include a person who

(a) participated in the decision that authorized the issuance of a citation related to the application,

(b) was a member of the interim action board that made the order under review, or

(c) is a member of a panel assigned to hear a citation related to the application.

(5) A hearing under this rule is open to the public, but the panel may exclude some or all members of the public in any circumstances it considers appropriate.

(6) On application by anyone, the panel may make the following orders to protect the interests of any person:

(a) an order that specific information not be disclosed;

(b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

(7) All proceedings at a hearing under this rule must be recorded by a court reporter or by other means, and any person may obtain, at the person's expense, a transcript of any part of the hearing that the person was entitled to attend.

(8) Each party may call witnesses to testify who

(a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and

(b) are subject to cross-examination.

(9) If the order under Rule 3-10 (2) *[Interim suspension or practice conditions]* took effect without notice to the lawyer or articled student, witnesses called by Law Society counsel must testify first, followed by witnesses called by the respondent.

(10) If subrule (9) does not apply, witnesses called by the lawyer or articled student must testify first, followed by witnesses called by Law Society counsel.

(11) The panel may

(a) accept an agreed statement of facts, and

(b) admit any other evidence it considers appropriate.

(12) Following completion of the evidence, the panel must

(a) invite each party to make submissions on the issues to be decided by the panel,

(b) decide by majority vote whether cause has been shown by the appropriate party under subrule (13) or (14), as the case may be, and

(c) make an order if required under subrule (13) or (14).

(13) If an order has been made under Rule 3-10 (2) *[Interim suspension or practice conditions]* with notice to the respondent, the panel must rescind or vary the order if cause is shown on the balance of probabilities by or on behalf of the respondent.

(14) If an order has been made under Rule 3-10 (2) *[Interim suspension or practice conditions]* without notice to the respondent, the panel must rescind or vary the order, unless Law Society counsel shows cause, on the balance of probabilities, why the order should not be rescinded or varied.

Division 1.2 – Complainants' Review Committee

Appointment of Complainants' Review Committee

3-13 (1) For each calendar year, the President must appoint a Complainants' Review Committee.

(2) If one or more Benchers have been appointed under section 5 *[Appointed benchers]*, the President must appoint at least one of the appointed Benchers to the Complainants' Review Committee.

Review by Complainants' Review Committee

3-14 (1) A complainant may apply to the Complainants' Review Committee for a review of a decision by the Executive Director under Rule 3-8 *[Action after investigation]* to take no further action after investigating a complaint.

(2) To initiate a review under subrule (1), the complainant must apply to the Complainants' Review Committee within 30 days after the decision is communicated to the complainant.

(3) The chair of the Complainants' Review Committee may extend the time for applying for a review under subrule (2) in extraordinary circumstances beyond the control of the complainant.

(4) The Complainants' Review Committee must

(a) review the documents obtained, collected or produced by the Executive Director under Rules 3-4 to 3-9, and

(b) on the direction of an appointed Bencher member of the Committee, make enquiries of the complainant, the lawyer or any other person.

(5) After its review and enquiries, the Complainants' Review Committee must do one of the following:

(a) confirm the Executive Director's decision to take no further action;

(b) refer the complaint to the Practice Standards Committee or to the Discipline Committee with or without recommendation;

(c) direct the Executive Director to conduct further investigation of the complaint to determine its validity.

(6) The chair of the Complainants' Review Committee must notify the complainant, the lawyer and the Executive Director, in writing, of the Committee's decision under subrule (5) and the reasons for that decision.

(7) If the Complainants' Review Committee keeps minutes of its consideration of a complaint, the Executive Director may disclose all or part of the minutes to the complainant or the lawyer concerned.

Division 2 – Practice Standards

Practice Standards Committee

3-15 (1) For each calendar year, the President must appoint a Practice Standards Committee, including a chair and vice chair, both of whom must be Benchers

(2) The President may remove any person appointed under subrule (1).

(3) At any time, the President may appoint a person to the Practice Standards Committee to replace a Committee member who resigns or otherwise ceases membership in the Committee, or to increase the number of members of the Committee.

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“Indigenous intercultural course” means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study;

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

“small firm” includes

(a) a firm in which not more than 4 lawyers practise law together, and

(b) a lawyer in an arrangement to share expenses with other lawyers who otherwise practises as an independent practitioner, except when the lawyer relies on a firm that is not a small firm to maintain trust accounting and other financial records on the lawyer’s behalf,

but does not include

(c) a public body such as government or a Crown corporation, or

(d) a corporation other than a law corporation, or other private body.

Application

3-27 Rule 3-28 *[Practice management course]* applies to a lawyer when

(a) the lawyer begins practice in a small firm or, while practising in a small firm, becomes a signatory on a trust account, unless the lawyer has done both of the following in a Canadian jurisdiction for a total of 2 years or more in the preceding 5 years:

(i) engaged in the practice of law in a small firm;

(ii) been a signatory on a trust account, or

(b) the Practice Standards Committee, by resolution, so orders.

Practice management course

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

(a) successfully complete the practice management course, and

(b) certify to the Executive Director in the prescribed form that the lawyer has successfully completed the practice management course.

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

Indigenous intercultural course

3-28.1 (1) A practising lawyer must comply with subrule (2) before

(a) the lawyer has engaged in the practice of law for two years in total, whether or not continuous, or

(b) January 1, 2024

whichever is later.

(2) Every practising lawyer must

(a) complete the Indigenous intercultural course, and

(b) certify to the Executive Director in the prescribed form that the lawyer has completed the Indigenous intercultural course.

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

Failure to complete Indigenous intercultural course

3-28.2 (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-28.1 *[Indigenous intercultural course]* by the date on which it is required is suspended until the lawyer has completed the course and certified the completion to the Executive Director as required by Rule 3-28.1.

(2) When there are special circumstances, the chair of the Credentials Committee may, in the chair's discretion, order that

(a) the lawyer not be suspended under subrule (1), or

(b) a suspension under subrule (1) be delayed for a specified period of time.

(3) At least 60 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the chair of the Credentials Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

Professional development

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

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

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

(a) complete the required professional development, and

(b) certify to the Executive Director in the prescribed form that the lawyer has completed the required professional development.

(4) Despite subrule (3), a practising lawyer need not complete the required professional development in a calendar year in which the lawyer has successfully completed the admission program or the equivalent in another Canadian jurisdiction.

(5) On written application by a practising lawyer who has refrained from the practice of law for a minimum of 60 consecutive days in a calendar year, the Executive Director may reduce the required professional development for that lawyer.

(6) The Executive Director must not reduce the amount of required professional development under subrule (5)

(a) by an amount greater than that proportionate to the part of the calendar year in which the lawyer refrained from the practice of law

(b) by any amount if the lawyer refrained from the practice of law as a result of suspension, disbarment or other disciplinary proceedings.

(7) A lawyer who ceases to be a practising lawyer without completing all required professional development must complete the uncompleted portion in the next calendar year in which the lawyer is a practising lawyer, in addition to the required professional development for that calendar year.

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

Mentoring

3-30 (1) The Benchers may allow credit as a mentor, subject to any conditions or limitations that the Benchers consider appropriate.

(2) To qualify to receive credit as a mentor, a lawyer must

(a) be qualified to act as a principal to an articled student under Rule 2-57 (2) and (2.1) *[Principals]*, and

(b) not be the subject of an order of the Credentials Committee under subrule (4) (c).

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(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 Tribunal 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 a motions adjudicator, there are extraordinary circumstances that outweigh the public interest in the publication of the citation, the motions adjudicator may

(a) grant the order, or

(b) order limitations on the content, means or timing of the publication.

(4) [rescinded]

(5) The motions adjudicator making a determination on an application under this rule must state in writing the specific reasons for that decision.

4-21 to 4-26 [rescinded]

Appointment of Law Society counsel

4-27 The Executive Director must appoint a lawyer employed by the Society or retain another lawyer to represent the Society when

(a) a direction to issue a citation is made under Rule 4-17 *[Direction to issue, expand or rescind citation]*,

(b) a person initiates a review under section 47 *[Review on the record]*,

(c) a person appeals a decision to the Court of Appeal under section 48 *[Appeal]*, or

(d) the Society is a respondent in any other action involving the investigation of a complaint or the discipline of a lawyer.

4-28 [rescinded]

Conditional admission

4-29 (1) A respondent may, at least 14 days before the date set for a hearing under this part, tender to the Discipline Committee a conditional admission of a discipline violation.

(2) The chair of the Discipline Committee may waive the 14-day time limit in subrule (1).

(3) The Discipline Committee may, in its discretion,

(a) accept the conditional admission,

(b) accept the conditional admission subject to any undertaking that the Committee requires the respondent to give in order to protect the public interest, or

(c) reject the conditional admission.

(4) If the Discipline Committee accepts a conditional admission tendered under this rule,

(a) those parts of the citation to which the conditional admission applies are resolved,

(b) the Executive Director must

(i) record the respondent’s admission on the respondent’s professional conduct record, and

(ii) notify the respondent and the complainant of the disposition, and

(c) subject to solicitor and client privilege and confidentiality, the Executive Director may disclose the reasons for the Committee’s decision.

(5) A respondent who undertakes under this rule not to practise law is a person who has ceased to be a member of the Society as a result of disciplinary proceedings under section 15 (3) *[Authority to practise law]*.

4-30 to 4-44 [rescinded]

Discipline proceedings involving members of other governing bodies

4-45 (1) The Executive Director must send written notice of the action to every governing body of which the person concerned is known to be a member when

(a) a citation is authorized under Rule 4-17 *[Direction to issue, expand or rescind citation]*,

(b) a disciplinary action is imposed under Rule 5-6.4 *[Disciplinary action]*, or

(c) a conditional admission tendered under Rule 4-29 *[Conditional admission]* is accepted by the Discipline Committee.

(2) When a citation is authorized against a lawyer who is a member of a governing body or when a governing body initiates disciplinary proceedings against a member of the Society, the Discipline Committee must consult with the governing body about the manner in which disciplinary proceedings are to be taken and the Society is bound by any agreement the Discipline Committee makes with the other governing body.

(3) The Discipline Committee may agree that the venue of disciplinary proceedings be changed to or from that of the Society, if it is in the public interest or if there is a substantial savings in cost or improvement in the convenience of any person without compromising the public interest.

(4) The Discipline Committee may take action under Rule 4-4 *[Action on complaints]* against a lawyer who

(a) has violated a prohibition against practice imposed by a governing body,

(b) is the subject of a declaration by a governing body under a provision similar to Rule 5-6.4 (3) (d) *[Disciplinary action]*, or

(c) has made an admission that is accepted under a provision similar to Rule 4-29 *[Conditional admission]*.

(5) The fact that a lawyer is or has been the subject of disciplinary proceedings by a governing body does not preclude any disciplinary action for the same or related conduct under this part.

(6) In a proceeding under this part, the filing of a duly certified copy of the disciplinary decision of a governing body against a lawyer found guilty of misconduct is proof of the lawyer’s guilt.

Discipline involving lawyers practising in other jurisdictions

4-46 (1) If it is alleged that a member of the Society has committed misconduct while practising temporarily in another Canadian jurisdiction under provisions equivalent to Rules 2-15 to 2-27 *[Inter-jurisdictional practice]*, the Discipline Committee will

(a) consult with the governing body concerned respecting the manner in which disciplinary proceedings will be conducted, and

(b) subject to subrule (2), assume responsibility for the conduct of the disciplinary proceedings under this part.

(2) The Discipline Committee may agree to allow the governing body concerned to assume responsibility for the conduct of disciplinary proceedings under subrule (1), including the expenses of the proceeding.

(3) In deciding whether to agree under subrule (2), the primary considerations will be the public interest, convenience and cost.

(4) To the extent that is reasonable in the circumstances, the Executive Director must do the following at the request of a governing body that is investigating the conduct of a member or former member of the Society or a visiting lawyer who has provided legal services:

(a) provide information to the governing body under Rule 2-27.1 *[Sharing information with a governing body]*;

(b) co-operate fully in the investigation and any citation and hearing.

(5) Subrule (4) applies when the Discipline Committee agrees with a governing body under subrule (2).

(6) When the Executive Director provides information or documentation to a governing body under subrule (4) or (5), the Executive Director may inform any person whose personal, confidential or privileged information may be included of that fact and the reasons for it.

Public notice of suspension or disbarment

4-47 (1) When a person is suspended under this part or Part 5 *[Tribunal, Hearings and Appeals],* is disbarred or, as a result of disciplinary proceedings, resigns from membership in the Society or otherwise ceases to be a member of the Society as a result of disciplinary proceedings, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation by means including but not limited to the following:

(a) publication of a notice in

(i) the British Columbia Gazette,

(ii) a newspaper of general circulation in each municipality and each district referred to in Rule 1-21 *[Regional election of Benchers]*, in which the person maintained a law office, and

(iii) the Society website, and

(b) notifying the following:

(i) the Registrar of the Supreme Court;

(ii) the Public Guardian and Trustee.

(2) When a person is suspended under Part 2 *[Membership and Authority to Practise Law]* or 3 *[Protection of the Public]*, the Executive Director may take any of the steps referred to in subrule (1).

(3) A lawyer who is suspended under this part or Part 5 *[Tribunal, Hearings and Appeals]* must inform all clients who reasonably expect the lawyer to attend to their affairs during the period of the suspension and clients or prospective clients who inquire about the availability of the lawyer's services during the suspension period of the following:

(a) the period during which the lawyer will not be practising;

(b) the arrangements the lawyer has put in place to protect the clients' interests while the lawyer will not be practising;

(c) the fact that the lawyer is not practising during the relevant period because of the suspension.

(4) A panel that suspends a lawyer may relieve the lawyer of any of the obligations set out in subrule (3) if the panel is satisfied that it is consistent with the public interest and that imposing the obligation would be unreasonable in the circumstances.

Publication of discipline decisions

4-48 (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken by a hearing panel, a motions adjudicator or a review board.

(1.1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of an admission of a discipline violation accepted by the Discipline Committee under Rule 4-29 *[Conditional admission]*.

(2) Despite subrules (1) and (3), but subject to Rule 4-47 *[Public notice of suspension or disbarment]*, the Executive Director must not make public any decision, reasons or action taken as follows:

(a) a decision not to accept an admission under Rule 5-6.5 *[Admission and consent to disciplinary action]*;

(b) any decision under Rule 3-10 *[Interim suspension or practice conditions]* or 3-11 *[Medical examination]*

before the matter is concluded and any prescribed period to initiate an appeal or review has expired.

(3) When a publication is required or permitted under this rule, the Executive Director may also publish generally all or part of

(a) [rescinded]

(b) the written reasons for the decision,

(c) an agreed statement of facts, or

(d) admissions made in response to a Notice to Admit.

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

Anonymous publication

4-49 (1) Except as allowed under this rule, a publication under Rule 4-48 *[Publication of discipline decisions]* must identify the respondent.

(2) The publication of a decision dismissing all allegations in the citation and any subsequent decision in the matter must not identify the respondent unless

(a) the respondent consents in writing, or

(b) an allegation is held to be proven on a review or appeal.

(3) An individual affected, other than the respondent, may apply to the panel for an order under subrule (4) before the written report on findings of fact and determination is issued or oral reasons are delivered.

(4) On an application under subrule (3) or on its own motion, the panel may order that publication not identify the respondent if

(a) the panel has imposed a disciplinary action that does not include a suspension or disbarment, and

(b) publication of the identity of the respondent could reasonably be expected to identify an individual, other than the respondent, and that individual would suffer serious prejudice as a result.

(5) If a panel orders that a respondent’s identity not be disclosed under subrule (4), the panel must state in writing the specific reasons for that decision.

Disclosure of practice restrictions

4-50 (1) When, under this part or Part 4 *[Discipline]* of the Act, a condition or limitation is imposed on the practice of a lawyer or a lawyer is suspended, the Executive Director may disclose the fact that the condition, limitation or suspension applies and the nature of the condition, limitation or suspension.

(2) If a lawyer gives an undertaking that restricts, limits or prohibits the lawyer’s practice in one or more areas of law, the Executive Director may disclose the fact that the undertaking was given and its effect on the lawyer’s practice.

(3) If the Executive Director discloses the existence of a condition, limitation or suspension under subrule (1) or an undertaking under subrule (2) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition, limitation or suspension ceases to be in force.

(4) Subrule (3) does not apply to a decision of Benchers, a hearing panel or a review board.

Disbarment

4-51 When a lawyer is disbarred, the Executive Director must strike the lawyer's name from the barristers and solicitors' roll.

Conviction

4-52 (1) In this rule, **"offence"** means

(a) an offence that was proceeded with by way of indictment, or

(b) an offence in another jurisdiction that, in the opinion of the Benchers, is equivalent to an offence that may be proceeded with by way of indictment.

(2) If the Discipline Committee is satisfied that a lawyer or former lawyer has been convicted of an offence, the Committee may refer the matter to the Benchers to consider taking action under subrule (3).

(3) Without following the procedure provided for in the Act or these rules, the Benchers may summarily suspend or disbar a lawyer or former lawyer on proof that the lawyer or former lawyer has been convicted of an offence.

Notice

4-53 (1) Before the Benchers proceed under Rule 4-52 *[Conviction]*, the Executive Director must notify the lawyer or former lawyer in writing that

(a) proceedings will be taken under that rule, and

(b) the lawyer or former lawyer may, by a specified date, make written submissions to the Benchers.

(2) The notice referred to in subrule (1) must be served in accordance with Rule 10-1 *[Service and notice]*.

(3) In extraordinary circumstances, the Benchers may proceed without notice to the lawyer or former lawyer under subrule (1).

Summary procedure

4-54 (1) This rule applies to summary proceedings before the Benchers under Rule 4-52 *[Conviction]*.

(2) The Benchers may, in their discretion, hear oral submissions from the lawyer or former lawyer.

(3) Subject to the Act and these rules, the Benchers may determine practice and procedure.

Investigation of books and accounts

4-55 (1) If the chair of the Discipline Committee reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that the Executive Director conduct an investigation of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.

(2) When electronic records have been produced or copied pursuant to an order under this rule, the lawyer concerned may request that a specific record be excluded from the investigation on the basis that it contains personal information that is not relevant to the investigation.

(3) A request under subrule (2) must be made to the Executive Director in writing within 21 days after the lawyer concerned receives a copy of the order under this rule.

(3.1) In exceptional circumstances, the Executive Director may extend the time for making a request under subrule (2).

(4) An order under this rule that permits the production or copying of electronic records must provide for a method of evaluating and adjudicating exclusion requests made under subrule (2).

(5) A request under subrule (2) must be refused unless the records in question are retained in a system of storage of electronic records that permits the segregation of personal information in a practical manner in order to comply with the request.

(6) When an order is made under subrule (1), the lawyer or former lawyer concerned must do the following as directed by the Executive Director:

(a) and (b) [rescinded]

(c) immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence regardless of the form in which they are kept;

(d) provide any explanations required for the purpose of the investigation;

(e) assist the Executive Director to access, in a comprehensible form, records in the lawyer's possession or control that may contain information related to the lawyer's practice by providing all information necessary for that purpose, including but not limited to

(i) passwords, and

(ii) encryption keys.

(7) When an order has been made under this rule, the lawyer concerned must not alter, delete, destroy, remove or otherwise interfere with any book, record or account within the scope of the investigation without the written consent of the Executive Director.

Failure to pay costs or fulfill practice condition

4-56 (1) An applicant or respondent must do the following by the date set by a hearing panel, review board or Committee or extended under Rule 5-12 *[Application to vary order]*:

(a) pay in full a fine or the amount owing under Rule 5-11 *[Costs of hearings]*;

(b) fulfill a practice condition as imposed under section 21 [Admission, reinstatement and requalification], 22 [Credentials hearings], 27 [Practice standards], 32 [Financial responsibility], 38 [Discipline hearings] or 47 [Review on the record], as accepted under section 19 [Applications for enrolment, call and admission, or reinstatement], or as varied under these Rules.

(2) If, on December 31, an applicant or respondent is in breach of subrule (1), the Executive Director must not issue to the applicant or respondent a practising certificate or a non-practising or retired membership certificate, and the applicant or respondent is not permitted to engage in the practice of law.

Recovery of money owed to the Society

4-57 (1) A lawyer or former lawyer who is liable to pay the costs of an audit or investigation must pay to the Society the full amount owing by the date set by the Discipline Committee.

(2) A lawyer who is liable to pay an assessment under Rule 3-80 *[Late filing of trust report]* must pay to the Society the full amount owing by the date specified in that Rule or as set or extended by the Executive Director.

(3) A lawyer who has not paid the full amount owing under subrule (1) or (2) by the date set or extended is in breach of these Rules and, if any part of the amount owing remains unpaid by December 31 following the making of the order, the Executive Director must not issue a practising certificate to the lawyer unless the Benchers order otherwise.

PART 5 – TRIBUNAL, HEARINGS AND APPEALS

Application

5-1 (1) This part applies to

(a) a hearing of an application for enrolment, call and admission or reinstatement,

(b) a hearing of a citation, and

(c) unless the context indicates otherwise, a review by a review board of a hearing decision.

(2) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.

The Tribunal

Tribunal

5-1.1 (1) The Tribunal comprises

(a) the Tribunal Chair,

(b) hearing panels,

(c) review boards, and

(d) motions adjudicators.

(2) Subject to the Act and these Rules, the Tribunal may determine the practice and procedure to be followed at a hearing, review or other proceeding.

Service, filing and communication

5-1.2 (1) The provisions of Rule 10-1 *[Service and notice]* are subject to this rule.

(2) A document to be filed with the Tribunal must be delivered by

(a) leaving it at or sending it by ordinary or registered mail to the Tribunal Office,

(b) sending it by email to the Tribunal Office, subject to size limits set by practice direction, or

(c) sending it by other means permitted under a practice direction.

(3) The parties to a proceeding must inform the Tribunal and every other party of any change of address, regardless of any other notice to the Society.

(4) The Tribunal may use and rely on the address of a respondent or an applicant provided at the outset of proceeding or the most recently received change of address.

(5) All correspondence to the Tribunal or any of its constituent parts must be

(a) sent to the Tribunal Office, and

(b) copied to all parties.

(6) The fact that correspondence is received and accepted by the Tribunal Office does not, for that reason alone, indicate compliance with requests or demands contained in the correspondence.

(7) All correspondence between parties or counsel and with the Tribunal must be respectful and formal to an extent appropriate to the circumstances.

Tribunal Chair

5-1.3 (1) The Benchers must appoint a Bencher as Tribunal Chair.

(2) The Tribunal Chair must not be a member of the Discipline, Credentials or Practice Standards Committee.

(3) The term of office of the Tribunal Chair is two years, beginning and ending January 1 of each even-numbered year.

(4) If the office of Tribunal Chair becomes vacant for any reason, the Benchers must promptly appoint a Bencher to complete the term of office.

(5) The Tribunal Chair may designate another Bencher to fulfill the functions of the Tribunal Chair from time to time.

Practice directions

5-1.4 (1) The Tribunal Chair may issue practice directions that are consistent with the Act and these rules.

(2) A hearing panel or review board is not bound by a practice direction.

(3) Practice directions must be made accessible to the public.

Hearing panels

Appointment of hearing panel

5-2 (1) When a hearing is ordered under this part, Part 2, Division 2 *[Admission and Reinstatement]* or Part 4 *[Discipline]*, the Tribunal Chair must appoint a panel consisting of 3 persons.

(2) Despite subrules (1) and (3), a panel may consist of one Bencher who is a lawyer if

(a) no facts are in dispute,

(b) the hearing is to consider an admission under Rule 5-6.5 *[Admission and consent to disciplinary action]*,

(c) the hearing proceeds under Rule 5-4.5 *[Summary hearing]*,

(d) the hearing is to consider a preliminary question under Rule 5-4.3 *[Preliminary questions]*, or

(e) it is not otherwise possible, in the opinion of the Tribunal Chair, to convene a panel in a reasonable period of time.

(3) A panel must

(a) be chaired by a lawyer, and

(b) include at least

(i) one Bencher or Life Bencher who is a lawyer, and

(ii) one person who is not a lawyer.

(4) Panel members must be permanent residents of British Columbia over the age of majority.

(5) The chair of a panel who ceases to be a lawyer may, with the consent of the Tribunal Chair, continue to chair the panel, and the panel may complete a hearing already scheduled or begun.

(5.1) If a member of a panel ceases to be a Bencher and does not become a Life Bencher, the panel may, with the consent of the Tribunal Chair, complete a hearing already scheduled or begun.

(6) Two or more panels may proceed with separate matters at the same time.

(7) The Tribunal Chair may refer a matter that is before a panel to another panel, fill a vacancy on a panel or terminate an appointment to a panel.

(8) Unless otherwise provided in the Act and these Rules, a panel must decide any matter by a majority, and the decision of the majority is the decision of the panel.

Panel member unable to continue

5-3 (1) Despite Rule 5-2 *[Hearing panels]*, if a member of a hearing panel cannot, for any reason, complete a hearing that has begun, the Tribunal Chair may order that the panel continue with the remaining members.

(2) If the chair of a hearing panel cannot, for any reason, complete a hearing that has begun, the Tribunal Chair may appoint another member of the hearing panel who is a lawyer as chair of the hearing panel.

Disqualification

5-4 (1) The following persons must not participate in a panel hearing a citation:

(a) a person who participated in the decision that authorized issuing the citation;

(b) a member of an interim action board that made an order under Rule 3-10 *[Interim suspension or practice conditions]* or 3-11 *[Medical examination]* regarding a matter forming the basis of the citation;

(c) a member of a panel that heard an application under Rule 3-12.3 *[Review of interim suspension or practice conditions]* to rescind or vary an interim suspension or practice condition or limitation in respect of a matter forming the basis of the citation.

(2) A person who participated in the decision to order the hearing of an application for enrolment as an articled student, for call and admission or for reinstatement must not participate in the panel on that hearing.

(3) A person must not appear as counsel for any party for three years after

(a) serving as a Bencher, or

(b) the completion of a hearing in which the person was a member of the panel.

Practice and procedure before a hearing panel

Hearing date and notice

5-4.1 (1) The date, time and place for the hearing to begin must be set

(a) by agreement between the parties, or

(b) on the application of a party, by the Tribunal Chair or by the motions adjudicator presiding at a pre-hearing conference.

(2) When a date is set under subrule (1) (b), the Tribunal must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the applicant or respondent consents to a shorter notice period.

(3) Written notice under subrule (2) may be made at the same time that the citation is served under Rule 4-19 *[Notice of citation]*, or at a later time.

Amending an allegation in a citation

5-4.2 (1) Law Society counsel may amend an allegation contained in a citation

(a) before the hearing begins, by giving written notice to the respondent and the Tribunal, 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 each party has been given the opportunity to make submissions respecting the proposed amendment.

Preliminary questions

5-4.3 (1) Before a hearing begins, any party may apply for the determination of a question relevant to the hearing by filing with the Tribunal and delivering to the other party, written notice setting out the substance of the application and the grounds for it.

(2) When an application is made under subrule (1), the Tribunal Chair must do one of the following as appears to the Tribunal Chair to be appropriate:

(a) appoint a panel to determine the question;

(b) refer the question to a motions adjudicator;

(c) refer the question to the panel at the hearing of the application.

(3) A panel appointed under subrule (2) (a) is not seized of the application or any question pertaining to the application other than that referred under that provision.

Severance and joinder

5-4.4 (1) Before a hearing begins, any party may apply in writing to the Tribunal 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) When an application is made under this rule, the Tribunal Chair must designate a motions adjudicator to make a determination.

(4) The motions adjudicator designated under subrule (3)

(a) must consider the submissions of the parties,

(b) may require a pre-hearing conference before making a determination, and

(c) must dismiss the application or allow the application, with or without conditions.

Summary hearing

5-4.5 (1) This rule may be applied in respect of the hearing of a citation comprising only allegations that the respondent has done one or more of the following:

(a) breached a rule;

(b) breached an undertaking given to the Society;

(c) failed to respond to a communication from the Society;

(d) breached an order made under the Act or these rules.

(2) Unless the panel orders otherwise, the parties may adduce evidence by

(a) affidavit,

(b) an agreed statement of facts, or

(c) an admission made or deemed to be made under Rule 5-4.8 *[Notice to admit]*.

(3) Despite Rules 5-6.3 *[Submissions and determination]* and 5-6.4 *[Disciplinary action]*, the panel may consider facts, determination, disciplinary action and costs and issue a decision respecting all aspects of the proceeding.

Demand for disclosure of evidence

5-4.6 (1) At any time after a citation has been issued and before the hearing begins, a respondent may demand in writing that Law Society counsel disclose the evidence that the Society intends to introduce at the hearing.

(2) On receipt of a demand for disclosure under subrule (1), Law Society counsel must provide the following to the respondent by a reasonable time before the beginning of the hearing:

(a) a copy of every document that the Society intends to tender in evidence;

(b) a copy of any statement made by a person whom the Society intends to call as a witness;

(c) if documents provided under paragraphs (a) and (b) do not provide enough information, a summary of the evidence that the Society intends to introduce;

(d) a summary of any other relevant evidence in Law Society counsel's possession or in a Society file available to counsel, whether or not counsel intends to introduce that evidence at the hearing.

(3) Despite subrule (2), Law Society counsel must not provide any information or documents about any discussion or other communication with the Ombudsperson in that capacity.

Application for details of the circumstances

5-4.7 (1) Before a hearing begins, the respondent may apply for disclosure of the details of the circumstances of misconduct alleged in a citation by filing with the Tribunal and delivering to Law Society counsel written notice setting out the substance of the application and the grounds for it.

(2) If a motions adjudicator is satisfied that an allegation in the citation does not contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven and to identify the transaction referred to, the motions adjudicator must order Law Society counsel to disclose further details of the circumstances.

(3) Details of the circumstances disclosed under subrule (2) must be

(a) in writing, and

(b) delivered to the respondent or respondent's counsel.

Notice to admit

5-4.8 (1) At any time, but not less than 45 days before a date set for the hearing of a citation, a party may request the other party to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document.

(2) A request made under subrule (1) must

(a) be made in writing in a document clearly marked "Notice to Admit" and served in accordance with Rule 10-1 *[Service and notice]*, and

(b) include a complete description of the fact, the truth of which is to be admitted, or attach a copy of the document, the authenticity of which is to be admitted.

(3) A party may make more than one request under subrule (1).

(4) A party that receives a request made under subrule (1) must respond within 21 days by serving a response on the other party in accordance with Rule 10-1 *[Service and notice]*.

(5) The time for response under subrule (4) may be extended by agreement of the parties or by an order under Rule 5-4.3 *[Preliminary questions]* or 5-5.1 *[Pre-hearing conference]*.

(6) A response under subrule (4) must contain one of the following in respect of each fact described in the request and each document attached to the request:

(a) an admission of the truth of the fact or the authenticity of the document attached to the request;

(b) a statement that the party making the response does not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.

(7) If a party who has been served with a request does not respond in accordance with this rule, the party is deemed, for the purposes of the hearing only, to admit the truth of the fact described in the request or the authenticity of the document attached to the request.

(8) If a party does not admit the truth of a fact or the authenticity of a document under this rule, and the truth of the fact or authenticity of the document is proven in the hearing, the panel may consider the refusal when exercising its discretion respecting costs under Rule 5-11 *[Costs of hearings]*.

Compelling witnesses and production of documents

5-5 (1) In this rule **"respondent"** includes a shareholder, director, officer or representative of a respondent law firm.

(2) A panel may

(a) compel the applicant or respondent to give evidence under oath, and

(b) at any time before or during a hearing, order the applicant or respondent to produce all files and records that are in the applicant's or respondent's possession or control that may be relevant to the matters raised by the application or in the citation.

(2.1) A party applying for an order under subrule (2) (a) must give reasonable notice to the applicant or respondent.

(3) A person who is the subject of an order under subrule (2) (a) may be cross-examined by Law Society counsel.

(4) A party to a proceeding under the Act and these Rules may prepare and serve a summons requiring a person to attend an oral or electronic hearing to give evidence in the form prescribed in Schedule 5 *[Form of Summons]*.

(5) Before a hearing begins, any party may apply for an order under section 44 (4) *[Witnesses]* by filing with the Tribunal and delivering to the other party written notice setting out the substance of the application and the grounds for it.

(6) After considering any submissions of the parties, a motions adjudicator must

(a) make the order requested or another order consistent with section 44 (4) *[Witnesses]*, or

(b) refuse the application.

(7) On the motion of any party, the motions adjudicator may apply to the Supreme Court under section 44 (5) *[Witnesses]* to enforce an order made under subrule (6).

Pre-hearing conference

5-5.1 (1) With or without a request from any party, the Tribunal Chair may order a pre-hearing conference at any time before a hearing begins.

(2) When a conference has been ordered under subrule (1), the Tribunal Chair must

(a) set the date, time and place of the conference, and

(b) designate a motions adjudicator to preside at the conference.

(3) Law Society counsel and the applicant or applicant's counsel or both, must be present at the conference.

(4) A respondent may attend the conference in person, through counsel or both.

(5) If the respondent fails to attend the conference, the motions adjudicator presiding may proceed with the conference in the absence of the respondent and may make any order under this rule, if the motions adjudicator is satisfied that the respondent had notice of the conference.

(6) Any person may participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this rule.

(7) The conference may consider any matters that may aid in the fair and expeditious disposition of the matter, including but not limited to

(a) setting a date for the hearing,

(b) simplification of the issues,

(c) admissions or an agreed statement of facts,

(d) amendments to the citation,

(e) any matter for which the motions adjudicator may make an order under this rule,

(f) conducting all or part of the hearing in written form or by video conference or teleconference,

(g) disclosure and production of documents,

(h) agreement for the hearing panel to receive and consider documents or evidence under Rule 5-6.1 (3) (e) *[Preliminary matters]*,

(i) the possibility that privilege or confidentiality might require closure of all or part of the hearing to the public, or exclusion of exhibits and other evidence from public access,

(j) any application to withhold the identity or locating particulars of a witness, and

(k) any other matters that may aid in the disposition of the matter.

(8) The motions adjudicator may

(a) adjourn a pre-hearing conference generally or to a specified date, time and place,

(b) order discovery and production of documents,

(c) set a date for the hearing, and

(d) allow or dismiss an application under subrule (5) (f).

(9) A party may apply to the motions adjudicator for an order

(a) to withhold the identity or contact information of a witness,

(b) to adjourn the hearing of the citation,

(c) for severance of allegations or joinder of citations under Rule 5-4.4 *[Severance and joinder]*,

(d) for disclosure of the details of the circumstances of misconduct alleged in a citation under Rule 5-4.7 *[Application for details of the circumstances]*,

(e) that the motions adjudicator may make under subrule (10), or

(f) concerning any other matters that may aid in the fair and expeditious disposition of the citation.

(10) The motions adjudicator may, on the application of a party or on the motions adjudicator's own motion, make an order that, in the judgment of the motions adjudicator, will aid in the fair and expeditious disposition of the matter, including but not limited to orders

(a) adjourning the conference generally or to a specified date, time and place,

(b) setting a date for the hearing to begin,

(c) allowing or dismissing an application made under subrule (9) or referred to the conference by the Tribunal Chair,

(d) specifying the number of days to be scheduled for the hearing,

(e) establishing a timeline for the proceeding including, but not limited to, setting deadlines for the completion of procedures and a plan for the conduct of the hearing,

(f) directing a party to provide a witness list and a summary of evidence that the party expects that any or all of the witnesses will give at the hearing,

(g) respecting expert witnesses, including but not limited to orders

(i) limiting the issues on which expert evidence may be admitted or the number of experts that may give evidence,

(ii) requiring the parties' experts to confer before service of their reports, or

(iii) setting a date by which an expert's report must be served on a party, or

(h) respecting the conduct of any application, including but not limited to allowing submissions in writing.

(11) If an order made under this rule affects the conduct of the hearing, the hearing panel may rescind or vary the order on the application of a party or on the hearing panel's own motion.

Adjournment

5-5.2 (1) Before a hearing begins, a party may apply for an order that the hearing be adjourned by filing with the Tribunal and delivering to the other party written notice setting out the reasons for the application.

(2) Before a hearing begins, a motions adjudicator must decide whether to grant the adjournment, with or without conditions, and advise the parties accordingly.

(3) After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

(4) Rule 5-4.1 (2) *[Hearing date and notice]* does not apply when a hearing is adjourned and re-set for another date.

(5) When a hearing is adjourned under Rule 2-92 (5) *[Security for costs]*, Law Society Counsel must file a notice with the Tribunal and deliver a copy to the applicant.

Application moot

5-5.3 If the circumstances of the applicant have changed so as to make the outcome of the hearing moot, after hearing submissions on behalf of the parties, the panel may do one of the following:

(a) adjourn the hearing generally;

(b) reject the application;

(c) begin or continue with the hearing.

Procedure

5-6 (1) [rescinded]

(2) If a court reporter is employed to record the proceedings of a hearing, the chair of the panel must ensure that the reporter first takes an oath or makes a solemn affirmation to faithfully and accurately report and transcribe the proceedings.

(2.1) Unless the chair of the panel otherwise orders, an applicant must personally attend the entire hearing.

(2.2) If a respondent fails to attend or remain in attendance at a hearing, the panel may proceed under section 42 *[Failure to attend]*.

(3) The parties may call witnesses to testify.

(4) All witnesses, including an applicant or respondent ordered to give evidence under section 41 (2) (a) *[Panels]*,

(a) must take an oath or make a solemn affirmation, if competent to do so, before testifying, and

(b) are subject to cross-examination.

(5) The panel may make inquiries of a witness as it considers desirable.

(6) The hearing panel may accept any of the following as evidence:

(a) an agreed statement of facts;

(b) oral evidence;

(c) affidavit evidence;

(d) evidence tendered in a form agreed to by the respondent or applicant and Law Society counsel;

(e) an admission made or deemed to be made under Rule 5-4.8 *[Notice to admit]*;

(f) any other evidence it considers appropriate.

Preliminary matters

5-6.1 (1) Before hearing any evidence on the allegations set out in a citation, the panel must determine whether

(a) the citation was served in accordance with Rule 4-19 *[Notice of citation]*, or

(b) the respondent waives any of the requirements of Rule 4-19.

(2) If the requirements of Rule 4-19 *[Notice of citation]* have been met, or have been waived by the respondent, the citation or a copy of it must be filed as an exhibit at the hearing, and the hearing may proceed.

(3) Despite subrule (1), before the hearing begins, the panel may receive and consider

(a) the citation,

(b) an agreed statement of facts,

(c) an admission made or deemed to be made under Rule 5-4.8 *[Notice to admit]*,

(d) the respondent's admission of a discipline violation and consent to a specified disciplinary action submitted jointly by the parties under Rule 5-6.5 *[Admission and consent to disciplinary action]*, and

(e) any other document or evidence by agreement of the parties.

Burden of proof

5-6.2 At a hearing ordered under Part 2, Division 2 *[Admission and Reinstatement]*, the onus is on the applicant to satisfy the panel on the balance of probabilities that the applicant has met the requirements of section 19 (1) *[Applications for enrolment, call and admission, or reinstatement]* and that division.

Submissions and determination

5-6.3 (1) Following completion of the evidence, the panel must invite the parties to make submissions on the issues to be decided by the panel.

(2) After submissions under subrule (1), the panel must find the facts and

(a) make a determination on each allegation in a citation, or

(b) decide whether to

(i) grant the application

(ii) grant the application subject to conditions or limitations that the panel considers appropriate, or

(iii) reject the application.

(3) A panel must reject an application for enrolment if it considers that the applicant's qualifications referred to in Rule 2-54 (2) *[Enrolment in the admission program]* are deficient.

(4) The panel must prepare written reasons for its findings.

(5) A copy of the panel's reasons prepared under subrule (3) must be delivered promptly to each party.

Disciplinary action

5-6.4 (1) Following a determination under Rule 5-6.3 *[Submissions and determination]* adverse to the respondent, the panel must

(a) invite the parties to make submissions as to disciplinary action,

(b) take one or more of the actions referred to in section 38 (5) to (7) *[Discipline hearings]*,

(c) include in its decision under this rule

(i) any order, declaration or imposition of conditions under section 38(7), and

(ii) any order under Rule 5-11 *[Costs of hearings]* on the costs of the hearing, including any order respecting time to pay,

(d) prepare a written record, with reasons, of its action taken under paragraph (b) and any action taken under paragraph (c),

(e) if it imposes a fine, set the date by which payment to the Society must be completed, and

(f) if it imposes conditions on the respondent's practice, set the date by which the conditions must be fulfilled.

(2) A panel may proceed under subrule (1) before written reasons are prepared under Rule 4-43 (2) (b)

(a) if the panel gives reasons orally for its decision under Rule 5-6.3 (2) (a) *[Submissions and determination]*, or

(b) when the panel accepts an admission jointly submitted by the parties under Rule 5-6.5 *[Admission and consent to disciplinary action]*.

(3) Despite subrule (1) (b), if the respondent is a member of another governing body and not a member of the Society, the panel may do one or more of the following:

(a) reprimand the respondent;

(b) fine the respondent an amount not exceeding $50,000;

(c) prohibit the respondent from practising law in British Columbia permanently or for a specified period of time;

(d) declare that, had the respondent been a member of the Society, the panel would have

(i) disbarred the respondent,

(ii) suspended the respondent, or

(iii) imposed conditions or limitations on the practice of the respondent.

(4) A copy of the panel's reasons prepared under subrule (1) (d) must be delivered promptly to each party.

(5) The panel may consider the professional conduct record of the respondent in determining a disciplinary action under this rule.

(6) Regardless of the nature of the allegation in the citation, the panel may take disciplinary action based on the ungovernability of the respondent by the Society.

(7) The panel must not take disciplinary action under subrule (6) unless the respondent has been given at least 30 days' notice that ungovernability may be raised as an issue at the hearing on disciplinary action.

(8) The panel may adjourn the hearing on disciplinary action to allow compliance with the notice period in subrule (7).

Admission and consent to disciplinary action

5-6.5 (1) The parties may jointly submit to the hearing panel an agreed statement of facts and the respondent's admission of a discipline violation and consent to a specified disciplinary action.

(2) If the panel accepts the agreed statement of facts and the respondent's admission of a discipline violation

(a) the admission forms part of the respondent's professional conduct record,

(b) the panel must find that the respondent has committed the discipline violation and impose disciplinary action, and

(c) the Executive Director must notify the respondent and the complainant of the disposition.

(3) The panel must not impose disciplinary action under subrule (2) (b) that is different from the specified disciplinary action consented to by the respondent unless

(a) each party has been given the opportunity to make submissions respecting the disciplinary action to be substituted, and

(b) imposing the specified disciplinary action consented to by the respondent would be contrary to the public interest in the administration of justice.

(4) An admission of conduct tendered in good faith by a lawyer during negotiation that does not result in a joint submission under subrule (1) is not admissible in a hearing of the citation.

Rejection of admission

5-6.6 (1) A conditional admission tendered under Rule 4-29 *[Conditional admission]* must not be used against the respondent in any proceeding unless the admission is accepted by the Discipline Committee.

(2) An admission tendered under Rule 5-6.5 *[Admission and consent to disciplinary action]* must not be used against the respondent in any proceeding unless the hearing panel accepts the admission and imposes disciplinary action.

5-7 [rescinded]

Public hearing

5-8 (1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public.

(1.1) The panel or review board must not make an order under subrule (1) unless, in the judgment of the panel or review board

(a) the public interest or the interest of an individual in the order outweighs the public interest in the principle of open hearings in the present case, or

(b) the order is required to protect the safety of an individual.

(2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:

(a) an order that specific information not be disclosed despite Rule 5-9 (2) *[Transcript and exhibits]*;

(b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

(3) Despite the exclusion of the public under subrule (1) in a hearing of a citation, the complainant and one other person chosen by the complainant may remain in attendance during the hearing, unless the panel orders otherwise.

(4) Except as required under Rule 5-9 *[Transcript and exhibits]*, when a hearing is in progress, no one is permitted to possess or operate any device for photographing, recording or broadcasting in the hearing room without the permission of the panel or review board, which the panel or review board in its discretion may refuse or grant, with or without conditions or restrictions.

(5) When a panel or review board makes an order or declines to make an order under this rule, the panel or review board must give written reasons for its decision.

Transcript and exhibits

5-9 (1) All proceedings at a hearing must be recorded by a court reporter or by other means.

(2) Subject to the Act, these rules and the *Freedom of Information and Protection of Privacy Act*, any person may obtain, at the person's own expense, a copy of

(a) a transcript of any part of the hearing that is open to the public, or

(b) an exhibit entered in evidence when a hearing is open to the public.

(3) This rule must not be interpreted to permit the disclosure of any information, files or records that are confidential or subject to a solicitor client privilege.

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 *[Review on the record]*, 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 order

5-12 (1) A party may apply in writing to the Tribunal 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),

(c) a change in the start date for a suspension imposed under section 38 *[Discipline hearings]* or 47 *[Review on the record]*, or

(d) a variation or rescission of another order that has not been fully executed or fulfilled.

(2) An application under subrule (1) (c) must be made at least 7 days before the start date set for the suspension.

(2.1) A party or anyone with an interest in information subject to an order made under Rule 5-8 (2) (a) *[Public hearing]* may make an application in writing to the Tribunal for rescission or variation of the order.

(3) [rescinded]

(4) The Tribunal Chair must refer an application under subrule (1) or (2.1) to one of the following, as may in the Tribunal Chair's discretion appear appropriate:

(a) the same panel or review board that made the order;

(b) a new panel;

(c) a motions adjudicator.

(5) The panel, review board or motions adjudicator that decides an application under subrule (1) must

(a) dismiss the application,

(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,

(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]*, or

(e) grant the variation or rescission applied for or as otherwise appears appropriate to the panel, review board or motions adjudicator.

(5.1) The panel, review board or motions adjudicator that decides an application under subrule (2.1) must

(a) dismiss the application,

(b) rescind the order, or

(c) vary the order to one that the original panel or review board was permitted to make under Rule 5-8 (2) (a) *[Public hearing]*.

(6) [rescinded]

(7) An application under this rule does not stay the order that the applicant seeks to vary.

5-13 and 5-14 [rescinded]

The review board

Review by review board

5-15 (1) In Rules 5-15 to 5-28, **"review"** means a review of a hearing panel decision by a review board under section 47 *[Review on the record]*.

(2) [rescinded]

(2.1) Rule 5-4.3 *[Preliminary questions]* applies, with any necessary changes, to an application by a party to a review for the determination of a question relevant to the review.

(3) Delivery of documents to a respondent or applicant under Rules 5-15 to 5-28 may be effected by delivery to counsel representing the respondent or the applicant.

(4) If the review board finds that there are special circumstances and hears evidence under section 47 (4) *[Review on the record]*, the Rules that apply to the hearing of evidence before a hearing panel apply.

Review boards

5-16 (1) When a review is initiated under Rule 5-19 *[Initiating a review],* the Tribunal Chair must establish a review board consisting of

(a) an odd number of persons, and

(b) more persons than the hearing panel that made the decision under review.

(2) A review board must be chaired by a Bencher who is a lawyer.

(3) Review board members must be permanent residents of British Columbia over the age of majority.

(4) The chair of a review board who ceases to be a lawyer may, with the consent of the Tribunal Chair, continue to chair the review board, and the review board may complete any hearing or hearings already scheduled or begun.

(5) Two or more review boards may proceed with separate matters at the same time.

(6) The Tribunal Chair may refer a matter that is before a review board to another review board, fill a vacancy on a review board or terminate an appointment to a review board.

(7) Unless otherwise provided in the Act and these Rules, a review board must decide any matter by a majority, and the decision of the majority is the decision of the review board.

Disqualification

5-17 The following must not participate in a review board reviewing the decision of a hearing panel:

(a) a member of the hearing panel;

(b) a person who was disqualified under Rule 5-4 *[Disqualification]* from participation in the hearing panel.

Review board member unable to continue

5-18 (1) Despite Rule 5-16 *[Review boards]*, if a member of a review board cannot, for any reason, complete a review that has begun, the Tribunal Chair may order that the review board continue with the remaining members, whether or not the board consists of an odd number of persons.

(2) If the chair of a review board cannot, for any reason, complete a review that has begun, the Tribunal Chair may appoint another member of the review board who is a lawyer as chair of the review board.

Practice and procedure before a review board

Initiating a review

5-19 (1) Within 30 days after being notified of the decision of the panel in a credentials hearing, the applicant may initiate a review by filing with the Tribunal and delivering to Law Society counsel a notice of review.

(2) Within 30 days after being notified of the decision of a panel under Rule 5-6.4 *[Disciplinary action]* or 5-11 *[Costs of hearings]*, the respondent may initiate a review by filing with the Tribunal and delivering to Law Society counsel a notice of review.

(3) Within 30 days after a decision of the panel in a credentials hearing, the Credentials Committee may initiate a review by resolution.

(4) Within 30 days after a decision of the panel in a hearing of a citation, the Discipline Committee may initiate a review by resolution.

(5) When a review is initiated under subrule (3) or (4), Law Society counsel must promptly file with the Tribunal and deliver to the other party a notice of review.

(6) Within 30 days after the order of the Practice Standards Committee under Rule 3-25 (1) *[Costs]*, the lawyer concerned may initiate a review by filing a notice of review with the Tribunal.

Extension of time to initiate a review

5-19.1 (1) A party may apply to the Tribunal to extend the time within which a review may be initiated under Rule 5-19 *[Initiating a review]* by filing with the Tribunal and delivering to the other party a notice of the appliation.

(2) When a party makes an application under subrule (1), a motions adjudicator must

(a) refuse the extension of time, or

(b) grant the extension, with or without conditions or limitations.

(3) [rescinded]

Stay of order pending review

5-20 (1) When a review is initiated under Rule 5-19 *[Initiating a review]*, the order of the panel or the Practice Standards Committee with respect to costs is stayed.

(2) When the Credentials Committee initiates a review under Rule 5-19 (3) *[Initiating a review]*, an order of the hearing panel to call and admit or reinstate the applicant is stayed.

(3) When a review has been initiated under Rule 5-19 *[Initiating a review]*, any party to the review may apply to the Tribunal for a stay of any order not referred to in subrule (1) or (2).

(4) When an application is made under this rule, a motions adjudicator must make a determination under subrule (3).

Notice of review

5-21 A notice of review must contain the following in summary form:

(a) a clear indication of the decision to be reviewed by the review board;

(b) the nature of the order sought;

(c) the issues to be considered on the review.

Record of credentials hearing

5-22 (1) Unless the parties agree otherwise, the record for a review of a credentials decision consists of the following:

(a) the application;

(b) a transcript of the proceedings before the panel;

(c) exhibits admitted in evidence by the panel;

(d) any written arguments or submissions received by the panel;

(e) the panel's written reasons for any decision;

(f) the notice of review.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Record of discipline hearing

5-23 (1) Unless the parties agree otherwise, the record for a review of a discipline decision consists of the following:

(a) the citation;

(b) a transcript of the proceedings before the panel;

(c) exhibits admitted in evidence by the panel;

(d) any written arguments or submissions received by the panel;

(e) the panel's written reasons for any decision;

(f) the notice of review.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Record of an order for costs by the Practice Standards Committee

5-24 (1) Unless the parties agree otherwise, the record for a review of an order for costs under Rule 3-25 *[Costs]* consists of the following:

(a) the order;

(b) all correspondence between the Society and the lawyer relating to the assessment and ordering of costs;

(c) the Committee's written reasons for any decision on costs;

(d) the notice of review.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Preparation and delivery of record

5-24.1 (1) The party initiating a review must prepare the record for the review in accordance with the relevant rule.

(1.1) Within 60 days of filing a notice of review, a party must file the record with the Tribunal in the form specified in the relevant practice direction and deliver a copy to the other party.

(2) The time for producing the record may be extended by agreement of the parties.

(3) No date may be set for the hearing of a review unless the party initiating the review has delivered all copies of the record required under subrule (1.1).

(4) By filing with the Tribunal written notice setting out the grounds for the application, and delivering a copy to the other party, the party initiating the review may apply for

(a) an extension of time to prepare and deliver the record, or

(b) an order that the Society bear all or part of the cost of obtaining and copying all or part of the record.

(5) When an application is made under subrule (4), a motions adjudicator must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.

(6) [rescinded]

(7) A determination under subrule (5) is without prejudice to an order of the review board under Rule 5-11 *[Costs of hearings]*.

Notice of review hearing

5-24.2 (1) The date, time and place for the hearing of a review to begin must be set

(a) by agreement between the parties, or

(b) on the application of a party, by the Tribunal Chair or by the motions adjudicator presiding at a pre-review conference.

(2) When a date is set under subrule (1), the Tribunal must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the parties agree to a shorter notice period.

Pre-review conference

5-25 (1) The Tribunal Chair may order a pre-review conference at any time before the hearing of a review, at the request of a party, or on the Tribunal Chair's own initiative.

(2) When a conference has been ordered under subrule (1), the Tribunal Chair must

(a) set the date, time and place of the conference and notify the parties, and

(b) designate a motions adjudicator to preside at the conference.

(3) Law Society counsel must be present at the conference.

(4) [rescinded]

(5) The applicant or the respondent, as the case may be, may attend the conference, in person, through counsel or both.

(6) If the applicant or the respondent, as the case may be, fails to attend the conference, the motions adjudicator presiding may proceed with the conference in the absence of that party and may make any order under this rule, if the adjudicator is satisfied that the party had been notified of the conference.

(7) The motions adjudicator presiding at a pre-review conference may allow any person to participate in the conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this rule.

(8) The conference may consider

(a) the simplification of the issues,

(b) any issues concerning the record to be reviewed,

(c) the possibility of agreement on any issues in the review,

(d) the exchange of written arguments or outlines of argument and of authorities,

(e) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public or that exhibits and other evidence be excluded from public access,

(f) setting a date for the review, and

(g) any other matters that may aid in the disposition of the review.

(9) The motions adjudicator presiding at a pre-review conference may

(a) adjourn the conference or the hearing of the review generally or to a specified date, time and place,

(b) order the exchange of written arguments or outlines of argument and of authorities, and set deadlines for that exchange,

(c) set a date for the review, subject to Rule 5-24.1 (3) *[Preparation and delivery of record]*, and

(d) make any order or allow or dismiss any application consistent with this part.

Adjournment

5-26 (1) Before a hearing of a review begins, a party may apply for an order that the hearing be adjourned by filing with the Tribunal and delivering to the other party written notice setting out the grounds for the application.

(2) [rescinded]

(3) Before the hearing begins, a motions adjudicator must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.

(4) [rescinded]

(5) After a hearing has begun, the chair of the review board may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

Decision on review

5-27 (1) The decision of the review board on a review is made by majority vote.

(2) The review board must prepare written reasons for its decision on a review.

(3) When the review board gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

(4) A copy of the review board's written reasons prepared under subrule (2) must be delivered promptly to each party.

(5) On request, the Executive Director must disclose the review board's written reasons for its decision.

Inactive reviews

5-28 (1) If no steps have been taken for 6 months or more, a party may apply for an order dismissing a review by filing with the Tribunal and delivering to the other party a notice in writing that sets out the basis for the application.

(2) [rescinded]

(3) If it is in the public interest and not unfair to the respondent or applicant, a motions adjudicator may dismiss the review.

(4) [rescinded]

Corrections

Slip rule

5-28.1 At any time, the Tribunal may

(a) correct an error in an order or decision that arose from a clerical mistake or from any other accidental slip or omission, or

(b) amend an order or decision to provide for any matter that should have been but was not adjudicated.

Appeals

Appeal to Court of Appeal

5-29 (1) The Discipline Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 *[Appeal]* of a decision of a panel or review board in a discipline hearing.

(2) The Credentials Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 *[Appeal]* of a decision of a panel or review board in a credentials hearing.

(3) The Practice Standards Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 *[Appeal]* of a decision of a review board with respect to an order for costs under Rule 3-25 *[Costs]*.

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PART 10 – GENERAL

Service and notice

10-1 (0.1) In this rule, **"recipient"** means a lawyer, former lawyer, law firm, articled student or applicant.

(1) A recipient may be served with a notice or other document by

(a) leaving it at the place of business of the recipient,

(b) sending it by

(i) registered mail, ordinary mail or courier to the last known business or residential address of the recipient,

(ii) electronic facsimile to the last known electronic facsimile number of the recipient,

(iii) electronic mail to the last known electronic mail address of the recipient, or

(iv) any of the means referred to in paragraphs (a) to (c) to the place of business of the counsel or personal representative of the recipient or to an address given to Law Society counsel by a respondent for delivery of documents relating to a citation, or

(c) posting it to an electronic portal operated by the Society to which the recipient has been given access and notifying the recipient of the posting by a method enumerated in paragraph (b) (ii) or (iii).

(2) If it is impractical for any reason to serve a notice or other document as set out in subrule (1), a motions adjudicator may order substituted service, whether or not there is evidence that

(a) the notice or other document will probably

(i) reach the intended recipient, or

(ii) come to the intended recipient's attention, or

(b) the intended recipient is evading service.

(3) [rescinded]

(4) A document may be served on the Society or on the Benchers by

(a) leaving it at or sending it by registered mail or courier to the principal offices of the Society, or

(b) personally serving it on an officer of the Society.

(4.1) A document required under the Act or these rules to be delivered to the President or the Executive Director must be left at or sent by registered mail or courier to the principal offices of the Society.

(5) A document sent by ordinary mail is deemed to be served 7 days after it is sent.

(6) A document that is left at a place of business or sent by registered mail or courier is deemed to be served on the next business day after it is left or delivered.

(7) A document sent by electronic facsimile or electronic mail is deemed to be served on the next business day after it is sent.

(7.1) A document that is posted to an electronic portal operated by the Society is deemed to be served the next business day after the document is posted and notice is sent to the recipient.

(8) Any person may be notified of any matter by ordinary mail, registered mail, courier, electronic facsimile or electronic mail to the person's last known address.

Duty not to disclose

10-2 A person performing any duty or fulfilling any function under the Act or these rules who receives or becomes privy to any confidential information, including privileged information,

(a) has the same duty that a lawyer has to a client not to disclose that information, and

(b) must not disclose and cannot be required to disclose that information except as authorized by the Act, these rules or an order of a court.

Communication with Ombudsperson confidential

10-2.1 (1) This rule must be interpreted in a way that will facilitate the Ombudsperson assisting in the resolution of disputes through communication without prejudice to the rights of any person.

(2) Communication between the Ombudsperson acting in that capacity and any person receiving or seeking assistance from the Ombudsperson is confidential and must remain confidential in order to foster an effective relationship between the Ombudsperson and that individual.

(3) The Ombudsperson must hold in strict confidence all information acquired in that capacity from participants.

Records

10-3 (1) In this rule, **"storage provider"** means any entity storing or processing records outside of a lawyer's office, whether or not for payment.

(2) When required under the Act or these rules, a lawyer must, on demand, promptly produce records in any or all of the following forms:

(a) printed in a comprehensible format;

(b) accessed on a read-only basis;

(c) exported to an electronic format that allows access to the records in a comprehensible format.

(3) A lawyer who is required to produce records under the Act or these rules must not alter, delete, destroy, remove or otherwise interfere with any record that the lawyer is required to produce, except with the written consent of the Executive Director.

(4) A lawyer must not maintain records, including electronic records, with a storage provider unless the lawyer

(a) retains custody and control of the records,

(b) ensures that ownership of the records does not pass to another party,

(c) is capable of complying with a demand under the Act or these rules to produce the records and provide access to them,

(d) ensures that the storage provider maintains the records securely without

(i) accessing or copying them except as is necessary to provide the service obtained by the lawyer,

(ii) allowing unauthorized access to or copying or acquisition of the records, or

(iii) failing to destroy the records completely and permanently on instructions from the lawyer, and

(e) enters into a written agreement with the storage provider that is consistent with the lawyer's obligations under the Act and these rules.

(5) If the Executive Committee declares, by resolution, that a specific entity is not a permitted storage provider for the purpose of compliance with this rule, no lawyer is permitted to maintain records of any kind with that entity.

Security of records

10-4 (1) A lawyer must protect all records related to the lawyer's practice and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.

(2) A lawyer must immediately notify the Executive Director in writing of all the relevant circumstances if the lawyer has reason to believe that

(a) the lawyer\ has lost custody or control of any records related to the lawyer's practice for any reason,

(b) anyone has improperly accessed or copied any of the lawyer's records, or

(c) a third party has failed to destroy records completely and permanently despite instructions from the lawyer to do so.

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SCHEDULE 1 – 2022 LAW SOCIETY FEES AND ASSESSMENTS

	$
A. Annual fee	
1. Practice fee (Rule 2-105 *[Annual practising and indemnity fee instalments]*)	2,289.00
2. Indemnity fee base assessment (which may be increased or decreased in individual cases in accordance with Rule 3-40 (1) *[Annual indemnity fee]*):	
(a) full-time practice	1,800.00
(b) part-time practice	900.00
3. Indemnity surcharge (Rule 3-44 (2) *[Deductible, surcharge and reimbursement]*)	1,000.00
4. Late payment fee for practising lawyers (Rule 2-108 (3) *[Late payment]*)	150.00
5. Retired member fee (Rule 2-105.1 (1) *[Annual non-practising and retired member fees]*)	125.00
6. Late payment fee for retired members (Rule 2-108 (4))	nil
7. Non-practising member fee (Rule 2-105.1 (1))	325.00
8. Late payment fee for non-practising members (Rule 2-108 (5))	40.00
9. Administration fee (R. 2-116 (3) *[Refund on exemption during practice year]*)	70.00
B. Trust administration fee	
1. Each client matter subject to fee (Rule 2-110 (1) *[Trust administration fee]*)	15.00
C. Special assessments	
D. Articled student fees	
1. Application fee for enrolment in admission program (Rules 2-54 (1) (e) *[Enrolment in the admission program]* and 2-62 (1) (b) *[Part-time articles]*)	275.00
2. Application fee for temporary articles (R. 2-70 (1) (c) *[Temporary articles]*)	150.00
3. Application fee for temporary articles (legal clinic) (Rule 2-70 (1) (c))	50.00
4. Training course registration (Rule 2-72 (4) (a) *[Training course]*)	2,600.00
5. Remedial work (Rule 2-74 (8) *[Review of failed standing]*):	
(a) for each piece of work	100.00
(b) for repeating the training course	4,000.00
E. Transfer fees	
1. Application fee for transfer from another Canadian province or territory – investigation fee (Rule 2-79 (1) (f) *[Transfer from another Canadian jurisdiction]*)	1,150.00
2. Transfer or qualification examination (Rules 2-79 (6) and 2-89 (6) *[Returning to practice after an absence]*)	325.00
F. Call and admission fees	
1. After enrolment in admission program (Rule 2-77 (1) (c) *[First call and admission]*)	250.00
2. After transfer from another Canadian province or territory (Rule 2-79 (1) (f) *[Transfer from another Canadian jurisdiction]*)	250.00

G. Reinstatement fees	**$**
1. Application fee following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-85 (1)(b) *[Reinstatement of former lawyer]*)	700.00
2 Application fee following 3 years or more as a former member (Rule 2-85 (1) (b))	550.00
3. Application fee in all other cases (Rule 2-85 (1) (b))	450.00

H. Change of status fees

1. Application fee to become retired member (Rule 2-4 (2) (b) *[Retired members]*)	35.00
2. Application fee to become non-practising member (Rule 2-3 (1) (b) *[Non-practising members]*)	70.00
3. Application fee for non-practising or retired member applying for practising certificate (Rule 2-5 (1) (b)) *[Release from undertaking]*	70.00

I. Inter-jurisdictional practice fees

1. Application fee (Rule 2-19 (3) (b) *[Inter-jurisdictional practice permit]*)	500.00
2. Renewal of permit (Rule 2-19 (3) (b))	100.00

J. Corporation and limited liability partnership fees

1. Permit fee for law corporation (Rule 9-4 (c) *[Law corporation permit]*)	400.00
2. New permit on change of name fee (Rule 9-6 (4) (c) *[Change of corporate name]*)	100.00
3. LLP registration fee (Rule 9-15 (1) *[Notice of application for registration]*	400.00

K. Practitioners of foreign law

1. Application fee for practitioners of foreign law (Rule 2-29 (1) (b) *[Practitioners of foreign law]*)	700.00
2. Permit renewal fee for practitioners of foreign law (Rules 2-29 (1) (b) and 2-34 (2) (c) *[Renewal of permit]*)	150.00
3. Late payment fee (Rule 2-34 (6))	100.00

L. Late fees

1. Trust report late filing fee (Rule 3-80 (2) (b) *[Late filing of trust report]*)	200.00
2. Professional development late completion fee (Rule 3-31 (1) (c) *[Late completion of professional development]*)	500.00
3. Professional development late reporting fee (Rule 3-31 (3) (b))	200.00
4. Late registration delivery fee (Rule 2-12.4)	200.00
5. Late self-assessment delivery fee (Rule 2-12.4)	500.00

M. Multi-disciplinary practice fees

	$
1. Application fee (Rule 2-40 (1) (b) *[Application to practise law in MDP]*)........	300.00
2. Application fee per proposed non-lawyer member of MDP (Rules 2-40 (1) (c) and 2-42 (2) *[Changes in MDP]*)..	1,125.00

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

Schedule 2 – 2022 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 indemnity coverage]*]

	Practice fee		Indemnity fee assessment	
	Payable prior to call	**Payable by May 31**	**Payable prior to call**	**Payable by May 31**
Full-time indemnification				
January	1,144.50	1,144.50	900.00	900.00
February	953.75	1,144.50	750.00	900.00
March	763.00	1,144.50	600.00	900.00
April	572.25	1,144.50	450.00	900.00
May	381.50	1,144.50	300.00	900.00
June	190.75	1,144.50	150.00	900.00
July	1,144.50	0.00	900.00	0.00
August	953.75	0.00	750.00	0.00
September	763.00	0.00	600.00	0.00
October	572.25	0.00	450.00	0.00
November	381.50	0.00	300.00	0.00
December	190.75	0.00	150.00	0.00
Part-time indemnification				
January	1,144.50	1,144.50	450.00	450.00
February	953.75	1,144.50	375.00	450.00
March	763.00	1,144.50	300.00	450.00
April	572.25	1,144.50	225.00	450.00
May	381.50	1,144.50	150.00	450.00
June	190.75	1,144.50	100.00	450.00
July	1,144.50	0.00	450.00	0.00
August	953.75	0.00	375.00	0.00
September	763.00	0.00	300.00	0.00
October	572.25	0.00	225.00	0.00
November	381.50	0.00	150.00	0.00
December	190.75	0.00	100.00	0.00

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

Schedule 3 – 2022 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]*]

	Non-practising members fee	**Retired members fee**
January	325.00	125.00
February	297.92	114.59
March	270.83	104.16
April	243.75	93.75
May	216.67	83.34
June	189.58	72.91
July	162.50	62.50
August	135.42	52.09
September	108.33	41.66
October	81.25	31.25
November	54.17	20.84
December	27.08	10.41

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
Citation hearing		
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 *[Suspension during investigation]*, 26.02 *[Medical examination]* or 39 *[Suspension]* and any application to rescind or vary an order under the Rules, for each day of hearing	30
3.	Disclosure under Rule 4-34 *[Demand for disclosure of evidence]*	Minimum 5 Maximum 20
4.	Application for particulars/preparation of particulars under Rule 5-4.7 *[Application for details of the circumstances]*	Minimum 1 Maximum 5
5.	Application to adjourn under Rule 4-40 *[Adjournment]* • if made more than 14 days prior to the scheduled hearing date • if made less than 14 days prior to the scheduled hearing date	 1 3
6.	Pre-hearing conference	Minimum 1 Maximum 5
7.	Preparation of agreed statement of facts • if signed more than 21 days prior to hearing date • if signed less than 21 days prior to hearing date • delivered to Respondent and not signed	 Min. 5 to max. 15 Min. 10 to max. 20 Min. 10 to max. 20
8.	Preparation of affidavits	Minimum 5 Maximum 20
9.	Preparation of Notice to Admit	Minimum 5 Maximum 20
10.	Preparation of response to Notice to Admit	Minimum 5 Maximum 20
11.	All process and correspondence associated with retaining and consulting an expert for the purpose of obtaining opinion(s) for use in the proceeding	Minimum 2 Maximum 10
12.	All process and communication associated with contacting, interviewing and issuing summons to all witnesses	Minimum 2 Maximum 10
13.	Interlocutory or preliminary motion for which provision is not made elsewhere, for each day of hearing	10
14.	Preparation for interlocutory or preliminary motion, per day of hearing	20

Item no.	Description	Number of units
15.	Attendance at hearing, for each day of hearing, including preparation not otherwise provided for in tariff	30
16.	Written submissions, where no oral hearing held	Minimum 5 Maximum 15
S. 47 review		
17.	Giving or receiving notice under Rule 5-21 *[Notice of review]*, correspondence, conferences, instructions, investigations or negotiations after review initiated, for which provision is not made elsewhere	Minimum 1 Maximum 3
18.	Preparation and settlement of hearing record under Rule 5-23 *[Record of discipline hearing]*	Minimum 5 Maximum 10
19.	Pre-review conference	Minimum 1 Maximum 5
20.	Application to adjourn under Rule 5-26 *[Adjournment]* • If made more than 14 days prior to the scheduled hearing date • If made less than 14 days prior to the scheduled hearing date	 1 3
21.	Procedural or preliminary issues, including an application to admit evidence under Rule 5-23 (2) *[Record of discipline hearing]*, per day of hearing	10
22.	Preparation and delivery of written submissions	Minimum 5 Maximum 15
23.	Attendance at hearing, per day of hearing, including preparation not otherwise provided for in the tariff	30
Summary hearings		
24.	Each day of hearing	$2,000
Hearings under Rule 5-6.5 *[Admission and consent to disciplinary action]*		
25.	Complete hearing, based on the following factors: (a) complexity of matter; (b) number and nature of allegations; and (c) the time at which respondent agreed to make an admission relative to scheduled hearing and amount of pre-hearing preparation required.	$1,000 to $3,500
Credentials hearings		
26.	Each day of hearing	$2,000

Value of units:

Scale A, for matters of ordinary difficulty: $100 per unit

Scale B, for matters of more than ordinary difficulty: $150 per unit

SCHEDULE 5 – FORM OF SUMMONS

[Rule 5-5 (4) *[Compelling witnesses and production of documents]*

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A HEARING CONCERNING

____

(As the case may be: a [former] member of the Law Society of British Columbia/ an articled student/an applicant for enrolment/call and admission/reinstatement)

SUMMONS

TO: ___________________________________

TAKE NOTICE that you are required to attend to testify as a witness at the time, date and place set out below.

Time: ____________________________

Date: ____________________________

Place: The Law Society of British Columbia
845 Cambie Street
Vancouver BC V6B 4Z9 (or other venue)

Dated at _,__________________________ ______________________________________

Party/Counsel

this day of __________________, 20____

(f) It is a lawyer's right to undertake the defence of a person accused of crime, regardless of the lawyer's own personal opinion as to the guilt of the accused. Having undertaken such defence, the lawyer is bound to present, by all fair and honourable means and in a manner consistent with the client's instructions, every defence that the law of the land permits, to the end that no person will be convicted except by due process of law.

(g) A lawyer should not, except as by law expressly sanctioned, acquire by purchase or otherwise any interest in the subject-matter of the litigation being conducted by the lawyer. A lawyer should scrupulously guard, and not divulge or use for personal benefit, a client's secrets or confidences. Having once acted for a client in a matter, a lawyer must not act against the client in the same or any related matter.

(h) A lawyer must record, and should report promptly to a client the receipt of any moneys or other trust property. The lawyer must use the client's moneys and trust property only as authorized by the client, and not commingle it with that of the lawyer.

(i) A lawyer is entitled to reasonable compensation for services rendered, but should avoid charges that are unreasonably high or low. The client's ability to pay cannot justify a charge in excess of the value of the service, though it may require a reduction or waiver of the fee.

(j) A lawyer should try to avoid controversies with clients regarding compensation so far as is compatible with self-respect and with the right to receive reasonable recompense for services. A lawyer should always bear in mind that the profession is a branch of the administration of justice and not a mere money-making business.

(k) A lawyer who appears as an advocate should not submit the lawyer's own affidavit to or testify before a court or tribunal except as to purely formal or uncontroverted matters, such as the attestation or custody of a document, unless it is necessary in the interests of justice. If the lawyer is a necessary witness with respect to other matters, the conduct of the case should be entrusted to other counsel.

2.1-4 To other lawyers

(a) A lawyer's conduct toward other lawyers should be characterized by courtesy and good faith. Any ill feeling that may exist between clients or lawyers, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. Personal remarks or references between lawyers should be scrupulously avoided, as should quarrels between lawyers that cause delay and promote unseemly wrangling.

(b) A lawyer should neither give nor request an undertaking that cannot be fulfilled and should fulfil every undertaking given. A lawyer should never communicate upon or attempt to negotiate or compromise a matter directly with any party who the lawyer knows is represented therein by another lawyer, except through or with the consent of that other lawyer.

(c) A lawyer should avoid all sharp practice and should take no paltry advantage when an opponent has made a slip or overlooked some technical matter. A lawyer should accede to reasonable requests that do not prejudice the rights of the client or the interests of justice.

2.1-5 To oneself

(a) A lawyer should assist in maintaining the honour and integrity of the legal profession, should expose before the proper tribunals without fear or favour, unprofessional or dishonest conduct by any other lawyer and should accept without hesitation a retainer against any lawyer who is alleged to have wronged the client.

(b) It is the duty of every lawyer to guard the Bar against the admission to the profession of any candidate whose moral character or education renders that person unfit for admission.

(c) A lawyer should make legal services available to the public in an efficient and convenient manner that will command respect and confidence. A lawyer's best advertisement is the establishment of a well-merited reputation for competence and trustworthiness.

(d) No client is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the state or disrespect for judicial office, or the corruption of any persons exercising a public or private trust, or deception or betrayal of the public.

(e) A lawyer should recognize that the oaths taken upon admission to the Bar are solemn undertakings to be strictly observed.

(f) All lawyers should bear in mind that they can maintain the high traditions of the profession by steadfastly adhering to the time-honoured virtues of probity, integrity, honesty and dignity.

2.2 Integrity

2.2-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

Commentary

[1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If clients have any doubt about their lawyers' trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.

[2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

[3] Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action.

[4] Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity.

[[1] amended 10/2021]

2.2-2 A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.

Commentary

[1] Collectively, lawyers are encouraged to enhance the profession through activities such as:

(a) sharing knowledge and experience with colleagues and students informally in day-to-day practice as well as through contribution to professional journals and publications, support of law school projects and participation in panel discussions, legal education seminars, bar admission courses and university lectures;

(b) participating in legal aid and community legal services programs or providing legal services on a pro bono basis;

(c) filling elected and volunteer positions with the Society;

(d) acting as directors, officers and members of local, provincial, national and international bar associations and their various committees and sections; and

(e) acting as directors, officers and members of non-profit or charitable organizations.

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[6] A lawyer must recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:

(a) decline to act;

(b) obtain the client's instructions to retain, consult or collaborate with a lawyer who is competent for that task; or

(c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.

[7] The lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting or other non-legal fields, and, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.

[7.1] When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 3.2-1.1.

[7.2] In providing short-term summary legal services under rules 3.4-11.1 to 3.4-11.4, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term summary legal services may be required or are advisable, and encourage the client to seek such further assistance.

[8] A lawyer should clearly specify the facts, circumstances and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications.

[9] A lawyer should be wary of bold and over-confident assurances to the client, especially when the lawyer's employment may depend upon advising in a particular way.

[10] In addition to opinions on legal questions, a lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, economic, policy or social complications involved in the question or the course the client should choose. In many instances the lawyer's experience will be such that the lawyer's views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

[11] In a multi-discipline practice, a lawyer must ensure that the client is made aware that the legal advice from the lawyer may be supplemented by advice or services from a non-lawyer. Advice or services from non-lawyer members of the firm unrelated to the retainer for legal services must be provided independently of and outside the scope of the legal services retainer and from a location separate from the premises of the multi-discipline practice. The provision of non-legal advice or services unrelated to the legal services retainer will also be subject to the constraints outlined in the Rules governing multi-discipline practices.

[12] The requirement of conscientious, diligent and efficient service means that a lawyer should make every effort to provide timely service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[13] The lawyer should refrain from conduct that may interfere with or compromise the lawyer's capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.

[14] A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

[15] Incompetence, negligence and mistakes – This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule. However, evidence of gross neglect in a particular matter or a pattern of neglect or mistakes in different matters may be evidence of such a failure, regardless of tort liability. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.

[[7.1] added 09/2013; [7.2] added 06/2016; [13] amended 10/2021]

3.2 Quality of service

3.2-1 A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.

Commentary

[1] This rule should be read and applied in conjunction with section 3.1 regarding competence.

[2] A lawyer has a duty to provide a quality of service at least equal to that which lawyers generally expect of a competent lawyer in a like situation. An ordinarily or otherwise competent lawyer may still occasionally fail to provide an adequate quality of service.

[3] A lawyer has a duty to communicate effectively with the client. What is effective will vary depending on the nature of the retainer, the needs and sophistication of the client and the need for the client to make fully informed decisions and provide instructions.

[4] A lawyer should ensure that matters are attended to within a reasonable time frame. If the lawyer can reasonably foresee undue delay in providing advice or services, the lawyer has a duty to so inform the client, so that the client can make an informed choice about the client's options, such as whether to retain new counsel.

Examples of expected practices

[5] The quality of service to a client may be measured by the extent to which a lawyer maintains certain standards in practice. The following list, which is illustrative and not exhaustive, provides key examples of expected practices in this area:

(a) keeping a client reasonably informed;

(b) answering reasonable requests from a client for information;

(c) responding to a client's telephone calls;

(d) keeping appointments with a client, or providing a timely explanation or apology when unable to keep such an appointment;

(e) taking appropriate steps to do something promised to a client, or informing or explaining to the client when it is not possible to do so; ensuring, where appropriate, that all instructions are in writing or confirmed in writing;

(f) answering, within a reasonable time, any communication that requires a reply;

(g) ensuring that work is done in a timely manner so that its value to the client is maintained;

(h) providing quality work and giving reasonable attention to the review of documentation to avoid delay and unnecessary costs to correct errors or omissions;

(i) maintaining office staff, facilities and equipment adequate to the lawyer's practice;

(j) informing a client of a proposal of settlement, and explaining the proposal properly;

(k) providing a client with complete and accurate relevant information about a matter;

(l) making a prompt and complete report when the work is finished or, if a final report cannot be made, providing an interim report when one might reasonably be expected;

(m) avoidance of self-induced disability, for example from the use of intoxicants or drugs, that interferes with or prejudices the lawyer's services to the client;

(n) being civil.

[6] A lawyer should meet deadlines, unless the lawyer is able to offer a reasonable explanation and ensure that no prejudice to the client will result. Whether or not a specific deadline applies, a lawyer should be prompt in prosecuting a matter, responding to communications and reporting developments to the client. In the absence of developments, contact with the client should be maintained to the extent the client reasonably expects.

[[4] amended 10/2021]

Limited scope retainers

3.2-1.1 Before undertaking a limited scope retainer the lawyer must advise the client about the nature, extent and scope of the services that the lawyer can provide and must confirm in writing to the client as soon as practicable what services will be provided.

Commentary

[1] Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer.

[2] A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting in a way that suggests that the lawyer is providing full services to the client.

[3] Where the limited services being provided include an appearance before a tribunal a lawyer must be careful not to mislead the tribunal as to the scope of the retainer and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.

[4] A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed (see rule 7.2-6.1).

[5] This rule does not apply to situations in which a lawyer is providing summary advice, for example over a telephone hotline or as duty counsel, or to initial consultations that may result in the client retaining the lawyer.

[rule and commentary added 09/2013]

Commentary

[1] A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.

[2] A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.

[3] If lawyers have suspicions or doubts about whether they might be assisting a client in any dishonesty, crime or fraud, before accepting a retainer, or during the retainer, the lawyers should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer. These should include making reasonable attempts to verify the legal or beneficial ownership of property and business entities and who has the control of business entities, and to clarify the nature and purpose of a complex or unusual transaction where the nature and purpose are not clear.

[3.1] The lawyer should also make inquiries of a client who:

(a) may be seeking, contrary to the prohibition in Rule 3-58.1(1) of the Law Society Rules, the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matter, or

(b) promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so.

[3.2] The lawyer should make a record of the results of these inquiries.

[4] A bona fide test case is not necessarily precluded by this rule and, so long as no injury to a person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case. In all situations, the lawyer should ensure that the client appreciates the consequences of bringing a test case.

[[3.1] amended 01/2021; [3] amended 10/2021]

Dishonesty, fraud when client an organization

3.2-8 A lawyer who is employed or retained by an organization to act in a matter in which the lawyer knows or ought to know that the organization has acted, is acting or intends to act dishonestly, criminally or fraudulently, must do the following, in addition to his or her obligations under rule 3.2-7:

(a) advise the person from whom the lawyer takes instructions and the chief legal officer, or both the chief legal officer and the chief executive officer, that the proposed conduct is, was or would be dishonest, criminal or fraudulent and should be stopped;

(b) if necessary because the person from whom the lawyer takes instructions, the chief legal officer or the chief executive officer refuses to cause the proposed conduct to be stopped, advise progressively the next highest persons or groups, including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the proposed conduct was, is or would be dishonest, criminal or fraudulent and should be stopped; and

(c) if the organization, despite the lawyer's advice, continues with or intends to pursue the proposed wrongful conduct, withdraw from acting in the matter in accordance with section 3.7.

Commentary

[1] The past, present, or proposed misconduct of an organization may have harmful and serious consequences, not only for the organization and its constituency, but also for the public who rely on organizations to provide a variety of goods and services. In particular, the misconduct of publicly traded commercial and financial corporations may have serious consequences for the public at large. This rule addresses some of the professional responsibilities of a lawyer acting for an organization, including a corporation, upon learning that the organization has acted, is acting, or proposes to act in a way that is dishonest, criminal or fraudulent. In addition to these rules, the lawyer may need to consider, for example, the rules and commentary about confidentiality (section 3.3).

[2] This rule speaks of conduct that is dishonest, criminal or fraudulent.

[3] Such conduct includes acts of omission. Indeed, often it is the omissions of an organization, such as failing to make required disclosure or to correct inaccurate disclosures that constitute the wrongful conduct to which these rules relate. Conduct likely to result in substantial harm to the organization, as opposed to genuinely trivial misconduct by an organization, invokes these rules.

[4] In considering a lawyer's responsibilities under this section, a lawyer should consider whether it is feasible and appropriate to give any advice in writing.

[5] A lawyer acting for an organization who learns that the organization has acted, is acting, or intends to act in a wrongful manner, may advise the chief executive officer and must advise the chief legal officer of the misconduct. If the wrongful conduct is not abandoned or stopped, the lawyer must report the matter "up the ladder" of responsibility within the organization until the matter is dealt with appropriately. If the organization, despite the lawyer's advice, continues with the wrongful conduct, the lawyer must withdraw from acting in the particular matter in accordance with rule 3.7-1. In some but not all cases, withdrawal means resigning from the lawyer's position or relationship with the organization and not simply withdrawing from acting in the particular matter.

[6] This rule recognizes that lawyers as the legal advisers to organizations are in a central position to encourage organizations to comply with the law and to advise that it is in the organization's and the public's interest that organizations do not violate the law. Lawyers acting for organizations are often in a position to advise the executive officers of the organization, not only about the technicalities of the law, but also about the public relations and public policy concerns that motivated the government or regulator to enact the law. Moreover, lawyers for organizations, particularly in-house counsel, may guide organizations to act in ways that are legal, ethical, reputable and consistent with the organization's responsibilities to its constituents and to the public.

[[1], [4] and [5] amended 10/2021]

Clients with diminished capacity

3.2-9 When a client's ability to make decisions is impaired because of minority or mental disability, or for some other reason, the lawyer must, as far as reasonably possible, maintain a normal lawyer and client relationship.

Commentary

[1] A lawyer and client relationship presupposes that the client has the requisite mental ability to make decisions about the client's legal affairs and to provide the lawyer with instructions. A client's ability to make decisions depends on such factors as age, intelligence, experience and mental and physical health and on the advice, guidance and support of others. A client's ability to make decisions may change, for better or worse, over time. A client may be mentally capable of making some decisions but not others. The key is whether the client has the ability to understand the information relative to the decision that has to be made and is able to appreciate the reasonably foreseeable consequences of the decision or lack of decision. Accordingly, when a client is, or comes to be, under a disability that impairs the client's ability to make decisions, the lawyer will have to assess whether the impairment is minor or whether it prevents the client from providing instructions or entering into binding legal relationships.

[2] A lawyer who believes a person to be incapable of giving instructions should decline to act. However, if a lawyer reasonably believes that the person has no other agent or representative and a failure to act could result in imminent and irreparable harm, the lawyer may take action on behalf of the person lacking capacity only to the extent necessary to protect the person until a legal representative can be appointed. A lawyer undertaking to so act has the same duties under these rules to the person lacking capacity as the lawyer would with any client.

[3] If a client's incapacity is discovered or arises after the solicitor-client relationship is established, the lawyer may need to take steps to have a lawfully authorized representative, such as a litigation guardian, appointed or to obtain the assistance of the Office of the Public Trustee to protect the interests of the client. Whether that should be done depends on all relevant circumstances, including the importance and urgency of any matter requiring instruction. In any event, the lawyer has an ethical obligation to ensure that the client's interests are not abandoned. Until the appointment of a legal representative occurs, the lawyer should act to preserve and protect the client's interests.

[4] In some circumstances when there is a legal representative, the lawyer may disagree with the legal representative's assessment of what is in the best interests of the client under a disability. So long as there is no lack of good faith or authority, the judgment of the legal representative should prevail. If a lawyer becomes aware of conduct or intended conduct of the legal representative that is clearly in bad faith or outside that person's authority, and contrary to the best interests of the client with diminished capacity, the lawyer may act to protect those interests. This may require reporting the misconduct to a person or institution such as a family member or the Public Trustee.

[5] When a lawyer takes protective action on behalf of a person or client lacking in capacity, the authority to disclose necessary confidential information may be implied in some circumstances: See Commentary under rule 3.3-1 (Confidentiality) for a discussion of the relevant factors. If the court or other counsel becomes involved, the lawyer should inform them of the nature of the lawyer's relationship with the person lacking capacity.

[[1] amended 10/2021]

Restricting future representation

3.2-10 A lawyer must not participate in offering or making an agreement in which a restriction on any lawyer's right to practise is part of the settlement of a client lawsuit or other controversy.

3.3 Confidentiality

Confidential information

3.3-1 A lawyer at all times must hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship and must not divulge any such information unless:

(a) expressly or impliedly authorized by the client;

(b) required by law or a court to do so;

(c) required to deliver the information to the Law Society, or

(d) otherwise permitted by this rule.

3.4 Conflicts

Duty to avoid conflicts of interest

3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

Commentary

[0.1] In a real property transaction, a lawyer may act for more than one party with different interests only in the circumstances permitted by Appendix C.

[1] As defined in these rules, a conflict of interest exists when there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person. The risk must be more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation arising from the retainer. A client's interests may be seriously prejudiced unless the lawyer's judgment and freedom of action on the client's behalf are as free as possible from conflicts of interest.

[2] A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest.

[3] The general prohibition and permitted activity prescribed by this rule apply to a lawyer's duties to current, former, concurrent and joint clients as well as to the lawyer's own interests.

Representation

[4] Representation means acting for a client and includes the lawyer's advice to and judgment on behalf of the client.

The fiduciary relationship, the duty of loyalty and conflicting interests

[5] The value of an independent bar is diminished unless the lawyer is free from conflicts of interest. The rule governing conflicts of interest is founded in the duty of loyalty which is grounded in the law governing fiduciaries. The lawyer-client relationship is a fiduciary relationship and as such, the lawyer has a duty of loyalty to the client. To maintain public confidence in the integrity of the legal profession and the administration of justice, in which lawyers play a key role, it is essential that lawyers respect the duty of loyalty. Arising from the duty of loyalty are other duties, such as a duty to commit to the client's cause, the duty of confidentiality, the duty of candour and the duty not to act in a conflict of interest. This obligation is premised on an established or ongoing lawyer client relationship in which the client must be assured of the lawyer's undivided loyalty, free from any material impairment of the lawyer and client relationship.

[6] The rule reflects the principle articulated by the Supreme Court of Canada in the cases of *R.* v. *Neil,* 2002 SCC 70 and *Strother v. 3464920 Canada Inc.,* 2007 SCC 24, regarding conflicting interests involving current clients, that a lawyer must not represent one client whose legal interests are directly adverse to the immediate legal interests of another client without consent. This duty arises even if the matters are unrelated. The lawyer client relationship may be irreparably damaged where the lawyer's representation of one client is directly adverse to another client's immediate interests. One client may legitimately fear that the lawyer will not pursue the representation out of deference to the other client, and an existing client may legitimately feel betrayed by the lawyer's representation of a client with adverse legal interests. The prohibition on acting in such circumstances except with the consent of the clients guards against such outcomes and protects the lawyer client relationship.

[7] Accordingly, factors for the lawyer's consideration in determining whether a conflict of interest exists include:

- the immediacy of the legal interests;
- whether the legal interests are directly adverse;
- whether the issue is substantive or procedural;
- the temporal relationship between the matters;
- the significance of the issue to the immediate and long-term interests of the clients involved; and
- the clients' reasonable expectations in retaining the lawyer for the particular matter or representation.

Examples of areas where conflicts of interest may occur

[8] Conflicts of interest can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that may give rise to conflicts of interest. The examples are not exhaustive.

(a) A lawyer acts as an advocate in one matter against a person when the lawyer represents that person on some other matter.

(c) A lawyer provides legal advice to a small business on a series of commercial transactions and at the same time provides legal advice to an employee of the business on an employment matter, thereby acting for clients whose legal interests are directly adverse.

(d) A lawyer, an associate, a law partner or a family member has a personal financial interest in a client's affairs or in a matter in which the lawyer is requested to act for a client, such as a partnership interest in some joint business venture with a client.

(i) A lawyer owning a small number of shares of a publicly traded corporation would not necessarily have a conflict of interest in acting for the corporation because the holding may have no adverse influence on the lawyer's judgment or loyalty to the client.

(e) A lawyer has a sexual or close personal relationship with a client.

(i) Such a relationship may conflict with the lawyer's duty to provide objective, disinterested professional advice to the client. The relationship may obscure whether certain information was acquired in the course of the lawyer and client relationship and may jeopardize the client's right to have all information concerning the client's affairs held in strict confidence. The relationship may in some circumstances permit exploitation of the client by the lawyer. If the lawyer is a member of a firm and concludes that a conflict exists, the conflict is not imputed to the lawyer's firm, but would be cured if another lawyer in the firm who is not involved in such a relationship with the client handled the client's work.

(f) A lawyer or a lawyer's law firm acts for a public or private corporation and the lawyer serves as a director of the corporation.

(i) These two roles may result in a conflict of interest or other problems because they may

1. affect the lawyer's independent judgment and fiduciary obligations in either or both roles,
2. obscure legal advice from business and practical advice,
3. jeopardize the protection of lawyer and client privilege, and
4. disqualify the lawyer or the law firm from acting for the organization.

(g) Sole practitioners who practise with other lawyers in cost-sharing or other arrangements represent clients on opposite sides of a dispute. See rules 3.4-42 and 3.4-43 on space-sharing arrangements.

(i) The fact or the appearance of such a conflict may depend on the extent to which the lawyers' practices are integrated, physically and administratively, in the association.

[[6] and [8] amnded 10/2021]

Consent

3.4-2 A lawyer must not represent a client in a matter when there is a conflict of interest unless there is express or implied consent from all clients and the lawyer reasonably believes that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.

(a) Express consent must be fully informed and voluntary after disclosure.

(b) Consent may be inferred and need not be in writing where all of the following apply:

(i) the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel;

(ii) the matters are unrelated;

(iii) the lawyer has no relevant confidential information from one client that might reasonably affect the other; and

(iv) the client has commonly consented to lawyers acting for and against it in unrelated matters.

Commentary

Disclosure and consent

[1] Disclosure is an essential requirement to obtaining a client's consent. Where it is not possible to provide the client with adequate disclosure because of the confidentiality of the information of another client, the lawyer must decline to act.

[2] The lawyer should inform the client of the relevant circumstances and the reasonably foreseeable ways that the conflict of interest could adversely affect the client's interests. This would include the lawyer's relations to the parties and any interest in or connection with the matter.

[3] Following the required disclosure, the client can decide whether to give consent. As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf not be subject to other interests, duties or obligations, in practice this factor may not always be decisive. Instead, it may be only one of several factors that the client will weigh when deciding whether or not to give the consent referred to in the rule. Other factors might include, for example, the availability of another lawyer of comparable expertise and experience, the stage that the matter or proceeding has reached, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs.

Consent in advance

[4] A lawyer may be able to request that a client consent in advance to conflicts that might arise in the future. As the effectiveness of such consent is generally determined by the extent to which the client reasonably understands the material risks that the consent entails, the more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. A general, open-ended consent will ordinarily be ineffective because it is not reasonably likely that the client will have understood the material risks involved. If the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, for example, the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation.

[5] While not a pre-requisite to advance consent, in some circumstances it may be advisable to recommend that the client obtain independent legal advice before deciding whether to provide consent. Advance consent must be recorded, for example in a retainer letter.

Implied consent

[6] In some cases consent may be implied, rather than expressly granted. As the Supreme Court held in *Neil* and in *Strother*, however, the concept of implied consent is applicable in exceptional cases only. Governments, chartered banks and entities that might be considered sophisticated consumers of legal services may accept that lawyers may act against them in unrelated matters where there is no danger of misuse of confidential information. The more sophisticated the client is as a consumer of legal services, the more likely it will be that an inference of consent can be drawn. The mere nature of the client is not, however, a sufficient basis upon which to assume implied consent; the matters must be unrelated, the lawyer must not possess confidential information from one client that could affect the other client, and there must be a reasonable basis upon which to conclude that the client has commonly accepted that lawyers may act against it in such circumstances.

Lawyer belief in reasonableness of representation

[7] The requirement that the lawyer reasonably believes that the lawyer is able to represent each client without having a material adverse effect on the representation of, or loyalty to, the other client precludes a lawyer from acting for parties to a transaction who have different interests, except where joint representation is permitted under this Code.

Dispute

3.4-3 Despite rule 3.4-2, a lawyer must not represent opposing parties in a dispute.

> **Commentary**
>
> **[1]** A lawyer representing a client who is a party in a dispute with another party or parties must competently and diligently develop and argue the position of the client. In a dispute, the parties' immediate legal interests are clearly adverse. If the lawyer were permitted to act for opposing parties in such circumstances even with consent, the lawyer's advice, judgment and loyalty to one client would be materially and adversely affected by the same duties to the other client or clients. In short, the lawyer would find it impossible to act without offending these rules.

Concurrent representation with protection of confidential client information

3.4-4 Where there is no dispute among the clients about the matter that is the subject of the proposed representation, two or more lawyers in a law firm may act for current clients with competing interests and may treat information received from each client as confidential and not disclose it to the other clients, provided that:

(a) disclosure of the risks of the lawyers so acting has been made to each client;

(b) each client consents after having received independent legal advice, including on the risks of concurrent representation;

(c) the clients each determine that it is in their best interests that the lawyers so act;

(d) each client is represented by a different lawyer in the firm;

(e) appropriate screening mechanisms are in place to protect confidential information; and

(f) all lawyers in the law firm withdraw from the representation of all clients in respect of the matter if a dispute that cannot be resolved develops among the clients.

> **Commentary**
>
> **[1]** This rule provides guidance on concurrent representation, which is permitted in limited circumstances. Concurrent representation is not contrary to the rule prohibiting representation where there is a conflict of interest provided that the clients are fully informed of the risks and understand that if a dispute arises among the clients that cannot be resolved the lawyers may have to withdraw, resulting in potential additional costs.

3.4-18 Rules 3.4-17 to 3.4-23 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) it is reasonable to believe the transferring lawyer has confidential information relevant to the new law firm’s matter for its client; or

(b) (i) the new law firm represents a client in a matter that is the same as or related to a matter in which a former law firm represents or represented its client (“former client”);

(ii) the interests of those clients in that matter conflict; and

(iii) the transferring lawyer actually possesses relevant information respecting that matter.

[amended 11/2016]

Commentary

[1] The purpose of the rule is to deal with actual knowledge. Imputed knowledge does not give rise to disqualification. As stated by the Supreme Court of Canada in *MacDonald Estate* v. *Martin*, [1990] 3 SCR 1235, with respect to the partners or associates of a lawyer who has relevant confidential information, the concept of imputed knowledge is unrealistic in the era of the mega-firm. Notwithstanding the foregoing, the inference to be drawn is that lawyers working together in the same firm will share confidences on the matters on which they are working, such that actual knowledge may be presumed. That presumption can be rebutted by clear and convincing evidence that shows that all reasonable measures, as discussed in rule 3.4-20, have been taken to ensure that no disclosure will occur by the transferring lawyer to the member or members of the firm who are engaged against a former client.

[2] The duties imposed by this rule concerning confidential information should be distinguished from the general ethical duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, which duty applies without regard to the nature or source of the information or to the fact that others may share the knowledge.

[3] Law firms with multiple offices — This rule treats as one “law firm” such entities as the various legal services units of a government, a corporation with separate regional legal departments and an interjurisdictional law firm.

[[1] to [3] added 11/2016; [1] amended 10/2021]

3.4-19 Rules 3.4-20 to 3.4-22 do not apply to a lawyer employed by the federal, a provincial or a territorial government who, after transferring from one department, ministry or agency to another, continues to be employed by that government.

[amended 11/2016]

Commentary

[1] Government employees and in-house counsel — The definition of "law firm" includes one or more lawyers practising in a government, a Crown corporation, any other public body or a corporation. Thus, the rule applies to lawyers transferring to or from government service and into or out of an in-house counsel position, but does not extend to purely internal transfers in which, after transfer, the employer remains the same.

[[1] added 11/2016]

Law firm disqualification

3.4-20 If the transferring lawyer actually possesses confidential information relevant to a matter 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 has:

  (i) taken reasonable measures to ensure that there will be no disclosure of the former client's confidential information by the transferring lawyer to any member of the new law firm; and

  (ii) advised the lawyer's former client, if requested by the client, of the measures taken.

[amended 11/2016]

Commentary

[0.1] There are two circumstances in which the new law firm should consider the implementation of reasonable measures to ensure that there will be no disclosure of the former client's confidential information to any member of the new firm:

(a) if the transferring lawyer actually possesses confidential information respecting the former client that may prejudice the former client if disclosed to a member of the new law firm, and

Doing business with a client

Independent legal advice

3.4-27 In rules 3.4-27 to 3.4-43, when a client is required or advised to obtain independent legal advice concerning a matter, that advice may only be obtained by retaining a lawyer who has no conflicting interest in the matter.

3.4-27.1 A lawyer giving independent legal advice under this section must:

(a) advise the client that the client has the right to independent legal representation;

(b) explain the legal aspects of the matter to the client, who appears to understand the advice given; and

(c) inform the client of the availability of qualified advisers in other fields who would be in a position to advise the client on the matter from a business point of view.

Commentary

[0.1] A client is entitled to obtain independent legal representation by retaining a lawyer who has no conflicting interest in the matter to act for the client in relation to the matter.

[1] If a client elects to waive independent legal representation and to rely on independent legal advice only, the lawyer retained has a responsibility that should not be lightly assumed or perfunctorily discharged.

[2] Either independent legal representation or independent legal advice may be provided by a lawyer employed by the client as in-house counsel.

3.4-28 Subject to this rule, a lawyer must not enter into a transaction with a client unless the transaction is fair and reasonable to the client, the client consents to the transaction and the client has independent legal representation with respect to the transaction.

Commentary

[1] This provision applies to any transaction with a client, including:

(a) lending or borrowing money;

(b) buying or selling property;

(c) accepting a gift, including a testamentary gift;

(d) giving or acquiring ownership, security or other pecuniary interest in a company or other entity;

(e) recommending an investment; and

(f) entering into a common business venture.

[2] The relationship between lawyer and client is a fiduciary one, and no conflict between the lawyer's own interest and the lawyer's duty to the client can be permitted. The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client does not give rise to a conflicting interest.

Investment by client when lawyer has an interest

3.4-29 Subject to rule 3.4-30, if a client intends to enter into a transaction with his or her lawyer or with a corporation or other entity in which the lawyer has an interest other than a corporation or other entity whose securities are publicly traded, before accepting any retainer, the lawyer must

(a) disclose and explain the nature of the conflicting interest to the client or, in the case of a potential conflict, how and why it might develop later;

(b) recommend and require that the client receive independent legal advice; and

(c) if the client requests the lawyer to act, obtain the client's consent.

Commentary

[1] If the lawyer does not choose to disclose the conflicting interest or cannot do so without breaching confidence, the lawyer must decline the retainer.

[2] A lawyer should not uncritically accept a client's decision to have the lawyer act. It should be borne in mind that, if the lawyer accepts the retainer, the lawyer's first duty will be to the client. If the lawyer has any misgivings about being able to place the client's interests first, the retainer should be declined.

[3] Generally, in disciplinary proceedings under this rule, the burden will rest upon the lawyer to show good faith, that adequate disclosure was made in the matter, and that the client's consent was obtained.

[4] If the investment is by borrowing from the client, the transaction may fall within the requirements of rule 3.4-32.

[[3] amended 10/2021]

3.4-30 When a client intends to pay for legal services by issuing or causing to be transferred to a lawyer a share, participation or other interest in property or in an enterprise, other than a non-material interest in a publicly traded enterprise, the lawyer must recommend but need not require that the client receive independent legal advice before accepting a retainer.

Payment and appropriation of funds

3.6-9 If a lawyer and client agree that the lawyer will act only if the lawyer's retainer is paid in advance, the lawyer must confirm that agreement in writing with the client and specify a payment date.

3. 6-10 A lawyer must not appropriate any client funds held in trust or otherwise under the lawyer's control for or on account of fees, except as permitted by the governing legislation.

Commentary

[1] The rule is not intended to be an exhaustive statement of the considerations that apply to payment of a lawyer's account from trust. The handling of trust money is generally governed by the Law Society Rules.

[2] Refusing to reimburse any portion of advance fees for work that has not been carried out when the contract of professional services with the client has terminated is a breach of the obligation to act with integrity.

3.6-11 If the amount of fees or disbursements charged by a lawyer is reduced on a review or assessment, the lawyer must repay the monies to the client as soon as is practicable.

Prepaid legal services plan

3.6-12 A lawyer who accepts a client referred by a prepaid legal services plan must advise the client in writing of:

(a) the scope of work to be undertaken by the lawyer under the plan; and

(b) the extent to which a fee or disbursement will be payable by the client to the lawyer.

3.7 Withdrawal from representation

3.7-1 A lawyer must not withdraw from representation of a client except for good cause and on reasonable notice to the client.

Commentary

[1] Although the client has the right to terminate the lawyer-client relationship at will, a lawyer does not enjoy the same freedom of action. Having undertaken the representation of a client, the lawyer should complete the task as ably as possible unless there is justifiable cause for terminating the relationship. It is inappropriate for a lawyer to withdraw on capricious or arbitrary grounds.

[2] An essential element of reasonable notice is notification to the client, unless the client cannot be located after reasonable efforts.-No hard and fast rules can be laid down as to what constitutes reasonable notice before withdrawal and how quickly a lawyer may cease acting after notification will depend on all relevant circumstances. When the matter is covered by statutory provisions or rules of court, these will govern. In other situations, the governing principle is that the lawyer should protect the client's interests to the best of the lawyer's ability and should not desert the client at a critical stage of a matter or at a time when withdrawal would put the client in a position of disadvantage or peril. As a general rule, the client should be given sufficient time to retain and instruct replacement counsel. Nor should withdrawal or an intention to withdraw be permitted to waste court time or prevent other counsel from reallocating time or resources scheduled for the matter in question. See rule 3.7-8 (Manner of withdrawal).

[3] Every effort should be made to ensure that withdrawal occurs at an appropriate time in the proceedings in keeping with the lawyer's obligations. The court, opposing parties and others directly affected should also be notified of the withdrawal.

[4] When a lawyer leaves a law firm to practise alone or to join another law firm, the departing lawyer and the law firm have a duty to inform all clients for whom the departing lawyer is the responsible lawyer in a legal matter that the clients have a right to choose who will continue to represent them. The same duty may arise when a firm is winding up or dividing into smaller units.

[5] This duty does not arise if the lawyers affected by the changes, acting reasonably, conclude that the circumstances make it obvious that a client will continue as a client of a particular lawyer or law firm.

[6] When this Chapter requires a notification to clients, each client must receive a letter as soon as practicable after the effective date of the changes is determined, informing the client of the right to choose a lawyer.

[7] It is preferable that this letter be sent jointly by the firm and any lawyers affected by the changes. However, in the absence of a joint announcement, the firm or any lawyers affected by the changes may send letters in substantially the form set out in a precedent letter on the Law Society website (see Practice Resources: Law Office Administration).

[8] Lawyers whose clients are affected by changes in a law firm have a continuing obligation to protect client information and property, and must minimize any adverse effect on the interests of clients. This obligation generally includes an obligation to ensure that files transferred to a new lawyer or law firm are properly transitioned, including, when necessary, describing the status of the file and noting any unfulfilled undertakings and other outstanding commitments.

[9] The right of a client to be informed of changes to a law firm and to choose a lawyer cannot be curtailed by any contractual or other arrangement.

[10] With respect to communication other than that required by these rules, lawyers should be mindful of the common law restrictions upon uses of proprietary information, and interference with contractual and professional relations between the law firm and its clients.

[[6], [7] and [9] amended 10/2021]

Optional withdrawal

3.7-2 If there has been a serious loss of confidence between the lawyer and the client, the lawyer may withdraw.

Commentary

[1] A lawyer may have a justifiable cause for withdrawal in circumstances indicating a loss of confidence, for example, if the lawyer is deceived by the client, the client refuses to accept and act upon the lawyer's advice on a significant point, the client is persistently unreasonable or uncooperative in a material respect, or the lawyer is facing difficulty in obtaining adequate instructions from the client. However, the lawyer should not use the threat of withdrawal as a device to force a hasty decision by the client on a difficult question.

[[1] amended 12/2018]

Non-payment of fees

3.7-3 If, after reasonable notice, the client fails to provide a retainer or funds on account of disbursements or fees, a lawyer may withdraw.

Commentary

[1] When the lawyer withdraws because the client has not paid the lawyer's fee, the lawyer should ensure that there is sufficient time for the client to obtain the services of another lawyer and for that other lawyer to prepare adequately for a hearing or trial.

[2] In criminal matters, if withdrawal is a result of non-payment of the lawyer's fees, the court may exercise its discretion to refuse counsel's withdrawal. The court's order refusing counsel's withdrawal may be enforced by the court's contempt power. See *R.* v. *Cunningham*, 2010 SCC 10.

[3] The relationship between a lawyer and client is contractual in nature, and the general rules respecting breach of contract and repudiation apply. Except in criminal matters involving non-payment of fees, if a lawyer decides to withdraw as counsel in a proceeding, the court has no jurisdiction to prevent the lawyer from doing so, and the decision to withdraw is not reviewable by the court, subject to its authority to cite a lawyer for contempt if there is evidence that the withdrawal was done for some improper purpose. Otherwise, the decision to withdraw is a matter of professional responsibility, and a lawyer who withdraws in contravention of this Chapter is subject to disciplinary action by the Benchers. See *Re Leask and Cronin* (1985), 66 BCLR 187 (SC). In civil proceedings the lawyer is not required to obtain the court's approval before withdrawing as counsel, but must comply with the Rules of Court before being relieved of the responsibilities that attach as "solicitor acting for the party." See *Luchka* v. *Zens* (1989), 37 BCLR (2d) 127 (CA)."

Withdrawal from criminal proceedings

3.7-4 If a lawyer has agreed to act in a criminal case and the interval between a withdrawal and the trial of the case is sufficient to enable the client to obtain another lawyer and to allow such other lawyer adequate time for preparation, the lawyer who has agreed to act may withdraw because the client has not paid the agreed fee or for other adequate cause provided that the lawyer:

(a) notifies the client, in writing, that the lawyer is withdrawing because the fees have not been paid or for other adequate cause;

(b) accounts to the client for any monies received on account of fees and disbursements;

(c) notifies Crown counsel in writing that the lawyer is no longer acting;

(d) in a case when the lawyer's name appears on the records of the court as acting for the accused, notifies the clerk or registrar of the appropriate court in writing that the lawyer is no longer acting; and

(e) complies with the applicable rules of court.

3.7-5 If a lawyer has agreed to act in a criminal case and the date set for trial is not such as to enable the client to obtain another lawyer or to enable another lawyer to prepare adequately for trial and an adjournment of the trial date cannot be obtained without adversely affecting the client's interests, the lawyer who agreed to act must not withdraw because of non-payment of fees.

(d) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of a tribunal or any of its officials in any case or matter by any means other than open persuasion as an advocate;

(e) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed or otherwise assisting in any fraud, crime or illegal conduct;

(f) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument or the provisions of a statute or like authority;

(g) knowingly assert as fact that which cannot reasonably be supported by the evidence or taken on judicial notice by the tribunal;

(h) make suggestions to a witness recklessly or knowing them to be false;

(i) deliberately refrain from informing a tribunal of any binding authority that the lawyer considers to be directly on point and that has not been mentioned by another party;

(j) improperly dissuade a witness from giving evidence or advise a witness to be absent;

(k) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another;

(l) knowingly misrepresent the client's position in the litigation or the issues to be determined in the litigation

(m) abuse, hector or harass a witness;

(n) when representing a complainant or potential complainant, attempt to gain a benefit for the complainant by threatening the laying of a criminal charge or by offering to seek or to procure the withdrawal of a criminal charge;

(o) needlessly inconvenience a witness; or

(p) appear before a tribunal while under the influence of alcohol or a drug.

Commentary

[1] In civil proceedings, a lawyer has a duty not to mislead the tribunal about the position of the client in the adversarial process. Thus, a lawyer representing a party to litigation who has made or is party to an agreement made before or during the trial by which a plaintiff is guaranteed recovery by one or more parties, notwithstanding the judgment of the court, should immediately reveal the existence and particulars of the agreement to the court and to all parties to the proceedings.

[2] A lawyer representing an accused or potential accused may communicate with a complainant or potential complainant, for example, to obtain factual information, to arrange for restitution or an apology from the accused, or to defend or settle any civil claims between the accused and the complainant. However, when the complainant or potential complaint is vulnerable, the lawyer must take care not to take unfair or improper advantage of the circumstances. If the complainant or potential complainant is unrepresented, the lawyer should be governed by the rules about unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused or potential accused. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

[3] It is an abuse of the court's process to threaten to bring an action or to offer to seek withdrawal of a criminal charge in order to gain a benefit. See also rules 3.2-5 (Threatening criminal or regulatory proceedings) and 3.2-6 (Inducement for withdrawal of criminal or regulatory proceedings) and accompanying commentary.

[4] When examining a witness, a lawyer may pursue any hypothesis that is honestly advanced on the strength of reasonable inference, experience or intuition.

[5] In the absence of a reasonable objection, lawyers have a duty to promptly sign appropriately drafted court orders that have been granted or agreed to. This duty continues, notwithstanding subsequent instructions of the client.

[[5] added 03/2017; [3] amended 10/2021]

Incriminating physical evidence

5.1-2.1 A lawyer must not counsel or participate in the concealment, destruction or alteration of incriminating physical evidence so as to obstruct or attempt to obstruct the course of justice.

Commentary

[1] In this rule, "evidence" does not depend upon admissibility before a tribunal or upon the existence of criminal charges. It includes documents, electronic information, objects or substances relevant to a crime, criminal investigation or a criminal prosecution. It does not include documents or communications that are solicitor-client privileged or that the lawyer reasonably believes are otherwise available to the authorities.

[2] This rule does not apply where a lawyer is in possession of evidence tending to establish the innocence of a client, such as evidence relevant to an alibi. However, a lawyer must exercise prudent judgment in determining whether such evidence is wholly exculpatory and therefore falls outside of the application of this rule. For example, if the evidence is both incriminating and exculpatory, improperly dealing with it may result in a breach of the rule and also expose a lawyer to criminal charges.

Disclosure of information

5.5-2 Unless the judge and opposing counsel have previously been made aware of the information, a lawyer acting as an advocate must disclose to them any information of which the lawyer is aware that a juror or prospective juror:

(a) has or may have an interest, direct or indirect, in the outcome of the case;

(b) is acquainted with or connected in any manner with the presiding judge, any counsel or any litigant;

(c) is acquainted with or connected in any manner with any person who has appeared or who is expected to appear as a witness; or

(d) may be legally disqualified from serving as a juror.

5.5-3 A lawyer must promptly disclose to the court any information that the lawyer reasonably believes discloses improper conduct by a member of a jury panel or by a juror.

Communication during trial

5.5-4 Except as permitted by law, a lawyer acting as an advocate must not communicate with or cause another to communicate with any member of the jury during a trial of a case.

5.5-5 A lawyer who is not connected with a case before the court must not communicate with or cause another to communicate with any member of the jury about the case.

5.5-6 A lawyer must not have any discussion after trial with a member of the jury about its deliberations.

Commentary

[1] The restrictions on communications with a juror or potential juror should also apply to communications with or investigations of the juror's family members.

[[1] amended 10/2021]

5.6 The lawyer and the administration of justice

Encouraging respect for the administration of justice

5.6-1 A lawyer must encourage public respect for and try to improve the administration of justice.

Commentary

[1] The obligation outlined in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen. A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements. Yet, for the same reason, a lawyer should not hesitate to speak out against an injustice.

[2] Admission to and continuance in the practice of law implies, on the part of a lawyer, a basic commitment to the concept of equal justice for all within an open, ordered and impartial system. However, judicial institutions will not function effectively unless they command the respect of the public, and, because of changes in human affairs and imperfections in human institutions, constant efforts must be made to improve the administration of justice and thereby, to maintain public respect for it.

[3] **Criticizing Tribunals -** Proceedings and decisions of courts and tribunals are properly subject to scrutiny and criticism by all members of the public, including lawyers, but judges and members of tribunals are often prohibited by law or custom from defending themselves. Their inability to do so imposes special responsibilities upon lawyers. First, a lawyer should avoid criticism that is petty, intemperate or unsupported by a bona fide belief in its real merit, since, in the eyes of the public, professional knowledge lends weight to the lawyer's judgments or criticism. Second, if a lawyer has been involved in the proceedings, there is the risk that any criticism may be, or may appear to be, partisan rather than objective. Third, when a tribunal is the object of unjust criticism, a lawyer, as a participant in the administration of justice, is uniquely able to, and should, support the tribunal, both because its members cannot defend themselves and because, in doing so, the lawyer contributes to greater public understanding of, and therefore respect for, the legal system.

[4] A lawyer, by training, opportunity and experience, is in a position to observe the workings and discover the strengths and weaknesses of laws, legal institutions and public authorities. A lawyer should, therefore, lead in seeking improvements in the legal system, but any criticisms and proposals should be bona fide and reasoned.

Seeking legislative or administrative changes

5.6-2 A lawyer who seeks legislative or administrative changes must disclose the interest being advanced, whether the lawyer's interest, the client's interest or the public interest.

Chapter 6 - Relationship to Students, Employees, and Others

6.1 Supervision

Direct supervision required

6.1-1 A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

Commentary

[1] A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion. The number of non-lawyers that a lawyer supervises must be limited to ensure that there is sufficient time available for adequate supervision of each non-lawyer.

[3] If a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

[4] A lawyer in private practice may permit a non-lawyer to perform tasks delegated and supervised by a lawyer, so long as the lawyer maintains a direct relationship with the client. A lawyer in a community legal clinic funded by a provincial legal aid plan may do so, so long as the lawyer maintains direct supervision of the client's case in accordance with the supervision requirements of the legal aid plan and assumes full professional responsibility for the work.

[5] Subject to the provisions of any statute, rule or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer generally turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which, in the public interest, must be exercised by the lawyer whenever it is required.

[[1] amended 10/2021]

Definitions

6.1-2 In this section,

“designated paralegal” means an individual permitted under rule 6.1-3.3 to give legal advice and represent clients before a court or tribunal;

“non-lawyer” means an individual who is neither a lawyer nor an articled student;

“paralegal” means a non-lawyer who is a trained professional working under the supervision of a lawyer.

Delegation

6.1-3 A lawyer must not permit a non-lawyer to:

(a) accept new matters on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;

(b) give legal advice;

(c) give or accept undertakings or accept trust conditions, except at the direction of and under the supervision of a lawyer responsible for the legal matter, providing that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;

(d) act finally without reference to the lawyer in matters involving professional legal judgment;

(e) be held out as a lawyer;

(f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a supporting role to the lawyer appearing in such proceedings;

(g) be named in association with the lawyer in any pleading, written argument or other like document submitted to a court;

(h) be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer’s law firm, unless the non-lawyer is an employee of the lawyer or the law firm;

(i) conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;

(j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;

(k) sign correspondence containing a legal opinion;

(l) sign correspondence, unless

  (i) it is of a routine administrative nature,

  (ii) the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,

  (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 the lawyer's 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.

[[1] amended 10/2021]

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,

(f) has been the subject of a hearing ordered, whether commenced or not, with respect to an application for enrolment as an articled student, call and admission, or reinstatement, unless the person was subsequently enrolled, called and admitted or reinstated in the same jurisdiction, or

(g) was required to withdraw or was expelled from a Bar admission program.

[amended 04/2013]

Electronic registration of documents

6.1-5 A lawyer who has personalized encrypted electronic access to any system for the electronic submission or registration of documents must not

(a) permit others, including a non-lawyer employee, to use such access; or

(b) disclose his or her password or access phrase or number to others.

6.1-6 When a non-lawyer employed by a lawyer has a personalized encrypted electronic access to any system for the electronic submission or registration of documents, the lawyer must ensure that the non-lawyer does not

(a) permit others to use such access; or

(b) disclose his or her password or access phrase or number to others.

Commentary

[1] The implementation of systems for the electronic registration of documents imposes special responsibilities on lawyers and others using the system. The integrity and security of the system is achieved, in part, by its maintaining a record of those using the system for any transactions. Statements professing compliance with law without registration of supporting documents may be made only by lawyers in good standing. It is, therefore, important that lawyers should maintain and ensure the security and the exclusively personal use of the personalized access code, diskettes, etc., used to access the system and the personalized access pass phrase or number.

[2] In a real estate practice, when it is permissible for a lawyer to delegate responsibilities to a non-lawyer who has such access, the lawyer should ensure that the non-lawyer maintains and understands the importance of maintaining the security of the system.

Real estate assistants

6.1-7 In rules 6.1-7 to 6.1-9,

"purchaser" includes a lessee or person otherwise acquiring an interest in a property;

"sale" includes lease and any other form of acquisition or disposition;

"show", in relation to marketing real property for sale, includes:

(a) attending at the property for the purpose of exhibiting it to members of the public;

(b) providing information about the property, other than preprinted information prepared or approved by the lawyer; and

(c) conducting an open house at the property.

6.1-8 A lawyer may employ an assistant in the marketing of real property for sale in accordance with this chapter, provided:

(a) the assistant is employed in the office of the lawyer; and

(b) the lawyer personally shows the property.

6.1-9 A real estate marketing assistant may:

(a) arrange for maintenance and repairs of any property in the lawyer's care and control;

(b) place or remove signs relating to the sale of a property;

(c) attend at a property without showing it, in order to unlock it and let members of the public, real estate licensees or other lawyers enter; and

(d) provide members of the public with preprinted information about the property prepared or approved by the lawyer.

6.2 Students

Recruitment and engagement procedures

6.2-1 A lawyer must observe any procedures of the Society about the recruitment and engagement of articled or other students.

Duties of principal

6.2-2 A lawyer acting as a principal to a student must provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession.

Commentary

[1] A principal or supervising lawyer is responsible for the actions of students acting under the principal or supervising lawyer's direction.

[[1] amended 10/2021]

Duties of articled student

6.2-3 An articled student must act in good faith in fulfilling and discharging all the commitments and obligations arising from the articling experience.

6.3 Harassment and discrimination

6.3-1 The principles of human rights laws and related case law apply to the interpretation of this section.

6.3-2 A term used in this section that is defined in human rights legislation has the same meaning as in the legislation.

6.3-3 A lawyer must not sexually harass any person.

6.3-4 A lawyer must not engage in any other form of harassment of any person.

6.3-5 A lawyer must not discriminate against any person.

Commentary

[1] A lawyer has a special responsibility to comply with the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws.

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Chapter 7 – Relationship to the Society and Other Lawyers

7.1 Responsibility to the Society and the profession generally

Regulatory compliance

7.1-1 A lawyer must

(a) reply promptly and completely to any communication from the Society;

(b) provide documents as required to the Law Society;

(c) not improperly obstruct or delay Law Society investigations, audits and inquiries;

(d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;

(e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and

(f) otherwise comply with the Law Society's regulation of the lawyer's practice.

Meeting financial obligations

7.1-2 A lawyer must promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a professional liability indemnity policy, when called upon to do so.

[amended 12/2019, effective 01/2020]

Commentary

[1] In order to maintain the honour of the Bar, lawyers have a professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed or undertaken on behalf of clients, unless, before incurring such an obligation, the lawyer clearly indicates in writing that the obligation is not to be a personal one.

[2] When a lawyer retains a consultant, expert or other professional, the lawyer should clarify the terms of the retainer in writing, including specifying the fees, the nature of the services to be provided and the person responsible for payment. If the lawyer is not responsible for the payment of the fees, the lawyer should help in making satisfactory arrangements for payment if it is reasonably possible to do so.

[3] If there is a change of lawyer, the lawyer who originally retained a consultant, expert or other professional should advise that person about the change and provide the name, address, telephone number, fax number and email address of the new lawyer.

[[3] amended 10/2021]

Duty to report

7.1-3 Unless to do so would involve a breach of solicitor-client confidentiality or privilege, a lawyer must report to the Society, in respect of that lawyer or any other lawyer:

(a) a shortage of trust monies;

(a.1) a breach of undertaking or trust condition that has not been consented to or waived;

(b) the abandonment of a law practice;

(c) participation in criminal activity related to a lawyer's practice;

(d) [rescinded]

(e) conduct that raises a substantial question as to the honesty, trustworthiness, or competency of a lawyer; and

(f) any other situation in which a lawyer's clients are likely to be materially prejudiced.

[amended 12/2019]]

Commentary

[1] Unless a lawyer who departs from proper professional conduct or competence is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer). In all cases, the report must be made without malice or ulterior motive.

[2] Nothing in this rule is meant to interfere with the lawyer-client relationship.

[3] A variety of stressors, physical, mental or emotional conditions, disorders or addictions may contribute to instances of conduct described in this rule. Lawyers who face such challenges should be encouraged by other lawyers to seek assistance as early as possible.

[4] The Society supports professional support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received in the course of such confidential counselling. A lawyer serving in the capacity of a peer support or counsellor in the Lawyers Assistance Program, or another Law Society approved peer assistance program, is not required to report any information concerning another lawyer acquired in the course of providing peer assistance. The potential disclosure of these communications is not subject to requirement by the Law Society. Such disclosure can only be required by law or a court but is permissible if the lawyer-counsellor believes on reasonable grounds that there is an imminent risk of death or serious harm and disclosure is necessary to prevent the death or harm.

[amended, [4] added 12/2019]

Encouraging client to report dishonest conduct

7.1-4 A lawyer must encourage a client who has a claim or complaint against an apparently dishonest lawyer to report the facts to the Society as soon as reasonably practicable.

7.2 Responsibility to lawyers and others

Courtesy and good faith

7.2-1 A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

Commentary

[1] The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their functions properly.

[2] Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.

[3] A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.

[4] A lawyer should agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities and similar matters that do not prejudice the rights of the client.

[5] A lawyer who knows that another lawyer has been consulted in a matter must not proceed by default in the matter without inquiry and reasonable notice.

[[5] added 04/2013]

7.2-2 A lawyer must avoid sharp practice and must not take advantage of or act without fair warning upon slips, irregularities or mistakes on the part of other lawyers not going to the merits or involving the sacrifice of a client's rights.

7.2-3 A lawyer must not use any device to record a conversation between the lawyer and a client or another lawyer, even if lawful, without first informing the other person of the intention to do so.

Communications

7.2-4 A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

7.2-5 A lawyer must answer with reasonable promptness all professional letters and communications from other lawyers that require an answer, and a lawyer must be punctual in fulfilling all commitments.

7.2-6 Subject to rules 7.2-6.1 and 7.2-7, if a person is represented by a lawyer in respect of a matter, another lawyer must not, except through or with the consent of the person's lawyer:

(a) approach, communicate or deal with the person on the matter; or

(b) attempt to negotiate or compromise the matter directly with the person.

[amended 09/2013]

7.2-6.1 Where a person is represented by a lawyer under a limited scope retainer on a matter, another lawyer may, without the consent of the lawyer providing the limited scope legal services, approach, communicate or deal with the person directly on the matter unless the lawyer has been given written notice of the nature of the legal services being provided under the limited scope retainer and the approach, communication or dealing falls within the scope of that retainer.

Commentary

[1] Where notice as described in rule 7.2-6.1 has been provided to a lawyer for an opposing party, the opposing lawyer is required to communicate with the person's lawyer, but only to the extent of the limited representation as identified by the lawyer. The opposing lawyer may communicate with the person on matters outside of the limited scope retainer.

[rule and commentary added 09/2013]

7.2-7 A lawyer who is not otherwise interested in a matter may give a second opinion to a person who is represented by a lawyer with respect to that matter.

Commentary

[1] Rule 7.2-6 applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract or negotiation, who is represented by a lawyer concerning the matter to which the communication relates. A lawyer may communicate with a represented person concerning matters outside the representation. This rule does not prevent parties to a matter from communicating directly with each other.

[2] The prohibition on communications with a represented person applies only where the lawyer knows that the person is represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but actual knowledge may be inferred from the circumstances. This inference may arise when there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of the other lawyer by ignoring the obvious.

[3] Rule 7.2-7 deals with circumstances in which a client may wish to obtain a second opinion from another lawyer. While a lawyer should not hesitate to provide a second opinion, the obligation to be competent and to render competent services requires that the opinion be based on sufficient information. In the case of a second opinion, such information may include facts that can be obtained only through consultation with the first lawyer involved. The lawyer should advise the client accordingly and, if necessary, consult the first lawyer unless the client instructs otherwise.

[[2] amended 10/2021]

7.2-8 A lawyer retained to act on a matter involving a corporate or other organization represented by a lawyer must not approach an officer or employee of the organization:

(a) who has the authority to bind the organization;

(b) who supervises, directs or regularly consults with the organization's lawyer; or

(c) whose own interests are directly at stake in the representation,

in respect of that matter, unless the lawyer representing the organization consents or the contact is otherwise authorized or required by law.

Commentary

[1] This rule applies to corporations and other organizations. "Other organizations" include partnerships, limited partnerships, associations, unions, unincorporated groups, government departments and agencies, tribunals, regulatory bodies and sole proprietorships. This rule prohibits a lawyer representing another person or entity from communicating about the matter in question with persons likely involved in the decision-making process for a corporation or other organization. If an agent or employee of the organization is represented in the matter by a lawyer, the consent of that lawyer to the communication will be sufficient for purposes of this rule. A lawyer may communicate with employees or agents concerning matters outside the representation.

[2] A lawyer representing a corporation or other organization may also be retained to represent employees of the corporation or organization. In such circumstances, the lawyer must comply with the requirements of section 3.4 (Conflicts), and particularly rules 3.4-5 to 3.4-9. A lawyer must not represent that the lawyer acts for an employee of a client, unless the requirements of section 3.4 have been complied with, and must not be retained by an employee solely for the purpose of sheltering factual information from another party.

[[2] amended 10/2021]

7.2-9 When a lawyer deals on a client's behalf with an unrepresented person, the lawyer must:

(a) urge the unrepresented person to obtain independent legal representation;

(b) take care to see that the unrepresented person is not proceeding under the impression that his or her interests will be protected by the lawyer; and

(c) make it clear to the unrepresented person that the lawyer is acting exclusively in the interests of the client.

Commentary

[1] If an unrepresented person requests the lawyer to advise or act in the matter, the lawyer should be governed by the considerations outlined in this rule about joint retainers.

Inadvertent communications

7.2-10 A lawyer who has access to or comes into possession of a document that the lawyer has reasonable grounds to believe belongs to or is intended for an opposing party and was not intended for the lawyer to see, must:

(a) in the case of a paper document, return it unread and uncopied to the party to whom it belongs,

(b) in the case of an electronic document, delete it unread and uncopied and advise the party to whom it belongs that that was done, or

(c) if the lawyer reads part or all of the document before realizing that it was not intended for him or her, cease reading the document and promptly return it or delete it, uncopied, to the party to whom it belongs, advising that party:

(i) of the extent to which the lawyer is aware of the contents, and

(ii) what use the lawyer intends to make of the contents of the document.

Commentary

[3] For purposes of this rule, **"electronic document"** includes email or other electronic modes of transmission subject to being read or put into readable form, such as computer hard drives and memory cards.

Undertakings and trust conditions

7.2-11 A lawyer must:

(a) not give an undertaking that cannot be fulfilled;

(b) fulfill every undertaking given; and

(c) honour every trust condition once accepted.

Commentary

[1] Undertakings should be written or confirmed in writing and should be absolutely unambiguous in their terms. If a lawyer giving an undertaking does not intend to accept personal responsibility, this should be stated clearly in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given is entitled to expect that the lawyer giving it will honour it personally. The use of such words as “on behalf of my client” or “on behalf of the vendor” does not relieve the lawyer giving the undertaking of personal responsibility.

[2] Trust conditions, which are equivalent to undertakings, should be clear, unambiguous and explicit and should state the time within which the conditions must be met. Trust conditions should be imposed in writing and communicated to the other party at the time the property is delivered. Trust conditions should be accepted in writing and, once accepted, constitute an obligation on the accepting lawyer that the lawyer must honour personally. The lawyer who delivers property without any trust condition cannot retroactively impose trust conditions on the use of that property by the other party.

[3] The lawyer should not impose or accept trust conditions that are unreasonable, nor accept trust conditions that cannot be fulfilled personally. When a lawyer accepts property subject to trust conditions, the lawyer must fully comply with such conditions, even if the conditions subsequently appear unreasonable. It is improper for a lawyer, after accepting a trust condition, to ignore or breach it on the basis that the condition is not in accordance with the contractual obligations of the clients. It is also improper to unilaterally impose cross conditions respecting one’s compliance with the original trust conditions.

[4] If a lawyer is unable or unwilling to honour a trust condition imposed by someone else, the subject of the trust condition should be immediately returned to the person imposing the trust condition, unless its terms can be forthwith amended in writing on a mutually agreeable basis.

[5] Trust conditions can be varied with the consent of the person imposing them. Any variation should be confirmed in writing. Clients or others are not entitled to require a variation of trust conditions without the consent of the lawyer who has imposed the conditions and the lawyer who has accepted them.

[6] Any trust condition that is accepted is binding upon a lawyer, whether imposed by another lawyer or by a lay person. A lawyer may seek to impose trust conditions upon a non-lawyer, whether an individual or a corporation or other organization, but great caution should be exercised in so doing since such conditions would be enforceable only through the courts as a matter of contract law and not by reason of the ethical obligations that exist between lawyers.

[[3] amended 10/2021]

Trust cheques

7.2-12 Except in the most unusual and unforeseen circumstances, which the lawyer must justify, a lawyer who withdraws or authorizes the withdrawal of funds from a trust account by cheque undertakes that the cheque

(a) will be paid, and

(b) is capable of being certified if presented for that purpose.

Commentary

[1] Unless funds are to be paid under an agreement that specifically requires another form of payment or payment by another person, a lawyer must not refuse to accept another lawyer's uncertified cheque for the funds. It is not improper for a lawyer, at that lawyer's own expense, to have another lawyer's cheque certified.

[[1] amended 10/2021]

Real estate transactions

7.2-13 If a lawyer acting for a purchaser of real property accepts the purchase money in trust and receives a registrable conveyance from the vendor in favour of the purchaser, then the lawyer is deemed to have undertaken to pay the purchase money to or as directed by the vendor on completion of registration.

7.3 Outside interests and the practice of law

Maintaining professional integrity and judgment

7.3-1 A lawyer who engages in another profession, business or occupation concurrently with the practice of law must not allow such outside interest to jeopardize the lawyer's professional integrity, independence or competence.

Commentary

[1] A lawyer must not carry on, manage or be involved in any outside interest in such a way that makes it difficult to distinguish in which capacity the lawyer is acting in a particular transaction, or that would give rise to a conflict of interest or duty to a client.

[2] When acting or dealing in respect of a transaction involving an outside interest, the lawyer should be mindful of potential conflicts and the applicable standards referred to in the conflicts rule and disclose any personal interest.

7.3-2 A lawyer must not allow involvement in an outside interest to impair the exercise of the lawyer's independent judgment on behalf of a client.

Appendix A – Affidavits, Solemn Declarations and Officer Certifications

Affidavits and solemn declarations

1. A lawyer must not swear an affidavit or take a solemn declaration unless the deponent:

(a) is physically present before the lawyer,

(b) acknowledges that he or she is the deponent,

(c) understands or appears to understand the statement contained in the document,

(d) in the case of an affidavit, swears, declares or affirms that the contents of the document are true,

(e) in the case of a solemn declaration, orally states that the deponent makes the solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath, and

(f) signs the document, or if permitted by statute, swears that the signature on the document is that of the deponent.

Commentary

Non-practising and retired members

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

Interjurisdictional practice

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

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

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

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

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

Deponent present before commissioner

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

Identification

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

Appearing to understand

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

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

[11] If it appears that a deponent is unable to read the document, the commissioner must certify in the jurat that the document was read in his or her presence and the commissioner was satisfied that the deponent understood it: B.C., *Rules of Court*, Rule 22-2(6). If it appears that the deponent does not understand English, the lawyer must arrange for a competent interpreter to interpret the document to the deponent and certify by endorsement in Form 60 [now Form 109] that he or she has done so: *Rules of Court*, Rule 22-2(7).

Affirmation

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

Swear or affirm that the contents are true

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

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

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

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

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

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

Solemn declaration

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

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

> **Solemn declaration**
>
> 41. Any judge, notary public, justice of the peace, provincial court judge, recorder, mayor or commissioner authorized to take affidavits to be used either in the provincial or federal courts, or any other functionary authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making the declaration before him, in the following form, in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing:
>
> > I, , solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.
> >
> > Declared before me at this . day of , 20

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

> **Statutory declarations**
>
> 69. A gold commissioner, mayor or commissioner authorized to take affidavits, or any other person authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making it before him or her in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing, in the following words:
>
> > I, A.B., solemnly declare that [state the facts declared to], and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath.

Execution

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

[[11], [16] and [20] amended 05/2016; [3], [7], [8], [10], [12], [14], [17] and [20] amended 10/2021]

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:

(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 (Family) 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 the next 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 them. 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; [2], [4] and [6] amended 10/2021]

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2022 BC Lawyers Professional Liability Indemnification Policy

Indemnitor:	**BC Lawyers Indemnity Association (“BCLIA”)**
Address for service:	**5th Floor, 845 Cambie Street, Vancouver, BC V6B 4Z9**
Administrator:	**Law Society of British Columbia (“Law Society”)**
Manager:	**Lawyers Indemnity Fund**
Master Policy number:	**LPL 22-01-01**

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DECLARATIONS

This policy governs claims and potential claims first made and reported in 2022 — please read the policy carefully.

1. **Individual Covered Party:** As defined in this policy
2. **Policy Period:** January 1, 2022 12:01 a.m. to January 1, 2023 12:01 a.m. (PST)
3. **Individual Coverage Period:** As defined in this policy
4. **Indemnity Fee:** As set by the **Law Society**
5. **Policy Territory:** Worldwide
6. **Limits of Liability and Deductibles:**

Coverage	Per Error Limit of Liability	Annual Aggregate Limit of Liability	Per Error Deductible	Profession-wide Limit of Liability
Part A: Professional Liability (errors & omissions)	$1,000,000 per **error** for **damages**, **claims expenses**, and deductible	$2,000,000 per **individual Covered Party,** including all **additional Covered Parties**, less any payments made under Part C	$5,000 per **error** resulting in the payment of **damages**, or $10,000 for any **error** reported within three years of the report date of a Part A or C **error** also resulting in a payment of **damages**	Unlimited
Part B: Trust Protection for dishonest appropriation	$300,000 per **claimant** and **error**, except as provided in Condition 1.4.3 for inter-jurisdictional practice, for **damages** and **claims expenses**	Nil	Nil	$17,500,000 profession-wide for all **claims** for **damages** and **claims expenses**, with a $2,000,000 sublimit for inter-jurisdictional practices
Part C: Trust Shortage Liability arising from **social engineering fraud** or reliance on fraudulent certified cheques	$500,000 per **error** for **damages**, **claims expenses**, and **deductible**	$500,000 sublimit within the Part A annual aggregate limit per **individual Covered Party**, including all **additional Covered Parties** $500,000 **law firm** annual aggregate limit for all **claims** for **damages**, **claims expenses** and deductibles	15% of the total amount of **damages** and **claims expenses** paid per **error**, reduced by the amount of any overdraft	$2,000,000 for all **errors** combined

7. **Endorsements:**

End#1 – OPTIONAL BUSINESS INNOCENT COVERED PARTY ENDORSEMENT

Limits of Liability and Deductible:

Coverage	**Per Error Limit of Liability***	**Annual Aggregate Limit of Liability***	**Per Error Deductible**	**Profession-wide Limit of Liability**
Business innocent covered party endorsement	$1,000,000 per **error** for **damages**, **claims expenses**, and **deductible**	$2,000,000 for all **additional Covered Parties** covered by all **BIC endorsements** issued to **members** at the **covered firm** for all **damages**, **claims expenses** and deductible arising from all **vicarious liability claims** or potential **vicarious liability claims**	10% of the total amount of **damages** and **claims expenses** paid for **vicarious liability claims**.	Unlimited

*All payments under Part A for the same **error** or **errors** are within, not in addition to, these limits of liability.

End#2 - PART C RETENTION ENDORSEMENT

This **Part C retention endorsement** only applies to coverage under Part C of the **Policy** for **individual Covered Parties** who have a **retained limit**.

Limits of Liability and Deductible:

Coverage	**Per Error Limit of Liability**	**Annual Aggregate Limit of Liability**	**Per Error Deductible**	**Profession-wide Limit of Liability**
Part C retention endorsement	$325,000 above the **retained limit** per **error** for **damages** and **claims expenses**	$325,000 sublimit within the Part A annual aggregate limit per **individual Covered Party**, including all **additional Covered Parties** $325,000 **law firm** annual aggregate limit for all **claims** for **damages**, **claims expenses** and deductibles	**Retained limit**	$2,000,000 for all **errors** combined

DEFINITIONS

For convenience, all defined words are in bold print. We, us or our refers to **BCLIA**. You, your or the **Covered Party** refers in Parts A and C to the **individual Covered Party** or **additional Covered Party**, and in Part B to the **individual Covered Party** or **innocent Covered Party**. Unless otherwise indicated, all specific statutory references are to statutes of British Columbia. In this policy:

Additional Covered Party means:

(a) each **law firm** in which the **individual Covered Party** is or was a partner, employee or associate counsel or that is or was liable for the **individual Covered Party**;

(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 Covered Party** or their **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 or indemnified by us and was the **individual Covered Party's** partner or liable for the **individual Covered Party**;

(d) each present or former employee of the **individual Covered Party**, 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 their duties and acting under the supervision of, in a supporting role to and not independent of the **individual Covered Party**; and

(e) each present or former **MDP partner** who, at the time of the **error**, was insured or indemnified 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 lawyer admitted as a Canadian legal advisor member by the **Law Society**.

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

Claim means: a demand for money, or the threat or institution of an action or other proceeding against you.

Claimant means:

(a) under Part A or C: a person or **organization** who has made or may make a **claim**; and

(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.

Claims expenses means:

(a) (i) fees and disbursements charged by defence counsel appointed by us; and

(ii) 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 Part A 2, Part B 2 and Part C 2, and all fees, costs and expenses we incur in any recovery efforts, but does not include salaries of our officers, directors and employees, or those of the **Law Society**; or

(b) for the purposes of Part A 2.9 only, reasonable fees and disbursements charged by independent defence counsel and payable by you.

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 or indemnification claims information, as amended from time to time.

Costs means: costs payable to a party pursuant to the Supreme Court Civil Rules, or the civil rules of court of any other Canadian or US jurisdiction, by agreement or by Order, except for **special costs**.

Covered Party means:

(a) under Part A or Part C: an **individual Covered Party** or **additional Covered Party**; and

(b) under Part B: an **individual Covered Party** or **innocent Covered Party**.

Cybercrime means: criminal activity including, but not limited to, **social engineering fraud**, business email compromise, identity theft, ransomware, or spoofing and phishing that either targets or uses a computer, a computer network or a networked device.

Damages means:

(a) under Part A: any compensatory damages award or settlement, including any related pre-judgment or post-judgment interest or **costs**, 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, fees for professional services including legal fees, or disbursements that you received, even if claimed as compensatory or general damages;

(ii) any order for punitive, exemplary or aggravated damages, even if claimed as compensatory or general damages;

(iii) any fine, sanction or penalty;

(iv) any order or indemnification for **costs** made against you in litigation in which you are not a party;

(v) any order for **special costs**; or

(vi) the cost of complying with declaratory, injunctive or other non-monetary relief.

(b) under Part B: the direct loss of no more than the money, or the **deemed value** of other property, dishonestly appropriated by the **individual Covered Party**, and any related pre-judgment or post-judgment interest, or **costs**.

Damages does not include:

(i) any monetary award, settlement or sum for which the **claimant** or **Covered Party**:

a. is entitled to claim indemnity under any other policy or form of insurance (including title insurance); or

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 coverage;

(ii) any order for **costs** made against you in litigation in which you are not a party, or

(iii) any order for **special costs** made against you or at all.

(c) under Part C: any monetary award or settlement, including any related pre-judgment or post-judgment interest or **costs**, for the direct loss only of no more than the amount by which the **trust account** is short, and any **repair costs** or compensatory damages directly related to covered allegations.

Damages does not include:

(i) any monetary award, settlement or sum for which the **claimant** or **Covered Party** is entitled to claim indemnification under any other policy or form of insurance 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 indemnity coverage;

(ii) any order or indemnification for **costs** made against you in litigation in which you are not a party, or

(iii) any order for **special costs**; or

(iv) the cost of complying with declaratory, injunctive or other non-monetary relief.

Data breach means: an incident wherein information in your care, custody or control is stolen or taken without your knowledge and consent.

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 error**. 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 **Covered Party(ies)** acting as an executor or personal representative of a deceased, an administrator, an escrow holder, an attorney appointed under a Power of Attorney, a guardian, a trustee or a 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 **Covered Party** or by **Covered Parties** 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**. When two or more **law firms** are involved, the **errors** are not related.

(b) under Part B: a dishonest appropriation of money or other property, whether to the use of the **individual Covered Party** or a third party, that was entrusted to and received by the **individual Covered Party** in their capacity as a barrister and solicitor and in relation to the provision of **professional services** to others.

(c) under Part C: a payment to a third party that creates an unintended shortage in trust funds that are held in a **trust account** in connection with the performance of **professional services** for others, provided that such payment was either:

(i) the result of the deposit into that **trust account** of what purports and appears and the **individual Covered Party** believed 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; or

(ii) the result of **social engineering fraud** and made only because the **individual Covered Party** believed the payment was legitimate and duly authorized, and did not relate in any way to the mistaken belief that funds had been deposited into the **trust account**.

Family means: **spouse**, children, parents or siblings.

Individual coverage period means: the period during which an **individual Covered Party** is covered for an **error**, as follows:

(a) under Part A:

(i) any period prior to January 1, 1971, 12:01 a.m. PST during which the **individual Covered Party** was a **member**;

(ii) any period between January 1, 1971, 12:01 a.m. PST and January 1, 1998, 12:01 a.m. PST during which the **individual Covered Party** was a **member** and held a **certificate**;

(iii) any period after January 1, 1998, 12:01 a.m. PST during which the **individual Covered Party** paid the annual insurance or **indemnity fee**; or

(iv) any period after January 1, 2002, 12:01 a.m. PST during which the **individual Covered Party** was a **member** and was performing **sanctioned *pro bono* services**.

(b) under Part B: any period during which the **individual Covered Party** was a **member**.

(c) under Part C: any period after January 1, 2012, 12:01 a.m. PST during which the **individual Covered Party** paid the annual insurance or **indemnity fee**.

Individual Covered Party means: each **member** or former **member** who:

(a) made or allegedly made the **error**; or

(b) for the purposes of Part A 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 Covered Party means: each present or former **member** who:

(a) is or may be liable for the **individual Covered Party**;

(b) did not personally commit, participate in committing, or acquiesce in the **error**; and

(c) was indemnified by us at the time of the **error**.

Law corporation means: an entity incorporated under the *Business Corporations Act* that is governed by, and a valid certificate of authorisation has been issued under, the *Legal Profession Act*.

Law firm means: a sole proprietorship through which a **member** provides **professional services**, 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.

Network Security breach means:

(a) the electronic receipt or transmission of a computer virus or other program via the internet or in any other manner that does or is intended to delete, distort, corrupt, manipulate, impair or gain or prevent access to: internet connections, networks or systems; computer programming; computer, telecommunication or other devices; or electronic data for uses other than those intended for authorized users of such devices, systems or networks; or

(b) the failure or violation of the security of computer, telecommunication or other devices, systems, or networks.

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 error 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.

Privacy breach means: any disclosure, howsoever arising, of information in your care, custody or control to an unauthorized person.

Professional services means:

(a) the practice of law as defined in the *Legal Profession Act*;

(b) *pro bono* legal services or **sanctioned *pro bono* services**;

(c) acting as a custodian under Part 6 of the *Legal Profession Act* or in a similar role, or as an arbitrator, mediator or parenting coordinator;

(d) performing any other activity deemed to be the practice of law by the **Law Society**;

(e) 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**; or

(f) acting as:

(i) an executor or personal representative of a deceased, an administrator, an escrow holder, an attorney appointed under a Power of Attorney, a guardian, a trustee, a committee, or in any similar fiduciary capacity;

(ii) a patent or trademark agent; or

(iii) an agent for any record keeping or filing duty imposed by any provincial or federal statute

provided that such services, and the related appointment or retainer, are connected and incidental to the **individual Covered Party's** practice of law and, for the purposes of Part B of this policy only, the **individual Covered Party** is also providing legal services.

Professional services does not include:

(i) (a) acting as a bailee or conduit of funds, from trust or otherwise, or

(b) providing investment advice or investment services

unless such services, and the related appointment or retainer, are performed in consequence of and incidental to the **individual Covered Party's** practice of law;

(ii) publishing or communicating on a website, blog or social media platform unless directly connected and incidental to the **individual Covered Party's** practice of law;

(iii) the services or activities of a "mortgage broker" as defined in the *Mortgage Broker Act*; or

(iv) with respect to Part A and Part C only, **unauthorized practice** by the **individual Covered Party**.

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.

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.

Related organization means: an **organization** that controls, is controlled by, or is under common control with another **organization**.

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 *pro bono* services means: *pro bono* legal services provided to an individual or organization 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.

Seconded lawyer means: an **individual Covered Party** who is a member of a **law firm**, but who, at the request of the **law firm**, temporarily acts in the capacity of in-house counsel for an **organization** or its **related organization.**

Social engineering fraud means: the intentional misleading of an **individual Covered Party** into sending or paying money based on false information that is provided to the **individual Covered Party**.

Special costs means: party and party costs ordered to be assessed as special costs (formerly called "solicitor and client costs") pursuant to Supreme Court Civil Rule 14-1(1), or another similar term in the civil rules of court of any other Canadian or US jurisdiction, or an equivalent type of punitive costs.

Spouse means: a person who is or has been married, or a person who is or has been living in a marriage-like relationship for a period of time of not less than one year.

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:

(a) for the purposes of Condition 3.3, the practice of law by an **individual Covered Party** 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; or

(b) for the purposes of the definition of **Professional Services**, the practice of law by an **individual Covered Party** in contravention of the rules of any other law society or bar.

This policy is a contract between each **Covered Party** and **BCLIA**.

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

PART A: PROFESSIONAL LIABILITY FOR ERRORS & OMISSIONS

1. PROFESSIONAL LIABILITY INDEMNITY AGREEMENT

We will pay on your behalf **damages** that you become legally obligated to pay because of any **claim** first made against you and reported to us in writing during the **policy period** arising out of an **error** by the **individual Covered Party** in performing or failing to perform **professional services** for others.

2. DEFENCE, EXPENSES AND SETTLEMENT

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 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 6; 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 have the right, but not the duty, to investigate, settle, defend or pay **claims expenses** in accordance with Part A 2.1.2; and

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 Part A 2.3, we will 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 settlement or **claims expenses** that are solely or substantially attributable to that part of a **claim**; 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 Part A 2.3 will be determined following final determination of the **claim**.

2.5 Notwithstanding Part 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 Part A 2.3. Any such payment, demand or failure to make a demand by us is without prejudice to our respective rights under Part A 2.4.

2.6 Any allocation or advancement of **claims expenses** does not apply to or create any presumption with respect to the allocation between covered and uncovered loss.

2.7 Notwithstanding Exclusion 2, we have the right and the duty to defend, in accordance with Part A 2.1.2, any **claim** first made against you and reported to us during the **policy period** arising out of a **personal injury error** while you were performing or failing to perform **professional services** for others.

2.8 Notwithstanding our obligations pursuant to Part A 2.1, 2.2 and 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 will be considered by the arbitrator in determining our respective obligations.

2.9 We will reimburse **claims expenses** up to a maximum sublimit of $100,000 to the per **error** limit in Declaration 6 in the:

2.9.1 appeal of a penalty assessed against an **individual Covered Party** pursuant to section 163.2 or section 237.3 of the *Income Tax Act*, R.S.C. 1985, c.1 or section 285.1 of the *Excise Tax Act*, R.S.C. 1985, c. E-15; or

2.9.2 defence of the prosecution of an offence against an **individual Covered Party** under subsection 8(8), section 10.1 or subsection 10.3(1) of the *Personal Information Protection and Electronic Documents Act* (PIPEDA), S.C. 2000, c.5

subject to: the assessment or prosecution occurring in the course of, in consequence of and directly related to the **individual Covered Party's** practice of law; our prior written consent to your choice of independent defence counsel; and an acquittal, a withdrawal of the allegation, or a finding by the Court that the **individual Covered Party** did not commit the acts or omissions that gave rise to the assessment or prosecution.

3. CLAIMS FIRST MADE AND REPORTED

3.1 Part A of this policy applies only to **claims** arising out of **errors** that occurred during the **individual coverage period**, and provided that:

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** or potential **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 professional liability 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 **Covered Party**.

4. RECIPROCAL JURISDICTIONS

4.1 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 or indemnity policy (the "**Reciprocal Jurisdiction's** policy") is broader than that provided by Part A of this policy, we will provide the same scope of compulsory coverage as that of the **Reciprocal Jurisdiction's** policy. For clarity, however, all **claims** and potential **claims** reported under Part A of this policy remain subject to the limits of liability stated in Condition 1 and the Declarations of this policy.

4.2 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**:

4.2.1 you were practising the law of a **Reciprocal Jurisdiction**;

4.2.2 you were performing the **professional services** in a **Reciprocal Jurisdiction**;

4.2.3 your client was in a **Reciprocal Jurisdiction**; and

4.2.4 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.

4.3 Part A 4.1 and 4.2 apply only if, at the time the **individual Covered Party** was performing the **professional services** giving rise to a **claim**, the **individual Covered Party** was practising 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.

4.4 Part A 4.1 and 4.2 do 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. TRUST PROTECTION COVERAGE AGREEMENT

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

2. DEFENCE AND SETTLEMENT

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

2.1.2 if we elect to defend you, we 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 have the right to investigate any **claim** or potential **claim**;

2.1.4 we 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; and

2.1.5 if you fail to cooperate in the investigation or defence of a **claim,** and you prejudice our ability to investigate or argue potential defences, we have the right to deny coverage for the **claim**.

3. CLAIMS FIRST MADE AND REPORTED

3.1 Part B of this policy applies only to:

3.1.1 **claims** arising out of **errors** that occurred while the **individual Covered Party** was a **member**, 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**:

(a) an **innocent Covered Party** becomes aware of an **error** or any circumstance that could reasonably be expected to be the basis of a **claim**, however unmeritorious, or a **claim** is made against an **innocent Covered Party** seeking **damages** that are covered under Part B of this policy;

(b) a **claim** is made against an **individual Covered Party** 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 Covered Party**; or

(c) the **Law Society** gives notice of a **claim** or potential **claim** against an **individual Covered Party**, and we deem such notice to be notice given by the **individual Covered Party**; or

3.1.2 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:

(a) 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

(b) in any event, no more than ten (10) years of the date of the **error**.

3.2 We may, in our sole discretion, agree to extend the time limits set out in Part B 3.1.1 and 3.1.2.

PART C: TRUST SHORTAGE LIABILITY

1. TRUST SHORTAGE LIABILITY INDEMNITY AGREEMENT

We will pay on your behalf **damages** that you become legally obligated to pay because of any **claim** first made against you and reported to us during the **policy period** arising out of an **error** by the **individual Covered Party**.

2. DEFENCE, EXPENSES AND SETTLEMENT

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

2.1.2 if we elect to defend you, we will have the right to select and instruct defence counsel;

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

2.1.4 we 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 6; or

(b) give you the right to negotiate or defend the **claim** or suit. In this event, the **damages** and **claims expenses** in excess of the amount for which we could have settled will not be recoverable under this policy.

3. CLAIMS FIRST MADE AND REPORTED

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** or potential **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 that 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** that 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 **Covered Party**.

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:

   3.1 any injury to, physical contact with, sickness, disease or death of any person, except for emotional distress or humiliation of a **claimant** directly resulting from an **error**; or

   3.2 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 l**aw corporation** or law office management corporation;

6. a **claim**:

   6.1 arising out of an **error** of an **individual Covered Party**, the payment of which would benefit, in whole or in part, directly or indirectly, the **individual Covered Party** or their **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 Covered Party**;

      6.2.2 the **individual Covered Party's family**; or

      6.2.3 the partners, associates or associate counsel of the **individual Covered Party** or their **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.

7. a **claim** made against you by an **organization** or **related organization** which:

   7.1 employs you,

   7.2 at which you work as a **seconded lawyer**, or

   7.3 at which you are a partner.

8. a **claim** against you where the **individual Covered Party** 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 Covered Party'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 only, the following additional exclusions apply.

Part A of the policy does not apply to:

9. a **claim** arising out of or in any way connected to a **privacy breach** or **data breach**;

10. a **claim** arising out of or in any way connected to a **network security breach** or **cybercrime**;

11. a **claim** arising out of or in any way connected to the dishonest appropriation of money or other property by any person including but not limited to an **error** under Part B of this policy;

12. a **claim** arising out of or in any way connected to any shortage of trust funds held in a **trust account** if that shortage is caused by or in any way connected to a dishonest or fraudulent act by any person including but not limited to an **error** under Part C of this policy; or

13. a **claim** arising out of or in any way connected to any contractual liability (express or implied, including an indemnity) unless there would be tort liability in the absence of the contract and only to the extent **damages** arise solely from any tort liability.

With respect to Part B: Trust Protection only, the following additional exclusions apply.

Part B of this policy does not apply to:

14. 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**;

15. 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%);

16. a **claim** where the money or property that was dishonestly appropriated had been unlawfully obtained by the **claimant**;

17. a **claim** brought by a **claimant** who:

    17.1 knew prior to the time of the **error** of any dishonest act by the **individual Covered Party**; or

    17.2 committed, participated in committing, consented to expressly or impliedly, acquiesced in or was reckless or wilfully blind to the **error**; or

18. 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 only, the following additional exclusions apply.

Part C of this policy does not apply to:

19. 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**;

20. 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

21. **errors** that occurred prior to January 1, 2012.

CONDITIONS

1. LIMITS OF LIABILITY

1.1 PART A — PER **ERROR**

1.1.1 The limit of liability stated in Declaration 6 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 **Covered Party** 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 PART A — ANNUAL AGGREGATE

1.2.1 The limit of liability stated in Declaration 6 is the maximum amount payable under Part A of this policy on behalf of each **individual Covered Party**, including all related **additional Covered Parties**, 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 under Part A or Part C reduce the limits of our liability stated in Declaration 6.

1.3 PART A — MULTIPLE **COVERED PARTIES**, **CLAIMS** OR **CLAIMANTS**

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 **Covered Party** or by **Covered Party(ies)** acting in more than one capacity and regardless of whether the **claims** are made against more than one **Covered Party** or made by more than one **claimant**.

1.4 PART B — PER C**LAIMANT** AND **ERROR**

1.4.1 The limit of liability stated in Declaration 6 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** and **claims expenses** for all **claims** by a **claimant** arising out of an **error** or **related errors**.

1.4.2 If a **claim** or potential **claim** is reported to us by or on behalf of any **Covered Party** 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 6 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 6 shall be $250,000, and Conditions 1.4.1, 1.4.2 and 1.5 shall be read as if the amount in Declaration 6 was $250,000.

1.5 PART B — MULTIPLE **COVERED PARTIES**, **CLAIMS**, **CLAIMANTS** OR **ERRORS**

One or more **claims**, resulting from an **error** or **related errors** made by one or more **Covered Parties**, made against one or more **Covered Parties** by a **claimant** or by related claimants, shall be subject to the one limit of liability stated in Declaration 6 or, if Condition 1.4.3 applies, then as stated there. **Claimants** are related if the money or other property dishonestly appropriated was jointly provided or jointly owned by the **claimants** or if the **claimants** are members of one **family**. In no case will the limit of coverage for an **error** or **related errors** exceed the limit set out in Declaration 6.

1.6 PART B — INTER-JURISDICTIONAL PRACTICE ANNUAL AGGREGATE

The limit of liability that is the maximum amount payable under Part B of this policy on behalf of all **individual Covered Parties**, including all related **additional Covered Parties**, 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 a sublimit to the Profession-Wide Annual Aggregate Limit set out in Declaration 6 and Condition 1.7.

1.7 PART B — PROFESSION-WIDE ANNUAL AGGREGATE

1.7.1 The limit of liability stated in Declaration 6 is the maximum amount payable under this policy for the **policy period** on an aggregate basis for all **Covered Parties** covered by Part B of this policy. For clarity, all **Covered Parties** 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 expense**s 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.

1.7.2 The **individual Covered Parties** and **innocent Covered Parties** 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 i**ndividual Covered Parties** or **innocent Covered Parties** for the **policy period**.

1.8 PART C — PER **ERROR**

1.8.1 The limit of liability stated in Declaration 6 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 **Covered Party** 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 PART C — ANNUAL AGGREGATE

1.9.1 The limit of liability stated in Declaration 6, a sublimit to the Part A Annual Aggregate limit stated in Declaration 6, is the maximum amount payable under Part C of this policy on behalf of each **individual Covered Party**, including all related **additional Covered Parties**, 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 Declaration 6.

1.10 PART C — **LAW FIRM** ANNUAL AGGREGATE

The limit of liability stated in Declaration 6 is the maximum amount payable under this Part C of this policy for the **policy period** on an aggregate basis for all **Covered Parties** 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 PART C — MULTIPLE **COVERED PARTIES**, **CLAIMS** OR **CLAIMANTS**

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 **Covered Party** or by **Covered Party(ies)** acting in more than one capacity and regardless of whether the **claims** are made against more than one **Covered Party** or made by more than one **claimant**.

1.12 PART C — PROFESSION-WIDE ANNUAL AGGREGATE

1.12.1 The limit of liability stated in Declaration 6 is the maximum amount payable under this policy for the **policy period** on an aggregate basis for all **Covered Parties** covered by Part C of this policy. For clarity, all **Covered Parties** 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 Covered Parties** and **additional Covered Parties** 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 Covered Parties** or **additional Covered Parties** for the **policy period**.

1.13 PART C – ELIMINATION OF A TRUST SHORTAGE

We will not pay any **damages** or **claims expenses** or undertake or continue the defence of any proceeding until you have complied with your obligation under Rule 3-74 (1) of the **Law Society** Rules.

1.14 PARTS A, B AND C – CLAIMS EXPENSES WITHIN LIMITS

All **claims expenses** are within, not in addition to, the applicable limit of liability set out in Declaration 6. **Claims expenses** will be subtracted first from the applicable limit of our liability, with the remainder being the amount available to pay **damages**, subject to deductibles.

1.15 PARTS A, B AND C - EXHAUSTION OF LIMITS

We will not pay any **damages** or **claims expenses**, or 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 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 6.

2.2 If **damages** or **claims expenses** are paid pursuant to Part B of this policy, no deductible will be paid by you.

2.3 If **damages** or **claims expenses** are payable pursuant to Part C of this policy, you will pay the deductible stated in Declaration 6 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**.

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

2.5 When one or more **claims** arising out of an **error** are or may be made jointly or severally against two or more:

2.5.1 **individual Covered Parties** at the same **law firm** as at the time of the **error**, we shall have the sole discretion to determine how the deductible applies to each **individual Covered Party**, based on our assessment of each **individual Covered Party's** responsibility for the **error**; or

2.5.2 **law firms**, or **individual Covered Parties** at separate **law firms**, the deductible applies separately to each **law firm**.

2.6 All of the terms and conditions of this policy apply even if the amount of the **claim**, potential **claim** or **damage**s may be less than the deductible stated in Declaration 6.

2.7 If we request, you will make direct payments for **claims** or potential **claims** within the deductible to us or to other parties.

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 we settle the **claim** on an *ex gratia* basis, or pay **claims expenses** on behalf of you or any other **Covered Party** 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 **Covered Party** pursuant to this policy, the **individual Covered Party** 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 **Covered Party** pursuant to Part B of this policy:

3.4.1 the **individual Covered Party** will reimburse us for all such amounts on demand; and

3.4.2 if any other **Covered Party** received a benefit from the **error**, that **Covered Party** 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 **Covered Parties**, your liability to us will be joint and several; and

3.5.2 the timing of any demand made is in our sole discretion.

4. NOTICE OF CLAIM OR SUIT

4.1 If you become aware of an **error** or any circumstance that 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 Indemnity Fund
5th Floor, 845 Cambie Street
Vancouver, BC V6B 4Z9
Attention: Director of Claims

or

Fax: 604-682-5842

or

Email: LIFclaims@lif.ca

Such notice and the information collected in the notice is necessary to settle or defend any **claim** or anticipated **claim** against you, and you are providing it to us for the dominant purpose of litigation.

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**.

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 strictly 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 COVERED PARTY

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 Part A 3 or Condition 4;

we will cover each **additional Covered Party** 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 Part A 3 or Condition 4, and provided that those **additional Covered Parties** who are entitled to the benefit of this Condition comply with all conditions promptly and were **members** or **MDP partners** at the time of the act or **error**.

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 **professional services** giving rise to the **error**;

then, pursuant to the terms of this policy, we will 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**.

7. CONFLICTS

Any duty that we may have to defend or indemnify you does 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 are 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 COVERAGE OR RECOURSE

9.1 With respect to Part A, this indemnification policy is excess and we will not pay any **claim**, **damages** or **claims expenses** until any other valid and collectible insurance, or right of indemnity, whether primary, excess, contributing, contingent or otherwise, except for insurance that is specifically arranged to pay amounts in excess of the limits of liability provided by this policy, is exhausted.

9.2 With respect to Part B, and to further clarify the intent and effect of the definition of **damages** under Part B, if a **Covered Party**, **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 will 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 will cover such loss, subject to its 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.

9.3 With respect to Part C, and to further clarify the intent and effect of the definition of **damages** under Part C, if other valid insurance, collectible bond, right of indemnity or recourse to any other source of recovery exists and protects the **individual Covered Party** or any other **Covered Party**, other than insurance specifically arranged to pay amounts in excess of the limits of liability provided by this policy, this policy will be null and void in respect of such hazards that are otherwise covered by the other valid coverage, whether the **Covered Party** is specifically named in that coverage or not. However, if the loss exceeds the collective limits of all other valid coverage, whether primary, contributing, excess, contingent or on any other basis at law or in equity, then this policy shall apply as excess, subject to its terms including limits and deductibles, and we will not pay any **claim**, **damage**s or **claims expense**s until such other valid coverage is exhausted.

9.4 If any **Covered Party** has lawyers professional liability insurance or indemnification coverage (other than insurance specifically arranged to pay amounts in excess of the limits of liability 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 or indemnity 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 will respond, or as to any allocation between (or amongst) the policies, will be made by us together with the other Canadian jurisdiction(s), and you agree to be bound by the decision. For clarity, a **Reciprocal Jurisdiction** is also a Canadian jurisdiction.

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 will 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 Part A 2.4, will 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 will 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 you have notice of a **claim** or potential **claim** to prejudice such rights, and will 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 will release us from all such responsibilities and obligations.

16. INDEMNITY FEE ADJUSTMENT

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

16.2 If, during the **policy period**, you cease to be a **member** or you are exempted from the compulsory professional liability indemnification program, the **indemnity fee** will be adjusted by the **Law Society** and us on a *pro rata* basis.

16.3 If you are suspended or disbarred, the **indemnity fee** will be deemed to be fully earned and will not be adjusted.

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 **indemnity 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 will be submitted and subject to the exclusive jurisdiction of the Courts of British Columbia in Vancouver, British Columbia.

19. PAYMENT INTO COURT

If we cannot obtain a sufficient discharge for money for which we admit liability, we may apply to the court without notice to any person for an order for the payment of it into court, and the court may order the payment into court to be made on terms as to costs and otherwise the court directs, and may provide to what fund or name the amount must be credited.

The receipt of the registrar or other proper officer of the court is a sufficient discharge to us for the money paid into court, and the money must be dealt with according to the orders of the court.

20. CURRENCY

The deductibles and limits are expressed in Canadian currency.

21. TERRITORY

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

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

BC Lawyers Indemnity Association

Susan I. Forbes, QC, Director

Endorsement #1 - BUSINESS INNOCENT COVERED PARTY (BIC)

ATTACHED TO AND FORMING PART OF POLICY NO. LPL 22-01-01 (the "**Policy**")

This **BIC endorsement** only applies to coverage under Part A of the **Policy** and only if both the **individual Covered Party** and all other **individual Covered Parties** at the **covered firm** have paid the **BIC fee**. Any additions or deletions of **individual Covered Parties** at the **covered firm** during the **BIC coverage period** will not affect the validity of this **BIC endorsement**.

Words and phrases that appear in bold are defined in this **BIC endorsement** or in the Definitions section of the **Policy**. You or your in the **Policy** is amended to only refer to an **additional Covered Party** as defined in this **BIC endorsement**.

In consideration of the payment of the **BIC fee**, and in reliance on the statements made in the **BIC application**, it is understood and agreed that solely for the purposes of the coverage afforded by this **BIC endorsement** for a **vicarious liability claim** under Part A:

1. The following definitions are added to the **Policy**:

   Authorized agent means: the **member** at the **covered firm** who has been authorized by each and every **individual Covered Party** at the **covered firm**, and the **covered firm**, to complete the **BIC application** on their behalf.

   BIC application means: the application for this **BIC endorsement** forming part of the **BIC endorsement** and completed by the **authorized agent**.

   BIC coverage period means:

   (a) any period after January 1, 2022, 12:01 a.m. PST during which the **individual Covered Party** was a **member**, and paid both the **indemnity fee** and **BIC fee**; and

   (b) any period prior to January 1, 2022, 12:01 PST during which the **covered firm** was issued a Business Innocent Covered Party (formerly Business Innocent Insured prior to January 1, 2020) Policy and the **individual Covered Party** was a **member** and paid the **indemnity fee**.

   BIC endorsement period means: the period between January 1, 2022 12:01 a.m. to January 1, 2023 12:01 a.m. (PST) for which the **BIC fee**, or a prorated portion of the **BIC fee** has been paid in addition to the **indemnity fee**.

   BIC fee means: the cost of this **BIC endorsement**, as communicated by the **Lawyers Indemnity Fund** of the **Law Society**.

   Covered firm means: the **law firm** in which the **individual Covered Party** is or was a partner, employee or associate counsel or that is or was liable for the **individual Covered Party** at the time the **professional services** giving rise to the **claim** and the **vicarious liability claim** were provided.

   Vicarious liability claim means: a **claim** against an **additional Covered Party** arising from a professional liability **claim** against the **individual Covered Party** for **damages** that would be

covered under Part A of the **Policy** but for the application of Exclusion 6.2 and Part A 3.4 of the **Policy**.

2. The definition of **additional Covered Parties** in the **Policy** is deleted and replaced with:

   (a) a **covered firm**; and

   (b) each present or former **member** who, at the time the **individual Covered Party** was providing the **professional services** giving rise to the **claim** and the **vicarious liability claim**:

      (i) was indemnified by us and paid the **BIC fee**,

      (ii) is or was at the **covered firm** and is or may be vicariously liable for the **individual Covered Party** at the time the **professional services** giving rise to the **claim** and the **vicarious liability claim** were provided,

      (iii) had no knowledge of the circumstances giving rise to the application of Exclusion 6.2,

      (iv) exercised due diligence in completing the **BIC application**, and

      (v) made reasonable and regular inquiries of the **individual Covered Party** that could have disclosed the circumstances giving rise to the application of Exclusion 6.2 under the **Policy**.

3. An **individual Covered Party** is deleted from the definition of **Covered Party** for Part A in the **Policy**, leaving **additional Covered Party** only.

4. The following is inserted into Exclusion 6.2 before the word provided:

   except that we will pay all sums **additional Covered Parties** become legally obligated to pay as **damages** because of any **vicarious liability claim** first made and reported to us in writing during the **BIC coverage period**, and

5. The following Exclusions are added to the Policy:

   The **BIC endorsement** does not apply to:

   1. **errors** that occurred prior to January 1, 2002.

   2. **claims**, **errors** or any circumstances that the **individual Covered Party** knew or could have reasonably foreseen prior to the **endorsement coverage period** might be the basis of a **claim** excluded by Exclusion 6.2.

6. The following conditions apply to coverage afforded by this **BIC endorsement**:

   1. THE **BIC FEE**

      The **BIC fee** is payable at the beginning of the **BIC coverage period** and is fully earned.

2. REPRESENTATIONS

By accepting the coverage afforded under this **BIC endorsement**, each **additional Covered Party** agrees:

2.1 the statements in this **BIC application** are accurate and complete; and

2.2 this **BIC endorsement** has been issued in reliance upon such representations;

but coverage is nevertheless extended under this policy to an **additional Covered Party** who did not make or who did not knowingly permit to be made any false statement in the **BIC application**.

3. ACTING AS AGENT

Each **individual Covered Party** expected to be with a **covered firm** at the inception of the **BIC coverage period** authorizes, on their behalf, the **authorized agent** at the c**overed firm** to act as their sole agent to complete and sign the **BIC application**, and the **authorized agent** or **covered firm** to give or receive notice of cancellation, pay the **BIC fee** and agree to any changes to this **BIC endorsement**.

4. LIMITS OF LIABILITY

The limit of liability for **damages**, **claims expenses** and deductible is $1,000,000 per **error**. The annual aggregate limit of liability for coverage afforded by this **BIC endorsement** is $2,000,000 for all **additional Covered Parties** covered by all **BIC endorsements** issued to **members** at the **covered firm** for all **damages**, **claims expenses** and deductible arising from all **vicarious liability claims** or potential **vicarious liability claims** first made and reported to us in writing during the **BIC endorsement period**. All payments, including deductible, under Part A for the same **error** or **errors** are within, not in addition to, these limits of liability.

7. The following conditions are added to the **Policy**:

2.1.1 If **damages** or **claims expenses** are paid pursuant to the **BIC endorsement** for **vicarious liability claims**, you will pay the deductible in Declaration 7 for End #1.

17.4 This **BIC endorsement** may be cancelled by **BCLIA** for non-payment of the **BIC fee** by providing 15 days written notice to the **covered firm**. This **BIC endorsement** may be cancelled by the **covered firm** by surrender thereof to **BCLIA** or by written notice to the **Company** stating when thereafter the cancellation shall be effective. The mailing of notice by regular mail shall be sufficient proof of notice by the **Company** or the **covered firm**. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **BIC coverage period**. Notice of cancellation by **BCLIA** to the **covered firm** shall be deemed notice to all **additional Covered Parties**.

All other terms and conditions of the **Policy** remain unchanged.

Endorsement #2 – PART C RETENTION ENDORSEMENT

ATTACHED TO AND FORMING PART OF POLICY NO. LPL 22-01-01 (the “**Policy**”)

This **Part C retention endorsement** only applies to coverage under Part C of the **Policy** for **individual Covered Parties** who have a **retained limit** Words and phrases that appear in bold are defined in this **Part C retention endorsement** or in the **Policy**.

In consideration of the payment of the **indemnity fee**, it is understood and agreed that solely for the purposes of the coverage afforded by this **Part C retention endorsement**:

1. Part C coverage, limits of liability and deductible are deleted from Declaration 6 of the **Policy**.

2. The following definitions are added to the **Policy**:

   Underlying insurance means the security and privacy policy arranged by the **Law Society** and **BCLIA** for BC law firms.

   Retained limit means the available limits of **underlying insurance** and all limits of other coverage or recourse set out in Condition 9.3 of the **Policy**.

3. Indemnity Agreement C is deleted and replaced with:

   We will pay on your behalf all sums that you become legally obligated to pay as **damages** above the **retained limit** because of any **claim** first made against you and reported to us during the **policy period** arising out of a Part C **error**.

4. The word “deductible” is deleted and replaced with “**retained limit**” in Part C s. 2.1.4(a), and Condition 2.3.

5. The words “and deductibles” are deleted, and the comma between “**damages**” and ”**claims expenses**” is deleted and replaced with “and,” in Conditions 1.8.1, 1.9.1, 1.9.2, and 1.10.

6. The words “or **retained limit** for Part C” are added after the word “deductibles” or “deductible” in Conditions 1.14, 1.15, 2.4, 2.5, 2.6, 2.7, and 3.1.

7. “Declaration 6” is deleted and replaced with “Declaration 7” in the following: Part C s. 2.1.4(a), 2.4.4(a), Conditions 1.8.1, 1.9.1 (the first reference only), 1.9.2, 1.10, 1.12.1, 2.3, and 2.6.

8. The words “or Declaration 7 for Part C” are added after “Declaration 6” in the following: Conditions 1.14 and 2.6.

All other terms and conditions of the **Policy** remain unchanged.