

**Part 5
Protection of the Public**

Division 1 - Admissions

Definitions

5-1 In this part,

"articling student" means a person enrolled in the society's bar admission program and registered in the student register as an articling student; (ENACTED 05/07)

"bar admission program" means the society's pre-call licensing program; (ENACTED 04/04)

"committee" means the admissions and education committee;

"CPLED program" means the Canadian Centre for Professional Legal Education program that operates as the society's bar admission program; (ENACTED 04/04)

"law student" means a person enrolled in a law degree program and registered in the society's student register as a law student; (ENACTED 05/07)

"principal" means a practising lawyer who has been approved to enter into an articling agreement with an articling student.

Committee objectives

5-2 The role of the committee is to:

- (a) advise the benchers on policies relating to admissions and education issues;
- (b) consider appeals of grades and admissions decisions made pursuant to the rules in this division and conduct hearings as required; and
- (c) take any steps and delegate any authority necessary for the committee to carry out its responsibilities.

(AM. 05/07; AM. 10/07)

Participation of dean

5-3 The benchers must appoint the Dean of the Faculty of Law at the University of Manitoba to sit as a committee member. (AM. 05/07)

Presentation to court

5-3.1 On the approval of an application for call to the bar:

- (a) the applicant must be presented to the Court of Queen's Bench by a bencher or the chief executive officer;
- (b) the presentation must take place at a sitting of the Court of Queen's Bench; and
- (c) the applicant must sign the rolls.

(ENACTED 10/10)

Admission of Articling Students

Application for admission as an articling student

5-4(1) Subject to rule 5-4.1, an applicant for admission as an articling student must, by May 31 in the calendar year in which articles commence:

- (a) provide proof that he or she has a bachelor of laws degree or juris doctor degree from a faculty of common law at a Canadian university (a “Canadian common law degree”) or an equivalent qualification, dated not more than 6 years before the date of the application for admission; or
- (b) provide proof that he or she is the recipient of a certificate of equivalency from the National Committee on Accreditation dated not more than 6 years before the date of the application for admission;

and must

- (c) provide proof that he or she is of good moral character and a fit and proper person to be admitted;
- (d) enter into an articling agreement with a practising lawyer who has been approved by the chief executive officer to act as a principal and submit an acceptable Education Plan; (ENACTED 05/07)
- (e) furnish all documentation required by the chief executive officer; and
- (f) pay the student admission fee under subsection 19(1) of the Act.
(AM. 06/03; 04/04; 12/05; 05/07; 10/07; 10/08; 10/10)

Approval of applicants

5-4(2) The Chief Executive Officer may admit a student who applies under subsection (1) or refuse to admit or impose conditions or restrictions on the applicant’s admission. (ENACTED 10/10)

Exception

5-4.1 An applicant for admission as an articling student who is the recipient of a “Canadian common law degree”, equivalent qualification, or a certificate of equivalency from the National Committee on Accreditation, dated more than 6 years before the date of the application, must apply to the society for permission to be admitted as an articling student and the chief executive officer may refuse the application or grant the application, with or without conditions. (ENACTED 12/05) (AM. 05/07; 10/07)

Failure to file admissions documents by deadline

5-4.2 If an applicant for admission as an articling student does not file the required documents by the deadline set out in rule 5-4 or any extended deadline authorized by the chief executive officer, the length of articles to be served under rule 5-5(1) shall be increased by one week for each week the filing of documents has been delayed. The chief executive officer may extend the deadline for filing documents under this rule only in exceptional circumstances. (ENACTED 10/08)

Joint responsibility of articling student and principal to file articling agreement

5-4.3 An applicant for admission as an articling student and the applicant’s principal must enter into a written articling agreement and are jointly responsible for filing with the society the signed agreement, together with an acceptable education plan and such further documentation as required by the chief executive officer, within two weeks of the commencement of articles. (ENACTED 10/08)

Failure to file articling agreement by deadline

5-4.4 If an applicant for admission as an articling student and the applicant's principal fail to file all the documents required under rule 5-4.3 by the required deadline or any extended deadline authorized by the chief executive officer, the length of articles to be served under rule 5-5(1) shall be increased by one week for each week the filing of documents has been delayed. The chief executive officer may extend the deadline for filing documents under this rule only in exceptional circumstances. (ENACTED 10/08)

Articling and CPLED program

5-5(1) Subject to subsection (4), every articling student must successfully complete the CPLED program within 2 years from the date of commencement of either the CPLED program or the student's articles, whichever is commenced earlier, and every articling student must serve, unless abridged by the chief executive officer,

- (a) at least 52 weeks of full-time articles; or
- (b) part-time articles which are equivalent to 52 weeks of full-time articles, as approved by the chief executive officer.

Abridgments of more than four weeks may only be granted in exceptional circumstances.
(AM. 04/04; 05/07; 10/08; 05/11;)

Credit for articles in another Canadian jurisdiction

5-5(2) In determining the period of time that a student has served articles in Manitoba, the student may be credited, to a maximum of six months, for all the time served by the student articling or clerking in another Canadian jurisdiction. (AM. 05/07; 10/08; 05/11)

Exemption for students who have completed the bar admission program in another Canadian jurisdiction

5-5(3) The chief executive officer may allow an articling student who has completed the bar admission program of another Canadian jurisdiction to complete qualification assessments or examinations in lieu of completing all or a portion of the bar admission program in Manitoba. (AM. 04/04; 05/07; 10/07; 10/08; 05/11;)

Practice experience in a foreign jurisdiction

5-5(4) An articling student or applicant for admission who has practising experience as a member of the legal profession in a foreign jurisdiction may apply to the chief executive officer for an exemption from completing all or a portion of the CPLED program and the term of articles set out in subsection (1) by filing the required application and furnishing all documentation required by the chief executive officer. (ENACTED 05/11)

Authority of chief executive officer

5-5(5) In considering a request under subsection (4), the chief executive officer may refuse the exemption or allow it in full or in part, with or without conditions or restrictions. (ENACTED 05/11)

Eligibility to act as a principal

5-6(1) To be eligible to act as a principal, an applicant must:

- (a) be a practising lawyer;
- (b) have carried on active practice in Manitoba for not less than three years immediately preceding becoming a principal or for less than three years if approved by the chief executive officer;
- (c) meet the criteria for principals established by the society; and
- (d) file the required application.

(AM. 05/07; 10/07)

Approval of principal

5-6(2) The chief executive officer must approve an applicant to act as a principal and may withdraw the approval granted at any time. (AM. 04/04; 05/07; 10/07)

Approved principal or delegate must offer articling position

5-6(3) Only a member who has been approved by the chief executive officer to act as a principal under subsection (2) or the principal's delegate may offer an articling position to a student and where rule 5-6.1 applies, the principal's delegate must comply with the process set out in rule 5-6.1(2). (ENACTED 06/09)

Termination before call

5-6(4) An articling student who has completed his or her term of articles under rule 5-5(1) may terminate the articling agreement before being called to the bar provided that prior written notice is given to the chief executive officer. (AM. 05/07; 06/09)

Application

5-6.1(1) This rule applies to the recruitment of articling students by principals intending to employ articling students at law firms located in the City of Winnipeg, and for purposes of this rule, City of Winnipeg means the part of the City that is bounded by the highway commonly known as the Perimeter Highway. (ENACTED 06/09)

Recruitment of articling students in Winnipeg

5-6.1(2) The following process shall govern the recruitment of articling students in Winnipeg:

- (a) a principal may only offer an articling position to a student who has, at a minimum, commenced his or her second year of law studies;
- (b) the chief executive officer must designate the date and time when a principal may communicate an offer of an articling position to a student and the earliest date and time by which the student must accept the offer;
- (c) an offer of an articling position made by a principal must remain open until the acceptance date and time designated by the chief executive officer under sub-paragraph (b) or any extended period permitted by the principal; and
- (d) after the deadline to accept an offer has passed, a principal may offer an articling position to any student who has not yet accepted an offer of articles provided the student has, at a minimum, commenced his or her second year of law studies.

(ENACTED 06/09)

Permission to withdraw from agreement to article in Manitoba

5-6.2 Once an offer to article at a firm in Manitoba has been accepted by a student, neither the offeror nor the student may withdraw from the agreement without the permission of the chief executive officer. (ENACTED 06/09)

Temporary assignment of student

5-7 A principal may permit an articling student to attend in the office of another member who meets the criteria set out in rule 5-6(1), for the purpose of the articling student obtaining training in a field that the principal feels he or she is not qualified to instruct, provided:

- (a) prior written approval is received from the chief executive officer; and
- (b) the training period is not more than a total of 8 weeks of the term of articles.

(AM. 05/07)

Practice by articling students

5-7.1 An articling student may practise law pursuant to section 21 of the Act in accordance with the terms of the Education Plan and Articling Agreement entered into between the articling student and his or her principal. (ENACTED 05/07)

Responsibility of principal

5-7.2 The principal of an articling student must comply with the terms of the Articling Agreement. (ENACTED 05/07)

Designation of articling student

5-8 During the term of articles, an articling student must be publicly designated as an "articling student-at-law", and this designation may be used on business cards and under the articling student's signature. (AM. 05/07)

Mandatory student participation

5-9(1) An articling student must attend all lectures, seminars, activities and examinations of the bar admission program, and this includes on-line participation in CPLED program activities, assignments, competency evaluations and examinations, unless excused from doing so by the chief executive officer. (ENACTED 04/04) (AM. 05/07)

Principal to allow participation

5-9(2) A principal must permit an articling student to attend or participate in the activities set out in subsection (1). (AM. 04/04; 05/07)

Grades

5-10(1) An articling student must receive a grade of competency demonstrated, competency not yet demonstrated, deferred or incomplete on competency evaluations, assignments and examinations. (AM. 04/04; 05/07)

Successful completion of CPLED program

5-10(2) Subject to rule 5-5(3) and subsection (4), an articling student will have successfully completed the CPLED program if he or she receives a grade of competency demonstrated on all competency evaluations and examinations. (AM. 04/04; 05/07)

Supplemental competency evaluations and examinations

5-10(3) An articling student who fails to receive a grade of competency demonstrated on a competency evaluation or examination is entitled to complete a supplemental competency evaluation or examination. (AM. 04/04; 05/07)

Passing grade for supplemental competency evaluations and examinations

5-10(4) In order to pass a supplemental competency evaluation or examination, an articling student must receive a grade of competency demonstrated. (AM. 04/04; 05/07)

Result final

5-10(5) Subject to rule 5-11(1), the result of a supplemental competency evaluation or examination is final. (ENACTED 04/04) (AM. 05/07)

Appeal of grades

5-11(1) An articling student who receives a grade of competency not yet demonstrated on a supplemental competency evaluation or supplemental examination may appeal the grade to the committee within 14 days of being issued the grade and being advised of the right to appeal. (AM. 04/04; 05/07; 10/07)

Hearings

5-11(2) The committee may hold a hearing to consider an appeal under subsection (1) or to consider a matter referred to it by the chief executive officer. The decision of the committee is final. (AM. 04/04; 05/07)

Criteria for successful completion

5-12 An articling student is eligible for call to the bar if he or she:

- (a) has completed the term of articles under rule 5-5(1);
- (b) has obtained a satisfactory certification from his or her principal;
- (c) has successfully completed the CPLED program or received an exemption under rule 5-5(3);
- (d) continues to be of good moral character and a fit and proper person to be called to the bar; and
- (e) has paid the required fees.

(AM. 04/04; 05/07; 10/07)

Repetition of CPLED program

5-13 An articling student who does not successfully complete the CPLED program may apply to the chief executive officer for permission to repeat the program, but is only eligible to repeat the program twice. (AM. 04/04; 05/07; 10/07)

Conditional practising certificate

5-14 The chief executive officer and the committee hearing an appeal under rule 5-28 may refuse to issue a practising certificate to an applicant for call to the bar or may impose conditions or restrictions on the practising certificate of the applicant. (AM. 04/04; 05/07; 10/07)

Admission of Law Students

Registration of law students

5-15(1) A person may be registered in the society's student register as a law student if the person:

- (a) provides proof of enrolment in a law degree program;
- (b) is approved by the chief executive officer to practise law under the control, supervision and authority of a practising lawyer;
- (c) files the required application;
- (d) furnishes all documentation required by the chief executive officer; and
- (e) pays any required fee.

(AM. 05/07; 10/07; 10/08)

Term of registration

5-15(2) Subject to rule 5-16(1), any registration granted under subsection (1) must be for a period of not more than one year. A law student may apply to renew his or her registration prior to its expiry. (AM. 05/07)

Withdrawal of approval to practice

5-16(1) The chief executive officer may withdraw the registration granted under rule 5-15(1) at any time. (ENACTED 05/07) (AM. 10/07)

Practice by law students

5-16(2) A law student may practise law pursuant to section 21 of the Act under the supervision of a practising lawyer. (AM. 05/07)

Admission on Exceptional Merit (AM. 10/10)

Admission on exceptional merit

5-17(1) The chief executive officer may approve an applicant to be called to the bar in Manitoba if he or she demonstrates qualifications of exceptional merit and distinction and provides proof that he or she:

- (a) has a bachelor of laws degree, juris doctor degree or graduate law degree from a faculty of common law at a Canadian university (a "Canadian common law degree"), or
- (b) is the recipient of a certificate of equivalency from the National Committee on Accreditation, or
- (c) is a member in good standing of the legal profession in a jurisdiction outside of Canada, in which the applicant is entitled to practice law,

and

- (d) files a certificate of standing or its equivalent, issued by each governing body of the legal profession in another province or territory of Canada or outside of Canada of which the applicant is a member and dated not more than 30 days before the date of the application,
- (e) provides proof that he or she is of good character and a fit and proper person to be admitted,
- (f) certifies in a prescribed form that he or she has reviewed and understands all materials that the chief executive officer requires the applicant to read,
- (g) furnishes all documentation required by the chief executive officer, and
- (h) pays any required fees.

(AM. 05/07; 10/07; 04/09)

Conditions

5-17(2) The chief executive officer may approve an applicant under subsection (1) to be called to the bar in Manitoba with or without conditions. (ENACTED 04/09)

Example

5-17(3) An individual commencing his or her third consecutive year as a fulltime member of the Faculty of Law at the University of Manitoba may apply to be called to the bar under this rule. (ENACTED 04/09)

Admission of law school faculty

5-18 Repealed 04/09

Presentation to court

5-19 Repealed 10/10

Former superior court judge

5-20 Repealed 10/10

Former provincial judge

5-21 Repealed 10/10

Part-time judge

5-22 Repealed 10/10

Former part-time judge

5-23 Repealed 10/10

Application to chief executive officer

5-23.1 Repealed 10/10

Transfer from Another Canadian Jurisdiction

Transfer application

5-24(1) In this rule,

“**certificate of standing**” means a certificate issued by the governing body of the legal profession in another province or territory of Canada and dated not more than 30 days before the date of the lawyer’s application for call. (AM. 12/09)

“**pre-call training period**” for a call to the bar in a jurisdiction, means the total time normally required for an articling student to complete the bar admission program and articles for that purpose. (AM. 05/07)

Requirements for call

5-24(2) A lawyer who is a member of the governing body of the legal profession in another province or territory of Canada (referred to in this rule as the “applicant’s home jurisdiction”) may be called to the bar upon:

- (a) filing a formal application for call;
- (b) filing a certificate of standing from each governing body of the legal profession in another province or territory of Canada of which the applicant is a member;
- (c) providing proof of the applicant’s good moral character and repute and fitness to become a member;
- (d) presenting such further evidence as may be required;
- (e) passing such assessments or examinations on substantive law, practice and procedure in Manitoba as may be prescribed by the chief executive officer, unless the applicant is exempt under rule 5-27.1;
- (f) paying the required fee; and
- (g) fulfilling all other requirements that the chief executive officer may consider appropriate.

(AM. 05/07; 10/07; 10/08; 12/09; 10/10)

In-House counsel

5-25(1) An applicant who does not qualify for transfer under rule 5-27.1 and who fulfills the requirements set out in clauses (a) through (d) and (g) of rule 5-24(2) may apply to be called to the bar in Manitoba as in-house counsel and the chief executive officer may exempt an applicant from the requirement to write and pass the assessment or examination referred to in clause (e) of rule 5-24(2) provided the applicant certifies in a prescribed form that he or she has reviewed and understands all of the materials reasonably required to be read by the applicant. (AM. 05/07; 10/07; 10/08; 10/10)

Restrictions on practice of in-house counsel

5-25(2) An applicant who is called to the bar as in-house counsel:

- (a) is entitled to practise law in Manitoba only on behalf of his or her employer or one of its subdivisions or affiliates;
- (b) must carry professional liability insurance which extends to his or her practice of law in Manitoba and is reasonably comparable in coverage and amount to that maintained by the society;
- (c) must provide the society with a certificate of insurance evidencing the insurance coverage referred to in clause (b);
- (d) must pay the required call fee and the fee necessary to receive an annual practising certificate; and
- (e) may be relieved of the restriction imposed in clause (a) by writing and passing the assessment or examination required under clause (e) of rule 5-24(2).

(AM. 05/07; 10/07; 10/08; 10/10)

Where no common law degree

5-26 Notwithstanding any other provision in this division, an applicant who does not have a bachelor of laws degree or juris doctor degree from a faculty of common law at a Canadian university (a “Canadian common law degree”) or an equivalent qualification must fulfill such additional requirements as the chief executive officer may prescribe, including passing assessments or examinations in common law principles and in the substantive law, practice and procedure in Manitoba. (AM. 05/07; 10/07; 10/08; 10/10)

Further articling

5-27 Where the total of the pre-call training period for an applicant’s home jurisdiction and the length of his or her post-call practice experience in that jurisdiction is less than 52 weeks, the applicant, before being called to the bar in Manitoba, must article to an approved member in Manitoba for a period of time equal to the difference, unless that time is abridged by the chief executive officer. (AM. 05/07)

Transfer under National Mobility Agreement and Territorial Mobility Agreement

5-27.1(1) This rule applies to an applicant for transfer from another Canadian jurisdiction who is:

- (a) a member of a reciprocating governing body as defined in rule 3-61 or a member of a governing body that is a signatory to the Territorial Mobility Agreement; and
- (b) entitled to practise law in that jurisdiction and holds a valid practising certificate or its equivalent issued by the applicant’s governing body.

(ENACTED 10/10)

Transfer examinations not required

5-27.1(2) An applicant under this rule must fulfill all the requirements in rule 5-24 for call and admission on transfer from another Canadian jurisdiction, except that he or she need not pass any transfer examinations. (ENACTED 10/10)

Certification regarding reading materials

5-27.1(3) To qualify for call and admission, an applicant under this rule must certify in a prescribed form that he or she has reviewed and understands all the materials reasonably required by the chief executive officer. (ENACTED 10/10)

Applicant has no greater rights

5-27.1(4) A lawyer called and admitted under this rule has no greater rights as a member of the society than:

- (a) a lawyer has as a member of the governing body of his or her home jurisdiction; or
- (b) any other member of the society in similar circumstances.

(ENACTED 10/10)

Transfer as Canadian legal advisor

5-27.2(1) Subject to subsection (2), a member of the Barreau du Quebec or the Chambre des notaires du Quebec may be called and admitted on transfer as a Canadian legal advisor upon:

- (a) filing a formal application for call and admission as a Canadian legal advisor;
- (b) filing a certificate of standing from all Canadian and foreign governing bodies of the legal profession of which the applicant is or has been a member;
- (c) providing proof of the applicant's good moral character and repute and fitness to become a member;
- (d) paying the required fees;
- (e) fulfilling all other requirements that the chief executive officer may consider appropriate.

(ENACTED 10/10) (AM. 10/11)

Canadian legal advisor must have civil law degree

5-27.2(2) This rule does not apply to a member of the Barreau du Quebec or the Chambre des notaires du Quebec unless he or she has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Barreau du Quebec or the Chambre des notaires du Quebec. (ENACTED 10/10) (AM. 10/11)

Scope of practice – Members of Barreau du Quebec

5-27.2(3) A Canadian legal advisor who is a member of the Barreau du Quebec

- (a) may give legal advice on
 - (i) the law of Quebec and matters involving the law of Quebec,
 - (ii) matters under federal jurisdiction, or
 - (iii) matters involving public international law,
- (b) may draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or
- (c) may appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction,
- (d) must not engage in the practice of law except as permitted under this subsection, and
- (e) must undertake to comply with this rule.

(ENACTED 10/10) (AM. 10/11)

Scope of practice – Members of Chambre des notaires du Quebec

5-27.2(4) A Canadian legal advisor who is a member of the Chambre des notaires du Quebec

- (a) may give legal advice on
 - (i) the law of Quebec and matters involving the law of Quebec,
 - (ii) matters under federal jurisdiction, or

- (iii) matters involving public international law,
 - (b) may draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, where expressly permitted by federal statute or regulation,
 - (c) may appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction where expressly permitted by federal statute or regulation,
 - (d) must not engage in the practice of law except as permitted under this subsection, and
 - (e) must undertake to comply with this rule.
- (ENACTED 10/11)

Requirements

5-27.2(5) A Canadian legal advisor must

- (a) be a member in good standing of the Barreau du Quebec or the Chambre des notaires du Quebec authorized to practise law in Quebec, and
- (b) immediately notify the chief executive officer in writing if he or she ceases to be authorized to practise law in Quebec.

(ENACTED 10/10) (AM. 10/11)

Compliance with Act and rules

5-27.2(6) A member in good standing who is admitted as a Canadian legal advisor has all the duties and responsibilities of a practising lawyer under the Act, these rules and the code. (ENACTED 10/10) (AM. 10/11)

Marketing legal services

5-27.2(7) A Canadian legal advisor, when engaging in advertising or any other form of marketing activity in Manitoba must have his or her name followed by the title "*Canadian Legal Advisor*" and a reference that he or she is legally authorized to practise law in the province of Quebec. (ENACTED 10/10) (AM. 10/11)

Appeals (ENACTED 10/10)

Appeal of admissions decisions

5-28(1) Subject to subsection (8), a decision of the chief executive officer made pursuant to the rules in this division may be appealed to the committee within 14 days of receipt of written confirmation of the decision and the right to appeal. (ENACTED 10/07) (AM. 04/10)

Chairperson to appoint panel

5-28(2) The chairperson of the committee must select a panel of three members of the committee to consider any appeal made under subsection (1). (ENACTED 10/07) (AM. 05/08)

Hearings

5-28(3) A panel must convene an oral hearing to consider an appeal at the direction of the chairperson or at the request of an appellant. (ENACTED 05/08)

Hearing to be public

5-28(4) An oral hearing convened under sub-section (3) must be open to the public unless the panel makes an order under sub-section (5). (ENACTED 06/09)

Exclusion of members of public

5-28(5) A panel considering an appeal under sub-section (3) may make an order excluding

members of the public from a hearing if it thinks that:

- (a) exclusion is necessary to prevent the disclosure of information that is subject to solicitor-client privilege; or
- (b) the public interest in the disclosure of other information is outweighed by the interest of the public or any person in preventing the information from being disclosed.

(ENACTED 06/09)

How and when order can be made

5-28(6) A panel may make an order under subsection (5) on its own motion, or on the application of any person having an interest in the information to be disclosed. The order or application may be made before the hearing begins or at any time during the hearing. (ENACTED 06/09)

Decision of panel final

5-28(7) A decision of the panel is final, except a decision to refuse to issue a practising certificate or a practising certificate free of conditions, which decision may be appealed to the Court of Appeal pursuant to section 76 of the Act. (ENACTED 05/08; AM. 06/09)

Exception

5-28(8) Where the chief executive officer does not grant a person's abridgement request under rule 5-28.1(3), the person may appeal in writing to the chair of the committee within 14 days of his or her receipt of written confirmation of the decision and the right to appeal. The decision of the chair is final. (ENACTED 04/10)

Application of rule

5-28.1(1) This rule applies to a person whose application:

- (a) for admission to the CPLED program and as an articling student,
- (b) for call to the bar, or
- (c) to resume active practice,

has been refused because the person has not satisfied the chief executive officer or an appeal panel of the Admissions and Education Committee that he or she is of good moral character and a fit and proper person to be admitted, called to the bar or to resume practice. (ENACTED 04/10)

Waiting period

5-28.1(2) Subject to subsection (3), a person referred to in subsection (1) may not apply for admission, call or resumption for a period of two years after the later of:

- (a) the date the chief executive officer refused his or her application, or
- (b) the date a panel of the Admissions and Education Committee dismissed his or her appeal of the chief executive officer's decision to refuse the application.

(ENACTED 04/10)

Abridgement

5-28.1(3) A person referred to in subsection (1) may submit a written request to the chief executive officer for permission to abridge the two year waiting period set out in subsection (2) and the chief executive officer may grant an abridgement request only if he or she is satisfied that there has been a material change in the person's circumstances. (ENACTED 04/10)

Resumption of Active Practice

Resuming active practice

5-28.2 A member who is non-practising, inactive or who has completed a period of suspension, must apply to resume active practice in Manitoba and the chief executive officer may issue a practicing certificate to a member, with or without conditions or restrictions, provided the member:

- (a) provides proof that he or she is of good moral character and a fit and proper person to practise;
- (b) passes such assessments or examinations and fulfills such requirements as may be prescribed by the chief executive officer;
- (c) pays to the society an amount equal to the annual non-practising fees for each of the years during which the member has not practised, to a maximum of five years;
- (d) pays the annual practising fee and required contributions; and
- (e) pays to the society all money owing by the member to the society.

(AM. 05/07; 10/07; 10/08; 05/10)

Former superior court judge

5-28.3 Subject to rule 5-28.7, a former judge of a superior court in Manitoba who is granted the privilege of resuming the active practice of law must not appear as counsel in the court of which he or she was a member or in any court inferior to that court, for a period of three years after he or she ceases to be a judge of that court. (ENACTED 10/10)

Former provincial judge

5-28.4 Subject to rule 5-28.7, a former judge of the Provincial Court in Manitoba who is granted the privilege of resuming the active practice of law must not appear as counsel in that court for a period of three years after he or she ceases to be a judge of that court. (ENACTED 10/10)

Part-time judge

5-28.5 A member who is a part-time judge of the Provincial Court in Manitoba must not appear as counsel in the Provincial Court. (ENACTED 10/10)

Former part-time judge

5-28.6 Subject to rule 5-28.7, a former part-time judge of the Provincial Court in Manitoba must not appear as counsel in the Provincial Court for a period of one year after he or she ceases to be a part-time judge of that court. (ENACTED 10/10)

Application to chief executive officer

5-28.7 A former judge may apply to the chief executive officer to reduce the time period during which the judge is prohibited from appearing as counsel in court. The chief executive officer may approve an application only in exceptional circumstances and may restrict the approval as he or she sees fit. (ENACTED 10/10)

Division 2 - Professional Liability Claims Fund

Definitions

5-29 In this part

“**member**” means a lawyer who holds a valid practising certificate issued by the society, but does not include a member who is not required to contribute to the professional liability claims fund under subsection 19(3) of the Act or rule 5-30(3); (AM. 10/07)

“annual contribution” means the amount a member must contribute each year to the professional liability claims fund.

Annual contribution

5-30(1) Each member must pay an annual contribution for the purpose of maintaining the professional liability claims fund.

Exemption

5-30(2) A practising lawyer who is not required to contribute to the professional liability claims fund under subsection 19(3) of the Act or under subsections (3) or (4) must complete and file an application for exemption from paying the contribution required under subsection (1). (AM. 05/07; 10/10)

Lawyers called to the bar in more than one jurisdiction

5-30(3) A lawyer may apply to the chief executive office for exemption from the requirement to contribute to the professional liability claims fund if he or she is a practising lawyer and resident in another Canadian jurisdiction and:

- (a) the governing body in that jurisdiction allows a similar exemption for members of the society; and
- (b) the lawyer maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to that required of Manitoba lawyers and that coverage extends to his or her practice in Manitoba.

(ENACTED 05/07; AM. 10/07)

Exemption for Canadian legal advisor

5-30(4) A Canadian legal advisor may apply to the chief executive officer for exemption from the requirement to contribute to the professional liability claims fund if he or she is a member in good standing of the Barreau du Quebec or the Chambre des notaires du Quebec authorized to practise law in Quebec and maintains the full mandatory professional liability insurance coverage required by the Barreau du Quebec or the Chambre des notaires du Quebec that extends to the Canadian legal advisor’s practice in Manitoba. (ENACTED 10/10) (AM. 10/11)

Surcharge

5-31 The annual contribution may include a surcharge to certain members or classes of members based on their paid claims record, the nature of a paid claim, or both.

Unpaid deductible

5-32 A member’s annual contribution must include the amount of any deductible owed by the member where:

- (a) the deductible or any part of it is unpaid as of May 1st, and
- (b) the member:
 - (i) has not made satisfactory arrangements with the chief executive officer for payment of the outstanding amount, or
 - (ii) has breached an agreement made with the chief executive officer respecting payment of the deductible.

Lawyers who do not contribute to the fund

5-33 The professional liability claims fund shall not respond to any claim made against a practising lawyer who is not required to contribute to the fund under subsection 19(3) of the Act or rule 5-30(3). A practising lawyer who ceases to qualify for the exemption under subsection 19(3) of the Act or

rule 5-30(3) must immediately notify the chief executive officer of his or her change in circumstances and pay the applicable portion of the annual contribution. (AM. 10/07)

Duty to notify insurer

5-34 A member, as soon as practicable after becoming aware of any acts or omissions that may give rise to a professional liability claim, must give notice of the potential claim to the chief executive officer.

Duty to co-operate

5-35 A member must co-operate with the society and any insurer as may be required under the provisions of the contract of group insurance.

Failure to comply with rules

5-36 Failure to comply with any of the rules in this division without reasonable excuse may constitute professional misconduct.

Division 3 - Reimbursement Fund

Definitions

5-37(1) In this division:

“**claim**” means a written claim initiated by statutory declaration or such application as may be required by the society from time to time;

“**committee**” means the reimbursement fund claims committee appointed by the benchers;

“**fund**” means the reimbursement fund established under subsection 46(1) of the Act. (ENACTED 01/05)

Annual contribution

5-37(2) Subject to rule 5-37.1, each practising lawyer must pay an annual contribution for the purpose of maintaining the reimbursement fund. (AM. 01/05; 10/10)

Exemption for Canadian legal advisor

5-37.1 A Canadian legal advisor may apply to the chief executive officer for exemption from the requirement to contribute to the reimbursement fund if he or she is a member in good standing of the Barreau du Quebec or the Chambre des notaires du Quebec authorized to practise law in Quebec and maintains defalcation coverage with the Barreau du Quebec or the Chambre des notaires du Quebec that is comparable to the coverage and limits set out in the Mobility Defalcation Compensation Agreement of the Federation of Law Societies of Canada and that coverage extends to his or her practice as a Canadian legal advisor in Manitoba. (ENACTED 10/10) (AM. 10/11)

Authority of CEO

5-38(1) The chief executive officer must investigate all claims made against the fund and may pay a claim, in whole or in part, or may pay some claims and refuse to pay others in accordance with the claims payment guidelines adopted for use by the Benchers. Where the chief executive officer determines to pay a claim in part or refuses to pay a claim the claimant may appeal that decision to the committee. (AM. 01/05)

Authority of committee

5-38(2) The committee must consider any appeal made under subsection (1) and either confirm or vary the decision of the chief executive officer. The committee may also pay claims, in whole or in part, or pay some claims and refuse to pay others in accordance with the claims payment guidelines adopted for use by the benchers. (ENACTED 01/05)

Report to benchers

5-39 The chief executive officer must report the disposition of any claim for reimbursement to the benchers. (AM. 01/05)

Authority of benchers

5-40 Where the chief executive officer or the committee is of the view that circumstances warrant payment of a claim in excess of the amount that would be payable under the claims payment guidelines they must report their recommendations to the benchers. The benchers must determine the disposition of the claim and may pay the claim in whole or in part, refuse to pay the claim or dispose of the claim in any manner they consider proper. (AM. 01/05)

Division 4 - Financial Accountability

(AM. 12/03; 06/08)

Definitions

5-41 In this division,

"accountant" means

- (a) a person who is a member in good standing of the Institute of Chartered Accountants of Manitoba, the Certified General Accountants Association of Manitoba or the Society of Management Accountants of Manitoba and who is in public practice, or
- (b) another person approved by the chief executive officer;

"books of original entry" means a book or books recording in chronological order the full details of all payments from trust, all transfers between individual client trust ledgers, and all trust receipts. These books must identify the form in which the trust money is received. (AM. 06/05)

"cash" means current coins within the meaning of The Currency Act, notes intended for circulation in Canada issued by the Bank of Canada pursuant to The Bank of Canada Act and current coins or bank notes of countries other than Canada. (ENACTED 06/05)

"client trust ledger" means a separate record maintained for each client and matter, recording in chronological order, the full details of all trust transactions for that client, and the balance in the client's account;

"funds" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or interest in them. (ENACTED 06/05)

"investigator" means a person designated to investigate, inspect or audit the accounts, books and records of a member;

"member" includes a firm as defined in Part I but does not include a student;

"money" includes cash, cheques, drafts, credit card sales slips, post office orders and express and bank money orders. (ENACTED 06/05)

"monthly trust reconciliation" means a comparison prepared each month by the member showing the reasons for any differences between the books of original entry, the client trust ledgers and the bank's records;

"pooled trust account" means an interest-bearing chequing account opened at a savings institution by a member for the benefit of a number of clients;

"public body" means:

- (a) a department or agent of Her Majesty in Right of Canada or of a Province;

- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them; or
- (c) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the Excise Tax Act or an agent of the organization.
(ENACTED 06/05)

“savings institution” means a chartered bank or a trust company that is authorized by law to receive money on deposit and is insured by the Canada Deposit Insurance Corporation, or a credit union or caisse populaire incorporated under The Credit Unions and Caisses Populaires Act;

“specific trust investment account” means a separate interest-bearing account opened by a member in trust for a specific client at a savings institution, and is limited to a daily interest savings account, a term deposit or a guaranteed investment certificate;

“trust bank account” means a pooled trust account or a specific trust investment account as defined herein;

“trust money” means

- (a) all money received by a member in connection with his or her legal practice that
 - (i) belongs in whole or in part to a client of the member, or
 - (ii) is received on a client’s behalf or to the direction or order of a client; or
- (b) money received by a member on account of fees for services not yet rendered or on account of disbursements not yet made, or for which a statement of account has not been rendered;

“trust year end” means the year end date selected by a member with respect to any trust bank accounts maintained for his or her practice, which date must be either December 31st or June 30th;

“valuable property” means anything of value, other than trust money, that can be negotiated or transferred by a member.

Trust records

5-42(1) A member must maintain up-to-date trust records and supporting documentation for all pooled trust accounts and specific trust investment accounts. The trust records must include:

- (a) a book or books of original entry; and
- (b) a client trust ledger for each client and each legal matter.

Monthly trust reconciliations

5-42(2) In order to ensure the accuracy of trust records, the member must produce a monthly trust reconciliation, including all pooled and specific trust investment accounts, no later than the end of the following month, and include the reasons for any differences between the following:

- (a) the amount of money held in the trust bank account according to the member's records;
- (b) the total of the individual client trust ledgers; and
- (c) the amount of money held in the trust bank account according to the bank's records.

Balances in clients' trust ledgers

5-42(3) The reconciliation in subsection (2) must be printed each month, and must be supported by a client list showing the balance of trust money held in each client's trust ledger.

Record of valuable property

5-42(4) A member must maintain a record of all valuable property held in trust.

Electronic trust records

5-42(5) A member who maintains electronic trust records must:

- (a) produce a printed copy of the books of original entry immediately after each month end;
- (b) ensure that the system is capable of producing a printed copy of any individual client trust ledger, showing a full history of all trust transactions for that client;
- (c) maintain a backup copy of the electronic records, which must be updated at least monthly, and stored in a secure manner in an off-site location; and
- (d) print a client's closed trust ledger before it is purged from the electronic file and store it in a central file maintained for purged ledgers.

Hand posted trust records

5-42(6) Where a member maintains trust records that are entered and posted by hand, they shall be entered and posted in ink. (ENACTED 06/05)

Trust records must be current

5-42(7) A member's trust records must be entered and posted so as to be current at all times. (ENACTED 06/05)

Handling of trust money

5-43(1) A member must

- (a) deposit or cause to be deposited all trust money into a pooled trust account as soon as practicable after receipt of the money;
- (b) subject to paragraph (e) of rule 5-53.3(2) make all withdrawals from a pooled trust account by consecutively numbered cheques drawn to the order of the person to whom the money is to be paid, unless otherwise authorized by the chief executive officer;
- (c) not withdraw money from a trust bank account to pay for the recovery of the member's fees or disbursements unless a statement of account is prepared and sent or delivered to the client at the time the money is withdrawn;
- (d) ensure that all cheques drawn on a trust bank account are signed only by the member or another practising lawyer in the member's firm or by those persons in conjunction with other employees of the firm, unless otherwise authorized by the chief executive officer;
- (e) not overdraw a trust bank account;
- (f) not overdraw any individual client's trust ledger account;
- (g) not pay any of the member's personal or general office accounts from a trust bank account;
- (h) at all times maintain sufficient balances on deposit in a trust bank account to meet all of the member's obligations with respect to trust money;
- (i) not make transfers of trust money from one client's account to another client's account unless the member has obtained either:
 - (i) the written authorization of the client from whose account the money is transferred; or
 - (ii) the verbal authorization of the client from whose account the money is

transferred, which authorization is subsequently confirmed in writing to the client by the member.

- (j) not retain any money other than trust money in a trust bank account.
- (k) ensure that trust money is paid out expeditiously once a legal matter is concluded, but if there are exceptional circumstances a member may apply to the chief executive officer for permission to retain the funds in trust for a longer period of time.

(AM. 06/05; 06/10)

Members who share space

5-43(2) Where a member who receives trust money participates in an arrangement with other members to share space and certain common expenses but otherwise practises as an independent practitioner:

- (a) the member must open his or her own trust account, in his or her own name; and
- (b) the member must not deposit trust money into a trust account opened by any other member.

Specific trust investment account

5-44(1) A member may, after first depositing trust money into a pooled trust account, subsequently withdraw the trust money or a portion of it and deposit it into a specific trust investment account, provided:

- (a) the specific trust investment account is opened in the name of the member in trust for the person to whom the money belongs; and
- (b) full details of the specific trust investments are recorded in the member's trust records.

Removing funds from specific trust investments

5-44(2) When withdrawing funds from a specific trust investment account, a member must deposit all resulting trust money directly back into a pooled trust account.

New pooled trust account

5-45 A member who opens a new pooled trust account must, within 30 days of opening the account, notify the chief executive officer in writing of the existence of the account, the account number, the name and branch of the savings institution and the date of the member's trust year end.

Change of trust year end date

5-46 A member must notify the chief executive officer in writing within 30 days of a change in the trust year end date referred to in rule 5-45.

Annual trust account report

5-47(1) A member must file an annual report with the chief executive officer as to his or her compliance with the rules in this division.

Type of report

5-47(2) Subject to subsection (3), the annual report filed by a member must include either:

- (a) a report of an accountant, in the form prescribed by the chief executive officer, within four months following the member's trust year end date; or
- (b) a self-report, in the form prescribed by the chief executive officer, within 8 weeks following the member's trust year end date.

CEO may require accountant's report

5-47(3) The chief executive officer may require a member to file the annual report referred to in clause (a) of subsection (2).

Report on termination of practice

5-47(4) Where a member withdraws from the practice of law as a sole practitioner or a firm with which the member practises winds up its practice, the member or firm must file a final report no later than four months after all trust accounts have been closed, in the form set out in clause (a) of subsection (2).

Closure of trust accounts

5-47(5) A member must close all trust accounts within three months after withdrawal from or winding up of a practice, in accordance with rule 2-74(2).

Extension of time to file report, close trust accounts

5-47(6) The chief executive officer may extend the time for the member to file the reports required in subsections (2) and (4) or to close his or her trust accounts as required by subsection (5) and may approve another form of final report.

Failure to file report

5-47(7) Where a member fails to file the report required under this rule within the time prescribed or within such other time requirement approved by the chief executive officer, the chief executive officer may require an investigator to inspect the accounts and records of the member or firm to determine whether there has been compliance with the rules in this division.

Inspection report

5-47(8) The investigator must issue a report to the chief executive officer advising whether or not the member has complied with the rules in this division.

Costs of inspection

5-47(9) Where the chief executive officer authorizes an inspection under subsection (7), the member must pay to the society the costs of the inspection of his or her accounts and records.

Suspension for failure to file

5-47(10) A member who fails to file the report required under this rule within the time prescribed or within such other time requirement approved by the chief executive officer is automatically suspended from practising law. A member must complete and file the report and pay a reinstatement fee in order to be reinstated to practice. (ENACTED 06/11)

Exception to requirement to file annual trust account report

5-47(11) Subsection (1) does not apply to a member if during the practicing year he or she maintained:

- (a) inactive or non-practising status; or
- (b) practising status and:
 - (i) used a trust bank account or handled trust money as a member of a firm required to file an annual trust account report;
 - (ii) did not maintain a trust bank account or handle trust money at any time; or

- (iii) was employed exclusively by a government body, except the Legal Aid Services Society of Manitoba, and did not practice law outside the scope of that employment.

(AM. 06/11; AM. 12/11)

Exception for practising lawyers

5-47(12) Repealed 12/11

Investigation of accounts and records

5-48(1) The benchers, the complaints investigation committee, or the chief executive officer may, at any time, require an investigator to investigate the accounts and records of a member for the purpose of ascertaining whether there has been compliance with the Act, rules, and the provisions of the code. (AM. 05/08)

Investigation report

5-48(2) Where the investigator determines that there has been non-compliance with the Act, rules or the provisions of the code, he or she must report the particulars of any breach to the chief executive officer. (AM. 05/08)

Report may be treated as complaint

5-48(3) Where the chief executive officer receives a report pursuant to subsection (2) or a report of non-compliance pursuant to rule 5-47(8), he or she may treat the report as if it were a complaint received under rule 5-60.

General records and accounts

5-48.1(1) A member must deposit into a general account only money received in connection with the member's practise of law that is not trust money. A member must maintain at least one general operating account and the following general books and records:

- (a) a general book of original entry recording in chronological order the full details of all general money received and disbursed. These books must identify the form in which the money is received;
- (b) an accounts receivable ledger or other suitable system that records for each client, the accounts rendered, payments made on account, and the balance owing to or from the client;
- (c) all supporting records including bank statements, pass books, cancelled cheques, cash receipts, deposit slips, bank advices and similar documents and invoices.

(ENACTED 12/03) (AM. 06/05)

Hand posted general records

5-48.1(2) Where a member maintains general records that are entered and posted by hand, they shall be entered and posted in ink. (ENACTED 06/05)

General records must be current

5-48.1(3) A member's general records must be entered and posted so as to be current at all times. (ENACTED 06/05)

Production of records

5-49(1) Subject to subsection (2), a member must co-operate with an investigator and must produce on demand and answer questions about all records, books, files and any other document, in any form, kept by or for the member that may be reasonably required by the investigator to conduct his or her

inspection or investigation. (AM. 12/03; 05/08)

Production of general records

5-49(2) An investigator may only demand production of a member's general records and accounts when they are required by the investigator for the purposes of tracing trust funds or determining if trust funds have been deposited into the member's general account. (ENACTED 12/03)

CDIC compliance

5-50 A member who maintains a pooled trust account or a specific trust investment account in a savings institution which is insured by the Canada Deposit Insurance Corporation ("CDIC") must comply with the reporting and disclosure obligations set forth in the Canada Deposit Insurance Corporation Act and the Schedule thereto.

Retention of records

5-51(1) A member must:

- (a) keep the books, records and accounts referred to in this division for at least ten years; and
- (b) on the completion and closing of a client's file, place on the file a copy of the individual client trust ledger.

(AM. 06/05)

Location of records

5-51(2) A member must keep the books, records and accounts referred to in this division pertaining to his or her most recent three-year period at the member's chief place of practice in Manitoba, unless otherwise authorized by the chief executive officer.

Unauthorized appropriation

5-52 A member must not appropriate any money or property of a client held in trust or otherwise under the member's control for or on account of the member's fees without the express or implied authority of the client.

Failure to comply with rules

5-53 Failure to comply with any of the rules in this division without reasonable excuse may constitute professional misconduct.

Restriction on receipt of cash

5-53.1(1) A member must not receive or accept from a person, in respect of any one client matter or transaction, cash in an aggregate amount of \$7,500.00 or more Canadian dollars. (ENACTED 06/05)

Recordkeeping for cash receipts

5-53.1(2) In addition to the recordkeeping requirements set out in rules 5-42(1) and 5-48.1(1), where the member receives cash for a client, the member's records must also include a book of duplicate receipts, with each receipt identifying or containing:

- (a) the date on which cash is received;
- (b) the person from whom cash is received;
- (c) the amount of cash received;
- (d) the client for whom cash is received;
- (e) any file number in respect of which the cash is received; and
- (f) the signature of the member or a person authorized by the member who receives the cash

and the signature of the person from whom the cash is received.
(ENACTED 06/05)

Foreign currency conversion for cash

5-53.2 For the purposes of rule 5-53.1(1), when a member receives or accepts cash from a person in a foreign currency, the member shall be deemed to have received or accepted the cash converted into Canadian dollars at:

- (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the member receives or accepts the cash; or
- (b) if the day on which the member receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the member receives or accepts the cash.

(ENACTED 06/05)

Application of cash restriction

5-53.3(1) Rule 5-53.1(1) applies to a member engaged in any of the following activities on behalf of a client or giving instructions on behalf of a client in respect of the following activities:

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

(ENACTED 06/05)

Exceptions to cash restriction

5-53.3(2) Despite subsection (1), rule 5-53.1(1) does not apply when the member receives cash:

- (a) from a financial institution or public body;
- (b) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity;
- (c) pursuant to a court order or an order of a tribunal;
- (d) to pay a fine or penalty;
- (e) in an amount of \$7,500 or more for fees, disbursements, expenses or bail, provided that any refund out of such receipts is also made in cash.

(ENACTED 06/05)

Acknowledgement of cash refund required

5-53.3(3) When a member pays a cash refund under paragraph (e) of subsection (2), the member must obtain a signed and dated acknowledgement of the payment from the person who receives the refund. (ENACTED 06/05)

Division 5 - Lawyers' Fees

Fees, disbursements and interest

5-54 A member must not charge or accept a fee or disbursement, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion. (AM. 06/09)

Real estate commission

5-55 A member must not:

- (a) pay a real estate commission before he or she is in a position to disburse the balance of the sale proceeds;
- (b) lend commission advances to real estate brokers or agents; or
- (c) enter into an arrangement with a real estate broker or agent that involves the broker or agent directing clients to the member in return for:
 - (i) a portion of the fee paid by the client to the member; or
 - (ii) a financial or other reward, direct or indirect.

Financial reward prohibited

5-55.1 A member must not receive a financial or other reward, directly or indirectly from an insurer, broker, agent or intermediary for recommending a title insurance product. (ENACTED 02/11)

Borrowing from client

5-56(1) Where a member borrows money either directly or indirectly from a client or a person or a corporation who at the time of the borrowing is or has been a client of the member or the member's firm, the member must:

- (a) observe the relevant provisions of the code; and
- (b) obtain from the client a certificate verifying that the client has received independent legal advice with respect to the transaction.

Exceptions

5-56(2) The provisions of subsection (1) do not apply to persons connected to the member by blood relationship, marriage or adoption, corporate clients whose shares are listed on a stock exchange, insurance corporations and other corporations whose business is in part that of lending money to members of the public.

Interest on unpaid fees

5-57(1) Repealed 06/09

Rate of interest

5-57(2) Repealed 06/09

Rate to be shown on bill

5-57(3) Repealed 06/09

Fee arbitration

5-58 The chief executive officer may make available to members and their clients a fee arbitration process to resolve certain disputes about the fees charged by members. Both parties must consent to submit the dispute to arbitration.

Division 6 - Complaints Investigation

General

5-59 Repealed 05/07

Complaint must be in writing

5-60 A complaint about the conduct or competence of a member must be in writing.

Consideration by the CEO

5-61 The chief executive officer:

- (a) must consider every complaint received under rule 5-60; and
- (b) may treat as a complaint information that comes to the attention of the society about the conduct or competence of a member.

Complaint not meriting investigation

5-62(1) The chief executive officer must not investigate a complaint when he or she determines that it does not merit investigation or is not within the jurisdiction of the society and must:

- (a) inform the complainant and member in writing of the decision not to investigate and the reason for that decision; and
- (b) provide the member with a copy of the complaint.

(AM. 09/10)

Instructions to complainant

5-62(2) When the chief executive officer determines that a complaint does not merit investigation he or she must provide the complainant with instructions on how to apply for a review of that decision under rule 5-63. (ENACTED 09/10)

Complaints review commissioner

5-63(1) As part of the society's process for investigating and responding to complaints about members, the benchers must appoint a person who is not a member of the society, a lawyer or a bencher to act as complaints review commissioner. (AM. 09/10)

Term of office

5-63(2) The complaints review commissioner must be appointed for a term not exceeding two years and is eligible for reappointment. The complaints review commissioner may be removed from office during his or her term by resolution passed by the benchers. (ENACTED 09/10)

Role of the complaints review commissioner

5-63(3) Subject to subsection (4), the complaints review commissioner may only review the following:

- (a) a determination by the chief executive officer under rule 5-62 not to investigate a complaint because it is of no merit; and
- (b) a decision by the chief executive officer under rule 5-66 not to refer a complaint to the complaints investigation committee for its consideration, except decisions under paragraphs (a)(iii), (e) and (f) of rule 5-66.

(ENACTED 09/10) (AM. 06/11)

No review

5-63(4) The complaints review commissioner must not review a complaint if he or she is of the opinion that it raises only issues relating to the negligence of a member or the amount of fees and disbursements charged by a member. (ENACTED 09/10)

Written request for review

5-63(5) Where the disposition of a complaint is subject to review under rule 5-63(3), the complainant must apply in writing to the complaints review commissioner within 60 days from the date the chief executive officer's decision was mailed to the complainant at his or her last known address. (AM. 09/10)

Notice to member

5-63(6) The chief executive officer must advise the member in writing when a complainant requests a review by the complaints review commissioner. (ENACTED 09/10)

Scope of review

5-63(7) The complaints review commissioner may review all files, records and documents obtained, collected or produced by the chief executive officer, including files and information that are subject to solicitor-client privilege and the complaints review commissioner must not disclose any privileged information, except as permitted under the Act. (AM. 09/10)

Decision

5-63(8) Following his or her review, the complaints review commissioner must:

- (a) confirm the decision of the chief executive officer; or
- (b) with respect to a review under rule 5-63(3)(a), direct the chief executive officer to investigate the complaint; or
- (c) with respect to a review under rule 5-63(3)(b), direct the chief executive officer to refer the complaint to the complaints investigation committee for its consideration.

(AM. 09/10)

Notification of decision

5-63(9) The complaints review commissioner must notify the complainant, the member and the chief executive officer in writing of his or her decision and the reasons for that decision. (AM. 09/10)

Decision not subject to further review

5-63(10) Subject to subsection (11), a decision of the complaints review commissioner under subsection (8) is final and not subject to further review. (AM. 09/10)

Clarification

5-63(11) When the complaints review commissioner directs the chief executive officer to investigate a complaint that was determined to be of no merit under rule 5-62 and after investigating the complaint the chief executive officer determines not to refer the complaint to the complaints investigation committee for its consideration, the complainant may apply for a review of that decision under rule 5-63(3)(b). (ENACTED 09/10)

Investigation of complaints

5-64(1) Subject to rule 5-62, the chief executive officer must investigate a complaint to determine its validity.

Member to receive copy of complaint

5-64(2) The chief executive officer must send a letter to the member complained of enclosing a copy of the complaint or the relevant information.

Written Response

5-64(3) Subject to rule 5-65(2), a member who has been sent a letter under subsection (2), must respond in writing to the substance of the complaint and to further inquiries from the chief executive officer.

Response within 14 days

5-64(4) The member's response must be signed by the member personally or by his or her counsel and delivered to the chief executive officer within 14 days after the letter is received by the

member or by such other date as may be set by the chief executive officer.

Failure to respond

5-64(5) A member's failure to respond in writing to the substance of a complaint or to further inquiries by the chief executive officer by the date set by the chief executive officer, without reasonable excuse, may constitute professional misconduct.

Copy of response must be sent to complainant

5-64(6) After receiving a response from a member, the chief executive officer must send a letter to the complainant enclosing either a copy of the member's response or a summary of it.

CEO investigation

5-64(7) The chief executive officer may appoint a member of the complaints investigation committee, counsel, or such other expert or person, as the chief executive officer considers appropriate, to assist in the investigation of a complaint.

Informal resolution of complaints

5-65(1) The chief executive officer may attempt to resolve a complaint informally at any time during his or her investigation of a complaint.

Written response not required

5-65(2) The chief executive officer may dispense with the requirement for a member to file a written response under rule 5-64(3), if he or she decides that the complaint may be satisfactorily resolved through informal means.

Where informal resolution unsuccessful

5-65(3) Where informal means do not satisfactorily resolve a complaint, the chief executive officer must investigate or continue the investigation of the complaint under rule 5-64.

Action after investigation

5-66 After investigating a complaint, the chief executive officer may:

- (a) take no further action if he or she is satisfied that;
 - (i) the complaint is without substance or its substance cannot be proved;
 - (ii) the member has provided a satisfactory explanation; or
 - (iii) the complaint has been satisfactorily resolved through informal means;
- (b) send a letter to the member reminding the member of his or her obligations under the Act, rules or code;
- (c) send a letter to the member recommending that a certain course of action be taken;
- (d) refer the complaint to the complaints investigation committee for its consideration;
- (e) direct that a charge be laid against the member when the member has:
 - (i) failed to respond to communication from the society or provide a full and substantive response to questions raised in the communication; or
 - (ii) breached any condition or restriction imposed on the member by the society or any undertaking given to the society;
- (f) require the member to appear personally before the complaints investigation committee

to further the investigation of a complaint when the member has:

- (i) failed to respond to communication from the society or provide a full and substantive response to questions raised in the communication; or
- (ii) breached any condition or restriction imposed on the member by the society or any undertaking given to the society.

(AM. 06/11)

Notice

5-67 The chief executive officer must notify the member and complainant in writing of the disposition of a complaint under rule 5-66 and, where applicable, must provide the complainant with instructions on how to apply for a review of the chief executive officer's decision under rule 5-63.
(AM. 09/10)

Failure to follow CEO's recommendation

5-68 Where a member fails to satisfactorily follow a course of action recommended under rule 5-66(c), the chief executive officer may refer the complaint to the complaints investigation committee.

Division 7 - Complaints Investigation Committee

Definitions

5-69 In this division,

“**chairperson**” means the chairperson of the complaints investigation committee or his or her designate;

“**committee**” means the complaints investigation committee.

Committee objectives

5-70(1) The objectives of the committee are to:

- (a) consider complaints referred to it about the conduct or competence of members;
- (b) recommend the development of programs that will assist members to practise law competently; and
- (c) identify members who do not meet accepted standards in the practice of law and recommend remedial measures to assist them to improve their legal practices.

Composition of committee

5-70(2) The benchers must appoint not less than six benchers to serve as committee members.

Quorum

5-70(3) At a meeting of the committee, three committee members constitute a quorum, provided that one of the committee members in attendance is an elected bencher.

Consideration of complaint

5-71 The committee must consider any complaint referred to it by the chief executive officer, the complaints review commissioner or a committee of the society and while considering a complaint under this rule, the committee may also consider any other matters arising out of the member's practice of law. (AM. 09/10)

Investigation by committee

5-72(1) In considering a matter under rule 5-71 the committee may:

- (a) send a letter to the member requiring the member to respond in writing to the substance of the complaint and to further inquiries from the committee;

- (b) require the response to be signed by the member personally or by his or her counsel and delivered to the committee within 14 days after the letter is received by the member or by such other date as may be set by the committee; and
- (c) appoint a member of the committee, counsel, or such other expert or person as the committee deems appropriate to assist in the investigation of the complaint.

Failure to respond

5-72(2) A member's failure to respond in writing to the substance of a complaint or to further inquiries by the committee by the date set by the committee, without reasonable excuse, may constitute professional misconduct.

Further investigation

5-72(3) The committee may instruct the chief executive officer to conduct a further investigation and, in doing so, the chief executive officer may utilize any investigative steps authorized under rule 5-64.

Appearance by member

5-72(4) The committee may require a member to appear personally before the committee to further its consideration of a complaint or to help determine whether the member is practising law competently, on such date and at such time as the committee considers appropriate.

Urgent matters

5-72(5) Where the chairperson of the committee is of the opinion that information concerning the conduct or competence of a member is of such an urgent nature that it requires immediate consideration by the committee, the chairperson may require the member to appear personally before the committee, on such date and at such time as the chairperson considers appropriate.

Failure to appear

5-72(6) A member's failure to appear before the committee on the date and at the time set under subsections (4) or (5), or rule 5-66(f), without reasonable excuse, may constitute professional misconduct. (AM. 06/11)

Disqualification

5-73 A member of the committee must not consider a matter in which he or she or a member of his or her firm is either the complainant or the member whose conduct or competence is in question.

Action on complaints

5-74(1) After considering a complaint under rule 5-71, the committee may:

- (a) decide to take no further action;
- (b) send a letter to the member reminding the member of his or her obligations under the Act, rules or code;
- (c) send a letter to the member recommending that a certain course of action be taken;
- (d) make recommendations to the member under rule 5-83, which, if carried out, will improve the member's practice of law;
- (e) decide to hold consideration of the complaint in abeyance until any related proceedings are concluded or until such time as the committee decides to resume consideration of the complaint;
- (f) issue a formal caution to the member under rule 5-77;
- (g) direct that a charge be laid against the member under rule 5-78(1);

- (h) accept a written undertaking from the member under rule 5-79;
- (i) impose restrictions on the member's practice of law or suspend him or her under subsection 68(c)(i) of the Act;
- (j) order a practice review of the member's practice under rule 5-82(1);
- (k) decide to hold disposition of the complaint in abeyance until the member has completed any action plan recommended under rule 5-83;
- (l) suspend or impose restrictions on the permit of a member's law corporation under subsection 37(1) of the Act;

Additional action

5-74(2) Subject to rule 5-77, the committee is not precluded from taking any of the steps in subsection (1) because it has previously taken another of those steps in the same matter.

Notice

5-75 The chief executive officer must notify the complainant and the member in writing of any determination by the committee under rule 5-74(1).

Reconsideration

5-76 A complaint that has been dealt with under rule 5-74(1)(a) may be reconsidered by the committee at a later date and be the subject of further action.

Formal caution

5-77(1) The committee may censure or disapprove of a member's conduct by issuing a formal caution to the member. If the caution is accepted by the member, it must be issued in writing to him or her, no other action must be taken by the committee under rule 5-74(1) and the caution must not be the subject of an appeal.

Member may refuse caution

5-77(2) If a member refuses to accept a formal caution, the committee must issue and proceed with a charge under rule 5-78.

Caution is confidential

5-77(3) A formal caution, if accepted, is confidential.

Permitted disclosure

5-77(4) Despite subsection (3), a formal caution and the circumstances surrounding it may be disclosed:

- (a) to the committee, when it is considering any subsequent complaints about the member;
- (b) to a discipline panel that later convicts the member of any charge, to assist it in determining the appropriate penalty;
- (c) to the complainant, the member's designated person under rule 2-77, each other governing body of the legal profession in Canada of which the member is a member and in any database of membership information operating to facilitate the mobility of lawyers in Canada.

(AM. 02/05)

Charge

5-78(1) Where the committee or the chief executive officer directs that a charge be laid against a member, the chief executive officer must draft a charge that clearly states what the member is alleged to have done or omitted to do. (AM. 06/11)

Service of charge

5-78(2) A charge must be served on the member or his or her counsel and forwarded to the discipline committee. The charge must include a notice of the date, time and place for setting the hearing date to determine the disposition of the charge against the member.

Methods of service

5-78(3) Service on a member of a charge under subsection (2) may be effected by:

- (a) serving the member personally;
- (b) sending it by registered mail to the member's last known address; or
- (c) serving it personally on the member's counsel or delivering a copy to the member's counsel by electronic or other means.

Substitutional service

5-78(4) Where it is impractical or impossible to serve the charge as required under subsection (3), a discipline panel may make an order for substitutional service.

Charges may be disclosed

5-78(5) Once charges have been served on a member, the chief executive officer may disclose the charges to the members of the society and to the public.

Undertaking to society

5-79(1) Where a member gives the committee a written undertaking to do or refrain from doing anything, the undertaking is deemed to be an undertaking given to the society.

Breach of undertaking

5-79(2) The failure of a member, without reasonable excuse, to comply with an undertaking given under subsection (1) may constitute professional misconduct.

Notifying member of suspension

5-80(1) When the committee suspends a member from practising law under subsection 68(c)(i) of the Act or the permit of the member's law corporation is suspended under subsection 37(1)(c) of the Act, the chief executive officer must notify the member in writing of the action taken and that the member has the right to appeal the decision under subsection 75(1) of the Act.

Method of service

5-80(2) Service of the notification under subsection (1) may be effected in accordance with rules 5-78.

Publication of suspension

5-81(1) When the committee suspends a member from practising law under subsection 68(c)(i) of the Act, or the permit of the member's law corporation is suspended under subsection 37(1)(c) of the Act, the chief executive officer must place a notice of the suspension in one issue of a newspaper that is in circulation:

- (a) in the area where the member or law corporation has an office and from which the member or law corporation practises; or

- (b) where the member or law corporation is no longer practising, in the area where the member or law corporation last had an office and from which the member or law corporation last practised.

(AM. 06/03; 06/09)

Notice of suspension

5-81(2) When the committee suspends a member from practising law under subsection 68(c)(i) of the Act or the permit of the member's law corporation is suspended under subsection 37(1)(c) of the Act, the chief executive officer must give notice of the suspension to the members of the society, to the complainant, to each other governing body of the legal profession in Canada of which the member is a member, and the chief executive officer may disclose the suspension in any databank of membership information operating to facilitate the mobility of lawyers in Canada.

Publication of restrictions

5-81(3) Subject to subsection (4), when the committee imposes restrictions on a member's practice of law or on the member's law corporation permit under subsections 68(c)(i) or 37(1) of the Act, it may direct that the chief executive officer publish a notice of the restrictions to the members of the society or the public, or both, in a form and manner the committee considers appropriate. The chief executive officer may disclose the restrictions in any databank of membership information operating to facilitate the mobility of lawyers in Canada.

Publication of restrictions to refrain from practising certain areas of law

5-81(4) Where restrictions imposed under subsections 68(c)(i) or 37(1) of the Act require a member or his or her law corporation to refrain from practising in respect of certain areas of the law, the chief executive office must place a notice of the imposition of the restrictions in one issue of a newspaper that is in circulation:

- (a) in the area where the member or law corporation has an office and from which the member or law corporation practises; or
- (b) where the member or law corporation is no longer practising, in the area where the member or law corporation last had an office and from which the member or law corporation last practised.

(AM. 06/03; 06/09)

Notice of restrictions to refrain from practising certain areas of law

5-81(5) Where the restrictions imposed under subsections 68(c)(i) or 37(1) of the Act require the member or his or her law corporation to refrain from practising in respect of certain areas of the law, the chief executive officer must give notice of the restrictions to the members of the society, to the complainant, to each other governing body of the legal profession in Canada of which the member is a member, and the chief executive officer may disclose the restrictions in any databank of membership information operating to facilitate the mobility of lawyers in Canada.

Practice review

5-82(1) When the committee decides there are reasonable grounds to believe that a member is practising law in an incompetent manner, the committee may order a practice review of the member's practice or the member may consent to the review.

Conduct of review

5-82(2) When a practice review is ordered, the chief executive officer must select one or more qualified persons to conduct the review.

Scope of review

5-82(3) The practice reviewers must conduct a review of some or all of the files of the member, or of the practice of the member or his or her law firm or both, including, where appropriate, an examination of the procedures in place to reduce the risk of liability insurance claims.

Obligation to co-operate

5-82(4) A member whose practice is being reviewed under subsection (1) must answer any inquiries and provide the practice reviewers with any information, files or records in his or her possession or power as may be reasonably requested.

Report to the committee

5-82(5) After completing a practice review, the practice reviewers must deliver a written report of their findings and recommendations to the committee. The chief executive officer must provide a copy of the report to the member.

Action on practice review report

5-83 After considering the report received under rule 5-82(5), the committee may take any of the steps outlined in rule 5-74(1) and may recommend that the member do one or more of the following:

- (a) undertake not to practise certain areas of law;
- (b) satisfactorily complete a remedial program;
- (c) satisfactorily complete an examination approved by the committee or its designate;
- (d) implement measures to reduce the risk of liability insurance claims;
- (e) obtain a psychiatric or psychological assessment or counselling, or both, and if the committee requests, provide a report on that assessment or counselling to the committee;
- (f) obtain a medical assessment or assistance or both, and if the committee requests, provide a report of that assessment or assistance to the committee;
- (g) obtain such other reports, assessments or assistance as the committee considers appropriate and, if the committee requests, provide a report of that assessment or assistance to the committee;
- (h) practise in a setting approved by the committee;
- (i) take such other steps that the committee directs, that are intended to improve the member's practice of law or otherwise protect the public interest.

Remedial program

5-84 A remedial program under rule 5-83(b) may include any program approved by the committee that is intended to improve the member's knowledge and skill in the practice of law, including, but not limited to, one or more of the following:

- (a) a continuing legal education course or activity;
- (b) a remedial education course or activity;
- (c) a course or activity offered by an educational institution;
- (d) a program of mentoring or supervision by a practising member approved by the committee.

Completion dates

5-85(1) When making recommendations under rule 5-83, the committee may set one or more dates by which time the member is to complete the recommendations.

Extensions

5-85(2) The committee may extend the date by which the member is to complete a recommendation.

Notice to member

5-86 The chief executive officer must deliver a copy of the committee's recommendations to the member in writing.

Member refusal to accept recommendations or failure to complete

5-87 If the member refuses to accept the committee recommendations or having accepted the recommendations, fails, in the opinion of the committee, to satisfactorily complete the recommended action plan, the committee must proceed under rule 5-74(1).

Member acceptance of recommendations

5-88 If the member agrees to accept the committee recommendations, he or she must sign a written undertaking under rule 5-79(1).

Future access to report by committee

5-89 The committee, in considering a subsequent complaint against the member, may refer to:

- (a) all or part of a practice review report delivered under rule 5-82(5);
- (b) a committee recommendation under rule 5-83; and
- (c) a report on the manner in which the member carried out or followed any previous recommendations or failed or refused to do so.

Future use of report and recommendation

5-90 A discipline panel may receive in evidence at an inquiry:

- (a) all or any part of a practice review report delivered under rule 5-82(5);
- (b) the committee recommendations under rule 5-83; and
- (c) a report on the manner in which the member has carried out or followed any recommendation or failed or refused to do so.

Notice to complainant

5-91 The chief executive officer must notify the complainant in writing of the committee's decision under rule 5-82(1), but the complainant is not entitled to receive a copy of any report or the committee's recommendations about the member's practice.

Costs

5-92 The cost of a practice review, action or remedial program taken under rules 5-82, 5-83 and 5-84 must be shared between the member and the society based on a cost-sharing arrangement formulated by the committee.

Division 8 - Discipline Proceedings

Definitions

5-93(1) In this division,

“**chairperson**” means the chairperson of the discipline committee or his or her designate;

“**committee**” means the discipline committee.

General

5-93(2) Repealed 05/07

Duties

5-93(3) The members of the committee shall meet to:

- (a) hold hearings into charges laid against members;
- (b) set dates for a hearing or the continuation of a hearing;
- (c) determine preliminary motions;
- (d) order or conduct pre-hearing conferences;
- (e) hear reinstatement applications;
- (f) hear pardon applications; and
- (g) transact such other business as may come before them.

(AM. 03/05)

Composition of committee

5-93(4) The benchers must appoint not less than six benchers to serve as members of the committee.

Discipline panels

5-94(1) Subject to subsection (2), the duties of the committee under rule 5-93(3) must be exercised by a panel of three members of the committee. Two of the three panel members must have current practising certificates.

Exception

5-94(2) A single committee member may conduct a hearing where the sole purpose of the hearing is to set hearing dates or dates for the continuation of a hearing, order or conduct a pre-hearing conference or make an order for substitutional service. (AM. 06/08)

Disqualification

5-95 A member of the committee must not sit as a member of a hearing panel where:

- (a) the committee member or any other member of his or her law firm:
 - (i) is the complainant or has advised the complainant in connection with the matter that is the subject of the hearing;
 - (ii) will be a witness;
 - (iii) conducted the pre-hearing conference in the matter that is the subject of the hearing; or
- (b) a member of his or her firm:
 - (i) is the member whose conduct or competence is the subject of the hearing;
 - (ii) is appearing as counsel; or
- (c) the committee member sat as a member of the complaints investigation committee when it considered the matter that is the subject of the hearing.

Chairperson to appoint panel

5-96(1) Once a charge has been served on a member, the chairperson must select a discipline panel to conduct a hearing and make a determination.

Right to counsel

5-96(2) A member whose conduct or competence is the subject of a hearing is entitled to be represented by counsel.

Law society counsel

5-96(3) The chief executive officer may appoint counsel employed by the society or retain other counsel to draft and prosecute a charge.

Setting a hearing date

5-96(4) The date, time and place for a hearing must be set by agreement between counsel for the society and the member or his or her counsel or failing agreement, by the chairperson. The chief executive officer must notify the member or his or her counsel in writing of the date, time and place of the hearing.

Resolution of panel

5-96(5) After hearing and considering the evidence and representations made, a discipline panel must make and record a resolution stating:

- (a) which, if any, of the acts or omissions stated in the charge have been proved to the satisfaction of the panel; and
- (b) whether or not, by the acts or omissions so proved, the member is guilty of professional misconduct or conduct unbecoming a lawyer or student, or incompetence.

Dismissal of charge

5-96(6) When a discipline panel finds that a member is not guilty of professional misconduct or conduct unbecoming a lawyer or student, or incompetence, it must dismiss the charge.

Penalties

5-96(7) When a discipline panel finds that a member is guilty of professional misconduct or of conduct unbecoming a lawyer or student or incompetence, it may impose one or more of the penalties set out under sections 72 and 73 of the Act.

Costs

5-96(8) When a discipline panel finds that a member is guilty of professional misconduct or of conduct unbecoming a lawyer or student, or incompetence, it may, pursuant to section 72 of the Act, order the member to pay all or any part of the costs incurred by the society in connection with any investigation or proceedings relating to the matter in respect of which the member was found guilty including, but not limited to, the following items:

- (a) all reasonable disbursements incurred by the society in investigating and proceeding to the hearing;
- (b) audit fees for time spent by auditors/investigators employed by the society in investigating and proceeding to the hearing, at rates set from time to time by the chief executive officer. These rates must reflect the actual costs connected with the investigation and hearing;
- (c) counsel fees for time spent by lawyers in investigating and preparing for proceeding to the hearing, but excluding the time spent at the hearing of the matter, at rates set from time to time by the chief executive officer. These rates must reflect the actual costs connected with the investigation and hearing;
- (d) \$500 for each one-half day of hearing, including the hearing of motions, arguments and other proceedings; and

- (e) honoraria paid to members of the discipline panel who sit on a hearing, including the hearing of motions, arguments, and other proceedings.

Public access to record of hearing

5-96(9) The chief executive officer may disclose the record of the hearing to the members of the society and to the public, except for any parts of the record pertaining to proceedings held in camera.

Record of hearing

5-96(10) The record of the hearing must include, but is not limited to:

- (a) the citation of the charges laid under rule 5-78(1);
- (b) the exhibits submitted in evidence at the hearing;
- (c) the transcript of the hearing; and
- (d) the written reasons of the discipline panel or the transcript of the panel's oral reasons.

Service of decision on member

5-97 Following a hearing, the chief executive officer must serve a copy of the written reasons of the discipline panel on the member or his or her counsel. When a member has been found guilty of professional misconduct or of conduct unbecoming a lawyer or student, or incompetence, the chief executive officer must also notify the member or his or her counsel of the member's right to appeal the decision under section 76 of the Act.

Report to complaints investigation committee

5-98 Following a hearing, the chief executive officer must provide a report, to include a copy of the written reasons of the discipline panel, to the chairperson of the complaints investigation committee.

Report to benchers

5-99 The discipline panel must report its findings and disposition to the benchers at the first bencher meeting following the hearing.

Publication of disbarment, suspension, resignation, restrictions on practice

5-100(1) When a lawyer is disbarred or suspended from practising law or permitted to resign his or her membership in the society or restrictions are imposed on the lawyer's practice that he or she refrain from practising in respect of certain areas of the law or where the permit of the lawyer's law corporation is revoked or suspended as a result of a finding of:

- (a) professional misconduct;
- (b) conduct unbecoming a lawyer; or
- (c) incompetence;

the chief executive officer must place a notice of the action taken in one issue of a newspaper that is in circulation:

- (d) in the area where the lawyer or law corporation has an office and from which the lawyer or law corporation practises; or
- (e) where the lawyer or law corporation is no longer practising, in the area where the lawyer or law corporation last practised and from which the lawyer or law corporation last practised.

(AM. 06/03; 06/09)

Notice when member found guilty

5-100(2) When a member is found guilty of professional misconduct, or conduct unbecoming a lawyer or student, or incompetence, the chief executive officer must give notice of the finding to the members of the society, to any party whose complaint gave rise to the charge against the member, to each other governing body of the legal profession in Canada of which the member is a member and the chief executive office may disclose the conviction in any database of membership information operating to facilitate the mobility of lawyers in Canada. The notice must include:

- (a) the name of the member;
- (b) the name of the member's law corporation, if the member is the sole voting shareholder;
- (c) the nature of the charge pursuant to which the member was found guilty, including brief particulars;
- (d) the penalty imposed, including any restrictions; and
- (e) any costs imposed.

The discipline panel may direct the chief executive officer to publish to the public such information concerning its findings as it considers appropriate in the circumstances in such manner and by such means as it may determine.

Notice when member found not guilty

5-100(3) When a member is found not guilty of professional misconduct, or conduct unbecoming a lawyer or student or incompetence, the chief executive officer must:

- (a) give notice of the decision to any party whose complaint gave rise to the charge; and
- (b) give notice of the finding to the members of the society. This notice must include the nature of the charge but must not disclose the name of the member or the name of the member's law corporation.

The discipline panel may direct the chief executive officer to publish to the public such additional information concerning its findings as it considers appropriate in the circumstances in such manner and by such means as it may determine.

Further investigation

5-101 When, in the course of a hearing, a matter concerning the conduct or competence of a member comes to the attention of the discipline panel, and it is of the opinion that the conduct or competence requires investigation, the discipline panel may refer the matter to the chief executive officer for investigation under division 6 of this Part.

Application for a pardon

5-101.1(1) Subject to subsection (2), in circumstances where:

- (a) a member's conduct was censured by the Complaints Investigation Committee and the member accepted a formal caution; or
- (b) a discipline panel found a member guilty of professional misconduct or conduct unbecoming a lawyer or student or incompetence and imposed a reprimand or fine, with or without an order of costs, and no other order, action or penalty was imposed on the member by the discipline panel as a result of that conviction,

the member may apply to the discipline committee for a pardon. (ENACTED 03/05)

Definition of pardon

5-101.1(2) A pardon is evidence of the fact that the Society no longer considers the censure or conviction to reflect adversely on the member's character. (ENACTED 03/05)

Application criteria

5-101.1(3) At the time a member makes an application under subsection (1), the following criteria must be satisfied:

- (a) ten years have passed since the date of the censure or conviction;
- (b) since the date of the censure or conviction the member has not accepted any other formal cautions and has not been found guilty of any other charges of professional misconduct, conduct unbecoming a lawyer or student or incompetence;
- (c) there are no charges pending against the member;
- (d) there are no complaints about the member under investigation;
- (e) the member has paid the society all money owing by the member to the society; and
- (f) a discipline panel has not granted any previous application by the member under this rule.

(ENACTED 03/05)

Convening a hearing

5-101.1(4) Where the chairperson of the discipline committee is satisfied that the applicant has met the criteria set out in subsection (3), the chairperson must establish a discipline panel to hear the application and make a determination. A hearing date must be set and notice provided to the applicant in accordance with rule 5-96(4). (ENACTED 03/05)

Role of panel

5-101.1(5) A panel may grant a pardon if it determines that:

- (a) the member has met all the criteria set out in subsection (3); and
- (b) under all the circumstances, a pardon is appropriate.

(ENACTED 03/05)

Service of decision on applicant

5-101.1(6) Following a hearing, the chief executive officer must serve a copy of the written decision of the discipline panel on the member or his or her counsel in accordance with rules 5-78(3) and 5-78(4). (ENACTED 03/05)

Disclosure of pardoned censure or conviction

5-101.1(7) A determination by a discipline panel to grant a pardon does not set aside the censure or conviction or relieve the society of any obligation to disclose the censure or conviction under the Act or these rules. Any disclosure of a censure or conviction that has been pardoned must also disclose that the member has received a pardon and that the Society no longer considers the censure or conviction to reflect adversely on the member's character. (ENACTED 03/05)

Division 9 - Reinstatement

Reinstatement

5-102(1) A person who has been disbarred and struck off the rolls or permitted to resign his or her membership in the society or a student, who has been expelled and had his or her name struck off the student register may seek to be reinstated by making written application to the chief executive officer and paying the required fee.

Required material

5-102(2) An applicant must submit a statutory declaration, with attachments verifying the information contained therein, showing:

- (a) the character, conduct, habits of life, particulars of employment and means of livelihood of the applicant since he or she ceased to be a member of the society;
- (b) the applicant's present financial position;
- (c) that restitution of any property and payment of all money that was misappropriated or converted by the applicant has been made, or the reason why restitution or payment has not been made;
- (d) that the applicant has paid back to the society any money paid out of the reimbursement fund for any misappropriation or conversion by the applicant;
- (e) the source from which and the manner in which money was obtained by the applicant in order to make the payments in clauses (c) and (d);
- (f) particulars of any other matters that might be the subject of a complaint to the society;
- (g) payment of all money owing by the applicant to the society or a proposal for repayment acceptable to the chief executive officer;
- (h) that the applicant has not, since he or she ceased to be a member of the society, contravened any provision of the Act; and
- (i) such other material as the society may require.

Notice of application

5-102(3) Repealed (06/04).

Publication

5-102(4) Repealed (06/04).

Notice to members

5-102(5) Repealed (06/04).

Referral to committee

5-102(6) Repealed (06/04).

Student application

5-102(7) Repealed (06/04).

Investigation

5-103 Repealed (06/04).

Convening of hearing

5-104(1) The chairperson of the discipline committee must establish a discipline panel to hear an application under rule 5-102 and make a determination. A hearing date must be set and notice provided to the applicant in accordance with rule 5-96(4). (AM. 06/04)

Notice of hearing

5-104(2) Repealed (06/04).

Appearance of applicant

5-105(1) Repealed (06/04).

Counsel and evidence

5-105(2) Repealed (06/04).

Waiver of rules

5-106 Repealed (06/04).

Resolution of panel

5-107 After hearing and considering the evidence and representations made, the discipline panel must:

- (a) reinstate the applicant as a member of the society, imposing such restrictions or conditions on the applicant's practice as it considers appropriate; or
- (b) refuse to reinstate the applicant as a member of the society.

Service of decision on applicant

5-108 Following a hearing, the chief executive officer must serve a copy of the written reasons of the discipline panel on the member or his or her counsel and give notice of the decision to the members of the society. The discipline panel may direct the chief executive officer to publish to the public such information concerning its decision as it considers appropriate in the circumstances in such manner and by such means as it may determine. (AM. 06/04)

Methods of service

5-109 Service on a member or his or her counsel of the notice required under rule 5-96(4) and of the decisions referenced in rules 5-97 and 5-108 may be effected in accordance with rules 5-78(3) and 5-78(4). (AM. 06/04)

Division 10 - Law Firm Name, Letterhead and Marketing of Professional Services
(AM. 02/11)

Firm letterhead

5-110 A law firm letterhead must not mislead the public. A limited liability partnership must disclose on its letterhead that it is practising as a limited liability partnership. A lawyer practising law through a law corporation must disclose on his or her letterhead that legal services are being provided by a law corporation. (AM. 02/03; 12/04; 02/11)

Persons listed on firm letterhead

5-111 A member may list on his or her firm letterhead only the following persons:

- (a) the names of practising lawyers who are members in good standing of the society;
- (b) the names of retired or deceased members of the society provided the persons are appropriately designated as such;
- (c) the names of articling students, paralegals, or non-lawyers, provided the persons are appropriately designated as such; and
- (d) where the firm is not a law corporation, the names of lawyers who reside outside Manitoba and who are partners or associates of the Manitoba member or firm by virtue of an inter-jurisdictional law firm arrangement, provided the letterhead clearly designates those members of the firm who are not entitled to practise law in Manitoba.

(AM. 02/11)

Law firm name

5-112 A practising lawyer, including a lawyer practising through a law corporation or a limited liability partnership, must carry on the practice of law under a firm name that does not mislead the public and complies with applicable provincial and federal statutes and regulations. (AM. 02/03; 02/11)

Misleading phrases

5-112(2) Repealed 02/11

Law corporation name

5-113(1) Repealed 02/11

Limited liability partnership name

5-113(2) Repealed 02/11

Marketing of professional services

5-114(1) A member or law firm may market professional services, provided the marketing:

- (a) is demonstrably true, accurate, and verifiable;
- (b) is not misleading, confusing or deceptive or likely to mislead, confuse or deceive;
- (c) is in the best interests of the public and consistent with a high standard of professionalism;
- (d) of a law corporation is done under the name of the corporation;
- (e) of a limited liability partnership is done under the name of the limited liability partnership.

(AM. 10/05; 02/11)

Preferred areas of practice

5-114(2) A member or law firm may advertise a preferred area or areas of practice provided the advertisement does not contain a claim, either directly or indirectly, that the advertising member or law firm is a specialist or expert.

Failure to comply with rule

5-114(3) Failure to comply with sub-sections (1) or (2), without reasonable excuse, may constitute professional misconduct.

Division 11 - Equity Ombudsperson

Office of the equity ombudsperson

5-115(1) The chief executive officer may appoint an equity ombudsperson to encourage equitable workplace practices and assist lawyers, articling students, persons working for legal employers and clients in resolving concerns or questions relating to discrimination and harassment. (ENACTED 03/05)

Communication with equity ombudsperson

5-115(2) Subject to subsection (3), communication between the equity ombudsperson acting in that capacity and any person receiving or seeking assistance from the equity ombudsperson is confidential and may not be disclosed in any proceedings under the Act or rules without the consent of all parties to the proceedings. (ENACTED 03/05)

Obligation under code

5-115(3) The equity ombudsperson is not relieved of the obligation to report to the society under commentary 1 of chapter 15 of the code. (ENACTED 03/05)

Division 12 - Client Identification and Verification

(ENACTED 12/08)

Definitions

5-116 In this division,

"client" includes

- (a) another party that a lawyer's client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer, and
- (b) in rules 5-120 to 5-124, an individual who instructs the lawyer on behalf of a client in relation to a financial transaction;

(ENACTED 01/09)

"financial institution" means

- (a) an authorized foreign bank within the meaning of section 2 of the Bank Act (Canada) in respect of its business in Canada or a bank to which the Bank Act applies,
- (b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act,
- (c) an association that is regulated by the Cooperative Credit Associations Act (Canada),
- (d) a company to which the Trust and Loan Companies Act (Canada) applies,
- (e) a trust company or loan company regulated by a provincial Act,
- (f) a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public, or
- (g) an organization controlled by a financial institution; (ENACTED 01/09)

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

"lawyer" means a member of a governing body who is authorized to practice law in another Canadian jurisdiction; (ENACTED 01/09)

"money" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or interest in them; (AM. 02/09)

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

"public body" means

- (a) a department or agent of Her Majesty in right of Canada or of a province or territory,
- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them,
- (c) a municipality incorporated by or under an Act of a province or territory of Canada,
- (d) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the Excise Tax Act (Canada) or an agent of the organization, (AM. 01/09)
- (e) an organization incorporated under an Act of Canada or of a province or territory for a public purpose; or (AM. 01/09)

- (f) an organization controlled by a public body. (ENACTED 01/09)

"reporting issuer" means an organization that is

- (a) a reporting issuer within the meaning of the securities law of any province or territory of Canada, or a corporation whose shares are traded on a stock exchange that is designated under section 262 of *The Income Tax Act (Canada)*, and operates in a country that is a member of the Financial Action Task Force on Money Laundering, or
- (b) controlled by a reporting issuer.

(ENACTED 01/09) (AM. 02/09)

"securities dealer" means a person or entity that is authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services. (ENACTED 01/09)

Control

5-116(2) In this division, a person controls an organization if the person directly or indirectly, has the power to elect a majority of the directors or equivalent body of the organization by virtue of

- (a) ownership or direction over voting securities of the organization,
- (b) being or controlling the general partner of a limited partnership, or
- (c) being a trustee of or occupying a similar position in the organization.

(ENACTED 01/09)

Application

5-117(1) Subject to subsection (2), this division applies to a member who is retained by a client to provide legal services.

Exemptions

5-117(2) Rules 5-118 to 5-128 do not apply when a member provides legal services

- (a) on behalf of his or her employer,
- (b) that do not involve a financial transaction in the following circumstances:
 - (i) as part of a duty counsel program sponsored by a non-profit organization,
 - (ii) in the form of pro bono summary advice, or
- (c) if another member or lawyer who has complied with rules 5-118 to 5-128 or the equivalent provisions of a governing body
 - (i) engages the member to provide legal services to the client as an agent, or
 - (ii) refers a matter to the member for the provision of legal services.

(AM. 01/09)

Interpretation

5-117(3) In this division, the responsibilities of a lawyer may be fulfilled by any member, associate or employee of the lawyer's firm, including members or employees of the firm conducting business in another Canadian jurisdiction. (ENACTED 01/09)

Client identification

5-118(1) A member who is retained by a client to provide legal services must make reasonable efforts to obtain and, if obtained, record all of the following information that is applicable:

- (a) the client's full name, business address and business telephone number;

- (b) if the client is an individual, the client's home address, home telephone number and occupation;
- (c) if the client is an organization, the name, position, and contact information for individuals who give instructions with respect to the matter for which the lawyer is retained;
- (d) if the client is an organization, other than a financial institution, public body or reporting issuer,
 - (i) the general nature of the type of business or activity engaged in by the client, and
 - (ii) the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number.

(AM. 01/09)

Subsequent identification not required

5-118(2) When a member has obtained and recorded the information concerning the identity of a client under subsection (1), the member is not required subsequently to obtain and record that information about the same individual or organization. (ENACTED 01/09)

Exemption

5-119 Rules 5-120 to 5-125 do not apply

- (a) if the client is
 - (i) a financial institution,
 - (ii) a public body,
 - (iii) a reporting issuer, or
 - (iv) an individual who instructs the member on behalf of a client described in subparagraphs (i) to (iii),
- (b) when a member
 - (i) pays money to or receives money from any of the following:
 - A. a financial institution;
 - B. a public body;
 - C. a reporting issuer,
 - (ii) receives money paid from the trust account of another member or lawyer,
 - (iii) receives money from a peace officer, law enforcement agency or other public official acting in an official capacity, or
 - (iv) pays or receives money
 - A. pursuant to the order of a court or other tribunal,
 - B. to pay a fine or penalty,
 - C. as a settlement of any legal or administrative proceeding, or
 - D. for professional fees, disbursements, expenses or bail, or
- (c) to a transaction in which funds involved are transferred by electronic transmission, provided

- (i) the transfer occurs between financial institutions or financial entities headquartered in and operating in countries that are members of the Financial Action Task Force,
- (ii) neither the sending nor the receiving account holders handle or transfer the funds, and
- (iii) the transmission record contains
 - A. a reference number,
 - B. the date,
 - C. the transfer amount,
 - D. the currency, and
 - E. the names of the sending and receiving holders and the sending and receiving entities.

(AM. 01/09)

Verification

5-120(1) When a member provides legal services in respect of a financial transaction, including a non-face-to-face transaction, the member must take reasonable steps to verify the identity of the client using what the member reasonably considers to be reliable, independent source documents, data or information. (AM. 01/09)

Examples of independent source documents

5-120(2) For the purposes of subsection (1), independent source documents may include:

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

(AM. 01/09)

Identifying directors, shareholders and owners

5-121 When a member provides legal services in respect of a financial transaction for a client that is an organization referred to in rule 5-120(2)(b) or (c), the member must make reasonable efforts to obtain, and if obtained, record,

- (a) the name and occupation of all directors of the organization, other than an organization that is a securities dealer, and

- (b) the name, address and occupation of all persons who own 25 per cent or more of the organization or of the shares of the organization.

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

5-122(1) This rule applies when a member provides legal services in respect of a financial transaction for a client who is an individual not physically present before the member. (AM. 01/09)

Client present elsewhere in Canada

5-122(2) If the client is present elsewhere in Canada, the member must verify the client's identity by obtaining an attestation from a commissioner of oaths for a jurisdiction in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in rule 5-120(2)(a). (AM. 01/09)

Attestation

5-122(3) For the purposes of subsection (2), an attestation must be produced on a legible photocopy of the document and must include

- (a) the name, profession and address of the person providing the attestation;
- (b) the signature of the person providing the attestation; and
- (c) the type and number of the identifying document provided by the client.

(AM. 01/09)

Permitted guarantors

5-122(4) For the purpose of subsection (2), a guarantor must be a person engaged in one of the following occupations in Canada:

- (a) dentist;
- (b) medical doctor;
- (c) chiropractor;
- (d) judge;
- (e) magistrate or justice of the peace;
- (f) lawyer;
- (g) notary (in Quebec);
- (h) notary public;
- (i) optometrist;
- (j) pharmacist;
- (k) professional accountant (Chartered Accountant, Certified General Accountant, Certified Management Accountant, Accredited Public Accountant, Public Accountant or Registered Public Accountant);
- (l) professional engineer;
- (m) veterinarian,
- (n) peace officer;
- (o) paralegal licensee in Ontario;
- (p) registered nurse;

(q) school principal.
(AM. 01/09)

Use of agent – client not present in Canada

5-123(1) If the client is not present in Canada, a member must rely on an agent to obtain the information required to verify the identity of the client under rule 5-120, which may be attested to in a form similar to that described in rule 5-122(3) provided the member and the agent have an agreement or arrangement in writing for this purpose. (AM. 01/09)

Use of information

5-123(2) A member who enters into an agreement or arrangement referred to in subsection (1) must obtain from the agent the information obtained by the agent under that agreement or arrangement.

Timing of verification for individuals

5-124(1) At the time that a member provides legal services in respect of a financial transaction, the member must verify the identity of a client who is an individual. (AM. 01/09)

When subsequent verification of individual not required

5-124(2) When a member has verified the identity of an individual, the member is not required to subsequently verify that same identity if the member recognizes that person.

Timing of verification for organizations

5-125(1) A member must verify the identity of a client that is an organization within 60 days of engaging in a financial transaction.

When subsequent verification of an organization not required

5-125(2) When a member has verified the identity of a client that is an organization and obtained and recorded information under rule 5-121, the member is not required to subsequently verify that identity or obtain and record that information. (AM. 01/09)

Record keeping and retention

5-126(1) A member must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of rule 5-120(1).

Form of documents

5-126(2) The documents referred to in subsection (1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.

Period of retention

5-126(3) A member must retain a record of the information and any documents obtained for the purposes of rules 5-118 and 5-121 and copies of all documents received for the purposes of rule 5-120(1) for the longer of:

- (a) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing services to the client, and
- (b) a period of at least 6 years following completion of the work for which the member was retained.

Existing matters

5-127 Rules 5-117 to 5-126 do not apply to matters in respect of which a member was retained on or before the date these rules come into force, but they do apply to all matters for which a member is retained after that time, regardless of whether the client is a new or existing client.

Criminal activity: duty to withdraw at time of taking information

5-128(1) If, in the course of obtaining the information and taking the steps required in rules 5-118, 5-120(1) or 5-121, a member knows or ought to know that he or she would be assisting a client in fraud or other illegal conduct, the member must withdraw from representation of the client. (AM. 01/09)

Application

5-128(2) This rule applies to all matters, including new matters for existing clients, for which a member is retained after the date this rule comes into force.

Criminal activity: duty to withdraw after being retained

5-129(1) If, while retained by a client, a member knows or ought to know that he or she would be assisting the client in fraud or other illegal conduct, the member must withdraw from representation of the client. (AM. 01/09)

Application

5-129(2) This rule applies to all matters for which a member is retained before or after this division comes into force.

Failure to comply with rules

5-130 Failure to comply with any of the rules in this division without reasonable excuse may constitute professional misconduct. (ENACTED 01/09)