

**Certified True Copy of Amendments  
to the Rules of the Law Society of Saskatchewan  
September 14, 2018**

It was moved, seconded and carried that the *Rules* of the Law Society of Saskatchewan be amended. Please note that deletions have a “~~line through~~” for identification purposes.

**PROPOSED AMENDMENTS:**

***Part 11 Special Fund***

Administration, in conjunction with the Trust Safety Committee, considered the issues surrounding the Special Fund and addressed potential changes to the manner in which the Special Fund operates from both a process and policy perspective.

The following Rule amendments were approved by the Benchers to modernize the operation of the Special Fund and update the Rules that govern it. Due to the extensive amendments, the entire section on the Special Fund Rules is included here for easy reference.

**PART 11  
Special Fund**

**Annual Assessment**

700. Every member shall, in each year by the date set in Rule 800(1), pay to the Society an annual assessment for the Special Fund in the amount ~~fixed~~ **determined** by the Benchers.

**Special Assessments**

701. (1) The Benchers may, where they determine that there are insufficient funds in the Special Fund to pay the expenses authorized under Rule 703 or to reimburse claimants under Rule 708, make a special assessment on members of the Society.

(2) Every member shall, by the date fixed by the Benchers, pay a special assessment fixed by the Benchers under subrule (1).

**Investment of Fund and Proceeds**

702. (1) Funds received by the Society under Rules 700 and 701 shall be deposited into the Special Fund account maintained by the Society under section 12(5) of the *Act*.

(2) The Society may invest the Special Fund and its proceeds in any securities authorized under subsection 3(5) of the *Act*.

**Payment of Expenses**

703. The Executive Director may authorize payment out of the Special Fund for expenses incurred:

- (a) in administering the Special Fund;
- (b) in investigating claims against the Special Fund, including the audit of the books, records and accounts of a member or former member;
- (c) arising out of the appointment of a trustee under section 61 of the *Act*;
- (d) in improving members' records and accounting procedures; and
- (e) in any other matter relating to the protection and maintenance of the Special Fund.

## Application for Compensation

704. (1) An application for compensation from the Special Fund shall be made in writing, addressed to the Executive Director.

(2) The Executive Director shall, upon receipt of an application under subrule (1), appoint a Claims Investigation Committee ~~consisting of one or more members of the Society~~ to investigate the claim **and make recommendations to the Benchers in relation to the determination of the application.**

**(3) The Claims Investigation Committee may be comprised of Law Society staff lawyers or Benchers or a combination thereof.**

**(4) The Claims Investigation Committee shall have the same investigative powers of a person designated by the Benchers to review complaints as set out in the Act and the Rules.**

## Procedure for Investigation

705. (1) A Claims Investigation Committee may:

- (a) make such inquiries of the claimant, the member or former member in respect of whom the claim is made and any other person as it considers desirable;
- (b) require the claimant to provide the Claims Investigation Committee with information and documents relating to the claim, which the Committee reasonably requires; and**
- ~~(c) in its discretion, order an oral hearing under Rule 706; and~~
- (c) notify the public of the date by which all applications for compensation from the Special Fund respecting claims against a specified member or former member must be made.

(2) A Claims Investigation Committee may postpone its investigation of a claim **and or its recommendations to the Benchers** pending:

- (a) final disposition of any disciplinary action, including judicial review or an appeal, taken against or by the member or former member in respect of whom the claim is made;
  - (b) final disposition of any criminal prosecution, including appeal, taken against or by the member or former member in respect of whom the claim is made; or
  - (c) the claimant obtaining, and assigning to the Society, part or all of a civil judgment or *Criminal Code* compensation order made against the member or former member respecting the money or other property claimed by the claimant.
- (3) Where the Claims Investigation Committee is of the view that there is sufficient evidence to make recommendations to the Benchers in relation to an application prior to the conclusion of related disciplinary actions or criminal prosecutions, it may do so subject to the following:**
- (a) No member of a Hearing Committee appointed in relation to the member or former member in respect of whom the claim is made shall participate in the consideration of the claim or be privy to the recommendations of the Claims Investigation Committee or to the outcome of the claim; and**
  - (b) Evidence as to the outcome of a Special Fund claim shall not be admissible in the context of a related discipline proceeding and is not, in any event, determinative.**

## Hearing

~~706. (1) Where, as part of an investigation under Rule 705, a Claims Investigation Committee orders an oral hearing, the Committee shall, subject to the Act and these Rules, determine the practice and procedure to be followed at the hearing.~~

## Recommendation to Benchers

707. (1) A Claims Investigation Committee shall, following completion of its investigation, make a report to the Benchers **containing recommendations as to whether or not all or a portion of the compensation claimed should be paid.**

## Action by Benchers

~~708. (1) The Benchers shall not, in respect of all claims arising out of the misappropriation or conversion by one member or former member, pay out of the Special Fund more than \$250,000.~~

**(2 1) Upon receipt of a report under Rule 707, the Benchers may:**

- (a) hear the claimant and any evidence that they may, in their discretion, permit; and

- (b) where they are satisfied that the claimant has suffered a pecuniary loss as a result of a member's misappropriation or conversion of moneys or other property entrusted to or received by the member in the member's professional capacity, in their discretion and on terms they think fit:
  - (i) subject to sub-rules (4 2) and (3), pay money out of the Special Fund to reimburse the claimant entitled for all or part of the loss authorize payment of all or part of the claim; or
  - (ii) determine that no payment shall be made.
- (2) Where a claim is authorized for payment, the Law Society shall administer the payment in accordance with the terms of coverage governing the National Special Fund program.
- (3) Liability for payment from the Special Fund shall not exceed the deductibles payable pursuant to the National Special Fund Program and further the Benchers shall not authorize payment of claims from the Special Fund beyond the limits of coverage contemplated by the National Special Fund Program.

708.1 (1) Where a claimant is not satisfied with a decision of the Benchers made pursuant to Rule 708, and where such complainant gives notice to the Executive Director, in writing, that he or she wishes to provide new or additional evidence in support of his or her claim, and where the ~~Chair of Discipline~~ Executive Director is satisfied that such new or additional evidence may result in a different ruling by the Benchers, the ~~Chair of Discipline~~ Executive Director may submit the original report of the Claims Investigation Committee along with the new information provided by the claimant to the Benchers for a reconsideration of the matter.

~~(a) direct that the Claims Investigation Committee shall reconsider the matter and provide a new report pursuant to Rule 707; or~~

~~(b) appoint a new Claims Investigation Committee to consider the matter.~~

~~(2) A new Claims Investigation Committee appointed pursuant to subrule (1)(b) shall proceed according to Rules 705 through 707.~~

(2) Subject to subrule (3), no application for reconsideration under this Rule shall be considered unless received by the Executive Director within ninety (90) days of the decision of the Benchers pursuant to Rule 708(2 1) being provided to the claimant.

(3) Where all, or a portion of, a claim has been denied by the Benchers prior to the completion of related discipline proceedings the claimant may, within ninety (90) days of receiving notice of the outcome of those proceedings, apply to have their claim reviewed in light of the findings made in the discipline proceeding.

### **Recovery of Payment Made**

709. (1) Where money is paid out of the Special Fund under Rule 703(b) or Rule 708(2 1), the Executive Director or the Benchers as the case may be:

- (a) may order that the member, on account of whose misappropriation or conversion the money is paid out, repay to the Society all or part of that amount; and
- (b) fix the date by which the repayment shall be completed.

(2) A member who has not paid the full amount owing under subrule (1) by the date fixed under subrule (1) is, unless the Benchers resolve otherwise, suspended from the practice of law until the amount owing is paid in full to the Society.

## **Part 7 Membership and Practice Privileges**

Each year, the Annual Practice Declaration must be approved. At September Convocation, the Benchers decided that approval is an Administrative responsibility and voted in favour that approval for the Annual Practice Declaration be transferred from the Benchers to the Executive Director.

## D. Membership Duties

### Practising Certificate

166. (1) A member requires a valid practising certificate to be entitled to practise.
- (2) The Executive Director shall, in respect of each practise year, issue a practising certificate to an Active Member who, before the commencement of that practise year:
- (a) has paid the fees fixed under Rule 800;
  - (b) has filed an Annual Practice Declaration in a form approved by the ~~Benchers~~ Executive Director;
  - (c) has complied with the *Act*, these Rules and all requirements made under them; and
  - (d) is otherwise in good standing.
- (3) The practising certificate of a Disqualified or Suspended Member becomes invalid for the duration of the period of disqualification or suspension, as the case may be.

### Part 12 Law Society Fees and Assessments

In an effort to deter CPD non-compliance, the Benchers approved an increase in the fee for reinstatement (following disqualification for non-compliance with the CPD Policy). They also approved the implementation of a late fee to be applied in situations where members fail to comply with the CPD Policy by December 31<sup>st</sup>, but comply prior to being disqualified in the new year.

### Continuing Professional Development Fees

871. (1) The fees payable by an applicant for approval of a remedial CPD plan are as set out in Schedule 1 following this Part.
- (2) The fees payable for an appeal of decisions authorized in the CPD Policy shall be as set out in Schedule 1 following this Part.
- (3) The reinstatement fee payable by a member disqualified for failing to comply with the CPD Policy shall be as set out in Schedule 1 following this Part.
- (4) The late fee payable by a member who fails to comply with the CPD Policy by the December 31st deadline, but complies prior to being disqualified, shall be as set out in Schedule 1 following this Part.

## Schedule 1 LAW SOCIETY FEES AND ASSESSMENTS

### L. Continuing Professional Development

1.	Approval of remedial CPD plan .....	500
2.	Appeal of decisions .....	100
3.	Reinstatement fee payable by member disqualified for failing to comply with the CPD Policy .....	<del>100</del> 750
4.	<u>Late compliance fee .....</u>	<u>400</u>

### Part 21 Withdrawal from Practice

Subrule 470(6), Assessment of Penalty by Discipline Committee, was deleted in June 2010. Failure to delete the reference in Rule 1903 was an oversight. Therefore, Rule 1903 requires amendment to correct this oversight and remove reference to subrule 470(6).

**Waiver of Rule**

1903. The Benchers may, by a decision of 2/3 of the Benchers present and entitled to vote, vary, waive or suspend any Rule other than subrule 92(3) ~~or subrule 470(6)~~.



**CERTIFIED to be a true copy of the resolutions passed by the Benchers of the Law Society of Saskatchewan at their meeting held September 14, 2018.**

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**TIMOTHY J. BROWN, Q.C.**  
**Executive Director**