

**Certified True Copy of Amendments
to the Rules of the Law Society of Saskatchewan
December 7, 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:

Rule amendments are required to operationalize the proposed new Conduct Investigation Committee Procedure Manual. As a matter ancillary to these Rule amendments, the definition of Complaints Counsel has been expanded to include the term Professional Responsibility Counsel and the Director of Professional Responsibility.

PART 6 – Committees

A. General

Membership

111. (1) The President shall, in the case of every committee other than the Executive Committee and the Discipline Committee, appoint the members, subject to the *Act*, and designate one of them as Chairperson and another of them as Vice-Chairperson.

(2) The Executive Committee shall consist of:

- (a) the President of the Society, who shall be Chairperson of the Committee;
- (b) the Vice-President of the Society, who shall be the Vice-Chairperson of the Committee;
- (c) the immediate Past President of the Society;
- (d) such other Benchers or members as appointed by the President; and
- (e) the Executive Director shall be a non-voting member of the Executive Committee.

(3) The Discipline Committee shall consist of:

- (a) all Benchers; and
- (b) any members and former Benchers appointed by the President.

(4) Any Vice-Chairperson of a Committee may perform the duties of the Chairperson of that Committee where it is desirable for him or her to do so in furtherance of the objects of the *Act* and the Rules.

(5) The members of a committee shall, if both the Chairperson and the Vice-Chairperson are unable or unwilling to act, choose one of their number to perform the duties of Chairperson.

(6) A member of a committee appointed under subrule (1) holds office until the earlier of:

- (a) ceasing to be a member of the Society; or
- (b) being removed from office by the President.

(7) The President may fill a vacancy on any committee with respect to which the President has the power of appointment.

(8) The President and Vice-President;

- (a) are non-voting *ex officio* members of each committee established under Rule 110, other than the Audit Committee ~~and the Conduct Investigation Committee~~; and

- (b) may be appointed as active members of any committee.

PART 8 – Professional Standards and Discipline

A. Definitions

299. In this Part,

“**competence**” means bringing adequate skill and knowledge to the practice of law including the management of a practice, as more particularly set out in Chapter II of *The Code of Professional Conduct* of the Law Society of Saskatchewan.

“**complainant**” means a person who has delivered a complaint about a member to the Society;

“**complaint**” includes:

- (a) a complaint made by a complainant under subsection 40(1)(a) or (c) of the *Act*; and
- (b) an allegation of conduct by a member as described in subsection 40(1)(b) or (d) of the *Act*;

“**complaints counsel**” means the person or persons designated by the Benchers under section 40(1) of the *Act* to review the conduct of members and includes the Director of Professional Responsibility and Professional Responsibility Counsel;

“**formal complaint**” means the document served on a member under 46(2) of the *Act* and Rule 430;

“**member**” means a member of the Society as set out in 2(1)(h) of the *Act* and includes a member of the governing body of the legal profession in another Canadian Province or Territory who is eligible to practice interjurisdictionally pursuant to the National Mobility Agreement 2013 and Interjurisdictional Practice Protocol under Rule 195 or holds an interjurisdictional practice certificate issued under Rule 196 except where this is inconsistent with the National Mobility Agreement 2013, the Interjurisdictional Practice Protocol or with *The Legal Profession Act* as amended;

“**practice advisor**” means the person or persons designated by the Benchers for the purposes of subsection 41(1.1)(b);

[Rule 299 amended February 4 & 5, 1993 and September 13, 1996]

[Rule 299 “competence” amended February 7, 2008]

[Rule 299 “competence,” “complaint,” “complaints counsel,” “formal complaint” and “member” amended; “practice advisor” and “Rule or Subrule” added June 17, 2010]

[Rule 299 “member” definition amended May 2, 2014, effective July 1, 2014]

[Rule 299 “member” definition amended, November 1, 2014]

[Rule 299 “Rule or Subrule” definition relocated to Part 1, Definitions, February 13, 2015]

B. Complaints

Examination of Complaints

300. (1) Any person may deliver to the Society a complaint against a member.

(2) The complaints counsel may require that a complaint be reduced to writing.

(3) The complaints counsel may, ~~and at the instruction of the Chairperson of the Conduct Investigation Committee shall~~, make or authorize a preliminary inquiry into the conduct of a member in order to determine the validity of a complaint.

(4) Subject to subrule (5), the complaints counsel shall deliver to a member in respect of whom a complaint is made, a copy of the complaint or, where in the opinion of the complaints counsel that is not practicable or appropriate, a summary of it.

(5) ~~The Chairperson of the Conduct Investigation Committee may, if~~ Complaints Counsel ~~he or she~~ considers it necessary for the effective investigation of the complaint, notification of ~~instruct the complaints counsel not to notify~~ the member under subrule (4) may be delayed until so directed by the Chairperson.

(6) The complaints counsel may require, from a member to whom a copy or summary of the complaint has been delivered under subrule (4), a response to the complaint.

D. Discipline

Definitions

~~398.~~ In this Part 8(D),

~~"Conduct Investigation Committee" means a conduct investigation panel constituted in accordance with Rule 398.2.~~

[Rule 399, Definitions added May 2, 2014, effective July 1, 2014]

[Rule 399, Definitions, amended to read Rule 398, November 1, 2014]

[Rule 398, Definitions, amended February 13, 2015]

Conduct Investigation Committee

398.1. (1) The ~~e~~Conduct ~~i~~nvestigation ~~e~~Committee appointed in accordance with section 35.1 of the Act shall consist of ~~a minimum of six persons~~seven to nine individuals and may include:

- (a) Benchers, former Benchers and members; and
- (b) any other persons who have reached the age of majority and have had appropriate investigation training or experience;

but ~~a majority of~~ the members of the Conduct Investigation Committee must be Benchers.

Conduct Investigation Panel

~~398.2. (1) For each complaint referred to the Conduct Investigation Committee, Complaints Counsel shall identify not more than three members of the Conduct Investigation Committee, subject to each member's:~~

- ~~(a) business or personal conflicts of interest;~~
- ~~(b) Society-related conflicts of interest; and~~
- ~~(c) availability;~~

~~to constitute a conduct investigation panel, in accordance with section 7.1 of the Act and Part 8 of these Rules, to carry out the duties of the Conduct Investigation Committee set out in Part 8(D) of these Rules.~~

~~(2) When identifying the most appropriate members of a conduct investigation panel constituted in accordance with (1), Complaints Counsel shall also take into account each member's:~~

- ~~(a) knowledge and expertise as it relates to the subject matter of the complaint; and~~
- ~~(b) Society-related workload.~~

~~(3) When determining the appropriate number of members for a conduct investigation panel constituted in accordance with (1), Complaints Counsel should consider the seriousness and complexity of the complaint.~~

[Rules 398.1 with minor amendments and 398.2 relocated from Part 6 Committees February 13, 2015]

Reciprocal Discipline

399. (1) If the disciplinary body of an extra-provincial law society orders the suspension of the membership of a Saskatchewan member in that society;

- (a) pending an investigation relating to the Saskatchewan member;
- (b) pending the outcome of any disciplinary proceedings against the Saskatchewan member; or
- (c) at the conclusion of any disciplinary proceedings against the Saskatchewan member,

the Law Society, without any other proceedings under the Rules, shall suspend the Saskatchewan member's membership in the Society for a period co-extensive with the period of suspension ordered by the disciplinary body.

(2) If a suspension in an extra-provincial law society is stayed, the suspension will also be stayed in Saskatchewan for a co-extensive period.

Review by Conduct Investigation Committee

400. (1) The Conduct Investigation Committee:

- (a) ~~shall promptly review~~ shall review, investigate and consider any complaint matter referred to it ~~submitted to it~~ by complaints counsel, by the Chairperson of the Professional Standards Committee, by the Ethics Committee or by the Complainants' Review Committee ~~or by the Ethics Committee~~; and
- (b) may review, investigate and consider any conduct of a member that may constitute conduct unbecoming, whether or not it formed the substance of a complaint or the substance of the referral to the Conduct Investigation Committee, and may direct make or authorize complaints counsel to complete whatever further inquiries and investigations it considers desirable before concluding its review, investigation and consideration of a complaint matter.
- ~~(c) may investigate any other matter that comes to its attention during the course of an investigation, that could potentially constitute conduct unbecoming.~~
- ~~(d) shall complete an inquiry or investigation under this rule as soon as practicable.~~
- (2) Upon completion of the review, ~~or investigation and consideration of a complaint matter, referred to it along with any supporting materials and recommendations, the Conduct Investigation Committee shall provide a make a motion in relation to the matter under consideration and convey a report of that motion to the Chairperson of the Discipline Committee or their designate. The motions that may be made by the Conduct Investigation Committee at the conclusion of its review, investigation and consideration of a complaint matter are to:~~
 - (a) ~~directing~~ that no further action be taken, if it is ~~of the opinion that~~ the complaint does not constitute conduct unbecoming;
 - (b) ~~inviteing~~ the member under investigation to meet with a Conduct Review Committee under Rule 401;
 - (c) ~~referring~~ the complaint to the Ethics Committee or the Professional Standards Committee; or
 - (d) ~~directing~~ the Chair of Discipline to appoint a Hearing Committee under 47(1) of the Act, to hear and determine a formal complaint on whatever allegations that the Conduct Investigation Committee determines to be appropriate.

(3) The Conduct Investigation Committee or its designate shall advise the member and the complainant, in writing, of the action taken under subrule (2).

(3.1) In accordance with its authority to direct the prosecution under section 49(1) of the Act, the Conduct Investigation Committee may amend the recommendation set out in its report made pursuant to (2)(d) at any time before the hearing.

(3.2) Amendments pursuant to (3.1) will form part of the formal complaint and may include, but are not limited to, the addition, removal or revision of allegations set out in the original ~~report~~motion.

(3.3) Notice of any amendments made pursuant to this rule shall be served on the member not less than 30 days before the commencement of the hearing, unless the member consents in writing to a shorter period.

Interim Suspension

420. (1) Subject to subrule (2), a Conduct Investigation Committee shall, before suspending a member under section 45 of the Act:

- (a) ensure that notice has been given to notify the member that consideration is being given to his or her suspension, for the reasons specified in the notice; and
- (b) ensure that give the member has a reasonable opportunity to make representations to the Conduct Investigation Committee respecting the suspension.
- (2) A Conduct Investigation Committee may act under section 45(1) of the Act without complying with subrule (1) if it is satisfied that such action is necessary to protect the public or the member's clients, or both.
- (3) If a Conduct Investigation Committee orders an oral hearing:
 - (a) the hearing shall be in private, unless the Committee orders otherwise; and
 - (b) the proceedings shall be recorded by a court reporter and any person may obtain, at his or her expense, a transcript of any part of the hearing which he or she was entitled to attend.
- (4) If a Conduct Investigation Committee concludes that a member should be suspended under section 45(1) of the Act, the Committee shall promptly advise:
 - (a) the member in writing that he or she is suspended and the reasons for it, and that the member has the right to request a review of the suspension under section 45(3) of the Act; and
 - (b) the Deputy Minister of Justice under section 54(1) of the Act.

PART 8 – Professional Standards and Discipline

In November 2017, the Ethics Committee supported changing the name of “Professional Conduct Rulings” on the Law Society’s website to “Ethics Rulings” to make it clearer that they are decisions rendered by the Ethics Committee. Rule 303(3)(c) requires amendment to implement this name change.

Ethics Committee

303. (1) The Ethics Committee shall review any referral or request made by:
- (a) complaints counsel;
 - (b) other Committees;
 - (c) request for ruling made pursuant to (2).
- (2) Any person may request a ruling from the Ethics Committee for a ruling on an ethical issue.
- (3) Upon receipt by the Ethics Committee of a referral or request, the Committee may:
- (a) make whatever recommendations it sees fit to resolve the conflict of interest or potential conflict of interest;
 - (b) decline to make a ruling;
 - (c) give opinions and make ~~professional conduct~~ ethics rulings on questions of professional ethics, for the guidance of the profession;
 - (d) make recommendations to the Benchers and to the Discipline Committee respecting professional ethics and the development of and revisions to *The Code of Professional Conduct*; and
 - (e) refer matters to the Conduct Investigation Committee or Professional Standards Committee.
- (4) The Ethics Committee may make whatever enquiries it thinks necessary and may follow whatever procedure it finds to be most efficient.

PART 7A - National Mobility and Interjurisdictional Practice and PART 10 - Insurance

Canadian law societies have been working together to formulate a unified approach to the definition of “entitled to practise law” for the purpose of national mobility. Specifically, the law societies agreed that a lawyer seeking to transfer to another Canadian jurisdiction under permanent mobility, who is entitled to practice law but for the requirement to obtain insurance in their home jurisdiction, should be treated pragmatically as an applicant who is “entitled to practise law.” Therefore, amendments to Rule 192 (Definitions) and Rule 605(4) (Saskatchewan Lawyers’ Insurance Association Inc.) were approved by the Benchers to modify the definition of “entitled to practice law” for the purposes of national mobility.

Definitions

192. In this Part, unless the context indicates otherwise:

“**entitled to practise law**” means allowed, under all of the legislation and regulation of a Home Jurisdiction, to engage in the practise of law in the Home Jurisdiction (but for any requirement to obtain liability insurance in the lawyer’s Home Jurisdiction);

Saskatchewan Lawyers’ Insurance Association Inc.

605. (1) Unless exempted under subrule (4), each member shall in each year by the date set in Rule 810(1) pay to SLIA a liability insurance assessment in the amount fixed by the Benchers.

...

(4) The following members are exempt from payment of the annual assessment under subrule (1) and any special assessments under subrule (2):

- (a) students-at-law;

- (b) subject to The Legal Profession Regulations, members employed by or on an exclusive contract with a Saskatchewan government institution as defined in The Freedom of Information and Protection of Privacy Act;
- (c) members employed by the Federal Department of Justice or the Public Prosecution Services of Canada;
- (d) Canadian Legal Advisors, pursuant to Rule 208;
- (e) members not resident in Saskatchewan who comply with Rule 207;
- (f) inactive members;
- (g) retired members;
- (h) pro bono members;~~and~~
- (i) members who are not (and will not be) engaged in the practice of law in Saskatchewan, but who are required to be reinstated to active member status in Saskatchewan temporarily, for the sole purpose of completing their permanent transfer to another Canadian jurisdiction pursuant to the national mobility regime; and
- (j) other members as approved by the Benchers.

PART 12 – Law Society Fees and Assessments

The refund of fees for an active member is only issued under limited circumstances. Amendments to Rule 880 relate to the circumstances in which a refund of fees may be issued and add discretion for Administration to issue refunds in circumstances of undue hardship.

Refund of Fees

880. (1) The Society shall, in the case of an active member who dies during the current year, refund one-twelfth of the current year's active member annual fee times the number of months remaining in the calendar year excluding the month that the member dies.

(2) The Society shall, upon being satisfied that an active member has during the current year become an inactive member for the purpose of parenting a newly born or newly adopted child refund one twelfth of the current year's active member annual fee times the number of months remaining in the calendar year excluding the month that the member becomes an inactive member.

(3) The Society shall, upon being satisfied that an active member has during the current year become unable to practice as a result of serious illness, refund one twelfth of the current year's active member annual fee times the number of months remaining in the calendar year.

(4) The Society may, upon being satisfied that there are circumstances that would impose undue hardship on the member, refund one twelfth of the current year's active member annual fee times the number of months remaining in the calendar year excluding the month that the member changes membership status.



**CERTIFIED to be a true copy of the resolutions
passed by the Benchers of the Law Society of
Saskatchewan at their meeting held December 7,
2018.**

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