

ETHICS EXAMINABLE PROVISIONS - FALL 2014 - O'BRIEN

GENERAL POWERS AND DUTIES

TOPIC	RULE	COMMENTARY/NOTES	Authority
Duty and Powers of the Law Society and Benchers	(3) Uphold and protect public interest and administration of justice a. Preserve rights and freedoms of all persons b. Ensure independence, integrity, honour and competence of lawyers c. Set standards and programs for education and professional responsibility and competence for lawyers and applicants for admission d. Regulate practice of law e. support lawyers, articling students who are permitted to practice in BC in fulfilling their duties	These are the guiding principles of the LPA and the law society's charge. <i>Andrews</i> shows that the <i>Charter</i> applies to the Law Society.	<i>LPA</i> s. 3
	<i>LPA</i> s. 11 gives the benchers the powers to make rules under 11(1), and states that these rules are binding under 11(3).	S. 5 of the <i>LPA</i> states that the Lieutenant Governor in Council appoints benchers.	<i>LPA</i> s. 11
	<i>LPA</i> s. 30 requires benchers to make rules regarding trust accounts, lawyer's fees, retainer agreements, the structure of law firms, mandatory insurance fund , etc...		<i>LPA</i> s. 30
	This case marks the first time that the independence of the bar has been found to be a fundamental right.		<i>FLSC</i>
	Duty not to disclose confidential information received by a person in connection with actions taken under Act or Rules		<i>LSRs</i> s. 10-2
General Duties of Lawyers	When acting as an advocate , the lawyer must represent the client resolutely and honourably within the limits of the law.	When acting as an advocate , the lawyer must not... SEE LIST IN <i>BC CODE</i> 5.1-2	<i>BC Code</i> 5.1-1
	A lawyer must cooperate and comply with the law society.		<i>BC Code</i> s. 7.1
	Lawyers must act in good faith, be civil and be courteous. This is also listed in <i>BC Code</i> 7.2.	7.2-2: must avoid taking advantage of irregularities and mistakes made by other lawyers (sharp practice)	<i>BC Code</i> 5.1-5
	A lawyer must encourage public respect for and try to improve the administration of justice.	[1]: This obligation extends to a lawyer's personal life [2]: A lawyer should lead in seeking improvements in the legal system, but any criticisms and proposals should be bona fide and reasoned.	<i>BC Code</i> 5.6-1
	A lawyer must report anything that is going to materially prejudice a client (unless it breaks confidentiality).		<i>BC Code</i> 7.1-3
	A lawyer must assist in preventing the unauthorized practice of law		<i>BC Code</i> 7.6-1
	Duty as a prosecutor: The prosecutor must act for the public and the administration of justice.	[1]: Primary duty is not to seek conviction but that justice is done on the merits of the case.	<i>BC Code</i> 5.1-3
	A lawyer must meet financial obligations in relation to their practice, including insurance.		<i>BC Code</i> 7.1-2
	Undertakings: a lawyer must fulfill any undertakings given and honour any trust conditions accepted in the course of litigation.		<i>BC Code</i> 5.1-6
	A lawyer must encourage a client who has a claim or complaint against a dishonest lawyer to report this to the Society.		<i>BC Code</i> 7.1-4
A lawyer who seeks legislative changes must disclose this interest in advance on who the change is for (client, lawyer, public)		<i>BC Code</i> 5.6-2	

Insurance	Insurance: a lawyer must maintain professional liability insurance.	<i>Law Society Rules 3-21</i>
	Notice: A lawyer needs to give prompt notice of any circumstances that can be reasonably expected to give rise to a claim to the insurer or any other indemnitor.	<i>BC Code 7.8-2</i>
	Co-operation: the lawyer must cooperate with the insurer.	<i>BC Code 7.8-3</i>
	Uninsured claims: the lawyer must expeditiously deal with a claim that is not covered or wholly covered by insurance in a way that does not take advantage of the client.	<i>BC Code 7.8-4</i>
	Partially Covered Claim: if liability is clear and the insurer is prepared to pay its portion of the claim, the lawyer must pay their balance of the claim.	<i>BC Code 7.8-5</i>

LAWYER/CLIENT RELATIONSHIP

Formation of Lawyer Client Relationship	A Client means a person who consults a lawyer and on whose behalf the lawyer agrees to render legal services or after consultation, reasonably concludes a lawyer agreed to render legal services.	Note: when the obligation of confidentiality arises that is inherent in the relationship, client has probably been formed.	<i>BC Code 1.1-1</i>
	Marketing: Any marketing activity must not be false, inaccurate, unverifiable, reasonably capable of misleading recipients, contrary to the interests of the public.	Note: there is no specific rule in BC on the advertising of fees, but there is reference to this in the Model Code. S. 4.2-2 of the Model Code states that fee advertisement must be reasonably precise, disclose additional or hidden costs, and the lawyer must adhere to that fee.	<i>BC Code 4.2-5</i>
	Public and Media Appearances: Provided that there is no infringement of the lawyer's obligations to the client, the profession, the courts, or the administration of justice, a lawyer can communicate to media and make public appearances. Nothing appears to address this rule regarding former clients.	[2] A lawyer must be satisfied that any public statement about a client must be within the client's interests and retainer. [3] public communications about a client's affairs should not even appear to be for the purpose of the lawyer's self-promotion.	<i>BC Code 7.5-1</i>
	Fees/disbursements: lawyer must not accept a fee or disbursement including interest unless it is fair and reasonable and has been disclosed in a timely fashion.		<i>BC Code 3.6-1</i>
	Contingency Agreements: Lawyers are allowed to enter into contingency agreements if they are reasonable and disclosed in a timely fashion.		<i>BC Code 3.6-2</i>
	Statement of account: lawyer must deliver properly executed statements of accounts.		<i>BC Code 3.6-3</i>
	Joint retainer: if a lawyer acts for two or more clients in the same matter, the lawyer must divide the fees and disbursements equitably between them, unless there is an agreement by the clients otherwise.		<i>BC Code 3.6-4</i>
	Division of Fees: if the client consents, fees can be divided between lawyers from different firms.		<i>BC Code 3.6-5</i>
	Fee Sharing: 3.6-6 allows referral fees if they are reasonable, do not increase cost for the client, and the client is informed and consents. However, 3.6-7 states that a lawyer must not directly or indirectly share a fee with any non-lawyer unless the lawyer is in a multidisciplinary practice with non-lawyers who are members of that practice (3.6-8).	Note: The owners of the practice must be either actively involved in the legal services or the management of it. Descoteaux: "Communication" to obtain legal advice is has a very broad scope. Solicitor client relationship can arise before the actual retainer is established.	<i>BC Code 3.6-6 to 3.6-8</i>
Deciding Whether to Act	A lawyer must make legal services to the public efficiently and conveniently, and subject to misleading, coercive, and other actions that bring the profession into disrepute (4.1-2), may offer legal services to a prospective client by any means. The same general rule is in the <i>BC Code</i> rules 2.1-5(c).	Right to Decline: a lawyer has a general right to decline representation (except when assigned as counsel by a tribunal), but it is a right to be exercised prudently, especially if it is difficult for the client to find a lawyer at all. If the lawyer does not take on the client, the lawyer should assist in finding another lawyer without charge with the exception of referral fees (3.6-6 Model Code).	<i>Model Code 4.1-1</i>
	Must refuse client if there is a conflict of interest unless permitted under the code. SEE CONFLICTS	[1]: Conflict of interest a conflict exists when there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or duties to another client, former client, or third person. The risk	<i>BC Code 3.4-1</i>

		<p>must be genuine and serious.</p> <p>[2]: A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer.</p>	
	<p>Must refuse client if the lawyer can't provide services to the standard of a competent lawyer.</p> <p>SEE COMPETENCE SECTION</p>		<p><i>BC Code</i> 3.1-2</p>
	<p>Must refuse client if the lawyer isn't satisfied the former lawyer has withdrawn or been discharged.</p>	<p>[1]: It is prudent for the lawyer to tell the client to settle outstanding matters with the former lawyer.</p>	<p><i>BC Code</i> 3.7-10</p>
	<p>Must refuse client if the lawyer is a potential witness for the client's case unless the evidence/testimony is permitted by law, uncontroverted or is necessary in the interests of justice.</p>		<p><i>BC Code</i> 5.2-1</p>
	<p>Must refuse client if the lawyer knows or ought to know that representing the client encourages dishonesty, crime or fraud.</p>	<p>[1],[2]: Lawyer needs to be on guard, alert...</p> <p>[3]: if the lawyer suspects whether he is assisting the client in crime, he should make reasonable inquiries.</p> <p>[4]: A case that tests the validity of a law by technically breaking it is not precluded by this rule so long as it is done in good faith and on reasonable grounds.</p>	<p><i>BC Code</i> 3.2-7</p>
Termin. of R-Ship	<p>Generally, termination is in accordance with the retainer - when the services contracted for are complete.</p>		
	<p>There are 3 instances where a lawyer must withdraw: (a) if they are discharged by a client, (b) the client persist in instructing the lawyer to act contrary to professional ethics, or (c) the lawyer is not competent.</p>		<p>3.7-7</p>
	<p>Must terminate the relationship if there is a conflict of interest unless permitted under the code.</p>	<p>[1]: Conflict of interest a conflict exists when there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or duties to another client, former client, or third person. The risk must be genuine and serious.</p> <p>[2]: A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer.</p>	<p><i>BC Code</i> 3.4-1</p>
	<p>Must terminate the relationship if the client is forcing the lawyer to not disclose an error or omission or not to rectify it.</p> <p>SEE ERRORS AND OMISSIONS</p>		<p><i>BC Code</i> 5.1-4</p>
	<p>A lawyer can only withdraw service for good cause and with reasonable notice.</p>	<p>[1]: having taken on the client, lawyers should complete a task as ably as possible unless there is a justifiable cause for terminating the relationship.</p> <p>[2]: an essential element of reasonable notice is notifying the client.</p> <p>[3]: every effort should be made to ensure that withdrawal occurs at an appropriate time in the proceedings.</p>	<p><i>BC Code</i> 3.7-1</p>
	<p>May terminate the relationship if there has been a serious loss of confidence between the lawyer and the client.</p>	<p>[1]: client deceives lawyer, refuses to accept advice on a significant point, client is unreasonable in a material respect, or the lawyer is facing difficulty in getting adequate instructions</p>	<p><i>BC Code</i> 3.7-2</p>
	<p>May terminate the relationship if there has been non-payment of fees after reasonable notice.</p> <p>The <i>Model Code</i> suggests that a lawyer should not take a lien on a client's property for non-payment of fees if it would materially prejudice the client's position on an uncompleted matter.</p>	<p>[1]: should ensure there is sufficient time for the client to get another lawyer.</p> <p>[2]: in criminal matters, the court has discretion to refuse withdrawal for non-payment of fees.</p> <p>Cunningham noted that this discretion should be used rarely, and only if withdrawal negatively affects</p>	<p><i>BC Code</i> 3.7-3</p>
	<p>May terminate the relationship in criminal proceedings if if there is sufficient time for the client to get another lawyer, and</p> <ol style="list-style-type: none"> notify the client in writing with reason accounts for any work not done with monies notifies crown notifies the clerk complies with the rules of court 	<p>Cunningham: The SCC stated that the court has jurisdiction to refuse a lawyer's withdrawal in a criminal defense.</p>	<p><i>BC Code</i> 3.7-4</p>
	<p>A lawyer cannot withdraw because of non-payment of fees in a criminal case when there is insufficient time to get another lawyer and an adjournment cannot be obtained without adversely affecting the client's interests.</p>	<p>3.7-6: in the same circumstances, if there is a justifiable reason for termination besides non-payment of fees, the lawyer must attempt to get the trial date adjourned and can only withdraw with permission of the court.</p>	<p><i>BC Code</i> 3.7-5</p>

	Manner of Withdrawal: the lawyer must try to minimize expenses and prejudice to the client and make all reasonable efforts to facilitate an orderly transfer.	3.7-9 lists tasks the lawyer needs to accomplish to facilitate withdrawal.	BC Code 3.7-8
	Successor lawyer must be satisfied the former lawyer has withdrawn or been discharged.	[1]: It is prudent for the lawyer to tell the client to settle outstanding matters with the former lawyer.	BC Code 3.7-10
CONDUCT			
Conduct Unb. & Prof. Miscond.	Conduct Unbecoming: Conduct unbecoming a lawyer is an activity that is contrary to the best interest of public or legal profession and harms the standing of the legal profession.	It is important to note that conduct unbecoming is distinct from professional misconduct, see <i>LPA</i> s. 38(4)(b) (1) and (2)	<i>LPA</i> s. 1
	Test for Conduct Unbecoming: conduct unbecoming is any act of any member that will seriously compromise the body of the profession in public estimation.		<i>Berge</i>
	Note: Conduct need not be specifically prohibited before it may be the subject of disciplinary proceedings. It is not confined to any predetermined to already established actions.	The benchers are given a general power to determine what conduct is to be acceptable in the practice and even outside the practice for members.	<i>Jabour</i>
	Test for Professional Misconduct: whether the facts as made out disclose a marked departure from that conduct the Society expects of its members; if so, it is professional misconduct		<i>Martin</i>
Ungovernability	Definition: when a lawyer shows that they will cannot be remediated or will not abide by Society rules/recommendations.	Factors: 1. Consistent failure to respond to the law society 2. Neglect of duties of duties and obligations to Society re trust accounting 3. Misleading behavior directed to clients/Society 4. Failure to attend disciplinary hearings 5. history of misconduct over time with different circumstances 6. History of breaching undertakings without apparent regard for consequences 7. Record or history of practicing law while under suspension	<i>Hall</i>
Lawyer Compt'ce	Definition of a competent lawyer: lawyer who has and applies relevant knowledge, skills, and attributes. Example: <i>Syed</i> - incompetence in a criminal defence of sexual assault; the lawyer failed to listen to the client, investigate facts, review documents and was overconfident.	Note: see specific skills in the legislation [11]: in a multi-discipline practice, the lawyer must ensure the client is aware that the legal advice may be supplemented by services from non-lawyers. Any non-lawyer services that are unrelated to the retainer must be provided independently from the scope of the legal services retainer and in a different location than the multi-disciplinary practice.	BC Code 3.1-1
	Legal standard for competence: is the "reasonably competent solicitor." originated in the SCC case <i>Central Trust</i> .	[2]: Competence regards both ethical and legal principles [5]: If undue delay is required to become competent in the subject matter, do not take on the client. [6]: If the lawyer is consulted about a task they lack confidence for, they should obtain client's instructions to retain, consult or collaborate with a lawyer who is competent for that task or obtain consent to become competent without undue delay, risk or expense.	BC Code 3.1-2
	Quality of Service: a lawyer has a duty to provide courteous, thorough and prompt service. Example: <i>Richey</i> - pattern of failing to communicate and perform legal services in a timely manner. See the Code for specific examples.	[3]: This involves effective communication with the client with an understanding of their particular needs and sophistication, including cultural differences. [4]: the lawyer needs to ensure that matters are attended to within a reasonable time frame, if undue delays are foreseeable, the lawyer must inform the client. [2]: an ordinarily competent lawyer occasionally fail to provide quality service.	BC Code 3.2-1
	3.2-1.1 - Limited Scope Retainer: before undertaking a limited scope retainer, the lawyer must inform the client the nature and extent of the services they can provide under such a retainer. 3.2-2 - Honesty and candour: the lawyer must be honest and candid about everything that may affect the client. 3.2-3 - Client as an organization: when the client is an organization, the lawyer must act within the organization's interest and not the specific agent's interests. 3.2-4 - Encouraging Settlement: a lawyer must encourage settlement or compromise whenever possible and		BC Code 3.2-1.1 to 3.2-8

	discourage useless legal proceedings. 3.2-5 - Threatening Criminal Proceedings: a lawyer must not threaten or advise a client to threaten criminal charges or complaints to regulatory authorities. 3.2-6 Inducements: lawyer cannot themselves or advise their client to provide or offer an inducement to anyone in order to withdraw criminal or regulatory proceedings. [2] This would include paying off witnesses, complainants, etc... 3.2-7 Dishonesty, Fraud by Client: a lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud. See Deciding Whether to Act. 3.2-8 Organizational Conduct: if a client organization is acting dishonest, criminally or fraudulently, the lawyer must advise their contact that the conduct should stop. If necessary, the lawyer should go over the contact's head to a higher member of the organization to report these issues. If the conduct persists, the lawyer should withdraw.			
Errors and Omms.	When a lawyer discovers an error or omission that may be damaging to the client and that cannot be rectified readily, the lawyer must (a) promptly inform the client without admitting legal liability, (b) recommend the client obtain independent legal advice on the matter and (c) advise the client that he or she may no longer be able to act.	[1]: Conditions 4.1 of the lawyers' compulsory professional liability insurance policy, a lawyer is contractually required to notify the insurer immediately after the lawyer becomes aware of the actual or alleged error that could reasonably be the basis of a claim covered by the policy.	<i>BC Code 7.8-1</i>	
COMPLAINTS PROCEDURE				
Generally	Allows complaints to the society for lawyers believed to be guilty of professional misconduct, conduct unbecoming, breach of the LPA or Law Society Rules		<i>LPA 26(1)</i>	
	Benchers can make rules authorizing investigations into the conduct of law firms or lawyers, former lawyers and articling student whether or not there has been a complaint.	Investigation may result in disciplinary action, limits on practice, requirements to take CPD and other remedial action.	<i>LPA 26(2)</i>	
	Benchers decisions can be reviewed.	S. 48 the appeal is made straight to the BCCA	<i>LPA s. 47</i>	
	(1) The executive director must consider every complaint. Information from any source that indicates that a lawyer's conduct may constitute a discipline violation must be treated as a complaint			<i>LSRs 3-4</i>
	(6) There is a duty on the lawyer to fully cooperate in a Law Society investigation			<i>LSRs 3-5</i>
	The Executive Director can... (1) take no action or (3) refer the complaint to the Practice Standards Committee or Discipline Committee.	(4) The executive director can only refer complaints to the discipline committee if allegations involve (a) breach of a rule, (b) breach of undertaking given to the Society, (c) failed to respond to the Society, (d) breached an order made under the LPA or the Rules		<i>LSRs 3-6</i>
Practice Standards Comm.	Objectives of Practice Standards Committee are to (a) recommend standards of practice for lawyers, (b) develop programs to assist lawyers to practice competently, (c) identify lawyers who don't meet standards of competence and recommend remedial measures for them		<i>LSRs 3-11</i>	
	the PSC needs to consider any complaint referred to it by the Executive Director and can (3) (a) take no further action, (b) make recommendations to the lawyer, (c) require the lawyer to discuss the complaint with another lawyer or bencher, (d) order a practice review if there are reasonable grounds to believe the lawyer was incompetent, and (e) refer the complaint to the discipline committee	Discipline Committee only if allegations involve (a) breach of a rule, (b) breach of undertaking given to the Society, (c) failed to respond to the Society, (d) breached an order made under the LPA or the Rules		<i>LSRs 3-12</i>
	Practice Reviews are conducted by one or more qualified people. A report is delivered to the PSC and the lawyer after it is done.			<i>LSRs 3-13</i>
	PSC Action: after the conclusion of a practice review, the PSC can recommend a variety of remedial measures/programs, (4) which form part of the lawyer's professional conduct record. See Rules for list of recommendations.	(6) The PSC can also refer the complaint to the Discipline Committee.		<i>LSRs 3-14</i>
	If the lawyer doesn't comply with a PSC recommendation , the PSC can make an order imposing the conditions.			<i>LSRs 3-14.1</i>

	Remedial Programs can include any program intended to improve the lawyer's knowledge and skill in the practice of law.		<i>LSRs</i> 3-15
Discipline Hearings	The Discipline Committee must hear any complaint referred to it. It can also authorize the Executive Director to authorize further investigation.		<i>LSRs</i> s. 4-3
	After consideration of a complaint , the Committee can <ul style="list-style-type: none"> decide no further action be taken, authorize a letter considering the lawyer's conduct, require the lawyer to meet with a benchler or other lawyers, require the lawyer to appear before the conduct review sub committee, or direct a citation against the lawyer 	<i>LSRs</i> 4-4	
	<p>(4) After a hearing, the panel must:</p> <p>(a) dismiss the citation</p> <p>(b) Determine the respondent has committed one or more of the following:</p> <ol style="list-style-type: none"> prof. misconduct conduct unbecoming a lawyer a breach of this Act or the rules incompetence if not a member, conduct that would constitute any of these if they were <p>(5) if there is an adverse determination made against the respondent, other than an articulated student, the panel must do one of the following:</p> <ol style="list-style-type: none"> reprimand Fine not exceeding 50k Conditions/limitations on practice suspend disbar require remediation, medical etc... 	<p>(6) Penalties available for articling students:</p> <ol style="list-style-type: none"> reprimand; fine less than 5k extend the period set aside enrollment <p>(7) and anything it considers appropriate</p>	<i>LPA</i> s. 38
CPD	Benchers have the authority to determine the minimum number of CPD hours per year. In BC, lawyers must have 12 hours of CPD per year. 2 of these hours must pertain to any combination of professional responsibility and ethics, client care and relations, or practice management.		<i>LSRs</i> 3-18.3
	<p>There is a small firm practice course required for lawyers who start practicing in a small firm.</p> <p>3.18-1 Small firm: maximum of 4 lawyers or a lawyer who shares expenses with a non-small firm but otherwise acts independently.</p>	3-18.11 states that this applies to a lawyer who starts practicing in a small firm or becomes a signatory on a trust account, unless the lawyer has done both in a Canadian jurisdiction for 2 years or more in the last 5 years.	<i>LSRs</i> 3-18.2
DUTY TO PRESERVE CLIENT CONFIDENCES			
Confidentiality	Definition: solicitor client privilege is a legal right of the client that is founded in the rule of evidence. It protects private communications between a lawyer and a client for providing or obtaining legal advice.		
	Confidentiality extends beyond the scope of SCP. it includes all information acquired by the lawyer in the course of a lawyer/client relationship and does not end at the termination of that relationship.		
	Confidentiality: A lawyer must keep all information concerning the business and affairs of a client acquired in the course of the professional relationship confidential. The lawyer can only disclose such information if (a) it is expressly or impliedly authorized by the client; (b) it is required by law or by court; (c) it is required to deliver the information to the Law Society; or (d) it is otherwise permitted by rules.	<p>[4]: this duty extends to anyone seeking advice or assistance, even if the lawyer does not render an account or agree to represent that person.</p> <p>[9]: can disclose client affairs to partners, associates and admin staff in one's firm.</p> <p>If provincial or federal legislation requires a lawyer to produce a privileged file, the lawyer has to claim privilege unless the client waives it. (BC Code 3.3-2.1)</p>	<i>BC Code</i> 3.3-1
Exceptions	(b) Exception: Crime/Fraud - confidential communications lose their confidential character if they were made for the purpose of obtaining legal advice to facilitate the commission of a crime.		<i>Descoteaux</i>
	(b) Exception: Public Safety - You can breach confidentiality to prevent a crime when there is clear risk that will manifest, and the crime is serious, and it is imminent	Code 3.3-3: can disclose confidential information if the lawyer believes on reasonable grounds there is imminent risk of death or serious bodily harm and disclosure is necessary to prevent it. The lawyer cannot disclose more than is necessary.	<i>Smith v Jones</i>
	(b) Exception: Innocence at Stake - SCP may be overridden when the accused shows privilege information cannot be obtained from any other source and he is unable to raise reasonable doubt in any other way.	Brown: A disclosure of the privileged communication may be made to the accused but not the crown. The disclosure may not be used to incriminate the privilege holder.	<i>McClure</i>

		Procedure: Accused first provides evidence that the privileged information exists, the trial judge examines it to see if it could raise a reasonable doubt.	
	(c) Exception: Law Society - If a lawyer is required under the Act to provide the Society with information that is under SCP, you still need to provide this information. s. 87 complaints against lawyers, responses to those complaints, and reports made under the authority of the LPA must not be required to be produced in any proceedings, unless you have the respective consent.	88(1.3) a lawyer that has provided to the Society confidential information is deemed not to have breached any duty of confidentiality. Law Society Rule 3-5(10): a lawyer required to produce information must do so even if it privileged or confidential	<i>LPA</i> s. 88
	(d) Exception: Permitted by the Rules - if it is alleged that the lawyer has committed a criminal offence or is civilly liable for a client's affairs, or has committed professional negligence of misconduct, the lawyer may disclose confidential information to defend the allegations if necessary.	Note: the lawyer must not disclose more than is necessary.	<i>BC Code</i> 3.3-4
	(d) Exception: Permitted by the Rules - a lawyer may disclose confidential information to collect lawyer fees if necessary		<i>BC Code</i> 3.3-5
	(d) Exception: Permitted by the Rules - a lawyer can disclose confidential information to another lawyer to secure that other lawyer's ethical or legal advice		<i>BC Code</i> 3.3-6
Verification	Division 11 rules 3-91 through 3-102 require lawyers to obtain, verify, and record certain information about their clients when they are retained to provide legal services. This stems from the <i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</i> and Regulations.	Exceptions: in house counsel/employee lawyers, duty counsel, pro bono, where another lawyer has referred the client and has already complied	
	Requirements: A lawyer needs to make reasonable efforts to obtain client's name, business and home address and telephone numbers, occupation, type of business.	For corporate clients, details about the individuals who give instruction on behalf of the organization and incorporation details and business identification number.	<i>LSRs</i> 3-93
	Requirements: A lawyer must take reasonable steps to verify the identity of the client.	For corporate clients, this includes verification of their directors and shareholders.	<i>LSRs</i> 3-95
	Non Face-to-face transactions: there is a requirement for attestation by commissioner of oaths or guarantor. According to 3-99(1), this must be acquired within 60 days for an organizational client.	Where the client is outside of Canada, the lawyer must rely on an agent.	<i>LSRs</i> 3-97
	Exceptions to verification requirements: clients that are financial institutions, public authorities, reporting issuer or an individual giving instructions on behalf of them. Also, transactions between lawyers, payment or receipt of money pursuant to a court order or to settle a proceeding. Electronic transactions between financial institutions in countries that are members of the Financial Action Tax Force		<i>LSRs</i> 3-94
Retention of Records	A lawyer must keep records of documents used to verify client identities, the longer of the duration of the lawyer/client relationship or at least 6 years following completion of the work.		<i>LSRs</i> 3-100
	This rule sets the requirements for the commission of cash transactions	3-61.1 sets the rules for maintaining records of cash transactions.	<i>LSRs</i> 3-51.1
CONFLICTS OF INTEREST			
Definition and Specifics	Must refuse client if there is a conflict of interest unless permitted under the code. <i>BC Code 3.4-3</i> states that a lawyer must not represent opposing parties in a dispute (even with consent).	[1]: Conflict of interest a conflict exists when there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or duties to another client, former client, or third person. The risk must be genuine and serious.	<i>BC Code</i> 3.4-1

	<p>BC Code 3.4-26.1 states the rule more specifically, noting that the relationship with the client and interests in the client or subject matter of the legal services cannot pose a substantial risk of adversely affecting the lawyer's loyalty.</p> <p>Examples under [8]: (a) a lawyer who is acting against his own client by acting for another client, etc... (c) acting for an employer and employee (d) extension to family members and business interests, lawyer has a financial stake in client's interests (e) very close personal relationships, sexual relationships may result in conflicts (f) lawyer acting as a director of the corporation (g) cost-sharing and space sharing arrangements (hard in a small space to maintain confidentiality, etc...)</p>	<p>[2]: A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer. [3]: This applies to a lawyer's duties to the current, former, concurrent and joint clients as well as to the lawyer's own interests. [7]: Factors in determining a COI: immediacy of the legal interests, whether they are directly adverse, whether it is substantive or procedural, the temporal relationship between the matters, significance of the issues to the clients, the client's reasonable expectations [8]: See list of examples.</p>	
	<p>Acting against former clients: Unless the former client consents, the lawyer must not act against the former client in: (a) the same matter (b) any related matter (c) any other matter if the lawyer has confidential information that could affect the client</p>	<p>3.4-11 deals with the situation of another lawyer in the firm acting against a former client. This situation is subject to 3.4-20, as outlined below.</p>	<p><i>BC Code 3.4-10</i></p>
<p>Tests</p>	<p>Bright Line Test: "A lawyer must not represent one client whose interests are directly adverse to the immediate interests of another current client - even if the two retainers are unrelated - unless both clients consent after receiving full disclosure and the lawyer believes he can represent both clients competently."</p>	<p>This basically the test laid out in <i>BC Code 3.4-2</i></p> <p>Note: only legally adverse</p>	<p><i>Neil</i></p>
	<p>If there is a conflict of interests, a lawyer can only act if he or she has (1) express or implied consent and (2) the actual ability to act for the clients without compromising their interests. (a) Express must be fully informed and voluntary after disclosure (b) Consent may be implied in the following situations: i. The lawyer is gov, financial institution, or other large body ii. matters are unrelated iii. no relevant confidential information iv. the client has commonly consented to this</p>	<p>[1]: where it is not possible to provide the conflicting clients with adequate disclosure on the conflict (i.e. because of confidentiality), the lawyer must not take on the client. [4]: If a consent in advance agreement, the agreement is only meaningful if it covers the type of conflict that occurred. [7]: The obligation that the lawyer reasonably believes they can represent conflicting parties competently precludes a lawyer from acting for parties to a transaction with different interests except where joint representation is permitted under the code.</p>	<p><i>BC Code 3.4-2</i></p>
<p>Firm Transfers and Space Sharing</p>	<p>When a lawyer transfers to another firm that represents the other side in a case: Test: The onus is on the transferring lawyer to satisfy a reasonably informed member of the public that no inappropriate use of confidential information will occur. Stage 1: Did the lawyer receive any confidential information? Stage 2: Is there a risk that confidential information will be used to the prejudice of the client, reflected in (b) of 3.4-20 and implicitly (a). Dissent: there should be an irrebuttable presumption that the lawyer cannot act once the conflict arises because confidence in the legal system is supremely important.</p>	<p>The onus is on the lawyer who transferred to establish both stages.</p> <p>The majority identified three competing values: (1) high standards and integrity of the profession, (2) litigant should have choice of counsel, (3) allow for reasonable mobility in the legal profession.</p>	<p><i>MacDonald Estate</i></p>
	<p>If the transferring lawyer actually possesses confidential information that could prejudice a former client, the firm must cease representation unless either: (a) the old client consents (b) or the new firm can establish that the representation is reasonable, meaning that they have to take reasonable steps to ensure the confidential information will not be shared.</p>	<p>MacDonald Estate: Reasonable steps: based on the code and caselaw that they have a system in place. [2]: Reasonable measures: Appendix D sets out a detailed scheme for what to do when somebody transfers law firms and a conflict arises. BC Code 3.4-22: none of this applies if the lawyer does not possess confidential information that could prejudice the former client. BC Code 3.4-23 and 3.4-24: the new firm cannot have any discussion about the case whatsoever with the new lawyer unless the former client consents. BC Code 3.4-25: the lawyer can go to the Society for an opinion on the matter.</p>	<p><i>BC Code 3.4-20</i></p>
	<p>Space Sharing Arrangements: Unless the lawyers agree that they will never act for clients with adverse interests, they must disclose to clients:</p>	<p>[1]: take reasonable measures to ensure confidentiality, i.e. conflict check [2]: lawyer must have the consent of every client before</p>	<p><i>BC Code 3.4-43</i></p>

	(a) space sharing arrangement (b) the ID of the lawyers in the space (c) that the lawyers sharing the space are free to act for other clients who share adverse interests	they disclose any information about the client to do a conflict check BC Code 3.4-42: This applies to lawyers who share space but aren't in partnership together	
Concurr't and Joint Rep.	Concurrent Representation: When there is no dispute among clients about a matter that is subject to the proposed representation, two or more lawyers in a law firm may act for current clients with competing interests and treat the information from each client as confidential. This is only possible provided that there is full disclosure, clients consent, the clients have received independent legal advice, and there are screening mechanisms to protect confidential information.	[2]: Example: if a law firm represents two different construction firms bidding for the same contract, two or more lawyers in the firm can represent the competing parties. [3]: even if the clients consent, a lawyer shouldn't take a concurrent retainer if one of the clients is less sophisticated or more vulnerable than the other.	BC Code 3.4-4
	Joint Representation occurs where multiple clients are on joint retainers for the same lawyer in an issue. Joint retainers require the lawyer to advise the client that: (a) they have been asked to act for the other client; (b) no information can be treated as confidential so far as the other clients are concerned (c) if a conflict develops that cannot be resolved, the lawyer cannot act for all the clients still	[2]: if you receive instructions from two spouses or partners to make them a will, that is a joint retainer. BC Code 3.4-6: if a lawyer has a continuing relationship with a client, before the lawyer accepts a joint retainer from that client and another client, the lawyer must advise the new client of the continuing relationship and recommend the new client get independent legal advice. BC Code 3.4-7: Once 3.4-6 has been completed, explicit consent is still required from both clients.	BC Code 3.4-5
Testamentary Interests and Gifts	A lawyer cannot include a clause in a will directing the executor to use the lawyer's services.	BC Code 3.4-38: the lawyer cannot prepare or cause an instrument to give him or her or an associate a gift or a benefit from the client, unless the client is a family member or a partner or an associate.	BC Code 3.4-37
	A lawyer cannot accept a gift that is more than nominal from a client unless the client has received independent legal advice.		BC Code 3.4-39
Fiduciary Duty	Facts: Lawyer failed to give old client info on tax structure but gave new client info in return for equity in company; lawyer had incentive not to give old client info. Rule: scope of retainer is a matter of contract law, but contains a fiduciary duty (duty of loyalty). Here, the lawyer must act solely in the beneficiary's interests, never their own.	Note: lawyer advising two competing clients on core competencies - probably breaches fiduciary duty because you cannot help one without harming the other. Note: however, if advice on generic tax or other business stuff, probably does not breach fiduciary duty.	<i>Strother</i>
Doing Business with Your Client	A lawyer must not enter a transaction with a client unless the transaction is fair and reasonable to the client, the client consents, and the client has independent legal representation.	BC Code 3.4-27.1: The independent legal advice must: (a) the client must be advised that they have the right (b) explain the legal aspects of the matter to the client (c) inform the client about qualified advisors in other fields who could advise the client from a business point of view BC Code 3.4-27 the independent legal advisor cannot have a conflict of interest in the matter.	BC Code 3.4-28
	Facts: McKercher had a long solicitor/client relationship with CN. McKercher picked up a new client with a 1.75B class action suit against CN. McKercher keeps one of CN's matter on retainer, and CN terminates that matter themselves. Issue: McKercher to be removed from case? Yes. Rules: 1. Even though large/sophisticated clients can give implied consent for acting in matters against their interests, the implied consent has limits and does not extend to this type of situation. 2. The duty to avoid COIs with former clients primarily involves avoiding the use of confidential information obtained through them 3. Duty of candour requires lawyers to advise existing clients about accepting retainers that have the lawyer acting against existing clients before they actually accept those retainers (unless you have implied consent from a sophisticated client).	A - The duty of loyalty includes a duty of commitment to the client's cause. This prevents a lawyer from summarily dropping a client just to avoid a conflict. B - If the client tactically uses conflict rules to prevent one client from their choice of counsel, the client loses the benefit of the conflict rule. C - Superior courts have inherent supervisory jurisdiction to remove lawyers from pending litigation. If the complaining client is not actually being prejudiced, consider whether the following factors would undermine the administration of justice: 1. Delay in bringing the motion by complaining party 2. Significant prejudice to new client because they have to find a new lawyer 3. Whether law firm accepted the retainer in good faith	CN Railway

PROVISIONS NOT IN SLIDES

Bar Admiss.	No one can be enrolled as an articling student or called unless the benchers are satisfied the person is of good character.	2(c) On application for enrollment, benchers can accept the app, accept the app with conditions, or order a hearing.	<i>LPA</i> s. 19
	When the benchers order a hearing under s. 19 , panel must grant application, grant application with conditions, or reject application.		<i>LPA</i> s. 22
Articling Students	GOverns the legal services by articling students.		<i>LSRs</i> 2-32.01
	Lawyers have to observe procedures and rules about recruitment		<i>BC Code</i> 6.2-1
	Duty of a principal: must provide the student with meaningful training, exposure and involvement in work that will provide the student with knowledge and experience of the practical aspects of law and appreciation for the profession's ethics.		<i>BC Code</i> 6.2-2
	Duties of an Articling Student: the student must act in good faith and discharge all commitments and obligations arising from the articling experience.		<i>BC Code</i> 6.2-3
Working With Others	The lawyer has a responsibility for all business entrusted to them and must supervise all staff to whom they delegate tasks.		<i>BC Code</i> 6.1-1
	A lawyer cannot permit a non-lawyer to: SEE LIST IN BC CODE 6.1-3		<i>BC Code</i> 6.1-3
	A lawyer cannot work with a suspended or disbarred lawyer without permission of the lawyer's governing body.		<i>BC Code</i> 6.1-4
Hearing Panels	The rules on composition of hearing panels		<i>LSRs</i> 5-2
Review Boards	Review boards can be used to appeal a panel decision.	This section sets out the composition of review boards.	<i>LSRs</i> 5-12.1
Client Property	A lawyer must care for a client's property as a careful or prudent owner would; and observe all relevant rules and the law about preservation of client property entrusted to the lawyer.	Murray: came into possession of damning evidence in a criminal trial. 3.5-3: must notify a client of the receipt of any property unless satisfied the client is already aware. 3.5-4: a lawyer must clearly label and ID a client's property 3.5-5: must maintain a record of the client's property 3.5-6: lawyer must promptly deliver client's property that is in the lawyer's custody and deliver it to the order of the client on request or, if appropriate, at the conclusion of the retainer	<i>BC Code</i> 3.5-2
Harassment	Covers harassment		<i>BC Code</i> 6.3
Specific Lawyer Duties	7.2-3: lawyer must not record a conversation with another lawyer without consent 7.2-4: Communications (don't be offensive) 7.2-5: Communications (promptness) 7.2-6: Communications (going to someone elses client) 7.2-7: Giving second opinions	7.2-8: Going to a contact of another lawyer's corporate client 7.2-9: Dealing with unrepresented litigants 7.2-10: Inadvertent communications: document intended for opposing party, etc... 7.2-12: trust cheques 7.2-13: real estate transactions	<i>BC Code</i> 7.2
Lawyer in Public	A lawyer in public office must adhere to standards of conduct as high as those engaged in the practice of law. I.E. applies to any elected officials, mayors, who are not actually practicing as lawyers.		<i>BC Code</i> 7.4-1

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Definitions

Benchers: elected by lawyers, they make law society rules, carry out credential processes, discipline processes, partake in policymaking, etc...

Sustainable professionalism: What is needed is a story of professionalism that captures the energy and positive attributes of both sides (*Farrow*). This is the midpoint between a zealous advocate and a moral agent. This excludes

Practice of Law: it includes giving any legal advice or making an offer to do any of the activities that are listed in s. 1, or making any representation that you're qualified to engage in the practice of law.

Law Society VS Canadian Bar Association: CBA Canon of Ethics is more of a guide of legal ethics. Importantly, it states that it does not displace other duties. The Law Society Rules and provisions are actually binding. However, s. 2.1 in the BC Code includes a canon of legal ethics much similar to the CBA Canon.