

Ethical Lawyering

SOURCES OF LEGAL ETHICS

Legal Profession Act

The Oath

Do you sincerely promise and swear (or affirm) that you will diligently, faithfully and to the best of your ability execute the offices of Barrister and Solicitor; that you will not promote suits upon frivolous pretences; that you will not pervert the law to favour or prejudice anyone; but in all things conduct yourselves truly and with integrity; and that you will uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada and the Province of British Columbia?

Law Society Rules

BC Code of Professional Conduct

Case Law

Rules and Practice Advice to Keep in Mind

Client ID Rules	<p>Law Society Rules 3-98 to 3-109</p> <ul style="list-style-type: none"> ▪ The lawyer must make reasonable efforts to obtain basic client identification information (full name, address, phone number). It would be good practice to take a copy of a driver license. ▪ Generally this extends to financial transactions
No Cash Rule	<p>Law Society Rules 3-59</p> <ul style="list-style-type: none"> ▪ Lawyers are generally prohibited from accepting an aggregate amount of \$7500 or more in cash ▪ There is an exception for professional fees, disbursements, expenses or bail ▪ If you accept any amount of cash you must maintain a cash receipt book
Engagement Letters	<p>The law society encourages use of engagement letters which should include:</p> <ul style="list-style-type: none"> ▪ Who the client is [who you act for] ▪ What the scope of the work is (unbundling) ▪ What the estimated fees are (give an upper and lower limit) ▪ When the work should be complete/when it ends ▪ Retainer ▪ Clarify there is no advice before the engagement letter
Integrity	<p>Code of Professional Conduct in BC s. 2.2-1</p> <p><i>A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.</i></p> <ul style="list-style-type: none"> ▪ Integrity is fundamental to anyone who practices law ▪ Public confidence in the administration of justice is eroded by a lawyer's irresponsible conduct (both professional and private) ▪ Generally, the law society is not concerned with purely private activities that do not bring into question the lawyer's professional integrity
Duty to Act with Courtesy and Good Faith	<p>Code of Professional Conduct BC</p> <p>7.2-1 <i>A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice</i></p> <ul style="list-style-type: none"> ▪ A lawyer should agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities and similar matters that do not prejudice the rights of the client ▪ Note-LSBC v Johnson: Fuck you case

<p>Duty to Report</p>	<p>Code of Professional Conduct BC 7.1-3 Unless to do so would involve a breach of solicitor-client confidentiality or privilege, a lawyer must report to the Society:</p> <ul style="list-style-type: none"> a) a shortage of trust monies; b) (a.1) a breach of undertaking or trust condition that has not been consented to or waived; c) the abandonment of a law practice; d) participation in criminal activity related to a lawyer’s practice; e) the mental instability of a lawyer of such a nature that the lawyer’s clients are likely to be materially prejudiced; f) conduct that raises a substantial question as to another lawyer’s honesty, trustworthiness, or competency as a lawyer; and g) any other situation in which a lawyer’s clients are likely to be materially prejudiced. <p>In addition you should encourage a client to report an apparent dishonest lawyer to the law society [Code of Professional Conduct Rule 7.1-4]</p>
<p>Working for Family Members</p>	<p>If you act for a family member you will have NO insurance coverage under the Law Societies professional liability insurance policy. Note-You may still be able to work for a business if a family member has a stake in it, as long as it doesn’t exceed 10%.</p>
<p>How to Avoid Complaints</p>	<p>Good communication Avoid procrastination Reduce distractions Manage expectations Apologize Use engagement letters</p>
<p>Civility in Communications</p>	<p>Code of Professional Conduct BC 7.2-4 A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.</p>
<p>Bully Clients</p>	<p>A bully client often will threaten to fire you, call your principle etc. Try to spot these problems early, call a practice advisor if need be and remember to always use engagement letters that give you the right to terminate your service. NOTE-when one client is over 60% of your practice you have be especially vulnerable to them.</p>
<p>Financial Responsibility</p>	<p>Code of Professional Conduct 7.1-2 A lawyer must promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a professional liability insurance policy, when called upon to do so. *See below on failure to meet financial obligation (under professional misconduct) In order to maintain the honour of the Bar, lawyers <u>have a professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed or undertaken</u> on behalf of clients, unless, before incurring such an obligation, the lawyer clearly indicates in writing that the obligation is not to be a personal one</p>
<p>Quality of Service</p>	<p>BC Code of Professional Conduct-3.2-1 A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.</p> <ul style="list-style-type: none"> ➤ A lawyer has a duty to provide a quality of service at least equal to that which lawyers generally expect of a competent lawyer in a like situation. An ordinarily or otherwise competent lawyer may still occasionally fail to provide an adequate quality of service ➤ A lawyer has a duty to communicate effectively with the client. What is effective will vary depending on the nature of the retainer, the needs and sophistication of the client and the need for the client to make fully informed decisions and provide instructions

Authority to Practice Law	Section 15(1) of the Legal Professions Act prohibits anyone except a practicing lawyer from engaging in the practice of law. [Some exceptions, see page 64] In addition, a person cannot falsely represent themselves as being a lawyer [15(4)]
Duty of In House Counsel	A lawyer who is in house counsel and knows or ought to know that the organization has acted dishonestly, criminally or fraudulently must advise the CEO and CLO, if they don't do anything then go to the board of directors, then if nothing is done still they can withdraw.
Preservation of Clients Property	BC Code of Professional Conduct 3.5-2 A lawyer must: <ul style="list-style-type: none"> a) care for a client's property as a careful and prudent owner would when dealing with like property; and b) observe all relevant rules and law about the preservation of a client's property entrusted to a lawyer. Document everything in relation to client property. You must notify the client when you receive property (3.5(3)) and keep the property safe and distinguishable from your own property (3.5-4). Account for the property and deliver upon request (3.5-6).
Affidavits	Failure to comply with the rules made render affidavit inadmissible into evidence and expose the lawyer to discipline. Affidavits may be completed by a practicing lawyer or student or notary. If changes need to be made to one that had already been sworn, it will need to be resworn. [Page 52 of CAN]
Managing Your Online Reputation	Be aware of the implications of social media use and your digital tattoo. You should have a social media policy at work for all employees. Review employees social media presence before hiring. Online presence is governed by the Code of Conduct, the LSBC Practice Resources Guidelines and Privilege.

The Law Society

The law society regulates lawyers from the time they begin their 1 year articles until they are no longer licensed as lawyers in BC. Their main mandate is to protect public interest. They are also tasked with running the lawyers insurance fund.

Object and duty of society 3 → Mandate of the Law Society

It is the object and duty of the society to uphold and protect the **public interest** in the administration of justice by

- a) preserving and protecting the rights and freedoms of all persons,
- b) ensuring the independence, integrity, honour and competence of lawyers,
- c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and
- d) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

Duties of Lawyers to the Law Society [7.1 Code of Professional Conduct BC]

7.1-1 A lawyer must

- a) reply promptly and completely to any communication from the Society;
- b) provide documents as required to the Law Society;
- c) not improperly obstruct or delay Law Society investigations, audits and inquiries;
- d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;
- e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and
- f) otherwise comply with the Law Society's regulation of the lawyer's practice.

Standards of the Legal Profession [Code of Professional Conduct BC s 2.1]

A lawyer is a minister of justice, an officer of the courts, a client's advocate and a member of an ancient, honourable and learned profession. In these several capacities, it is a lawyer's duty to promote the interests of the state, serve the cause of justice, maintain the authority and dignity of the courts, be faithful to clients, be candid and courteous in relations with other lawyers and demonstrate personal integrity.

To the State [2.1-1]	A lawyer owes a duty to the state, to maintain its integrity and its law. A lawyer should not aid, counsel or assist any person to any in any way contrary to the law.
To the Client [2.1-3]	<ul style="list-style-type: none"> ▪ A lawyer should obtain sufficient knowledge of the facts and law before giving legal advice (be wary of bold and confident assurance to a client). ▪ A lawyer should disclose any conflicts of interest. ▪ You should tell a client if a settlement is fair and advise them to end litigation. ▪ A lawyer should treat adverse witness, counsel and litigations fairly ▪ A lawyer should endeavour to obtain for a client any and every remedy or defence that is authorized by law ▪ You make take on unpopular clients but you must advocate for them just as you would anyone else ▪ A lawyer has a duty of confidentiality to their client. Having once acted for a client in a matter, a lawyer must not act against the client in the same or any related matter. ▪ Record and report any use of trust money to client ▪ A lawyer is entitled to reasonable compensation ▪ Avoid conflicts over money (law it more than a money making business)

To the Courts and Tribunals [2.1-2]	<ul style="list-style-type: none"> ▪ A lawyers conduct should at all times be characterized by candour and fairness. ▪ Judges are entitled to receive support of the legal profession, any valid complaints should be done through the proper authorities. ▪ A lawyer should not attempt to deceive a court or tribunal.
To other Lawyers [2.1-4]	<ul style="list-style-type: none"> ▪ A lawyers conduct to other lawyers should be characterized by courtesy and good faith ▪ A lawyer should not communicate, or negotiation with a party if they know the are represented by a lawyer ▪ A lawyer should avoid sharp practice and should take no paltry advantage when an opponent has made a slip or overlooked some technical matter. A lawyer should accept reasonable requests that don't prejudice your clients rights
To Oneself [2.1-5]	<ul style="list-style-type: none"> ▪ A lawyer should assist in maintaining the honour and integrity of the legal profession ▪ A lawyer should make legal services available ▪ A lawyer needs to fulfil their oath ▪ No client is entitled to receive nor should any layer render any service or advice involving disloyalty to the state or disrespect for judicial office ▪ Promote values of probity, integrity honesty and dignity

The Law Society Complaint and Discipline Process

The law society receives about 1,100 complaints a year. The law society can make adverse determinations pursuant to section 38(4) of the Legal Professions Act on:

Complaint Intake

Complaints to the law society can come in a variety of ways (telephone, online etc). Section 3-2 of the Law Society Rules states anyone may deliver a complaint against a lawyer.

When a complaint is received the law society representative must make a determination of what will happen with the complaint. The law society will decline to investigate a complaint where: [Section 3-5(3) of the Law Society Rule]

- (a) is outside the jurisdiction of the Society,
 - Example: if it involved fee disputes, or if the lawyer complained of is not governed by the law society of BC
- (b) is frivolous, vexatious or an abuse of process, or
- (c) does not allege facts that, if proven, would constitute a discipline violation.

In some cases the representative will be able to resolve disputes right away without the complaint going any further. If a complaint is unlikely to result in discipline, then it will be handled at the early resolution stage. In the event that a complaint is incomplete they may seek substantiation.

The Intake Stage will result in one of three outcome:

1. The law society will decline to investigate
2. The complaint will be resolved [early resolution process]
3. The complaint will be investigated further [substantiated]

Common complaints:

- Poor communication with clients or other lawyers
- Delay in taking action on a file
- Breaches of professional responsibilities (breach of undertaking, rudeness, dishonesty, incivility)
- Disputes over fees and account
 - NOTE-these complaints are outside of the law societies jurisdiction (the reviews are conducted by the Supreme Court Registrar)
- Conflicts of interest
- Failure to pay practice debts
- Incompetence

NOTE→Under The Law Society Rules 3-10 and 4-23 the law society reserves the right to suspend or place conditions on a lawyer if three or more benchers believes the practice of the lawyer to be dangerous and harmful to the public or the lawyers clients. Under Rule 3-11 a lawyer or articulated student who is under investigation or have been cited may be required to submit to a mediation examination concerning the ability of the lawyer to practice law.

Complaint Investigation

If after the initiation complaint intake process the Law Society representative believes the complaint warrants further investigation then the Law Society has the authority to investigate complaints under rules 3-5 to 3-7 of the Law Society Rules. A lawyer has a duty to cooperate with any investigation [Rule 7.1-1 of the BC Code]. The Law Society Rules govern the investigation process [Rule 3-5], they may require that the lawyer be interviewed or provide documents and files.

At the conclusion of the investigation the Professional Conduct staff make an assessment of the complaint and determine if:

1. No Further action is necessary [Rule 3-8]
 - The complaint is not valid (of its validity is not proven)
 - The complaint does not disclose conduct serious enough to warrant further action, OR
 - The matter giving rise to complaint has been resolved.
2. Evidence support an allegation of misconduct
 - The matter will then be referred to the Discipline Committee
3. Evidence supports an allegation of incompetence
 - The matter will then be referred to the Practice Standards Committee

NOTE→A complainant who is dissatisfied with the decision to take no further action has a right to request a review of the decision by the Complaints Review Committee [Rule 3-14].

Complaints Review Committee	Discipline Committee	Practice Standards Committee
<p>They review the complaint file, and can make the following order:</p> <ol style="list-style-type: none"> 1. Confirm the decision to take no further action 2. Refer the matter to the discipline committee 3. Refer the matter to the practice standards committee. <p>*If a complainant is still unsatisfied they may take their concerns to the Ombudsperson</p>	<p>The DC makes decisions on what actions, if any should be take on the complaints it considered.</p> <p>The DC must do one of the following:</p> <ol style="list-style-type: none"> 1. Decide no further action be taken 2. Order a Conduct Letter be sent to the lawyer 3. Order a Conduct Meeting 4. Oder the Lawyer appear before a conduct Review Subcommittee 5. Direct that a Citation be Issued 	<p>The PSC deals with complaints in situations in which competency problems play a role in what otherwise might be conduct leading a discipline proceeding or the conduct itself suggest a competency problem.⁶</p> <p>The PSC Will Do One of the Following: [Section 3-17(3) LS Rules]</p> <ol style="list-style-type: none"> 1. Decide no further action 2. Make recommendations 3. Order lawyer to meet with bencher or other designed lawyer 4. Practice Review 5. Refer to Discipline Committee

Discipline Committee Orders

Conduct Letter	This letter does not form part of the lawyers professional conduct record, and it is not admissible in the hearing of a citation [Rule 4-9(2)].
Conduct Meeting	<p>Under rule 4-10 when the discipline committee orders a conduct meeting the meeting:</p> <ul style="list-style-type: none"> ▪ Must be held in private ▪ Does not form part of the lawyers professional conduct record ▪ The bencher or other lawyers present are not permitted to testify in the hearing of a citation as to any statement made by the lawyer during this meeting [ie it is confidential] ▪ No written record
Conduct Review Subcommittee	<p>The conduct review process responds to complaints, which while troubling, do not warrant the issuance of a citation. The committee must include: [Rule 4-11(2)]</p> <ul style="list-style-type: none"> (a) must include at least one lawyer, (b) may include one or more appointed Benchers, and (c) (c) must be chaired by a Bencher or a Life Bencher. <p>Rule 4-12-Conduct Review</p> <p>(1) A conduct review is an informal proceeding at which the lawyer</p> <ul style="list-style-type: none"> a) must appear personally, and b) may be represented by counsel. <p>(2) Subject to subrule (3), a conduct review must be conducted in private.</p> <p>(3) The Conduct Review Subcommittee may, in its discretion, permit the complainant to be present at all or part of the meeting, with or without the right to speak at the meeting. [aka the complainant may attend]</p> <p>At the end of review a written report is prepare which is considered by the discipline committee and forms part of the processional conduct record [Rule 4-13]. The discipline committee must make one of the following orders: [Rule 4-13(6)]</p> <ul style="list-style-type: none"> (a) decide to take no further action on the complaint; (b) refer the lawyer to the Practice Standards Committee; (c) direct that a citation be issued against the lawyer under Rule 4-17 (1) [<i>Direction to issue, expand or rescind citation</i>]; (d) rescind the decision under Rule 4-4 (1) (d) [<i>Action on complaints</i>] to require the lawyer to appear before the Conduct Review Subcommittee, and substitute another decision under Rule 4-4 (1). <p>*Note that this report cannot be used as evidence at a hearing for that same conduct[Rule 4-16]</p>

Citation

The discipline committee may order a hearing into the conduct or competency of a lawyer by issuing a citation against the lawyer.

Contents of citation

4-18 (1) A citation may contain one or more allegations.

(2) Each allegation in a citation must

- a) be clear and specific enough to give the respondent notice of the misconduct alleged, and
- b) contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven against the respondent and to identify the transaction referred to

The Law society bears the onus of proving these allegations and if it cannot prove them the citation is dismissed.

The Hearing

All proceedings before a hearing are recorded by a court reporter. The hearing is open to the public [Rule 5-8].

A hearing Panel Consists of:

Possible Adverse Determinations Available to the Law Society [section 38(4) LPA]

- Professional Misconduct
- Conduct Unbecoming of a Lawyer
- A breach of the Act or Law Society Rules
- Incompetence performance of duties undertaken in the capacity as a lawyer

If an adverse decision is made, they must impose one of the following sanctions [38(5) of the Legal Professions Act]

- Reprimand
- Fine not exceeding 50,000
- Impose conditions on their practice
- Suspend them
- Disbarment
- Order them to complete specific programs etc

Issuance of Penalties

The main goal of dispensary action to make sure lawyers face consequences if they fail to meet the standards that in place to protect the public. Discipline should be process, increasing in severity as the number of complaints increased (progressive discipline).

Main Purposes → Deterrence and protection of the public.

As noted above section 38(5) of the Legal Professional Act outlines consequences of an adverse finding following a hearing.

The Ogilvie Factors outlines the factors that should be considered in ordering a sanction:

- a) The nature and gravity of the conduct proven;
- b) The age and experience of the respondent
- c) The previous character of the respondent, including details about prior discipline
- d) The impact upon the victim
- e) The advantage gained, or to be gained, by the respondent
- f) The number of times the offending conduct occurred
- g) Whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances
- h) The possibility of remediating or rehabilitating the respondent
- i) The impact on the respondent of criminal or other sanctions or penalties
- j) The impact of the proposed penalty on the respondent
- k) The need for specific and general deterrence
- l) The need to ensure the public's confidence in the integrity of the profession
- m) The range of penalties imposed in similar cases

Case	Facts	Penalty
<i>LSBS v Martin</i>	Air India case, set test for professional misconduct.	Reprimanded Fined 20,000 Pay costs of the proceedings (amounting to 35,000)
<i>LSBS v Johnson</i>	Says "fuck you" to officer.	Suspended for 30 days Pay Costs of the Proceedings (amounting to 10,000)
<i>LSBC v Food</i>	Social worker threaten to shoot	2 week suspension Pay costs of the proceedings
<i>LSBC v Harding</i>	Car lot, threatening to use crowbar.	2 months suspension
<i>LSBC v Vlug</i>	11 allegations	7 weeks suspension (which was reduced from the original 6 months) Fine 20,000
<i>LSUP v Groia</i>	Guy who defended his clients too aggressively.	1 month suspension
<i>LSBS v Wirick</i>	Trust Misappropriation	Disbarred
<i>LSBC McLean</i>	Ungovernability	Disbarred
<i>LCA v Beaver</i>	Stole Trust Money	Disbarred
<i>LSBC v Faminoff</i>	A Bunch of Financial Stuff	2 month suspension Ordered to pay costs (8430)
<i>LSBC v Derksen</i>	Financial stuff	45 day suspension Pay 1000 in costs
<i>LSBC v Lessing</i>	Marriage break-up, went broke	1 Month suspension Ordered to pay costs He can't self represent in any court without consent of the PSC
<i>LSBC</i>	Breach of confidentiality	1 week suspension 2500 Fine Ordered to pay cost (5000)
<i>McCormick</i>	Disclosed RCMP information	45 day suspension Ordered to pay 5000

Professional Misconduct

TEST→ Whether the facts as made out disclose a marked departure from that conduct the law society expects of its members, if so, it is professional misconduct. [LSBC v Martin, 2005]

*The law society has the burden of proof of establishing professional misconduct on a balance of probabilities

*Note that Professional Misconduct is not defined anywhere

- It is settled law that it is for the benchers to determine what conduct amounts to professional misconduct
- The Benchers are guardians of the proper standards of professional and ethical conduct
- The Law Society may consider previous conduct of a lawyer when determining if they committed professional misconduct (*Johnson, Foo*)
- *Groia* and *Laraker*- you must use the proper mechanisms to file complaints, and be civil in your communications with other lawyers/judges etc.
- Does the lawyer have personal issues that are worthy of consideration?

Things that may constitute Professional Misconduct

- Misappropriation of Client Trust Funds
- Fraudulent Activities
- Failure to Respond
 - To the Law Society
 - To a non-lawyer
- Misleading Conduct
 - Misrepresentations to a court
 - Misrepresentations to clients or the law society
- Breach of Undertaking
- Conflicts of Interest
- Breach of Confidentiality
- **Threatening to report to a regulatory body or Threatening Criminal Proceedings**
 - Code of Professional Conduct: 3.2-5 A lawyer must not, in an attempt to gain a benefit for a client, threaten, or advise a client to threaten:
 - a) to initiate or proceed with a criminal or quasi-criminal charge; or
 - b) to make a complaint to a regulatory authority.
- Civility
 - *LCUP v Groia*: The conduct must be uncivil-that is rude, demeaning or abusive conduct of which there is either no good faith basis or where the good faith basis is not objectively reasonable-the conduct must bring the administration of justice into disrepute. The administration of justice may be brought into disrepute by conduct including: stopping other counsel from presenting their case, questioning into integrity of the Court process or those involved, delaying the case, or causing a miscarriage of justice.
- Improper Commission of Documents
- Tampering with a witness
- Charging excessive fees/altering time sheets to obtain increased fees
- Failure to pay practice debts
- Obligations regarding payments of taxes
- Neglect of office systems/clients
- Failure to supervise staff
 - LSBC v Martin

➤ Failure to Meet Financial Responsibilities

- Law Society Rules 3-49: A lawyer has failed to meet the minimum standards of financial responsibility when:
 - When a monetary judgement is issued against them and they don't satisfy it in 7 days
 - Rules 3-50 if you fail to notify a judgement you should notify the LS
 - The lawyer is an insolvent lawyer
 - NOTE→Rules 3-51: when a lawyer becomes insolvent they must notify the Law Society and give documents regarding the debts
 - The lawyer does not procure and permit complying of records as required under the rules of to ensure compliance of books, records or accounts
 - A lawyer does not deliver a trust report when required
 - A lawyer does not report and pay the trust administration fee to the Law Society

Case	Ratio
<p><i>LSBC v Martin, 2005</i> Air India lawyer case. Failed to supervise work of clients children, and to appreciate the warning signs that their accounts were fraudulent. Professional Misconduct-YES</p>	<p>Set the test for professional misconduct [aka marked departure].</p>
<p><i>Lawyer 10</i> He swore under oath that a payment was not made, when in fact it had been made. Professional Misconduct-NO</p>	<p>A respondent must be culpable in order to have committed professional misconduct. The conduct must not only be a marked departure of the norm, but also be blameworthy. In the absence of culpability, gross neglect, reckless or dishonesty a finding of professional misconduct may not be warranted.</p>
<p><i>LSBC v Johnson</i> Lawyer who says “fuck you” to police officer in court house. Professional Misconduct-YES</p>	<p>The law society may consider previous behaviour of the lawyer when determining whether the committed professional misconduct. Insults or profanity, uttered in anger may constitute professional misconduct. Note-you have a duty of courtesy and good faith.</p>
<p><i>LSBC v Foo</i> You who told social worker in a courthouse he wanted to shoot her. Professional Misconduct-YES</p>	<p>All the circumstances are relevant, including location of the comment etc. It is not necessary to prove the words were intended to be threatening</p>
<p><i>LSBC v Harding</i> Guy threatens tow lot with crowbar because he wants to take pictures. Professional Misconduct- YES</p>	<p>You cannot use your legal knowledge to manipulate the system.</p>
<p><i>LSBC v Flug</i> 11 allegations against him (about disclosure of documents, false representations to the court etc) Professional Misconduct-YES</p>	<p>He knowingly misrepresented the facts while in Court and misled the Law Society, attached documents to an affidavit after it had been sworn, and acted with incivility in dealing with fellow lawyers. He also did not acknowledge his misconduct</p>
<p><i>LSUP v Groia</i> Cited for abusive behaviour during litigation (uncivil behaviour) Professional Misconduct-YES</p>	<p>Uncivil conduct amounts to professional misconduct when such conduct calls the administration of justice into disrepute. (this is a contextual analysis). Fearless advocacy is permissible, but unfounded direct attacks on the integrity of counsel are not.</p>
<p><i>Dore v Quebec</i> Guy writes letter to judge saying negative things about him. Professional Misconduct-YES</p>	<p>A lawyer owes a duty to the Courts and Tribunals under the Code of Professional Conduct BC [2.1-2]. Any complaints about a judge should be filed through the appropriate channels. Lawyers may speak their minds, but are constrained by their professional duties while doing so.</p>

<p><i>Laarakker v Law Society</i> L sends letter to other lawyer saying he was at the bottom of his class etc. Professional Misconduct-YES</p>	<p>Lawyer have a duty to be civil in their communications with other lawyers [See above].</p>
<p><i>LSBC v Lessing</i> He was broke from his marriage and didn't report it and failed to comply with court orders. Professional Misconduct-YES</p>	<p>You must report financial hardships to the law society. The law society will take into account personal problems. Professional Misconduct-YES</p>
<p>Financial Misappropriation Cases</p> <ul style="list-style-type: none"> ➤ You cannot pay from trust if you know there is a fee dispute ➤ You can only pay yourself from trust AFTER you have rendered the account [Law Society Rules 3-65] ➤ If you write cheque from a trust account you are undertaking that it will be paid [Code of Professional Conduct Rule 7.2-12] 	
<p><i>LSBC v Wirick</i> He misappropriated trust funds from real estate transactions. He failed to pay out mortgages and used those funds for other purposes. Professional Misconduct-YES (he was disbarred)</p>	<p>This is the reason we now have trust account audits. (it cost the law society 40 Millions)</p> <p>A lawyer should be alert to becoming involving in criminal activities such as mortgages fraud in the face of a bully client.</p>
<p><i>LSA v Beaver</i> He took 180,000 from trust. There were potential personal issues that lead to his behaviour. Professional Misconduct-YES (Disbarred)</p>	<p>Personal circumstances may be a mitigating factor, but will not always relieve a lawyer of liability.</p>
<p><i>LSBC v Faminoff</i> He handled client trust money improperly, failed to maintain proper account records, intentional misrepresentation to the law society by backdating statements of accounts and breaches of undertaking. Professional Misconduct- YES</p>	<p>Never backdate accounting records and always been transparent.</p>
<p><i>LSBC v Tungohan</i> Failed to handle trust funds in accordance with LS rules, failed to notify LS of monetary judgement, he withdrew funds from pooled trust accounts before rendering an account. Professional Misconduct-YES</p>	<p>You must notify the law society when a monetary judgement is issued against you.</p> <p>You must render the account before taking money from a trust account.</p>
<p><i>LSBC v Derksen</i> Failed to comply with LS accounting rules: failing to deposit cash retainer into trust account, failing to record recipe of cheque for payment of fees, failing to deliver bills etc. Professional Misconduct-YES</p>	<p>It is important comply with LS financial obligations. A past history of failure to meet financial obligations will be considered.</p>
<p><i>LS Ontario v Sas</i> She was moving to a new firm and closing trust accounts, but did it improperly. Professional Misconduct-YES</p>	<p>You have to take responsibility for those actions taken by person who are employed by you. You should take steps to determine that monies have been billed properly.</p>
<p><i>LSBC v Lessing</i> He was broke from his marriage and didn't report it and failed to comply with court orders. Professional Misconduct-YES</p>	<p>You must report financial hardships to the law society. The law society will take into account personal problems. Generally, the law society is not concerned with personal matter, unless it has collateral consequences on your obligations.</p>

Conduct Unbecoming

Legal Profession Act Definition

"conduct unbecoming a lawyer" includes a matter, conduct or thing that is considered, in the judgment of the benchers, a panel or a review board,

- (a) to be contrary to the best interest of the public or of the legal profession, or
- (b) to harm the standing of the legal profession

LSBS v Berge, 2005: We adopt the useful working distinction that professional misconduct refers to the conduct occurring in the course of a lawyers practice while conduct unbecoming refers to conduct in the lawyers private life. Conduct unbecoming includes any act of any member that will seriously compromise the body of the profession in the public estimate.

This concept is premised on the idea of integrity [2.2-1(3) Commentary]

- Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.
- Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action.
- Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity.

Conduct Unbecoming Can Encompass a range of conduct, including:

- Criminal and other illegal conduct
 - Assault, impaired driving, tax evasion, drug possession
- Misleading or dishonest conduct
- Lying to Law Society on Application
- Breach of trust, fiduciary or other obligation
- Inappropriate public comments
- Failing to comply with a court order
- Deemed Conduct Unbecoming
 - Financial irresponsibility contributing to bankruptcy
 - Failing to take reasonable steps to discharge bankruptcy

Ungovernability

Relevant Factors in Determining if Someone is Ungovernable: [Hall, 2007]

1. Consistent failure to respond to LS inquiries
2. Neglect of obligations to LS re Trust accounting
3. Misleading Client and/or LS
4. Failure to attend a Discipline Hearing
5. History of Different Kinds of Misconduct over Time
6. History of Breaches of Undertakings
7. History of Practicing While under Suspension
8. Number of Citations and Conduct Reviews [added in *Welder*]

CASE	RATIO
<i>LSBC v McLean, 2015</i> He failed to respond to LS, and failed to comply with practice standards order. He was DISBARRED.	A demonstrated a persistent and wanton disregarded to law society regulatory process. Aggravating Factors: only been called to the bar for 5 years yet had a number of citations, there was no possibility of remediation or rehabilitation, he didn't comply with past orders

**Is this a form of professional misconduct? → or for any rule violation

**Does it automatically lead to disbarment?

Competency

The Duty to be Competent

Pursuant to section 3.1-2 of the BC Professional Code of Conduct, a lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.

What does it mean to be Competent?

- As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law, accordingly a client is entitled to assume that law has the ability to deal with their legal matters
- Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises
- A lawyer should not undertake a matter without honestly feeling competent to handle it or being able to become competence
- If you are not competent to handle a matter you should:
 - Decline to act
 - Obtain clients instructions to consult or collaborate with another lawyer
 - obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client
- Be careful about rendering an "opinion", and also be careful about giving any non-legal advice without proper disclose of your qualifications (example business advice)
- Competency does not mean perfection!!

Competency Requirements

- Keeping a client reasonably informed
- Answering reasonable requests from client for information
- Responding to client telephone calls
- Keeping appoints with clients and providing explanations for missing them and apologies
- Taking appropriate steps to do something promised to a client (ensure everything is in writing)
- Answering within a reasonable time any communication that requires a reply
- Ensuring work is done in a timely manner
- Provide quality work and giving reasonable attention to the review of documents etc
- Maintaining officer, staff and facilities adequately
- Informing client of a proposal to settle
- Meeting deadlines (if not then provide a reasonable explanation)

Practice Standards Committee

One of the objects and duty of the Law Society is to establish practice standards and ensure the competency of lawyers (the protection of public interest). The Practice standards committee has primary authority over competency related matters. The Committees objectives are: [Rule 3-16 of the Law Society Rules

- a) Recommend standards of practice for lawyers
- b) Develop programs that will assist lawyers to practice law competently
- c) Identify lawyers who do not meet the accepted standards in the practice of law and recommend remedial measures to assist them in improving legal practices.

If a Person is Found to be incompetent, it may be addressed by: [Section 27(1) of the Legal Professions Act]

1. Making orders that impose conditions and limitations on the lawyers practice
 - Any orders that restrict practice may be temporary, especially in the case of struggling lawyers who just need help getting back on track
2. Requiring them lawyer receive help improving their competency through learning and guidance

Admission to the Law Society

Applicants must complete a 12 month Law Society admission program which includes:

1. 9 months of articles
2. 10 week PLTC
3. Two Qualifications Exams

Process

- Make sure you are eligible
- Secure your articling position
- Complete Application Package
- Submit Package
- Submit Separate Application for PLTC

Credential Hearing: The Law Society may order a credentials hearing, Section 2-51 of the Law Society Rules gives the Law Society the discretion to refer a matter to the credential committee.

When a Credentials Hearing Might be Ordered If:

- Not bring forthright in your application form [Failure to Disclose goes to issue of Character]
- Past Criminal Charges or convictions
 - Note this is both criminal and regulatory offences
- Bankruptcy and Insolvency
- Allegations/charges or academic misconduct
- Answers that May Indicate a lack of Fitness

At the end of the hearing the panel must do one of the following: [Section 22(1) of the Legal Professions Act]

- Grant the Application
- Grant the Application Subject to Conditions
- Reject the Application

*You have a right to appeal these decisions (BCCA)

CASE	RATIO
<p><i>Vanessa Winn</i> She was not entirely honest on her application, the Law Society found out by looking at her application to the California Bar. Outcome-She was admitted, it was determined she was of good character and repute. **Note: Failure to Disclose goes to issues of Character</p>	<p>Make sure you disclose everything on your application. Applicant should be aware that completion of the application or enrollment in the admission program of the LS is not a matter to be take lightly, and applicants should not attempt to avoid complete answers or downplay or otherwise describe a negative event in the best possible lights. Applicants should be totally forthright about their past and a failure to be forthright or otherwise downplay the negative event may result in a credential hearing.</p>

Good Character, Repute and Fitness Requirements

Legal Profession Act

19 (1) No person may be enrolled as an articled student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.

Good Character means those qualities which might reasonably be considered in the eyes of reasonable men and women to be relevant to practice of Law in BC at the time of the application.

The Applicant Must Establish that they are:

1. Of Good Character and Repute, and
2. Fit to Become a Barrister and Solicitor in BC

*the Applicant has the burden of satisfying the committee they have meet these two essential moral standards. [McQuat]

Factors To Consider in the Application of Section 19(1): [Mohan articulating the principles developed over time]

1. It is the applicants character and fitness at the time of the hearing viewed on a balance of probabilities that is determinative
2. The test does not require perfection or certainty
3. The questions becomes whether the applicant is able to demonstrate that he or she had rehabilitated himself to herself there being a balance to be struck between protecting the public and a concept of redemption through rehabilitation
4. Because every persons character is formed over time and it response to an number of influences it seems clear that no isolated act or serious of acts necessary defined ones nature for all time
5. Because being a lawyer is demanding the person must be fit to deal with that, the qualities to be considered are: a commitment to speak the trust no matter the personal cost, resolve to place the clients interests first and ot never expose the client to risk of avoidable loss, trustworthiness in handling the money of a client
6. Good or bad character does not depend on what a man knows of himself it means his general reputation in the estimation of his neighbours [Non-exhaustive list]
7. The status of lawyer requires that a special standard of honesty, integrity and trustworthiness be imposed meet and kept at all times so that public confidence is maintained.

Character

Character comprises of at least:

1. An appreciation of the different between right and wrong
2. The moral fiber to do what is right, not matter how uncomfortable the doing may be, and no matter what consequences to oneself
3. A belief that the law must be upheld and the courage to see that it is upheld

Fitness

Question-Do you have any existing condition that is reasonably likely to impair your ability to function as an articles student?

MAIN ISSUE: any medical conduction that would render you incapable of practicing law competently puts a clients interest at risk and harms the professions reputation and is thus relevant.

- A medical condition is not a bar to practicing law competently
- It is about CURRENT conditions not past →Subjective Test
- Fitness includes substance dependency/disorders and any information about medical conditions is kept confidential by the Law Society

Reinstatement

Test To determine if the Applicant has been Rehabilitated:

1. Is there a long course of conduct showing that the applicant is a person to be trusted
2. Has the applicants conduct since seizing to be a member been unimpeachable
3. Has there been a sufficient lapse of time
4. Have the applicant purged his guilt
5. Is there substantial evidence that applicant is likely to conduct themselves again if readmitted
6. Has the applicant remained current in the law through continuing legal education or is there a plan to be become current.

Cases

<p>McOuat v LSBC He applied to readmission. He had been disbarred for stealing client trust money. He went to jail etc. Reinstatement-NO</p>	<p>Note that section 19(1) of the Legal Profession Act applies applicants for reinstatement.</p> <p>The Law Society will consider a number of factors when deciding if a person is of good character and repute, particular importance will be placed on whether the person has been accountable for their actions.</p>
<p>LSBC v Mohan The guy who cheated on math test, law school paper and thesis paper (he didn't disclose the thesis paper thing, but the Law Society found out). Admitted-YES</p>	<p>Prior behaviour is not a complete bar to admission, if an applicant has sufficiently rehabilitated themselves that will be taken into account.</p> <p>In this case the majority found he had worked hard to meet to standard required under section 19(1).</p> <p>There was a Minority in this case. (Wilson)</p>
<p>Christopher Kay The guy who ran away when he owed over 300,000 to clients. He came back and applied to be reinstated.</p>	<p>Defined test determining whether to readmit someone. He was not reinstated.</p>
<p>Gayman He had been disbarred. He had a history of alcohol dependency. He got clean and applied for reinstatement. Reinstated-YES (with conditions)</p>	<p>This is a case about the importance of redemption. It is an exceptional case where the applicant was reinstated under strict conditions, but the panel found that what he had done to redeem himself was remarkable.</p>
<p>Lagamatt When applying to be committed there were concerns over an alleged sexual assault and past grow ops.</p>	<p>The panel was satisfied that he had been fully rehabilitated and currently of good character and repute and fit to become a lawyer without conditions.</p> <p>Factors they considered: he was remorseful, the sexual assault was dropped, he took actions to compensate for his wrongs.</p>

Confidentiality and Privilege

Confidentiality vs Privilege

- Confidentiality is a broader duty
- Privilege is a narrowed subset of matters into which a court or other legal process cannot inquire.

Confidentiality

Confidential information

3.3-1 A lawyer at all times must hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship and must not divulge any such information unless:

- a) expressly or impliedly authorized by the client;
- b) required by law or a court to do so;
- c) required to deliver the information to the Law Society, or
- d) otherwise permitted by this rule.

*Rule 3.3-2 says you cannot use confidential information to the disadvantage of the client or former client.

Confidential information is all information you learn working for a client regardless of its sources, or whether it was previously confidential.

Rationale: Confidentiality is necessary to render effective professional service through fostering communication.

Things To Note

- Confidentiality is different than privilege → The ethical rule is wider and applies without regard to the nature or source of the information or the fact that others may share the knowledge
- The duty of confidentiality survives the relationship (aka it lives indefinitely)
- You own a duty of confidentiality to anyone seeking advice, even if you have not rendered an account or agreed to represent.
- Generally, you should not disclose that you have been retained by a client
- Take care to avoid having conversations about confidential matters in places where there is a risk of being overheard
- There is implied disclosure if you need to reveal the information for practical purposes (ie talking to a senior partner etc)

Exceptions to Confidentiality

<i>harm / public safety exception</i>	<p>3.3-3 A lawyer may disclose confidential information, but must not disclose more information than is required, when the lawyer believes on reasonable grounds that there is an imminent risk of death or serious bodily harm, and disclosure is necessary to prevent the death or harm.</p> <ul style="list-style-type: none"> ➤ Serious Psychological harm may constitute serious bodily harm (Smith v Jones) ➤ In assessing whether disclosure of confidential information is justified, consider: <ul style="list-style-type: none"> ○ The seriousness of the potential injury to others if the prospective harm occurs; ○ The likelihood that it will occur and its imminence ○ The absence of any other feasible way to prevent the potential injury ○ The circumstances under which the lawyer acquired the information of the client's intent or prospective course of action
<i>Disclosure in Your Defence</i>	<p>3.3-4 If it is alleged that a lawyer or the lawyer's associates or employees:</p> <ol style="list-style-type: none"> (a) have committed a criminal offence involving a client's affairs; (b) are civilly liable with respect to a matter involving a client's affairs; (c) have committed acts of professional negligence; or (d) have engaged in acts of professional misconduct or conduct unbecoming a lawyer, <p>the lawyer may disclose confidential information in order to defend against the allegations, but must not disclose more information than is required.</p>

<i>Fee Collection</i>	3.3-5 A lawyer may disclose confidential information in order to establish or collect the lawyer's fees, but must not disclose more information than is required.
<i>To Obtain Ethical Advice</i>	3.3-6 A lawyer may disclose confidential information to another lawyer to secure legal or ethical advice about the lawyer's proposed conduct

CASE	RATIO
<i>LSBC v McCloud</i> In the court of trying to withdraw from a case he disclosed confidential information	This panel has decided in favour of a significant sanction both as a specific deterrent and a reminder about the importance of client confidentiality and as a more specific observation of the importance to the profession and to the administration of justice generally.
<i>Szarfer v Chodos</i> He had an affair with his client's wife after learning they were having marital problems.	The decision confirms that it is the USE not just the communication of confidential information that is prohibited. You cannot use confidential information for your own personal benefit.
<i>Juman v Doucette</i> Police wanted to use information from her discovery at a civil trial as evidence against her at another trial.	There is an implied undertaking by parties in a civil litigation to keep information obtained in pre-trial discoveries confidential.
<i>R v Neil</i>	It is not only the individual lawyer but also the firm as the whole that owes the fiduciary duty of confidentiality.
<i>McCormick</i> In an interview she disclosed confidential information about her former client RCMP.	Your duty of confidentiality extends to previous clients as well as current.

Privilege

Where legal information of any kind is sought from a professional legal advisor, in his capacity as such, the communication relating to that purpose made in confidence by the client are at his instance permanently protected from disclosure by himself or by the legal advise except if the privilege is waived.

You have a positive duty to claim privilege on behalf of the client when faced with requests orders to provide documentations (under federal or provincial legislation) [Rule 3.3-2.1].

Three Main Types

1. Solicitor Client Privilege

- Object is to protect the confidential nature of the relationship and foster communications so the client can receive effective legal advice
- This privilege is indefinite
- TEST [*Wigmour*]
 1. The communication must be between solicitor and client
 2. The communication must be made in confidence
 3. The communication must be made in the course of seeking legal advice

2. Litigation Privilege

- The object is to ensure the efficacy of the adversarial system
- It protects anything made in preparation of litigation, including documents made by third parties.
- This ends at the end of the litigation

3. Settlement Privilege

- Object is to encourage parties to engage in frank and open discussions in order to resolve their disputes
- Documents created for the intended purpose of settling litigation are protected by settlement privilege
- This protection extends whether you label a document "without prejudice" or not → Do not rely on the words "without prejudice", the letter must refer to the settling of the dispute

CASE	RATIO
<p><i>Bell v Smith</i> A lawyer accidently produced the whole litigation file (when he we only supposed to give part of it).</p>	Inadvertent disclosure of privileged information is not a waiver to privilege.
<p><i>Murray</i> Paul Bernardo's lawyer had possession of video tapes depicting sexual assault etc.</p>	Physical evidence is not privileged. Discussions about the tapes are privileged, but the physical objects are not, and hiding them on behalf of the client is not solicitor client privilege. You should turn over the physical evidence to an intermediary, such as the law society which can pass it one without revealing the source.

Advertising

Marketing of Legal Services in BC is governed by the BC Code of Professional Conduct, section 4.2, these rules are applicable to any marketing activity undertaken or authorized by a lawyer.

RULE→Content and format of marketing activities

4.2-5 Any marketing activity undertaken or authorized by a lawyer must not be:

- a) false,
- b) inaccurate,
- c) unverifiable,
- d) reasonably capable of misleading the recipient or intended recipient, or
- e) contrary to the best interests of the public

For example, a marketing activity violates this rule if it:

1. is calculated or likely to take advantage of the vulnerability, either physical or emotional, of the recipient,
2. is likely to create in the mind of the recipient or intended recipient an unjustified expectation about the results that the lawyer can achieve, or
3. otherwise brings the administration of justice into disrepute.

Preferred Practice Areas

4.3-0.1 A lawyer may state in any marketing activity a preference for practice in any one or more fields of law if the lawyer regularly practises in each field of law in respect of which the lawyer wishes to state a preference.

➤ BUT-you cannot advertise a “specialization” pursuant to section 4.3-1

CASE	RATIO
Jabor He was advertising services at a lower fee than could be performed at.	The law society marketing rules do not violate freedom of speech. The ethical, moral and financial aspects of a trade or profession can be regulated by a province within its boundaries.
Diamond and Diamond LLP Advertised that he was an award winning personal injury lawyer, but was actually referring the clients to other lawyers. This was against marketing rules.	You cannot advertise that your are doing the work when in fact your are referring the client to another lawyer.

Fees

RULE (BC Code of Professional Conduct)→3.6-1 A lawyer 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

What is a fair and reasonable fee depends on such factors as:

- a) the time and effort required and spent;
- b) the difficulty of the matter and the importance of the matter to the client;
- c) whether special skill or service has been required and provided;
- d) the results obtained;
- e) fees authorized by statute or regulation;
- f) special circumstances, such as the postponement of payment, uncertainty of reward, or urgency;
- g) the likelihood, if made known to the client, that acceptance of the retainer will result in the lawyer's inability to accept other employment;
- h) any relevant agreement between the lawyer and the client;
- i) the experience and ability of the lawyer;
- j) any estimate or range of fees given by the lawyer; and
- k) the client's prior consent to the fee.

RULE	EXPLANATION
Rule Against Hidden Fees	Due to the fiduciary relationship between client and lawyer hidden fees are prohibited because they are contrary to full disclosure requirements
Referral Fees	BC Code of Professional Conduct- 3.6-6: You can accept a refer fee if the referral is made because of the expertise of the other lawyer, so long as the fee is reasonable and the client is informed and consents. 3.6-7: you cannot divide your fees or accept referral fees from non-lawyers.
Contingency Fees	BC Code of Professional Conduct 3.6-2 A lawyer may enter into contingency fee agreements, subject to the requirement that they are reasonable. Reasonable if the circumstances requires a consideration of: the likelihood of success, the nature and complexity of the case, the expense and risk of pursuing it, the amount of the expected recovery, and who is to receive the cost and award. Law Society Rules 8-1(1): Contingency fees must be fair and reasonable (at the time you charge the client). Different rules apply for contingency agreements related to personal injury (see page 47 of CAN) NOTE→you can only withdraw in accordance with Rule 3.7-7 (obligatory withdrawal), aka if you are incompetent to continue, have been discharged, or the client is instructing you to do things contrary to professional ethics, UNLESS the written contract specified that your can under different circumstances. Cewe Case: In this case the court found that the contingency fee agreement was not fair and reasonable, an contingency agreement is not a lottery ticket and ac court will intervene if the amount is unreasonable. Success in an action does not guarantee the fee set out in the agreement, the final account must be fair and reasonable. <ul style="list-style-type: none"> ▪ Record all time you spend on a case to proof later ▪ Note how this case might affect access to justice
Division of Fees	BC Code of Professional Conduct-Section 3.6-5 With the consent of your client you can divide your fees between different lawyers
Statement of Accounts	BC Code of Professional Conduct 3.6-3 In a statement of an account delivered to a client, a lawyer must clearly and separately detail the amounts charged as fees and disbursements

Withdrawal from Representation

Rule: 3.7-1 (Code of Professional Conduct) A lawyer must not withdraw from representation of a client except for good cause and on reasonable notice to the client.

- A lawyer must notify the client as soon as possible if they withdraw [Rule 3.7-9]
- Every effort should be made to ensure that withdrawal occurs at an appropriate time
- There are different rules governing criminal proceedings
- If a lawyer leaves a law firm, the lawyer and the firm have a duty to tell the client and they have a choice who they want to stay with
- In civil matters the court cannot intervene in a decision to withdraw unless there is evidence it was done for an improper purpose.
- Confidentiality rules still apply even if your withdraw (you cannot disclose the reason for withdrawal unless the client consents) Rule 3.7-9.1 [*McCloud*]

Optional Withdrawal	<p>BC Code of Professional Conduct: 3.7-2 If there has been a serious loss of confidence between the lawyer and the client, the lawyer may withdraw.</p> <ul style="list-style-type: none"> ➤ A lawyer may have a justifiable cause for withdrawal in circumstances indicating a loss of confidence, for example, if a lawyer is deceived by his client, the client refuses to accept and act upon the lawyer's advice on a significant point, a client is persistently unreasonable or uncooperative in a material respect, or the lawyer is facing difficulty in obtaining adequate instructions from the client. ➤ However, the lawyer should not use the threat of withdrawal as a device to force a hasty decision by the client on a difficult question
Non-Payment of Fees	<p>BC Code of Professional Conduct 3.7-3 If, after <u>reasonable notice</u>, the client fails to provide a retainer or funds on account of disbursements or fees, a lawyer may withdraw.</p> <ul style="list-style-type: none"> ➤ The lawyer should ensure that there is sufficient time for the client to obtain the services of another lawyer and for that other lawyer to prepare adequately for a hearing or trial ➤ In criminal matters, if withdrawal is a result of non-payment of the lawyer's fees, the court may exercise its discretion to refuse counsel's withdrawal. The court's order refusing counsel's withdrawal may be enforced by the court's contempt power. <i>R. v. Cunningham</i>
Obligatory Withdrawal	<p>BC Code of Professional Conduct: 3.7-7 A lawyer must withdraw if:</p> <ol style="list-style-type: none"> a. discharged by a client; b. a client persists in instructing the lawyer to act contrary to professional ethics; or c. the lawyer is not competent to continue to handle a matter.

Manner of Withdrawal [Section 3.7-8 to 3.7-9]

- Section 3.7-8 when you withdraw you must try to minimize the expense and avoid prejudice to the client
- You must notify the client and all parties involved
- Give the client all papers which they are entitled to
- Promptly render all accounts
- Co-operate with the successor lawyer
- Notify the court in writing when your name appears on as counsel

Conflicts

Duty to avoid conflicts of interest

BC Code of Professional Conduct 3.4-1 → A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

- A conflict of interest exists where 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 interests or the lawyer's duties to another client, a former client, or third person.
- The risk must be more than a mere possibility, there must be a genuine serious risk to the duty of loyalty.
- This rule is founded in the duty of loyalty, this obligation is premised on an established or ongoing lawyer-client relationship in which the client must be assured of the lawyer's undivided loyalty.
- A lawyer should examine whether a conflict of interest exists not only at the outset, but throughout the duration of the retainer.
- There is a distinction between a legal and business conflict.

Exception-Consent

Rule 3.4-2: A lawyer must not represent a client in a matter when there is a conflict of interest unless there is express or implied consent from all clients and the lawyer reasonably believes that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.

- Consent must be fully informed and voluntary.
- Consent may be inferred and not in writing when certain conditions are met (Page 59).

"Bright Line" Rule

A lawyer may not represent one client whose interests are directly adverse to the immediate interest of another current client if the two matters are unrelated unless both clients consent after receiving full disclosure and preferably independent legal advice and the lawyer reasonably believes that he or she is able to represent each client without adversely affecting each other.

Scope of the Rule

1. The rule applies only where the immediate interests of clients are directly adverse in the matters on which the lawyer is acting.
2. The relevant interests must be legal, not merely strategic or commercial.
3. The rule cannot be invoked by a party for purely tactical purposes (i.e., institutional organizations should not spread retainers).
4. The rule does not apply to unrelated matters where it is unreasonable for a client to expect that the law firm will not act against them.

Factors to Consider if a Conflict of Interest Exists

- the immediacy of the legal interests;
- whether the legal interests are directly adverse;
- whether the issue is substantive or procedural;
- the temporal relationship between the matters;
- the significance of the issue to the immediate and long-term interests of the clients involved; and
- the clients' reasonable expectations in retaining the lawyer for the particular matter or representation.

Acting Against Former Clients

3.4-10 Unless the former client consents, a lawyer must not act against a former client in:

- (a) the same matter,
- (b) any related matter, or
- (c) any other matter, if the lawyer has relevant confidential information arising from the representation of the former client that may reasonably affect the former client.

CASE	RATIO
CNR v McKercher Lawyer ditched old client to take on new client in class action against old client.	In this case there was conflict because of the substantial risk the CN would be materially and adversely affected by this (in particular because he had possession of information of their litigation practices).