The Law Society of Manitoba

INCORPORATED 1877 | INCORPORÉ EN 1877

Code of Professional Conduct

Adopted by the Benchers of the Law Society of Manitoba
on December 29, 2010 Effective January 1, 2011

TABLE OF CONTENTS

PREFACE 5
PREFACE 6
CHAPTER 1 - INTERPRETATION AND DEFINITIONS 8
1.1 DEFINITIONS 9
CHAPTER 2 – STANDARDS OF THE LEGAL PROFESSION 11
2.1 INTEGRITY 12
CHAPTER 3 – RELATIONSHIP TO CLIENTS 14
3.1 COMPETENCE 15
Definitions 15
Competence 16
3.2 QUALITY OF SERVICE 21
Quality of Service 21
Limited Scope Retainers 23
Honesty and Candour 23
Language Rights 24
Advising Clients 25
When the Client is an Organization 26
Encouraging Compromise or Settlement 27
Threatening Criminal or Regulatory Proceedings 27
Inducement for Withdrawal of Criminal or Regulatory Proceedings 28
Dishonesty, Fraud by Client or Others 29
Dishonesty, Fraud when Client an Organization 30
Clients with Diminished Capacity 32
3.3 CONFIDENTIALITY 34
Confidential Information 34
Use of Confidential Information 36
Mandatory Disclosure 36
Permitted Disclosure 37
3.4 CONFLICTS 42
Duty to Avoid Conflicts of Interest 42
Consent 45
Short-term Summary Legal Services 48
Dispute 49
Concurrent Representation with Protection of Confidential Client Information 49
Joint Retainers 50
Acting Against Former Clients 53
Acting for Borrower and Lender 54
Civil Society Organizations 56
Conflicts from Transfer Between Law Firms 56
Law Firm Disqualification 58
Transferring Lawyer Disqualification 60
Lawyer Due-Diligence for Non-Lawyer Staff 60

Doing Business with a Client 61
Definitions 61
Transactions with Clients 62
Borrowing from Clients 64
Lending to Clients 65
Guarantees by a Lawyer 65
Payment for Legal Services 66
Gifts and Testamentary Instruments 66
Judicial Interim Release 67
3.5 PRESERVATION OF CLIENTS' PROPERTY 68
Preservation of Clients' Property 68
Notification of Receipt of Property 69
Identifying Clients' Property 69
Accounting and Delivery 69
3.6 FEES AND DISBURSEMENTS 70
Reasonable Fees and Disbursements 70
Civil Society Organization Clients 71
Contingent Fees and Contingent Fee Agreements 71
Statement of Account 72
Joint Retainer 72
Division of Fees and Referral Fees 72
Prepaid Legal Services Plan 74
Solicitor's Lien 74
3.7 WITHDRAWAL FROM REPRESENTATION 76
Withdrawal from Representation 76
Optional Withdrawal 76
Non-payment of Fees 77
Obligatory Withdrawal 77
Leaving a Law Firm 77
Manner of Withdrawal 79
Duty of Successor Lawyer 80
CHAPTER 4 – MARKETING OF LEGAL SERVICES 82
4.1 MAKING LEGAL SERVICES AVAILABLE 83
Making Legal Services Available 83
Restrictions 83
4.2 MARKETING 85
Marketing of Professional Services 85
Advertising of Fees 85
Firm Name 86
4.3 ADVERTISING NATURE OF PRACTICE 87
General Practice 87
Preferred and Restricted Areas of Practice 87
CHAPTER 5 – RELATIONSHIP TO THE ADMINISTRATION OF JUSTICE 88
5.1 THE LAWYER AS ADVOCATE 89

Advocacy 89
Incriminating Physical Evidence 92
Ex Parte Proceedings 94
Single-Party Communications with a Tribunal 94
Duty as Prosecutor 95
Disclosure of Error or Omission 96
Courtesy 96
Undertakings 96
Agreement on Guilty Plea 96
5.2 THE LAWYER AS WITNESS 98
Submission of Evidence 98
Appeals 98
5.4 COMMUNICATION WITH WITNESSES 100
Conduct During Witness Preparation and Testimony 100
5.5 RELATIONS WITH JURORS 103
Communications before Trial 103
Disclosure of Information 103
Communication During Trial 103
5.6 THE LAWYER AND THE ADMINISTRATION OF JUSTICE 105
Encouraging Respect for the Administration of Justice 105
Seeking Legislative or Administrative Changes 106
Security of Court Facilities 106
5.7 LAWYERS AND MEDIATORS 107
Role of Mediator 107
CHAPTER 6 – RELATIONSHIP TO STUDENTS, EMPLOYEES, AND OTHERS 108
6.1 SUPERVISION 109
Direct Supervision Required 109
Application 110
Delegation 110
Suspended or Disbarred Lawyers 112
Electronic Registration of Documents 112
6.2 STUDENTS 114
Recruitment and Engagement Procedures 114
Duties of Principal 114
Duties of Articling Student 114
6.3 DISCRIMINATION AND HARASSMENT 115
Discrimination 115
Harassment 117
Sexual Harassment 119
Reprisal 121
CHAPTER 7 – RELATIONSHIP TO THE SOCIETY AND OTHER LAWYERS 122
7.1 RESPONSIBILITY TO THE SOCIETY AND THE PROFESSION GENERALLY 123
Communications from the Society 123
Meeting Financial Obligations 123

Duty to Report 124
7.2 RESPONSIBILITY TO LAWYERS AND OTHERS 126
Courtesy and Good Faith 126
Communications 127
Inadvertent Communications 129
Undertakings and Trust Conditions 130
7.3 OUTSIDE INTERESTS AND THE PRACTICE OF LAW 132
Maintaining Professional Integrity and Judgment 132
7.4 THE LAWYER IN PUBLIC OFFICE 133
Standard of Conduct 133
7.5 PUBLIC APPEARANCES AND PUBLIC STATEMENTS 134
Communication with the Public 134
Interference with Right to Fair Trial or Hearing 135
7.6 PREVENTING UNAUTHORIZED PRACTICE 136
Preventing Unauthorized Practice 136
7.7 RETIRED JUDGES RETURNING TO PRACTICE 137
7.8 ERRORS AND OMISSIONS 138
Informing Client of Errors or Omission 138
Notice of Claim 138
Co-operation 139
Responding to Client's Claim 139

PREFACE

PREFACE

The legal profession has developed over the centuries to meet a public need for legal services on a professional basis. Traditionally, this has involved the provision of advice and representation to protect or advance the rights, liberties and property of a client by a trusted adviser with whom the client has a personal relationship and whose integrity, competence and loyalty are assured.

In order to satisfy this need for legal services adequately, lawyers and the quality of service they provide must command the confidence and respect of the public. This can only be achieved if lawyers establish and maintain a reputation for both integrity and high standards of legal skill and care. The lawyers of many countries in the world, despite differences in their legal systems, practices, procedures and customs, have all imposed upon themselves substantially the same basic standards. Those standards invariably place their main emphasis on integrity and competence.

In Canada, the provincial legislatures have entrusted to the legal profession through its governing bodies responsibility for maintaining standards of professional conduct and for disciplining lawyers who fail to meet them. Generally, the preparation and publication of codes of ethics and professional conduct have been left to the profession. It is a responsibility that must be accepted and carried out by the profession as a whole.

The pertinent laws in Canada use various terms to describe conduct that subjects the lawyer to discipline, for example, "professional misconduct", "conduct unbecoming" and "acts derogatory to the honour or dignity of the Bar". Some statutes also provide that disciplinary action may be taken if a lawyer is convicted of an indictable offence, or for "misappropriation or wrongful conversion", or "gross negligence" or for conduct "incompatible with the best interests of the public or the members of the [Law] Society", or for breach of the applicable statute itself or the rules made under it.

With few exceptions the statutes do not specify the kinds of conduct that will subject a lawyer to discipline. For its part, the Code does not attempt to define professional misconduct or conduct unbecoming, nor does it try to evaluate the relative importance of the various rules or the gravity of a breach of any of them. By enunciating principles of what is and is not acceptable professional conduct, the Code is designed to assist governing bodies and practitioners alike in determining whether in a given case the conduct is acceptable, thus furthering the process of self-government.

The essence of professional responsibility is that the lawyer must act at all times *uberrimae fidei,* with utmost good faith to the court, to the client, to other lawyers, and to members of the public. Given the many and varied demands to which the lawyer is subject, it is inevitable that problems will arise. No set of rules can foresee

every possible situation, but the ethical principles set out in the Code are intended to provide a framework within which the lawyer may, with courage and dignity, provide the high quality of legal services that a complex and ever-changing society demands.

The extent to which each lawyer's conduct should rise above the minimum standards set by the Code is a matter of personal decision. The lawyer who would enjoy the respect and confidence of the community as well as of other members of the legal profession must strive to maintain the highest possible degree of ethical conduct. The greatness and strength of the legal profession depend on high standards of professional conduct that permit no compromise.

The Code of Professional Conduct that follows is to be understood and applied in the light of its primary concern for the protection of the public interest. This principle is implicit in the legislative grants of self-government referred to above. Inevitably, the practical application of the Code to the diverse situations that confront an active profession in a changing society will reveal gaps, ambiguities and apparent inconsistencies. In such cases, the principle of protection of the public interest will serve to guide the practitioner to the applicable principles of ethical conduct and the true intent of the Code.

CHAPTER 1 – INTERPRETATION AND DEFINITIONS

1.1 DEFINITIONS

1.1-1 In this Code, unless the context indicates otherwise:

"associate" includes a lawyer who practices law in a law firm through an employment or other contractual relationship;

"civil society organization" means a registered charity under the *Income Tax Act* (Canada), a not-for-profit corporation incorporated under the laws of Manitoba, or a not-for-profit corporation permitted under the laws of Manitoba to operate in the Province.

"client" means a person who:

(a) consults a lawyer and on whose behalf the lawyer renders or undertakes to render legal services; or

(b) having consulted the lawyer, reasonably concluded that the lawyer has agreed to render legal services on his or her behalf;

and includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client's work;

Commentary
[1] A lawyer-client relationship may be established without formality. [2] When an individual consults a lawyer in a representative capacity, the client is the corporation, partnership, organization, or other legal entity that the individual is representing. [3] For greater clarity, a client does not include a near-client, such as an affiliated entity, director, shareholder, employee or family member, unless there is objective evidence to demonstrate that such an individual had a reasonable expectation that a lawyer-client relationship would be established.

"conflict of interest" means the existence of 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 the lawyer's duties to another client, a former client, or a third person;

"consent" means fully informed and voluntary consent after disclosure:

(a) in writing, provided that, if more than one person consents, each signs the same or a separate document recording the consent; or

(b) orally, provided that each person consenting receives a separate written communication recording the consent as soon as practicable;

"law firm" includes one lawyer or two or more lawyers practising together, and may include:

(a) a sole proprietorship;

(b) a law corporation or limited liability partnership;

(c) a partnership or association of lawyers or law corporations or a combination of both;

but excludes arrangements where lawyers share office space and certain common expenses, but otherwise practise as independent practitioners;

"lawyer" means a member of the Society as defined in *The Legal Profession Act*, S.M. 2002, c. 44 - Cap. L107;

"Society" means The Law Society of Manitoba;

"tribunal" includes a court, board, arbitrator, mediator, administrative agency or other body that resolves disputes, regardless of its function or the informality of its procedures.

CHAPTER 2 – STANDARDS OF THE LEGAL PROFESSION

2.1 INTEGRITY

2.1-1 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.

Commentary

[1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be.

[2] 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.

[3] Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice, for example, committing any personally disgraceful or morally reprehensible offence including an act of fraud or dishonesty, will reflect upon the integrity of the lawyer, the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that the knowledge of it would be likely to impair the client's trust in the lawyer, the Society may be justified in taking disciplinary action.

[4] 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.

2.1-2 A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.

Commentary

[1] Collectively, lawyers are encouraged to enhance the profession through activities such as:

(a) sharing knowledge and experience with colleagues and students informally in day-to-day practice as well as through contribution to professional journals and publications, support of law school projects and participation in panel discussions, legal education seminars, bar admission courses and university lectures;

(b) participating in legal aid and community legal services programs or providing legal services on a pro bono basis;

(c) filling elected and volunteer positions with the Society;

(d) acting as directors, officers and members of local, provincial, national and international bar associations and their various committees and sections; and

(e) acting as directors, officers and members of non-profit or charitable organizations.

CHAPTER 3 – RELATIONSHIP TO CLIENTS

3.1 COMPETENCE

Definitions

3.1-1 In this section,

"competent lawyer" means a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement, including:

(a) knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the lawyer practises;

(b) investigating facts, identifying issues, ascertaining client objectives, considering possible options and developing and advising the client on appropriate courses of action;

(c) implementing as each matter requires, the chosen course of action through the application of appropriate skills, including:

i. legal research;
ii. analysis;
iii. application of the law to the relevant facts;
iv. writing and drafting;
v. negotiation;
vi. alternative dispute resolution;
vii. advocacy; and
viii. problem solving;

(d) communicating at all relevant stages of a matter in a timely and effective manner;

(e) performing all functions conscientiously, diligently and in a timely and cost-effective manner;

(f) applying intellectual capacity, judgment and deliberation to all functions;

(g) complying in letter and spirit with all rules pertaining to the appropriate professional conduct of lawyers;

(h) recognizing limitations in one's ability to handle a matter or some aspect of it and taking steps accordingly to ensure the client is appropriately served;

(i) managing one's practice effectively;

(j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and

(k) otherwise adapting to changing professional requirements, standards, techniques and practices.

Competence

3.1-2 A lawyer must perform all legal services undertaken on the client's behalf to the standard of a competent lawyer.

Commentary

[1] As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf.

[2] Competence is founded upon both ethical and legal principles. This rule addresses the ethical principles. 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.

[3] In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include:

(a) the complexity and specialized nature of the matter;

(b) the lawyer's general experience;

(c) the lawyer's training and experience in the field;

(d) the preparation and study the lawyer is able to give the matter; and

(e) whether it is appropriate or feasible to refer the matter to, or associate

or consult with, a lawyer of established competence in the field in question.

[4] In some circumstances expertise in a particular field of law may be required; often the necessary degree of proficiency will be that of the general practitioner.

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:

(a) the lawyer's or law firm's practice areas;

(b) the geographic locations of the lawyer's or firm's practice; and

(c) the requirements of clients.

[5] A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk, or expense to the client. The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.

[6] A lawyer should recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:

(a) decline to act;

(b) obtain the client's instructions to retain, consult or collaborate with a lawyer who is competent for that task; or

(c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.

[7] A lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting, or other non-legal fields, and, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.

[7A] When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 3.2-1A.

[7B] In providing short-term summary legal services under Rules 3.4-2A – 3.4-2D, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term summary legal services may be required or are advisable, and encourage the client to seek such further assistance.

[8] A lawyer should clearly specify the facts, circumstances and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications. A lawyer should only express his or her legal opinion when it is genuinely held and is provided to the standard of a competent lawyer.

[9] A lawyer should be wary of providing unreasonable or over-confident assurances to the client, especially when the lawyer's employment or retainer may depend upon advising in a particular way.

[10] In addition to opinions on legal questions, a lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, economic, policy or social implications involved in the question or the course the client should choose. In many instances the lawyer's experience will be such that the lawyer's views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

[10A] When it becomes apparent that the client has misunderstood or

misconceived the position or what is really involved, the lawyer should explain, as well as advise, so that the client is apprised of the true position and fairly advised about the real issues or questions involved.

[11] Intentionally left blank.

[11.1] Lawyers who provide legal services through civil society organizations to clients are required to control the delivery of legal services. The lawyer should take care to:

(a) act on behalf of the client's interest;

(b) advise the client honestly and candidly about the nature, extent and scope of the services that the lawyer can provide through the civil society organization; and

(c) avoid conflicts of interest between the client and the civil society organization.

[11.2] Where other services are provided through the civil society organization, or where the lawyer's services are provided together with other services, the lawyer should take care to protect client confidentiality and privilege, and should only disclose client confidential or privileged information with client consent, or as required by law.

[12] The requirement of conscientious, diligent and efficient service means that a lawyer should make every effort to provide timely service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[13] A lawyer should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.

[14] A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

[15] **Incompetence, Negligence and Mistakes -** This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule. However,

evidence of gross neglect in a particular matter or a pattern of neglect or mistakes in different matters may be evidence of such a failure regardless of tort liability. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.

3.2 QUALITY OF SERVICE

Quality of Service

3.2-1 A lawyer has a duty to provide courteous, thorough and prompt service to the client. The quality of service required of a lawyer is service which is competent, timely, conscientious, diligent, efficient and civil.

Commentary

[1] This rule should be read and applied in conjunction with Section 3.1 regarding competence.

[2] 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.

[3] 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.

[4] A lawyer should ensure that matters are attended to within a reasonable time frame. If the lawyer can reasonably foresee undue delay in providing advice or services, the lawyer has a duty to so inform the client, so that the client can make an informed choice about his or her options, such as whether to retain new counsel.

Examples of expected practices

[5] The quality of service to a client may be measured by the extent to which a lawyer maintains certain standards in practice. The following list, which is illustrative and not exhaustive, provides key examples of expected practices in this area:

(a) keeping a client reasonably informed;

(b) answering reasonable requests from a client for information;

(c) responding to a client's telephone calls;

(d) keeping appointments with a client, or providing a timely explanation or

apology in circumstances when unable to keep such an appointment;

(e) taking appropriate steps to do something promised to a client, or informing or explaining to the client when it is not possible to do so;

(f) ensuring, where appropriate, that all instructions are in writing or confirmed in writing;

(g) answering within a reasonable time any communication that requires a reply;

(h) ensuring that work is done in a timely manner so that its value to the client is maintained;

(i) providing quality work and giving reasonable attention to the review of documentation to avoid delay and unnecessary costs to correct errors or omissions;

(j) maintaining office staff, facilities and equipment adequate to the lawyer's practice;

(k) informing a client of a proposal of settlement, and explaining the proposal properly;

(l) providing a client with relevant information about a matter and never withholding information from a client or misleading the client about the position of a matter in order to cover up neglect or a mistake;

(m) making a prompt and complete report when the work is finished or, if a final report cannot be made, providing an interim report where one might reasonably be expected;

(n) avoiding the use of intoxicants or drugs, that interferes with or prejudices the lawyer's services to the client;

(o) being civil.

[6] A lawyer should meet deadlines, unless the lawyer is able to offer a reasonable explanation and ensure that no prejudice to the client will result. Whether or not a specific deadline applies, a lawyer should be prompt in handling a matter, responding to communications and reporting developments to the client. In the absence of developments, contact with the client should be maintained to the extent reasonably expected by the client.

[7] In providing short-term limited legal services under Rules 3.4-2A – 3.4-2D, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term limited legal services may be required or are advisable, and encourage the client to seek such further assistance.

Limited Scope Retainers

3.2-1A Before undertaking a limited scope retainer the lawyer must advise the client about the nature, extent and scope of the services that the lawyer can provide and must confirm in writing to the client as soon as practicable what services will be provided.

Commentary

[1] Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer.

[2] A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting in a way that suggests that the lawyer is providing full services to the client.

[3] Where the limited services being provided include an appearance before a tribunal a lawyer must be careful not to mislead the tribunal as to the scope of the retainer and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.

[4] A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed (See rule 7.2-6A)

[5] This rule does not apply to situations in which a lawyer is providing summary advice, for example over a telephone hotline or as duty counsel, or to initial consultations that may result in the client retaining the lawyer.

Honesty and Candour

3.2-2 When advising a client, a lawyer must be honest and candid and must inform the client of all information known to the lawyer that may affect the interests of the client in the matter.

Commentary

[1] A lawyer should disclose to the client all the circumstances of the lawyer's relations to the parties and interest in or connection with the matter, if any, that might influence whether the client selects or continues to retain the lawyer.

[2] A lawyer's duty to a client who seeks legal advice is to give the client a competent opinion based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law and the lawyer's own experience and expertise. The advice must be open and undisguised and must clearly disclose what the lawyer honestly thinks about the merits and probable results.

[3] Occasionally, a lawyer must be firm with a client. Firmness, without rudeness, is not a violation of the rule. In communicating with the client, the lawyer may disagree with the client's perspective, or may have concerns about the client's position on a matter, and may give advice that will not please the client. This may legitimately require firm and animated discussion with the client.

Language Rights

3.2-2A A lawyer must, when appropriate, advise a client of the client's language rights, including the right to proceed in the official language of the client's choice.

3.2-2B Where a client wishes to retain a lawyer for representation in the official language of the client's choice, the lawyer must not undertake the matter unless the lawyer is competent to provide the required services in that language.

Commentary

[1] The lawyer should advise the client of the client's language rights as soon as possible.

[2] The choice of official language is that of the client not the lawyer. The lawyer should be aware of relevant statutory and Constitutional law relating to language rights including the Canadian Charter of Rights and Freedoms, s.19(1), Part XVII of the Criminal Code and section 23.2 of the Divorce Act regarding language rights in courts under federal jurisdiction and in criminal and divorce proceedings. The lawyer should also be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages. With regard to Manitoba in particular, section 23 of the Manitoba Act, 1870 sets out constitutional guarantees to ensure full and equal access to the Legislature, the laws and the courts in either French or English or both official languages.

[3] A lawyer should, when appropriate, inform the client of the client's language rights relating to a client's matter, including where applicable:

(a) subsection 19(1) of the *Canadian Charter of Rights and Freedoms* which provides for the right to use English or French in, or in any pleading in or process issuing from, any court established by Parliament;

(b) Part XVII of the *Criminal Code* (Language of Accused) which primarily provides for the right of an accused whose language is one of the official languages of Canada to be tried before a judge or a judge and jury, if applicable, who speak the official language of the accused or, if the circumstances warrant, both official languages;

(c) subsection 23.2 of the *Divorce Act* which recognizes the right of any person to use either English or French, or both official languages, in a proceeding conducted under that Act;

(d) section 23 of the *Manitoba Act, 1870* which provides for the right to use English or French in, or in any pleading or process issuing from, any court of Canada or any courts of the Province of Manitoba and which requires provincial legislation to be enacted in both English and French.

[4] When a lawyer considers whether to provide the required services in the official language chosen by the client, the lawyer should carefully consider whether it is possible to render those services in a competent manner as required by Rule 3.1-2 and related Commentary.

Advising Clients

3.2-2C A lawyer must obtain the client's instructions and in doing so, provide informed and independent advice.

Commentary

[1] Lawyers provide legal services based upon the client's instructions. In order to provide appropriate instructions, the client should be fully and fairly informed. There may not be a need for the lawyer to obtain explicit instructions for every single step on a matter. Before taking steps, a lawyer should consider whether and to what extent the client should be consulted or informed. Fundamental decisions such as how to plead and what witnesses to call almost always require prior consultations. The same may not be so with less fundamental decisions. When in doubt, the lawyer should consult with the client. A lawyer should obtain instructions from the client on all matters not falling within the express or implied authority of

the lawyer.

[2] A lawyer should clearly specify the facts, circumstances and assumptions upon which an opinion is based. If it is apparent that the client has misunderstood or misconceived the lawyer's advice, matters concerning the position taken or what is really involved in the matter, the lawyer should explain the matter further to the client to a sufficient degree so that the client does understand.

[3] A lawyer should not provide advice if the lawyer's personal views of the client, others involved or the issue will affect the lawyer's independence on the matter. For example, a lawyer's relationship (personal, financial, or previously strained with the client, opposing counsel or the opposing party) could affect the lawyer's ability to objectively assess a matter.

[4] When a lawyer is requested to provide independent legal advice or independent representation, the lawyer should treat the client as if he or she were the lawyer's own client for those purposes. The client is not the referring party. The lawyer should not treat the task as one that can be taken lightly.

[5] If requested by a client to do so, a lawyer should assist the client in obtaining a second opinion by cooperating with the second lawyer. A lawyer is not obliged, however, to assist a client who is really attempting to coerce the formulation of a favourable opinion or is acting unreasonably in some other respect.

[6] If a lawyer has difficulty contacting a client to obtain instructions, the lawyer ought to take reasonable steps to locate the client. If those efforts fail, the lawyer should consider withdrawing in accordance with section 3.7 (Withdrawal from Representation).

When the Client is an Organization

3.2-3 Although a lawyer may receive instructions from an officer, employee, agent or representative, when a lawyer is employed or retained by an organization, including a corporation, the lawyer must act for the organization in exercising his or her duties and in providing professional services.

Commentary

[1] A lawyer acting for an organization should keep in mind that the organization, as such, is the client and that a corporate client has a legal personality distinct from its shareholders, officers, directors and employees. While the organization or corporation acts and gives instructions through its officers, directors, employees, members, agents or representatives, the lawyer should

ensure that it is the interests of the organization that are served and protected. Further, given that an organization depends on persons to give instructions, the lawyer should ensure that the person giving instructions for the organization is acting within that person's actual or ostensible authority.

[2] In addition to acting for the organization, the lawyer may also accept a joint retainer and act for a person associated with the organization. For example, a lawyer may advise an officer of an organization about liability insurance. In such cases the lawyer acting for an organization should be alert to the prospects of conflicts of interests and should comply with the rules about the avoidance of conflicts of interests (section 3.4).

Encouraging Compromise or Settlement

3.2-4 A lawyer must advise and encourage the client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and must discourage the client from commencing or continuing useless legal proceedings.

Commentary

[1] The lawyer should consider the use of alternative dispute resolution (ADR) when appropriate, inform the client of ADR options and, if so instructed, take steps to pursue those options.

Threatening Criminal or Regulatory Proceedings

3.2-5 A lawyer must not, in an attempt to gain a benefit for the 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.

Commentary

[1] It is an abuse of the court or regulatory authority's process to threaten to bring action in order to secure the satisfaction of a private grievance. Even if a client has a legitimate entitlement to be paid monies, threats to take criminal or quasi-criminal action are not appropriate.

[2] It is not improper, however, to notify the appropriate authority of criminal or quasi-criminal activities while also taking steps through the civil system. Nor is it

improper for a lawyer to request that another lawyer comply with an undertaking or trust condition or other professional obligation or face being reported to the Society. The impropriety stems from threatening to, or actually using, criminal or quasi-criminal proceedings to gain a civil advantage.

Inducement for Withdrawal of Criminal or Regulatory Proceedings

3.2-6 A lawyer must not:

(a) give or offer to give, or advise an accused or any other person to give or offer to give, any valuable consideration to another person in exchange for influencing the Crown or a regulatory authority's conduct of a criminal or quasi-criminal charge or a complaint unless the lawyer obtains the consent of the Crown or the regulatory authority to enter into such discussions;

(b) accept or offer to accept, or advise a person to accept, any valuable consideration in exchange for influencing the Crown or a regulatory authority's conduct of a criminal or quasi-criminal charge or a complaint, unless the lawyer obtains the consent of the Crown or regulatory authority to enter such discussions; or

(c) wrongfully influence any person to prevent the Crown or regulatory authority from proceeding with charges or a complaint or to cause the Crown or regulatory authority to withdraw the complaint or stay charges in a criminal or quasi-criminal proceeding.

Commentary

[1] "Regulatory authority" includes professional and other regulatory bodies.

[2] A lawyer for an accused or potential accused must never influence a complainant or potential complainant not to communicate or cooperate with the Crown. However, this rule does not prevent a lawyer for an accused or potential accused from communicating with a complainant or potential complainant to obtain factual information, arrange for restitution or an apology from an accused, or defend or settle any civil matters between the accused and the complainant. When a proposed resolution involves valuable consideration being exchanged in return for influencing the Crown or regulatory authority not to proceed with a charge or to seek a reduced sentence or penalty, the lawyer for the accused must obtain the consent of the Crown or regulatory authority prior to discussing such proposal with the complainant or potential complainant. Similarly, lawyers advising a complainant or potential complainant with respect to any such negotiations can do so only with

the consent of the Crown or regulatory authority.

[3] A lawyer cannot provide an assurance that the settlement of a related civil matter will result in the withdrawal of criminal or quasi-criminal charges, absent the consent of the Crown or regulatory authority.

[4] Where the complainant or potential complainant is unrepresented, the lawyer should have regard to the rules respecting unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused or potential accused. If the complainant or potential complainant is vulnerable, the lawyer should take care not to take unfair or improper advantage of the circumstances. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

Dishonesty, Fraud by Client or Others

3.2-7 A lawyer must never:

(a) knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct;

(b) do or omit to do anything that the lawyer ought to know assists in or encourages any dishonesty, fraud, crime, or illegal conduct by a client or others; or

(c) instruct a client or others on how to violate the law and avoid punishment.

Commentary

[1] A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.

[2] A lawyer should be alert to and avoid unwittingly becoming involved with a client or others engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.

[3] If a lawyer has suspicions or doubts about whether he or she might be

assisting a client or others in dishonesty, fraud, crime or illegal conduct, the lawyer should make reasonable inquiries to obtain information about the client or others and, in the case of a client, about the subject matter and objectives of the retainer. These should include verifying who are the legal or beneficial owners of property and business entities, verifying who has the control of business entities, and clarifying the nature and purpose of a complex or unusual transaction where the purpose is not clear. The lawyer should make a record of the results of these inquiries.

[4] A bona fide test case is not necessarily precluded by this rule and, so long as no injury to a person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case. In all situations, the lawyer should ensure that the client appreciates the consequences of bringing a test case.

Dishonesty, Fraud when Client an Organization

3.2-8 A lawyer who is employed or retained by an organization to act in a matter in which the lawyer knows that the organization has acted, is acting or intends to act dishonestly, fraudulently, criminally or illegally must do the following, in addition to his or her obligations under rule 3.2-7:

(a) advise the person from whom the lawyer takes instructions and the chief legal officer, or both the chief legal officer and the chief executive officer that the proposed conduct is, was or would be dishonest, fraudulent, criminal, or illegal and should be stopped;

(b) if necessary because the person from whom the lawyer takes instructions, the chief legal officer or the chief executive officer refuses to cause the proposed wrongful conduct to be stopped, advise progressively the next highest persons or groups including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the conduct was, is or would be dishonest, fraudulent, criminal, or illegal and should be stopped; and

(c) if the organization, despite the lawyer's advice, continues with or intends to pursue the proposed wrongful conduct, withdraw from acting in the matter in accordance with the rules in section 3.7.

Commentary

[1] The past, present, or proposed misconduct of an organization may have

harmful and serious consequences, not only for the organization and its constituency, but also for the public who rely on organizations to provide a variety of goods and services. In particular, the misconduct of publicly traded commercial and financial corporations may have serious consequences to the public at large. This subrule addresses some of the professional responsibilities of a lawyer acting for an organization, including a corporation, when he or she learns that the organization has acted, is acting, or proposes to act in a way that is dishonest, fraudulent, criminal or illegal. In addition to these rules, the lawyer may need to consider, for example, the rules and commentary about confidentiality (section 3.3).

[2] This rule speaks of conduct that is dishonest, fraudulent, criminal or illegal. Such conduct includes acts of omission.

[3] Indeed, often it is the omissions of an organization, such as failing to make required disclosure or to correct inaccurate disclosures that constitute the wrongful conduct to which these rules relate. Conduct likely to result in substantial harm to the organization, as opposed to genuinely trivial misconduct by an organization, invokes these rules.

[4] In considering his or her responsibilities under this section, a lawyer should consider whether it is feasible and appropriate to give any advice in writing.

[5] A lawyer acting for an organization who learns that the organization has acted, is acting, or intends to act in a wrongful manner, may advise the chief executive officer and must advise the chief legal officer of the misconduct. If the wrongful conduct is not abandoned or stopped, the lawyer must report the matter "up the ladder" of responsibility within the organization until the matter is dealt with appropriately. If the organization, despite the lawyer's advice, continues with the wrongful conduct, the lawyer must withdraw from acting in the particular matter in accordance with rule 3.7-1. In some but not all cases, withdrawal means resigning from his or her position or relationship with the organization and not simply withdrawing from acting in the particular matter.

[6] This rule recognizes that lawyers as the legal advisers to organizations are in a central position to encourage organizations to comply with the law and to advise that it is in the organization's and the public's interest that organizations do not violate the law. Lawyers acting for organizations are often in a position to advise the executive officers of the organization, not only about the technicalities of the law, but also about the public relations and public policy concerns that motivated the government or regulator to enact the law. Moreover, lawyers for organizations, particularly in-house counsel, may guide organizations to act in ways that are legal, ethical, reputable, and consistent with the organization's responsibilities to its constituents and to the public.

Clients with Diminished Capacity

3.2-9 When a client's ability to make decisions is impaired because of minority or mental disability, or for some other reason, the lawyer must, as far as reasonably possible, maintain a normal lawyer and client relationship.

Commentary

[1] A lawyer and client relationship presupposes that the client has the requisite mental ability to make decisions about his or her legal affairs and to give the lawyer instructions. A client's ability to make decisions depends on such factors as age, intelligence, experience and mental and physical health and on the advice, guidance and support of others. A client's ability to make decisions may change, for better or worse, over time. A client may be mentally capable of making some decisions but not others. The key is whether the client has the ability to understand the information relative to the decision that has to be made and is able to appreciate the reasonably foreseeable consequences of the decision or lack of decision. Accordingly, when a client is, or comes to be, under a disability that impairs his or her ability to make decisions, the lawyer will have to assess whether the impairment is minor or whether it prevents the client from giving instructions or entering into binding legal relationships.

[2] A lawyer who believes a person to be incapable of giving instructions should decline to act. However, if a lawyer reasonably believes that the person has no other agent or representative and a failure to act could result in imminent and irreparable harm, the lawyer may take action on behalf of the person lacking capacity only to the extent necessary to protect the person until a legal representative can be appointed. A lawyer undertaking to so act has the same duties under these rules to the person lacking capacity as the lawyer would with any client.

[3] If a client's incapacity is discovered or arises after the solicitor-client relationship is established, the lawyer may need to take steps to have a lawfully authorized representative, such as a litigation guardian, appointed or to obtain the assistance of the Office of the Public Trustee to protect the interests of the client. Whether that should be done depends on all relevant circumstances, including the importance and urgency of any matter requiring instruction. In any event, the lawyer has an ethical obligation to ensure that the client's interests are not abandoned. Until the appointment of a legal representative occurs, a lawyer should act to preserve and protect the client's interests.

[4] In some circumstances when there is a legal representative, the lawyer may disagree with the legal representative's assessment of what is in the best interests

of the client under a disability. So long as there is no lack of good faith or authority, the judgment of the legal representative should prevail. If a lawyer becomes aware of conduct or intended conduct of the legal representative that is clearly in bad faith or outside that person's authority, and contrary to the best interests of the client with diminished capacity, the lawyer may act to protect those interests. This may require reporting the misconduct to a person or institution such as a family member, the Public Trustee or another appropriate agency.

[5] Where a lawyer takes protective action on behalf of a person or client lacking in capacity the authority to disclose necessary confidential information may be implied in some circumstances: See Commentary under rule 3.3-1 (Confidentiality) for a discussion of the relevant factors. If the court or other counsel become involved, the lawyer should inform them of the nature of the lawyer's relationship with the person lacking capacity.

3.3 CONFIDENTIALITY

Confidential Information

3.3-1 A lawyer at all times must hold in strict confidence all information concerning the business and affairs of the 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.

Commentary

[1] A lawyer cannot render effective professional service to a client unless there is full and unreserved communication between them. At the same time, the client must feel completely secure and entitled to proceed on the basis that, without any express request or stipulation on the client's part, matters disclosed to or discussed with the lawyer will be held in strict confidence.

[2] This rule must be distinguished from the evidentiary rule of lawyer and client privilege, which is also a constitutionally protected right, concerning oral or documentary communications passing between the client and the lawyer. 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.

[3] A lawyer owes the duty of confidentiality to every client without exception and whether or not the client is a continuing or casual client. The duty survives the professional relationship and continues indefinitely after the lawyer has ceased to act for the client, whether or not differences have arisen between them.

[4] A lawyer also owes a duty of confidentiality to anyone seeking advice or assistance on a matter invoking a lawyer's professional knowledge, although the lawyer may not render an account or agree to represent that person. A solicitor and client relationship is often established without formality. A lawyer should be cautious in accepting confidential information on an informal or preliminary basis since possession of the information may prevent the lawyer from subsequently acting for another party in the same or a related matter. (See rule 3.4-1 Conflicts.)

[5] Generally, unless the nature of the matter requires such disclosure, the lawyer should not disclose having been:

(a) retained by a person about a particular matter; or

(b) consulted by a person about a particular matter, whether or not the lawyer-client relationship has been established between them.

[6] A lawyer should take care to avoid disclosure to one client of confidential information concerning or received from another client and should decline employment that might require such disclosure.

[7] Sole practitioners who practise in association with other lawyers in cost-sharing, space-sharing or other arrangements should be mindful of the risk of advertent or inadvertent disclosure of confidential information, even if the lawyers institute systems and procedures that are designed to insulate their respective practices. The issue may be heightened if a lawyer in the association represents a client on the other side of a dispute with the client of another lawyer in the association. Apart from conflict of interest issues such a situation may raise, the risk of such disclosure may depend on the extent to which the lawyers' practices are integrated, physically and administratively, in the association.

[8] A lawyer should avoid indiscreet conversations and other communications, even with the lawyer's spouse or family, about a client's affairs and should shun any gossip about such things even though the client is not named or otherwise identified. Similarly, a lawyer should not repeat any gossip or information about the client's business or affairs that is overheard or recounted to the lawyer. Apart altogether from ethical considerations or questions of good taste, indiscreet shop-talk among lawyers, if overheard by third parties able to identify the matter being discussed, could result in prejudice to the client. Moreover, the respect of the listener for lawyers and the legal profession will probably be lessened. Although the rule may not apply to facts that are public knowledge, a lawyer should guard against participating in or commenting on speculation concerning the client's affairs or business.

[9] In some situations, the authority of the client to disclose may be implied. For example, in court proceedings some disclosure may be necessary in a pleading or other court document. Also, it is implied that a lawyer may, unless the client directs otherwise, disclose the client's affairs to partners and associates in the law firm and, to the extent necessary, to non-legal staff, such as secretaries and filing clerks and to others whose services are used by the lawyer. But this implied authority to disclose places the lawyer under a duty to impress upon associates, employees, students and other lawyers engaged under contract with the lawyer or with the firm

of the lawyer the importance of non-disclosure (both during their employment and afterwards) and requires the lawyer to take reasonable care to prevent their disclosing or using any information that the lawyer is bound to keep in confidence.

[10] The client's authority for the lawyer to disclose confidential information to the extent necessary to protect the client's interest may also be implied in some situations where the lawyer is taking action on behalf of the person lacking capacity to protect the person until a legal representative can be appointed. In determining whether a lawyer may disclose such information, the lawyer should consider all circumstances, including the reasonableness of the lawyer's belief the person lacks capacity, the potential harm that may come to the client if no action is taken, and any instructions the client may have given the lawyer when capable of giving instructions about the authority to disclose information. Similar considerations apply to confidential information given to the lawyer by a person who lacks the capacity to become a client but nevertheless requires protection.

[11] A lawyer may have an obligation to disclose information under rules 5.5-2, 5.5-3 and 5.6-3. If client information is involved in those situations, the lawyer should be guided by the provisions of this rule.

Use of Confidential Information

3.3-2 The lawyer must not use or disclose a client's or former client's confidential information to the disadvantage of the client or former client, or for the benefit of the lawyer or a third person without the consent of the client or former client.

Commentary

[1] The fiduciary relationship between a lawyer and a client forbids the lawyer or a third person from benefiting from the lawyer's use of a client's confidential information. If a lawyer engages in literary works, such as a memoir or autobiography, the lawyer is required to obtain the client's or former client's consent before disclosing confidential information.

Mandatory Disclosure

3.3-3 When required by law, by order of a tribunal of competent jurisdiction, or pursuant to *The Legal Profession Act* and the regulations/by-laws/rules thereunder a lawyer must disclose confidential information, but the lawyer must not disclose more information than is required.

3.3-3A A lawyer must disclose confidential information, but only to the extent necessary:

(a) if the lawyer has reasonable grounds for believing that an identifiable person or group is in imminent danger of death or serious bodily harm and believes disclosure is necessary to prevent the death or harm; and

(b) the lawyer does not reasonably believe that such disclosure will cause harm to the lawyer or to the lawyer's family or to the lawyer's associates.

Commentary

[1] While a lawyer is generally justified in obeying a court order to disclose confidential information, this may not be the case where a lawyer believes in good faith that the order is in error. In these circumstances, provided that an appeal from the order is taken, the lawyer has an obligation to withhold disclosure pending final adjudication of the matter.

[2] A decision to disclose the confidential information of a client cannot be taken lightly. In making that decision the lawyer should be guided by the commentary to rule 3.3-3B. In the case of mandatory disclosure a significant factor to be considered is the imminence of the perceived danger. In the absence of an imminent danger, there may be other alternatives available to the lawyer short of disclosure.

[3] Mandatory disclosure of imminent danger of death or bodily harm is not conditional on a crime occurring. Accordingly, this rule could apply in circumstances such as a threatened suicide or self-mutilation.

[4] A lawyer will be relieved from the mandatory obligation to disclose information arising from a reasonable belief that a person is in imminent danger of death or serious bodily harm if the lawyer reasonably believes that disclosure will bring harm upon the lawyer or the lawyer's family or colleagues. This might occur where the lawyer expects that the client is likely to retaliate or has threatened retaliation.

Permitted Disclosure

3.3-3B A lawyer may divulge confidential information, but only to the extent necessary:

(a) with the express or implied authority of the client concerned;

(b) in order to establish or collect a fee;

(c) in order to secure legal or ethical advice about the lawyer's proposed conduct;

(d) if the lawyer has reasonable grounds for believing that a crime is likely to be committed and believes disclosure could prevent the crime; or

(e) if the lawyer has reasonable grounds for believing that a dangerous situation is likely to develop at a court facility.

Commentary

[1] When a client undermines the lawyer and client relationship by impugning the lawyer's conduct or refusing to pay the lawyer's account, fairness dictates that there is a waiver of confidentiality to such an extent so as to allow a lawyer to defend the allegations or prosecute the claim for fees.

[2] Clients are entitled to have information with respect to past conduct held in confidence but the same rationale does not apply with respect to a prospective crime. While the principles relating to solicitor-client confidentiality warrant special protection in our judicial system, disclosure may be permissible in limited circumstances in the interests of protecting the public.

[3] A decision to disclose pursuant to rules 3.3-3B(d) and (e) should be made only in exceptional circumstances. The decision to do so can be based on a number of factors including:

- Are there reasonable grounds for believing that a crime will be carried out?
- What is the nature of the crime and its impact? How serious is the crime? For example, is it a petty crime without a victim, or a crime that can potentially harm one or more persons or their property? Is it a crime that is likely to involve violence?
- Is the information, if disclosed, likely to prevent the crime?
- Will the information be disclosed through other means in any event, or does urgency dictate more immediate action?
- Does the client envision involving the lawyer in the events relating to the crime? Is the lawyer being duped into participating in a fraud, for

example?

- Is the communication part of a conspiracy to commit a crime or in furtherance of a crime? If so, no (evidentiary) privilege attaches to it as it cannot be said to be a legitimate communication for the purpose of obtaining legal advice.
- Is there reliance on the lawyer by a victim?
- What is the impact of disclosure on the client? Will disclosure make a difference to the client? For example, could the client be subject to a reduced charge if the crime is not carried out?
- What is the impact on the lawyer's practice?
- What is the impact on the lawyer? Are there concerns about the personal safety of either the lawyer or the lawyer's family?
- What will disclosure mean to the administration of justice and our legal system?
- What does the lawyer's conscience say?

[4] Once a decision to disclose is made, the lawyer will then need to consider how to disclose, to whom, and how to ensure that the disclosure is no more than is necessary to prevent the crime or dangerous situation at the court facility from occurring. Furthermore, the lawyer must also be mindful of the obligations under Rule 3.2-2 to be honest and candid with the client and to inform the client of the disclosure where appropriate.

3.3-4 If it is alleged that a lawyer or the lawyer's associates or employees:

(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,

the lawyer may disclose confidential information in order to defend against the allegations but the lawyer must not disclose more information than is required.

3.3-5 Intentionally left blank.

3.3-6 Intentionally left blank.

3.3-7 A lawyer may disclose confidential information to the extent reasonably necessary to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a law firm, but only if the information disclosed does not compromise the solicitor-client privilege or otherwise prejudice the client.

Commentary

[1] As a matter related to clients' interests in maintaining a relationship with counsel of choice and protecting client confidences, lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice.

[2] In these situations (see Rules 3.4-17 to 3.4-23 on Conflicts From Transfer Between Law Firms), rule 3.3-7 permits lawyers and law firms to disclose limited information. This type of disclosure would only be made once substantive discussions regarding the new relationship have occurred.

[3] This exchange of information between the firms needs to be done in a manner consistent with the transferring lawyer's and new firm's obligations to protect client confidentiality and privileged information and avoid any prejudice to the client. It ordinarily would include no more than the names of the persons and entities involved in a matter. Depending on the circumstances, it may include a brief summary of the general issues involved, and information about whether the representation has come to an end.

[4] The disclosure should be made to as few lawyers at the new law firm as possible, ideally to one lawyer of the new firm, such as a designated conflicts lawyer. The information should always be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship.

[5] As the disclosure is made on the basis that it is solely for the use of checking conflicts where lawyers are transferring between firms and for establishing screens, the disclosure should be coupled with an undertaking by the new law firm to the former law firm that it will:

(a) limit access to the disclosed information;

(b) not use the information for any purpose other than detecting and resolving conflicts; and

(c) return, destroy, or store in a secure and confidential manner the information provided once appropriate confidentiality screens are established.

[6] The client's consent to disclosure of such information may be specifically addressed in a retainer agreement between the lawyer and client. In some circumstances, however, because of the nature of the retainer, the transferring lawyer and the new law firm may be required to obtain the consent of clients to such disclosure or the disclosure of any further information about the clients. This is especially the case where disclosure would compromise solicitor-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge).

3.4 CONFLICTS

Duty to Avoid Conflicts of Interest

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.

Commentary

[1] Lawyers have an ethical duty to avoid conflicts of interest. Some cases involving conflicts of interest will fall within the scope of the bright line rule as articulated by the Supreme Court of Canada. The bright line rule prohibits a lawyer or law firm from representing one client whose legal interests are directly adverse to the immediate legal interests of another client even if the matters are unrelated unless the clients consent. However, the bright line rule cannot be used to support tactical abuses and will not apply in the exceptional cases where it is unreasonable for the client to expect that the lawyer or law firm will not act against it in unrelated matters. See also rule 3.4-2 and commentary [6].

[2] In cases where the bright line rule is inapplicable, the lawyer or law firm will still be prevented from acting if representation of the client would create a substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's own interests or by the lawyer's duties to another current client, a former client, or a third person. The risk must be more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation arising from the retainer.

[3] This rule applies to a lawyer's representation of a client in all circumstances in which the lawyer acts for, provides advice to or exercises judgment on behalf of a client. Effective representation may be threatened where a lawyer is tempted to prefer other interests over those of his or her own client: the lawyer's own interests, those of a current client, a former client, or a third party.

The Fiduciary Relationship, the Duty of Loyalty and Conflicting Interests

[4] The rule governing conflicts of interest is founded in the duty of loyalty which is grounded in the law governing fiduciaries. The lawyer-client relationship is based on trust. It is a fiduciary relationship and as such, the lawyer has a duty of loyalty to the client. To maintain public confidence in the integrity of the legal profession and the administration of justice, in which lawyers play a key role, it is essential that lawyers respect the duty of loyalty. Arising from the duty of loyalty are other duties, such as a duty to commit to the client's cause, the duty of confidentiality, the duty of

candour and the duty to avoid conflicting interests.

[5] A client must be assured of the lawyer's undivided loyalty, free from any material impairment of the lawyer and client relationship. The relationship may be irreparably damaged where the lawyer's representation of one client is directly adverse to another client's immediate legal interests. One client may legitimately fear that the lawyer will not pursue the representation out of deference to the other client.

Other Duties Arising from the Duty of Loyalty

[6] The lawyer's duty of confidentiality is owed to both current and former clients, with the related duty not to attack the legal work done during a retainer or to undermine the former client's position on a matter that was central to the retainer.

[7] The lawyer's duty of commitment to the client's cause prevents the lawyer from summarily and unexpectedly dropping a client to circumvent conflict of interest rules. The client may legitimately feel betrayed if the lawyer ceases to act for the client to avoid a conflict of interest.

[8] The duty of candour requires a lawyer or law firm to advise an existing client of all matters relevant to the retainer.

Identifying Conflicts

[9] A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest. Factors for the lawyer's consideration in determining whether a conflict of interest exists include:

(a) the immediacy of the legal interests;

(b) whether the legal interests are directly adverse;

(c) whether the issue is substantive or procedural;

(d) the temporal relationship between the matters;

(e) the significance of the issue to the immediate and long-term interests of the clients involved; and

(f) the clients' reasonable expectations in retaining the lawyer for the

particular matter or representation.

Examples of Areas where Conflicts of Interest May Occur

[10] Conflicts of interest can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that may give rise to conflicts of interest. The examples are not exhaustive.

(a) A lawyer acts as an advocate in one matter against a person when the lawyer represents that person on some other matter.

(b) A lawyer provides legal advice on a series of commercial transactions to the owner of a small business and at the same time provides legal advice to an employee of the business on an employment matter, thereby acting for clients whose legal interests are directly adverse.

(c) A lawyer, an associate, a law partner or a family member has a personal financial interest in a client's affairs or in a matter in which the lawyer is requested to act for a client, such as a partnership interest in some joint business venture with a client.

i. A lawyer owning a small number of shares of a publicly traded corporation would not necessarily have a conflict of interest in acting for the corporation because the holding may have no adverse influence on the lawyer's judgment or loyalty to the client.

(d) A lawyer has a sexual or close personal relationship with a client.

i. Such a relationship may conflict with the lawyer's duty to provide objective, disinterested professional advice to the client. The relationship may obscure whether certain information was acquired in the course of the lawyer and client relationship and may jeopardize the client's right to have all information concerning his or her affairs held in strict confidence. The relationship may in some circumstances permit exploitation of the client by his or her lawyer. If the lawyer is a member of a firm and concludes that a conflict exists, the conflict is not imputed to the lawyer's firm, but would be cured if another lawyer in the firm who is not involved in such a relationship with the client handled the client's work.

(e) A lawyer or his or her law firm acts for a public or private corporation

and the lawyer serves as a director of the corporation.

i. These two roles may result in a conflict of interest or other problems because they may

A. affect the lawyer's independent judgment and fiduciary obligations in either or both roles,

B. obscure legal advice from business and practical advice,

C. jeopardize the protection of lawyer and client privilege, and

D. disqualify the lawyer or the law firm from acting for the organization.

(f) Sole practitioners who practise with other lawyers in cost-sharing or other arrangements represent clients on opposite sides of a dispute.

i. The fact or the appearance of such a conflict may depend on the extent to which the lawyers' practices are integrated, physically and administratively, in the association.

The Role of the Court and Law Societies

[11] These rules set out ethical standards to which all members of the profession must adhere. The courts have a separate supervisory role over court proceedings. In that role, the courts apply fiduciary principles developed by the courts to govern lawyers' relationships with their clients, to ensure the proper administration of justice. A breach of the rules on conflicts of interest may lead to sanction by a law society even where a court dealing with the case may decline to order disqualification as a remedy.

Consent

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 affected clients and the lawyer reasonably believes that he or she is able to represent the client without having a material adverse effect upon the representation of or loyalty to the client or another client.

(a) Express consent must be fully informed and voluntary after disclosure.

(b) Consent may be inferred and need not be in writing where all of the following apply:

i. the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel;

ii. the matters are unrelated;

iii. the lawyer has no relevant confidential information from one client that might reasonably affect the other; and

iv. the client has commonly consented to lawyers acting for and against it in unrelated matters.

Commentary

Disclosure and Consent

[1] Disclosure is an essential requirement to obtaining a client's consent and arises from the duty of candour owed to the client. Where it is not possible to provide the client with adequate disclosure because of the confidentiality of the information of another client, the lawyer must decline to act.

[2] Disclosure means full and fair disclosure of all information relevant to a person's decision in sufficient time for the person to make a genuine and independent decision, and the taking of reasonable steps to ensure understanding of the matters disclosed. The lawyer therefore should inform the client of the relevant circumstances and the reasonably foreseeable ways that the conflict of interest could adversely affect the client's interests. This would include the lawyer's relations to the parties and any interest in or connection with the matter.

[2A] While this rule does not require that a lawyer advise a client to obtain independent legal advice about the conflict of interest, in some cases the lawyer should recommend such advice. This is to ensure that the client's consent is informed, genuine and uncoerced, especially if the client is vulnerable or not sophisticated.

[3] Following the required disclosure, the client can decide whether to give consent. As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf not be subject to other interests, duties or obligations, in practice this factor may not always be decisive. Instead, it may be only one of several factors that the client will weigh when deciding whether or not to give the consent referred to in the rule. Other factors might include, for example, the

availability of another lawyer of comparable expertise and experience, the stage that the matter or proceeding has reached, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs.

Consent in Advance

[4] A lawyer may be able to request that a client consent in advance to conflicts that might arise in the future. As the effectiveness of such consent is generally determined by the extent to which the client reasonably understands the material risks that the consent entails, the more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. A general, open-ended consent will ordinarily be ineffective because it is not reasonably likely that the client will have understood the material risks involved. If the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, for example, the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation.

[5] While not a pre-requisite to advance consent, in some circumstances it may be advisable to recommend that the client obtain independent legal advice before deciding whether to provide consent. Advance consent must be recorded, for example in a retainer letter.

Implied Consent

[6] In limited circumstances consent may be implied, rather than expressly granted. In some cases it may be unreasonable for a client to claim that it expected that the loyalty of the lawyer or law firm would be undivided and that the lawyer or law firm would refrain from acting against the client in unrelated matters. In considering whether the client's expectation is reasonable, the nature of the relationship between the lawyer and client, the terms of the retainer and the matters involved must be considered. Governments, chartered banks and entities that might be considered sophisticated consumers of legal services may accept that lawyers may act against them in unrelated matters where there is no danger of misuse of confidential information. The more sophisticated the client is as a consumer of legal services, the more likely it will be that an inference of consent can be drawn. The mere nature of the client is not, however, a sufficient basis upon which to assume implied consent; the matters must be unrelated, the lawyer must not possess confidential information from one client that could affect the other

client, and there must be a reasonable basis upon which to conclude that the client has commonly accepted that lawyers may act against it in such circumstances.

Short-term Summary Legal Services

3.4-2A In rules 3.4-2B to 3.4-2D "Short-term summary legal services" means advice or representation to a client under the auspices of a pro bono or not-for-profit legal services provider with the expectation by the lawyer and the client that the lawyer will not provide continuing legal services in the matter.

3.4-2B A lawyer may provide short-term summary legal services without taking steps to determine whether there is a conflict of interest.

3.4-2C Except with consent of the clients as provided in rule 3.4-2, a lawyer must not provide, or must cease providing short-term summary legal services to a client where the lawyer knows or becomes aware that there is a conflict of interest.

3.4-2D A lawyer who provides short-term summary legal services must take reasonable measures to ensure that no disclosure of the client's confidential information is made to another lawyer in the lawyer's firm.

Commentary

[1] Short-term summary legal service and duty counsel programs are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the not-for-profit legal services provider and the lawyers and law firms who provide these services. Performing a full conflicts screening in circumstances in which the short-term summary services described in these rules are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided.

[2] The limited nature of short-term summary legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term summary legal services only if the lawyer has actual knowledge of a conflict of interest between the client receiving short-term summary legal services and an existing client of the lawyer or an existing client of the *pro bono* or not-for-profit legal services provider or between the lawyer and the client receiving short-term summary legal services.

[3] Confidential information obtained by a lawyer providing the services described in Rule 3.4-2A-2D will not be imputed to the lawyers in the lawyer's firm or

to non-lawyer partners or associates in a multi-discipline partnership. As such, these individuals may continue to act for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services, and may act in future for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services.

[4] In the provision of short-term summary legal services, the lawyer's knowledge about possible conflicts of interest is based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of consulting with the *pro bono* or not-for-profit legal services provider to receive its services.

Dispute

3.4-3 Despite rule 3.4-2, a lawyer must not represent opposing parties in a dispute.

Commentary

[1] A lawyer representing a client who is a party in a dispute with another party or parties must competently and diligently develop and argue the position of the client. In a dispute, the parties' immediate legal interests are clearly adverse. If the lawyer were permitted to act for opposing parties in such circumstances even with consent, the lawyer's advice, judgment and loyalty to one client would be materially and adversely affected by the same duties to the other client or clients. In short, the lawyer would find it impossible to act without offending these rules.

Concurrent Representation with Protection of Confidential Client Information

3.4-4 Where there is no dispute among the clients about the matter that is the subject of the proposed representation, two or more lawyers in a law firm may act for current clients with competing interests and may treat information received from each client as confidential and not disclose it to the other clients, provided that:

(a) disclosure of the risks of the lawyers so acting has been made to each client;

(b) the lawyer recommends each client receive independent legal advice, including on the risks of concurrent representation;

(c) the clients each determine that it is in their best interests that the lawyers so act and consent to the concurrent representation;

(d) each client is represented by a different lawyer in the firm;

(e) appropriate screening mechanisms are in place to protect confidential information; and

(f) all lawyers in the law firm withdraw from the representation of all clients in respect of the matter if a dispute that cannot be resolved develops among the clients.

Commentary

[1] This rule provides guidance on concurrent representation, which is permitted in limited circumstances. Concurrent representation is not contrary to the rule prohibiting representation where there is a conflict of interest provided that the clients are fully informed of the risks and understand that if a dispute arises among the clients that cannot be resolved the lawyers may have to withdraw, resulting in potential additional costs.

[2] An example is a law firm acting for a number of sophisticated clients in a matter such as competing bids in a corporate acquisition in which, although the clients' interests are divergent and may conflict, the clients are not in a dispute. Provided that each client is represented by a different lawyer in the firm and there is no real risk that the firm will not be able to properly represent the legal interests of each client, the firm may represent both even though the subject matter of the retainers is the same. Whether or not a risk of impairment of representation exists is a question of fact.

[3] The basis for the advice described in the rule from both the lawyers involved in the concurrent representation and those giving the required independent legal advice is whether concurrent representation is in the best interests of the clients. Even where all clients consent, the lawyers should not accept a concurrent retainer if the matter is one in which one of the clients is less sophisticated or more vulnerable than the other.

[4] In cases of concurrent representation lawyers should employ, as applicable, the reasonable screening measures to ensure non-disclosure of confidential information within the firm set out in the rule on conflicts from transfer between law firms (see Rule 3.4-20).

Joint Retainers

3.4-5 Before a lawyer acts in a matter or transaction for more than one client, the lawyer must advise each of the clients that:

(a) the lawyer has been asked to act for both or all of them;

(b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and

(c) if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

Commentary

[1] Although this rule does not require that a lawyer advise clients to obtain independent legal advice before the lawyer may accept a joint retainer, in some cases, the lawyer should recommend such advice to ensure that the clients' consent to the joint retainer is informed, genuine and uncoerced. This is especially so when one of the clients is less sophisticated or more vulnerable than the other.

[2] A lawyer who receives instructions from spouses or partners to prepare one or more wills for them based on their shared understanding of what is to be in each will should treat the matter as a joint retainer and comply with rule 3.4-5. Further, at the outset of this joint retainer, the lawyer should advise the spouses or partners that, if subsequently only one of them were to communicate new instructions, such as instructions to change or revoke a will:

(a) the subsequent communication would be treated as a request for a new retainer and not as part of the joint retainer;

(b) in accordance with Rule 3.3-1, the lawyer would be obliged to hold the subsequent communication in strict confidence and not disclose it to the other spouse or partner; and

(c) the lawyer would have a duty to decline the new retainer, unless:

i. the spouses or partners had annulled their marriage, divorced, permanently ended their conjugal relationship or permanently ended their close personal relationship, as the case may be;

ii. the other spouse or partner had died; or

iii. the other spouse or partner was informed of the subsequent communication and agreed to the lawyer acting on the new instructions.

[3] After advising the spouses or partners in the manner described above, the lawyer should obtain their consent to act in accordance with rule 3.4-7.

3.4-6 If a lawyer has a continuing relationship with a client for whom the lawyer acts regularly, before the lawyer accepts joint employment for that client and another client in a matter or transaction, the lawyer must advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

3.4-7 When a lawyer has advised the clients as provided under rules 3.4-5 and 3.4-6 and the parties are content that the lawyer act, the lawyer must obtain their consent.

Commentary

[1] Consent in writing, or a record of the consent in a separate written communication to each client is required. Even if all the parties concerned consent, a lawyer should avoid acting for more than one client when it is likely that a contentious issue will arise between them or their interests, rights or obligations will diverge as the matter progresses.

3.4-8 Except as provided by rule 3.4-9, if a contentious issue arises between clients who have consented to a joint retainer:

(a) the lawyer must not advise them on the contentious issue and must:

i. refer the clients to other lawyers; or

ii. advise the clients of their option to settle the contentious issue by direct negotiation in which the lawyer does not participate, provided:

A. no legal advice is required; and

B. the clients are sophisticated.

(b) if the contentious issue is not resolved, the lawyer must withdraw from the joint representation.

Commentary

[1] This rule does not prevent a lawyer from arbitrating or settling, or attempting

to arbitrate or settle a dispute between two or more clients or former clients who are not under any legal disability and who wish to submit the dispute to the lawyer.

[2] If, after the clients have consented to a joint retainer, an issue contentious between them or some of them arises, the lawyer is not necessarily precluded from advising them on non-contentious matters.

3.4-9 Subject to this rule, if clients consent to a joint retainer and also agree that if a contentious issue arises the lawyer may continue to advise one of them, the lawyer may advise that client about the contentious matter and must refer the other or others to another lawyer.

Commentary

[1] This rule does not relieve the lawyer of the obligation when the contentious issue arises to obtain the consent of the clients when there is or is likely to be a conflict of interest, or if the representation on the contentious issue requires the lawyer to act against one of the clients.

[2] When entering into a joint retainer, the lawyer should stipulate that, if a contentious issue develops, the lawyer will be compelled to cease acting altogether unless, at the time the contentious issue develops, all parties consent to the lawyer's continuing to represent one of them. Consent given before the fact may be ineffective since the party granting the consent will not at that time be in possession of all relevant information.

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 prejudice that client.

Commentary

[1] This rule guards against the misuse of confidential information from a

previous retainer and ensures that a lawyer does not attack the legal work done during a previous retainer, or undermine the client's position on a matter that was central to a previous retainer. It is not improper for a lawyer to act against a former client in a fresh and independent matter wholly unrelated to any work the lawyer has previously done for that client if previously obtained confidential information is irrelevant to that matter.

3.4-11 When a lawyer has acted for a former client and obtained confidential information relevant to a new matter, another lawyer ("the other lawyer") in the lawyer's firm may act in the new matter against the former client if:

(a) the former client consents to the other lawyer acting; or

(b) the law firm has:

i. taken reasonable measures to ensure that there will be no disclosure of the former client's confidential information by the lawyer to any other lawyer, any other member or employee of the law firm, or any other person whose services the lawyer or the law firm has retained in the new matter; and

ii. advised the lawyer's former client, if requested by the client, of the measures taken.

Commentary

[1] The Commentary to rules 3.4-17 to 3.4-23 regarding conflicts from transfer between law firms provide valuable guidance for the protection of confidential information in the rare cases in which it is appropriate for another lawyer in the lawyer's firm to act against the former client.

Acting for Borrower and Lender

3.4-12 Subject to rule 3.4-14, a lawyer or two or more lawyers practising in partnership or association must not act for or otherwise represent both lender and borrower in a mortgage or loan transaction.

3.4-13 In rules 3.4-14 to 3.4-16 **"lending client"** means a client that is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of its business.

3.4-14 Provided there is compliance with this rule, and in particular rules 3.4-5 to 3.4-9, a lawyer may act for or otherwise represent both lender and borrower in a

mortgage or loan transaction in any of the following situations:

(a) the lender is a lending client;

(b) the lender is selling real property to the borrower and the mortgage represents part of the purchase price;

(c) the lawyer practises in a remote location where there are no other lawyers that either party could conveniently retain for the mortgage or loan transaction; or

(d) the lender and borrower are not at "arm's length" as defined in the *Income Tax Act* (Canada).

3.4-15 Where a lawyer acts for both the borrower and the lender in a mortgage or loan transaction, the lawyer must disclose to the borrower and the lender, in writing, before the advance or release of the mortgage or loan funds, all material information that is relevant to the transaction.

Commentary
[1] What is material is to be determined objectively. Material information would be facts that would be perceived objectively as relevant by any reasonable lender or borrower. An example is a price escalation or "flip", where a property is re-transferred or re-sold on the same day or within a short time period for a significantly higher price. The duty to disclose arises even if the lender or the borrower does not ask for the specific information.

3.4-16 If a lawyer is jointly retained by a client and a lending client in respect of a mortgage or loan from the lending client to the other client, including any guarantee of that mortgage or loan, the lending client's consent is deemed to exist upon the lawyer's receipt of written instructions from the lending client to act and the lawyer is not required to:

(a) provide the advice described in rule 3.4-5 to the lending client before accepting the retainer;

(b) provide the advice described in rule 3.4-6; or

(c) obtain the consent of the lending client as described in rule 3.4-7, including confirming the lending client's consent in writing, unless the lending client requires that its consent be reduced to writing.

Commentary
[1] Rules 3.4-15 and 3.4-16 are intended to simplify the advice and consent process between a lawyer and institutional lender clients. Such clients are generally sophisticated. Their acknowledgement of the terms of and consent to the joint retainer is usually confirmed in the documentation of the transaction (e.g. mortgage loan instructions) and the consent is generally deemed by such clients to exist when the lawyer is requested to act. [2] Rule 3.4-16 applies to all loans when a lawyer is acting jointly for both the lending client and another client regardless of the purpose of the loan, including, without restriction, mortgage loans, business loans and personal loans. It also applies where there is a guarantee of such a loan.

Civil Society Organizations

3.4-16.1.1 When practising through a civil society organization, a lawyer shall establish a system to search for conflicts of interest of the civil society organization.

Conflicts from Transfer Between Law Firms

Application of Rule

3.4-17 In rules 3.4-17 to 3.4-23,

> **"matter"** means a case, a transaction, or other client representation, but within such representation does not include offering general "know-how" and, in the case of a government lawyer, providing policy advice unless the advice relates to a particular client representation.

3.4-18 Rules 3.4-17 to 3.4-23 apply when a lawyer transfers from one law firm ("former law firm") to another ("new law firm"), and either the transferring lawyer or the new law firm is aware at the time of the transfer or later discovers that:

(a) It is reasonable to believe the transferring lawyer has confidential information relevant to the new law firm's matter for its client; or

(b)

i. the new law firm represents a client in a matter that is the same as or related to a matter in which a former law firm represents or represented its client ("former client");

ii. the interests of those clients in that matter conflict; and

iii. the transferring lawyer actually possesses relevant information respecting that matter.

Commentary

[1] The purpose of the rule is to deal with actual knowledge. Imputed knowledge does not give rise to disqualification. As stated by the Supreme Court of Canada in *Macdonald Estate v. Martin*, [1990] 3 SCR 1235, with respect to the partners or associates of a lawyer who has relevant confidential information, the concept of imputed knowledge is unrealistic in the era of the mega-firm. Notwithstanding the foregoing, the inference to be drawn is that lawyers working together in the same firm will share confidences on the matters on which they are working, such that actual knowledge may be presumed. That presumption can be rebutted by clear and convincing evidence that shows that all reasonable measures, as discussed in rule 3.4-20, have been taken to ensure that no disclosure will occur by the transferring lawyer to the member or members of the firm who are engaged against a former client.

[2] The duties imposed by this rule concerning confidential information should be distinguished from the general ethical duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, which duty applies without regard to the nature or source of the information or to the fact that others may share the knowledge.

[3] **Law firms with multiple offices** — This rule treats as one "law firm" such entities as the various legal services units of a government, a corporation with separate regional legal departments and an interjurisdictional law firm.

3.4-19 Rules 3.4-20 to 3.4-22 do not apply to a lawyer employed by the federal, a provincial or a territorial government who, after transferring from one department, ministry or agency to another, continues to be employed by that government.

Commentary

[1] **Government employees and in-house counsel** — The definition of "law firm" includes one or more lawyers practising in a government, a Crown corporation, any other public body or a corporation. Thus, the rule applies to lawyers transferring to or from government service and into or out of an in-house counsel position, but does not extend to purely internal transfers in which, after transfer, the employer remains the same.

Law Firm Disqualification

3.4-20 If the transferring lawyer actually possesses confidential information relevant to a matter respecting the former client that may prejudice the former client if disclosed to a member of the new law firm, the new law firm must cease its representation of its client in that matter unless:

(a) the former client consents to the new law firm's continued representation of its client; or

(b) the new law firm has:

i. taken reasonable measures to ensure that there will be no disclosure of the former client's confidential information by the transferring lawyer to any member of the new law firm; and

ii. advised the lawyer's former client, if requested by the client, of the measures taken.

Commentary

[1] It is not possible to offer a set of "reasonable measures" that will be appropriate or adequate in every case. Instead, the new law firm that seeks to implement reasonable measures must exercise professional judgment in determining what steps must be taken "to ensure that no disclosure will occur to any member of the new law firm of the former client's confidential information." Such measures may include timely and properly constructed confidentiality screens.

[2] For example, the various legal services units of a government, a corporation with separate regional legal departments, an interjurisdictional law firm, or a legal aid program may be able to demonstrate that, because of its institutional structure, reporting relationships, function, nature of work, and geography, relatively fewer "measures" are necessary to ensure the non-disclosure of client confidences. If it can be shown that, because of factors such as the above, lawyers in separate units, offices or departments do not "work together" with other lawyers in other units, offices or departments, this will be taken into account in the determination of what screening measures are "reasonable."

[3] The guidelines that follow are intended as a checklist of relevant factors to be considered. Adoption of only some of the guidelines may be adequate in some cases, while adoption of them all may not be sufficient in others.

Guidelines: How to Screen/Measures to be Taken

1. The screened lawyer should have no involvement in the new law firm's representation of its client in the matter.

2. The screened lawyer should not discuss the current matter or any information relating to the representation of the former client (the two may be identical) with anyone else in the new law firm.

3. No member of the new law firm should discuss the current matter or the previous representation with the screened lawyer.

4. The firm should take steps to preclude the screened lawyer from having access to any part of the file.

5. The new law firm should document the measures taken to screen the transferring lawyer, the time when these measures were put in place (the sooner the better), and should advise all affected lawyers and support staff of the measures taken.

6. These Guidelines apply with necessary modifications to situations in which non-lawyer staff leave one law firm to work for another and a determination is made, before hiring the individual, on whether any conflicts of interest will be created and whether the potential new hire actually possesses relevant confidential information.

How to Determine If a Conflict Exists Before Hiring a Potential Transferee

[4] When a law firm ("new law firm") considers hiring a lawyer, or an articled law student ("transferring lawyer") from another law firm ("former law firm"), the transferring lawyer and the new law firm need to determine, before the transfer, whether any conflicts of interest will be created. Conflicts can arise with respect to clients of the law firm that the transferring lawyer is leaving and with respect to clients of a firm in which the transferring lawyer worked at some earlier time.

[5] After completing the interview process and before hiring the transferring lawyer, the new law firm should determine whether any conflicts exist. In determining whether the transferring lawyer actually possesses relevant confidential information, both the transferring lawyer and the new law firm must be very careful, during any interview of a potential transferring lawyer, or other recruitment process, to ensure that they do not disclose client confidences. See Rule 3.3-7 which provides that a lawyer may disclose confidential information to the extent the lawyer reasonably believes necessary to detect and resolve conflicts of

interest where lawyers transfer between firms.

[6] A lawyer's duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

Transferring Lawyer Disqualification

3.4-21 Unless the former client consents, a transferring lawyer referred to in rule 3.4-20 must not:

(a) participate in any manner in the new law firm's representation of its client in the matter; or

(b) disclose any confidential information respecting the former client except as permitted by rule 3.3-7.

3.4-22 Unless the former client consents, members of the new law firm must not discuss the new law firm's representation of its client or the former law firm's representation of the former client in that matter with a transferring lawyer referred to in rule 3.4-20 except as permitted by rule 3.3-7.

Lawyer Due-Diligence for Non-Lawyer Staff

3.4-23 A lawyer or a law firm must exercise due diligence in ensuring that each member and employee of the law firm, and each other person whose services the lawyer or the law firm has retained:

(a) complies with rules 3.4-17 to 3.4-23; and

(b) does not disclose confidential information:

i. of clients of the firm; or

ii. any other law firm in which the person has worked.

Commentary

[1] This rule is intended to regulate lawyers and articled law students who transfer between law firms. It also imposes a general duty on lawyers and law firms to exercise due diligence in the supervision of non-lawyer staff to ensure that they comply with the rule and with the duty not to disclose confidences of clients of the lawyer's firm and confidences of clients of other law firms in which the person has worked.

[2] Certain non-lawyer staff in a law firm routinely have full access to and work extensively on client files. As such, they may possess confidential information about the client. If these staff move from one law firm to another and the new firm acts for a client opposed in interest to the client on whose files the staff worked, unless measures are taken to screen the staff, it is reasonable to conclude that confidential information may be shared. It is the responsibility of the lawyer/law firm to ensure that staff who may have confidential information that if disclosed, may prejudice the interests of the client of the former firm, have no involvement with and no access to information relating to the relevant client of the new firm.

3.4-24 [deleted]

3.4-25 [deleted]

3.4-26 [deleted]

Doing Business with a Client

Definitions

3.4-27 In rules 3.4-27 to 3.4-41,

"independent legal advice" means a retainer in which:

(a) the retained lawyer, who may be a lawyer employed as in-house counsel for the client, has no conflicting interest with respect to the client's transaction;

(b) the client's transaction involves doing business with:

i. another lawyer, or

ii. a corporation or other entity in which the other lawyer has an interest other than a corporation or other entity whose securities are publicly traded;

(c) the retained lawyer has advised the client that the client has the right to independent legal representation;

(d) the client has expressly waived the right to independent legal representation and has elected to receive no legal representation or legal representation from another lawyer;

(e) the retained lawyer has explained the legal aspects of the transaction to the client, who appeared to understand the advice given; and

(f) the retained lawyer informed the client of the availability of qualified advisers in other fields who would be in a position to give an opinion to the client as to the desirability or otherwise of a proposed investment from a business point of view.

"independent legal representation" means a retainer in which:

(a) the retained lawyer, who may be a lawyer employed as in-house counsel for the client, has no conflicting interest with respect to the client's transaction; and

(b) the retained lawyer will act as the client's lawyer in relation to the matter.

Commentary
[1] If a client elects to waive independent legal representation and to rely on independent legal advice only, the retained lawyer has a responsibility that should not be lightly assumed or perfunctorily discharged.

"lawyer" includes an associate or partner of the lawyer, related persons as defined by the *Income Tax Act* (Canada), and a trust or estate in which the lawyer has a beneficial interest or for which the lawyer acts as a trustee or in a similar capacity.

"related persons" means related persons as defined in the *Income Tax Act* (Canada);

Transactions with Clients

3.4-28 A lawyer must not enter into a transaction with a client unless the transaction with the client is fair and reasonable to the client.

3.4-29 Subject to rules 3.4-30 to 3.4-36, where a transaction involves: lending or borrowing money, buying or selling property or services having other than nominal value, giving or acquiring ownership, security or other pecuniary interest in a company or other entity, recommending an investment, or entering into a common business venture, a lawyer must, in sequence:

(a) disclose the nature of any conflicting interest or how a conflict might develop later;

(b) consider whether the circumstances reasonably require that the client receive independent legal advice with respect to the transaction; and

(c) obtain the client's consent to the transaction after the client receives such disclosure and legal advice.

3.4-30 Rule 3.4-29 does not apply where:

(a) a client intends to enter into a transaction with a corporation or other entity whose securities are publicly traded in which the lawyer has an interest; or

(b) a lawyer borrows money from a client that is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of business.

Commentary

[1] The relationship between lawyer and client is a fiduciary one. The lawyer has a duty to act in good faith. A lawyer should be able to demonstrate that the transaction with the client is fair and reasonable to the client.

[2] In some circumstances, the lawyer may also be retained to provide legal services for the transaction in which the lawyer and a client participate. A lawyer should not uncritically accept a client's decision to have the lawyer act. It should be borne in mind that if the lawyer accepts the retainer the lawyer's first duty will be to the client. If the lawyer has any misgivings about being able to place the client's interests first, the retainer should be declined. This is because the lawyer cannot act in a transaction with a client where there is a substantial risk that the lawyer's loyalty to or representation of the client would be materially and adversely affected by the lawyer's own interest, unless the client consents and the lawyer reasonably believes that he or she is able to act for the client without having a material adverse effect on loyalty or the representation.

[3] If the lawyer chooses not to disclose the conflicting interest or cannot disclose without breaching confidence, the lawyer must decline the retainer.

[4] Generally, in disciplinary proceedings under this rule, the burden will rest upon the lawyer to show good faith, that adequate disclosure was made in the matter, that independent legal advice was received by the client, where required, and that the client's consent was obtained.

Documenting Independent Legal Advice

[5] A lawyer retained to give independent legal advice relating to a transaction should document the independent legal advice by doing the following:

(a) provide the client with a written certificate that the client has received independent legal advice;

(b) obtain the client's signature on a copy of the certificate of independent legal advice; and

(c) send the signed copy to the lawyer with whom the client proposes to transact business.

Borrowing from Clients

3.4-31 A lawyer must not borrow money from a client unless:

(a) the client is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public; or

(b) the client is a related person as defined by the *Income Tax Act* (Canada) and the lawyer:

i. discloses to the client the nature of the conflicting interest; and

ii. requires that the client receive independent legal advice or, where the circumstances reasonably require, independent legal representation.

3.4-32 Subject to rule 3.4-31, if a corporation, syndicate or partnership in which either or both of the lawyer and the lawyer's spouse has a direct or indirect substantial interest borrows money from a client, the lawyer must:

(a) disclose to the client the nature of the conflicting interest; and

(b) require that the client obtain independent legal representation.

Commentary

[1] Whether a person is considered a client within rules 3.4-31 and 3.4-32 when lending money to a lawyer on that person's own account or investing money in a

security in which the lawyer has an interest is determined having regard to all circumstances. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and advice about the loan or investment, the lawyer is bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

[2] Given the definition of "lawyer" applicable to these Doing Business with a Client rules, a lawyer's spouse or a corporation controlled by the lawyer would be prohibited from borrowing money from a lawyer's unrelated client. Rule 3.4-32 addresses situations where a conflicting interest may not be immediately apparent to a potential lender. As such, in the transactions described in the rule, the lawyer must make disclosure and require that the unrelated client from whom the entity in which the lawyer or the lawyer's spouse has a direct or indirect substantial interest is borrowing has independent legal representation.

Lending to Clients

3.4-33 A lawyer must not lend money to a client unless before making the loan, the lawyer:

(a) discloses to the client the nature of the conflicting interest;

(b) requires that the client:

i. receive independent legal representation; or

ii. if the client is a related person as defined by the *Income Tax Act* (Canada), receive independent legal advice; and

(c) obtains the client's consent.

Guarantees by a Lawyer

3.4-34 Except as provided by rule 3.4-35, a lawyer retained to act with respect to a transaction in which a client is a borrower or a lender must not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is the borrower or lender.

3.4-35 A lawyer may give a personal guarantee in the following circumstances:

(a) the lender is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of business,

and the lender is directly or indirectly providing funds solely for the lawyer, the lawyer's spouse, parent or child;

(b) the transaction is for the benefit of a non-profit or charitable institution, and the lawyer provides a guarantee as a member or supporter of such institution, either individually or together with other members or supporters of the institution; or

(c) the lawyer has entered into a business venture with a client and a lender requires personal guarantees from all participants in the venture as a matter of course and:

i. the lawyer has complied with rules 3.4-28 to 3.4-36; and

ii. the lender and participants in the venture who are clients or former clients of the lawyer have independent legal representation.

Payment for Legal Services

3.4-36 When a client intends to pay for legal services by transferring to a lawyer a share, participation or other interest in property or in an enterprise, other than a nonmaterial interest in a publicly traded enterprise, the lawyer must recommend but need not require that the client receive independent legal advice before accepting a retainer.

Commentary
[1] The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client does not give rise to a conflicting interest.

Gifts and Testamentary Instruments

3.4-37 A lawyer must not accept a gift that is more than nominal from a client unless the client has received independent legal advice.

3.4-38 A lawyer must not include in a client's will a clause directing the executor to retain the lawyer's services in the administration of the client's estate.

3.4-39 Unless the client is a family member of the lawyer, a lawyer must not prepare or cause to be prepared an instrument giving the lawyer a gift or benefit from the client, including a testamentary gift.

Judicial Interim Release

3.4-40 A lawyer must not act as a surety for, deposit money or other valuable security for or act in a supervisory capacity to an accused person for whom the lawyer acts.

3.4-41 A lawyer may act as a surety for, deposit money or other valuable security for or act in a supervisory capacity to an accused who is in a family relationship with the lawyer when the accused is represented by the lawyer's partner or associate.

3.5 PRESERVATION OF CLIENTS' PROPERTY

Preservation of Clients' Property

3.5-1 In this rule, "property" includes a client's money, securities as defined in *The Securities Act,* C.C.S.M. c. S50, original documents such as wills, title deeds, minute books, licenses, certificates and the like, and all other papers such as client's correspondence, files, reports, invoices and other such documents as well as personal property including precious and semi-precious metals, jewellery and the like.

3.5-2 A lawyer must:

(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.

Commentary

[1] The duties concerning safekeeping, preserving, and accounting for clients' monies and other property are set out in *The Legal Profession Act* and the *Law Society Rules.*

[2] These duties are closely related to those regarding confidential information. A lawyer is responsible for maintaining the safety and confidentiality of the files of the client in the possession of the lawyer and should take all reasonable steps to ensure the privacy and safekeeping of a client's confidential information. A lawyer should keep the client's papers and other property out of sight as well as out of reach of those not entitled to see them.

[2A] A lawyer should be alert to the duty to claim on behalf of a client any privilege in respect of property seized or attempted to be seized by an external authority or in respect of third party claims made against the property. In this regard, the lawyer should be familiar with the nature of the client's common law privilege and with such relevant constitutional and statutory provisions as those found in the *Income Tax Act* (Canada), the *Charter* and the *Criminal Code*.

[3] Subject to any rights of lien, the lawyer should promptly return a client's property to the client on request or at the conclusion of the lawyer's retainer.

[4] If the lawyer withdraws from representing a client, the lawyer is required to comply with rule 3.7 (Withdrawal from Representation).

Notification of Receipt of Property

3.5-3 A lawyer must promptly notify a client of the receipt of any money or other property of the client, unless satisfied that the client is aware that they have come into the lawyer's custody.

Identifying Clients' Property

3.5-4 A lawyer must clearly label and identify clients' property and place it in safekeeping distinguishable from the lawyer's own property.

3.5-5 A lawyer must maintain such records as necessary to identify clients' property that is in the lawyer's custody.

Accounting and Delivery

3.5-6 A lawyer must account promptly for clients' 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.

3.5-7 If a lawyer is unsure of the proper person to receive a client's property, the lawyer must apply to a tribunal of competent jurisdiction for direction.

Commentary

[1] A lawyer should be alert to the duty to claim on behalf of a client any privilege in respect of property seized or attempted to be seized by an external authority or in respect of third party claims made against the property. In this regard, the lawyer should be familiar with the nature of the client's common law privilege and with such relevant constitutional and statutory provisions as those found in the *Income Tax Act* (Canada), the *Charter* and the *Criminal Code*.

3.6 FEES AND DISBURSEMENTS

Reasonable Fees and Disbursements

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.

Commentary

[1] What is a fair and reasonable fee will depend upon 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.

[1A] A fee will not be fair and reasonable and may subject the lawyer to disciplinary proceedings if it is one that cannot be justified in the light of all pertinent circumstances, including the factors mentioned, or is so disproportionate to the services rendered as to introduce the element of fraud or dishonesty, or undue profit.

[2] The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. No fee, extra fees, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where the lawyer's fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such agency or other person. An example of conduct which may offend this rule is a lawyer who applies little skill or effort in assisting a client in obtaining periodic indemnity benefits, and charges an administration fee for collecting such monies or a fee which is calculated as a percentage of such benefits.

[3] A lawyer should provide to the client in writing, before or within a reasonable time after commencing a representation, as much information regarding fees and disbursements, and interest, as is reasonable and practical in the circumstances, including the basis on which fees will be determined. A legal assistant's time for tasks specific to the client, and for which the legal assistant is qualified and able to carry out, may be charged to the client at a fair and reasonable rate provided that the lawyer advises the client in advance, preferably in writing, of the intention to do so and the rate to be charged.

[4] A lawyer should be ready to explain the basis of the fees and disbursement charged to the client. This is particularly important concerning fee charges or disbursements that the client might not reasonably be expected to anticipate. When something unusual or unforeseen occurs that may substantially affect the amount of a fee or disbursement, the lawyer should give to the client an immediate explanation. A lawyer should confirm with the client in writing the substance of all fee discussions that occur as a matter progresses and a lawyer may revise an initial estimate of fees and disbursements.

Civil Society Organization Clients

3.6-1.2 A lawyer providing legal services through a civil society organization shall not directly or indirectly charge a fee to the person for whose benefit the legal services are provided, but the lawyer may charge disbursements in accordance with rule 3.6-1.

Contingent Fees and Contingent Fee Agreements

3.6-2 Subject to rule 3.6-1 and section 55 of *The Legal Profession Act*, a lawyer may enter into a written agreement that provides that the lawyer's fee is contingent,

in whole or in part, on the outcome of the matter for which the lawyer's services are to be provided.

Commentary
[1] In determining the appropriate percentage or other basis of the contingency fee, a lawyer and client should consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. The lawyer and client may agree that, in addition to the fee payable under the agreement, any amount arising as a result of an award of costs or costs obtained as a part of a settlement is to be paid to the lawyer, which may require judicial approval under the governing legislation. In such circumstances, a smaller percentage of the award than would otherwise be agreed upon for the contingency fee, after considering all relevant factors, will generally be appropriate. The test is whether the fee, in all of the circumstances, is fair and reasonable. [2] Although a lawyer is generally permitted to terminate the professional relationship with a client and withdraw services if there is justifiable cause as set out in rule 3.7-1, special circumstances apply when the retainer is pursuant to a contingency agreement. In such circumstances, the lawyer has impliedly undertaken the risk of not being paid in the event the suit is unsuccessful. Accordingly, a lawyer cannot withdraw from representation for reasons other than those set out in rule 3.7-7 (Obligatory Withdrawal) unless the written contingency contract specifically states that the lawyer has a right to do so and sets out the circumstances under which this may occur.

Statement of Account

3.6-3 In a statement of account delivered to a client, a lawyer must clearly and separately detail the amounts charged as fees and disbursements.

Joint Retainer

3.6-4 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.

Division of Fees and Referral Fees

3.6-5 If there is consent from the client, fees for a matter may be divided between lawyers who are not in the same firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

3.6-6 If a lawyer refers a matter to another lawyer because of the expertise and ability of the other lawyer to handle the matter, and the referral was not made because of a conflict of interest, the referring lawyer may accept, and the other lawyer may pay, a referral fee, provided that:

(a) the fee is reasonable; and

(b) the client is informed and consents.

3.6-7 A lawyer must not:

(a) directly or indirectly share, split, or divide his or her fees with any person who is not a lawyer;

(b) give any financial or other reward for the referral of clients or client matters to any person who is not a lawyer; or

(c) give or receive any financial or other reward for the referral of clients or client matters when providing legal services through a civil society organization.

Commentary

[1] This rule prohibits lawyers from entering into arrangements to compensate or reward non-lawyers for the referral of clients. It does not prevent a lawyer from engaging in promotional activities involving reasonable expenditures on promotional items or activities that might result in the referral of clients generally by a non-lawyer. Accordingly, this rule does not prohibit a lawyer from:

(a) making an arrangement respecting the purchase and sale of a law practice when the consideration payable includes a percentage of revenues generated from the practice sold;

(b) entering into a lease under which a landlord directly or indirectly shares in the fees or revenues generated by the law practice;

(c) paying an employee for services, other than for referring clients, based on the revenue of the lawyer's firm or practice; or

(d) occasionally entertaining potential referral sources by purchasing meals, providing tickets to, or attending at, sporting or other activities or sponsoring client functions.

3.6-8 Intentionally left blank.

3.6-9 Intentionally left blank.

3.6-10 Intentionally left blank.

3.6-11 Intentionally left blank.

Prepaid Legal Services Plan

3.6-12 A lawyer who accepts a client referred by a prepaid legal services plan must advise the client in writing of:

(a) the scope of work to be undertaken by the lawyer under the plan; and

(b) the extent to which a fee or disbursement will be payable by the client to the lawyer.

Solicitor's Lien

3.6-13 A lawyer must not assert a solicitor's lien against property of a client who is unable to pay the lawyer's account in circumstances in which to do so would materially prejudice the client.

Commentary

[1] A lawyer is entitled to assert a solicitor's lien over files, documents, money or other personal property of a client which is in the possession of the lawyer until the client has paid all of the lawyer's outstanding accounts. This retaining lien is possessory only and there are no means by which a lawyer can actively enforce it. As a general rule, however, a lawyer is not obliged to give copies of file material to the client or new counsel or even allow inspection of this property while asserting a lien. Conversely, a lawyer who withdraws without just cause in the course of a matter loses the possessory lien over the client's documents and must deliver the materials to the client or new solicitor. Some original documents such as corporate records required by law to be kept elsewhere cannot be the subject of a solicitor's lien.

[2] Liens claimed on property recovered or preserved, sometimes referred to as "charging liens" can only be asserted for the costs properly incurred in recovering or preserving the specific property in question.

[3] A lawyer has a duty to decline to enforce a lien for non-payment of legal fees if the client is unable to pay and assertion of the lien would materially prejudice the client's position in any uncompleted matter (material prejudice being understood to exceed mere inconvenience to the client). For example, a solicitor's lien should not be enforced when a trial or hearing is in progress or imminent. Nor should a lawyer enforce a solicitor's lien for non-payment if the client is prepared to enter into an agreement that reasonably assures the lawyer of payment in due course.

[4] Special considerations apply where a lawyer retained under a contingency agreement seeks to assert a lien for unpaid fees. This is because a contingent fee is generally not collectible until the completion of the matter. Where a lawyer withdraws or is discharged, the lawyer cannot insist on payment absent a provision in the contingency agreement allowing the lawyer to do so. Accordingly, the contingency agreement should clearly state what fees and disbursements will be payable in the event the lawyer withdraws or is discharged. A lawyer who is discharged or withdraws with just cause may require the client to pay outstanding disbursements prior to releasing the file only if the contingency agreement provides that the lawyer is entitled to full payment of the disbursements regardless of the outcome of the litigation. The lawyer may impose a trust condition on the new lawyer that file materials are forwarded on the condition that the former lawyer's fees are paid at the conclusion of the matter. When imposing such a trust condition, the former lawyer must acknowledge that the client retains the right to assess the lawyer's account through the courts or to be arbitrated in accordance with the rules of the Law Society.

3.7 WITHDRAWAL FROM REPRESENTATION

Withdrawal from Representation

3.7-1 A lawyer must not withdraw from representation of a client except for good cause and on reasonable notice to the client.

Commentary
[1] Although the client has the right to terminate the lawyer-client relationship at will, a lawyer does not enjoy the same freedom of action. Having undertaken the representation of a client, the lawyer should complete the task as ably as possible unless there is justifiable cause for terminating the relationship. It is inappropriate for a lawyer to withdraw on capricious or arbitrary grounds. [2] An essential element of reasonable notice is notification to the client, unless the client cannot be located after reasonable efforts. No hard and fast rules can be laid down as to what constitutes reasonable notice before withdrawal and how quickly a lawyer may cease acting after notification will depend on all relevant circumstances. When the matter is covered by statutory provisions or rules of court, these will govern. In other situations, the governing principle is that the lawyer should protect the client's interests to the best of the lawyer's ability and should not desert the client at a critical stage of a matter or at a time when withdrawal would put the client in a position of disadvantage or peril. As a general rule, the client should be given sufficient time to retain and instruct replacement counsel. See rules 3.7-8 and 3.7-9 (Manner of Withdrawal). [3] Every effort should be made to ensure that withdrawal will occur at an appropriate time in the proceedings in keeping with the lawyer's obligations. The court, opposing parties and others directly affected should also be notified of the withdrawal.

Optional Withdrawal

3.7-2 If there has been a serious loss of confidence between the lawyer and the client, the lawyer may withdraw in accordance with rules 3.7-8 and 3.7-9.

Commentary
[1] A lawyer may have a justifiable cause for withdrawal in circumstances indicating a loss of confidence, for example, if a lawyer is deceived by a 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

3.7-3 If, after reasonable notice, the client fails to provide a retainer or funds on account of disbursements or fees, a lawyer may withdraw in accordance with rules 3.7-8 and 3.7-9 unless serious prejudice to the client would result.

3.7-4 Intentionally left blank.

3.7-5 Intentionally left blank.

3.7-6 Intentionally left blank.

Obligatory Withdrawal

3.7-7 A lawyer must withdraw if:

(a) discharged by a client;

(b) the 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.

Commentary

[1] In a situation calling for obligatory withdrawal pursuant to this rule a lawyer must still comply with rules 3.7-8 and 3.7-9 before discontinuing representation of the client. In a matter before the court a lawyer would therefore be required to seek an order permitting the withdrawal.

Leaving a Law Firm

3.7-7A When a lawyer leaves a law firm, the lawyer and the law firm must:

(a) ensure that clients who have current matters for which the departing lawyer has conduct or substantial involvement are given reasonable

notice that the lawyer is departing and are advised of their options for retaining counsel; and

(b) take reasonable steps to obtain the instructions of each affected client as to who they will retain.

Commentary

[1] When a lawyer leaves a firm to practise elsewhere, it may result in the termination of the lawyer-client relationship between that lawyer and a client.

[2] The client's interests are paramount. Clients must be free to decide whom to retain as counsel without undue influence or pressure by the lawyer or the firm. The client should be provided with sufficient information to make an informed decision about whether to continue with the departing lawyer, remain with the firm where that is possible, or retain new counsel.

[3] The lawyer and the law firm should cooperate to ensure that the client receives the necessary information on the available options. While it is preferable to prepare a joint notification setting forth such information, factors to consider in determining who should provide it to the client include the extent of the lawyer's work for the client, the client's relationship with other lawyers in the law firm and access to client contact information. In the absence of agreement, both the departing lawyer and the law firm should provide the notification.

[4] If a client contacts a law firm to request a departed lawyer's contact information, the law firm should provide the professional contact information where reasonably possible.

[5] Where a client chooses to remain with the departing lawyer, the instructions referred to in the rule should include written authorizations for the transfer of files and client property. In all cases, the situation should be managed in a way that minimizes expense and avoids prejudice to the client.

[6] In advance of providing notice to clients of their intended departure the lawyer should provide such notice to the firm as is reasonable in the circumstances.

[7] When a client chooses to remain with the firm, the firm should consider whether it is reasonable in the circumstances to charge the client for time expended by another firm member to become familiar with the file.

[8] The principles outlined in this rule and commentary will apply to the dissolution of a law firm. When a law firm is dissolved the lawyer-client relationship

may end with one or more of the lawyers involved in the retainer. The client should be notified of the dissolution and provided with sufficient information to decide who to retain as counsel. The lawyers who are no longer retained by the client should try to minimize expense and avoid prejudice to the client.

[9] See also rules 3.7-8 to 3.7-10 and related commentary regarding enforcement of a solicitor's lien and the duties of former and successor counsel.

3.7-7B Rule 3.7-7A does not apply to a lawyer leaving (a) a government, a Crown corporation or any other public body or (b) a corporation or other organization for which the lawyer is employed as in house counsel.

Manner of Withdrawal

3.7-8 When a lawyer withdraws, the lawyer must try to minimize expense and avoid prejudice to the client and must do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor lawyer.

3.7-9 Upon discharge or withdrawal, a lawyer must:

(a) notify the client in writing, stating:

i. the fact that the lawyer has withdrawn;

ii. the reasons, if any, for the withdrawal; and

iii. in the case of litigation, that the client should expect that the hearing or trial will proceed on the date scheduled and that the client should retain new counsel promptly;

(b) subject to the lawyer's right to a lien, deliver to or to the order of the client all papers and property to which the client is entitled;

(c) subject to any applicable trust conditions, give the client all relevant information in connection with the case or matter;

(d) account for all funds of the client then held or previously dealt with, including the refunding of any remuneration not earned during the representation;

(e) promptly render an account for outstanding fees and disbursements;

(f) co-operate with the successor lawyer in the transfer of the file so as to minimize expense and avoid prejudice to the client;

(g) notify opposing counsel or other interested parties that may need to know; and

(h) comply with the applicable rules of court.

Commentary

[1] If an application to court is necessary, the lawyer should take care to ensure that any material filed does not violate solicitor-client privilege.

[1A] Steps taken to withdraw should be taken promptly so as to minimize any possible prejudice and costs to the client.

[1B] If the lawyer who is discharged or withdraws is a member of a firm, the client should be notified that both the lawyer and the firm are no longer acting for the client.

[2] If the question of a right of lien for unpaid fees and disbursements arises on the discharge or withdrawal of the lawyer, the lawyer should have due regard to the effect of its enforcement upon the client's position. Generally speaking, a lawyer should not enforce a lien if to do so would prejudice materially a client's position in any uncompleted matter. See rule 3.6-13.

[3] The obligation to deliver papers and property is subject to a lawyer's right of lien. In the event of conflicting claims to such papers or property, the lawyer should make every effort to have the claimants settle the dispute.

[4] Co-operation with the successor lawyer will normally include providing any memoranda of fact and law that have been prepared by the lawyer in connection with the matter, but confidential information not clearly related to the matter should not be divulged without the written consent of the client.

[5] A lawyer who ceases to act for one or more clients should co-operate with the successor lawyer or lawyers and should seek to avoid any unseemly rivalry, whether real or apparent.

Duty of Successor Lawyer

3.7-10 Before agreeing to represent a client, a successor lawyer must be satisfied that the former lawyer has withdrawn or has been discharged by the client.

Commentary
[1] It is quite proper for the successor lawyer to urge the client to settle or take reasonable steps towards settling or securing any outstanding account of the former lawyer, especially if the latter withdrew for good cause or was capriciously discharged.

CHAPTER 4 – MARKETING OF LEGAL SERVICES

4.1 MAKING LEGAL SERVICES AVAILABLE

Making Legal Services Available

4.1-1 A lawyer must make legal services available to the public efficiently and conveniently and, subject to subrule (2), may offer legal services to a prospective client by any means.

Commentary

[1] A lawyer may assist in making legal services available by participating in the Legal Aid Plan and lawyer referral services and by engaging in programs of public information, education or advice concerning legal matters.

[2] As a matter of access to justice, it is in keeping with the best traditions of the legal profession to provide services *pro bono* and to reduce or waive a fee when there is hardship or poverty or the client or prospective client would otherwise be deprived of adequate legal advice or representation. The Law Society encourages lawyers to provide public interest legal services and to support organizations that provide services to persons of limited means.

[3] Where a lawyer knows or has reasonable grounds to believe that a client is entitled to Legal Aid, the lawyer should advise the client of the right to apply for Legal Aid, unless the circumstances indicate that the client has waived or does not need such assistance.

[4] **Right to Decline Representation** - A lawyer has a general right to decline a particular representation (except when assigned as counsel by a tribunal), but it is a right to be exercised prudently, particularly if the probable result would be to make it difficult for a person to obtain legal advice or representation. Generally, a lawyer should not exercise the right merely because a person seeking legal services or that person's cause is unpopular or notorious, or because powerful interests or allegations of misconduct or malfeasance are involved, or because of the lawyer's private opinion about the guilt of the accused. A lawyer declining representation should assist in obtaining the services of another lawyer qualified in the particular field and able to act. When a lawyer offers assistance to a client or prospective client in finding another lawyer, the assistance should be given willingly and, except where a referral fee is permitted by section 3.6, without charge.

Restrictions

4.1-2 In offering legal services, a lawyer must not use means that:

(a) are false or misleading;

(b) amount to coercion, duress, or harassment;

(c) take advantage of a person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover; or

(d) otherwise bring the profession or the administration of justice into disrepute.

Commentary

[1] A person who is vulnerable or who has suffered a traumatic experience and has not recovered may need the professional assistance of a lawyer, and this rule does not prevent a lawyer from offering assistance to such a person. A lawyer is permitted to provide assistance to a person if a close relative or personal friend of the person contacts the lawyer for this purpose, and to offer assistance to a person with whom the lawyer has a close family or professional relationship. The rule prohibits the lawyer from using unconscionable, exploitive or other means that bring the profession or the administration of justice into disrepute.

4.2 MARKETING

Marketing of Professional Services

4.2-1 A lawyer may market professional services, provided that the marketing is:

(a) demonstrably true, accurate and verifiable;

(b) neither misleading, confusing, or deceptive, nor likely to mislead, confuse, or deceive;

(c) in the best interests of the public and consistent with a high standard of professionalism.

Commentary

[1] Examples of marketing that may contravene this rule include:

(a) stating an amount of money that the lawyer has recovered for a client or referring to the lawyer's degree of success in past cases, unless such statement is accompanied by a further statement that past results are not necessarily indicative of future results and that the amount recovered and other litigation outcomes will vary according to the facts in individual cases;

(b) suggesting qualitative superiority to other lawyers;

(c) raising expectations unjustifiably;

(d) suggesting or implying the lawyer is aggressive;

(e) disparaging or demeaning other persons, groups, organizations or institutions;

(f) taking advantage of a vulnerable person or group; and

(g) using testimonials or endorsements which contain emotional appeals.

Advertising of Fees

4.2-2 A lawyer may advertise fees charged for their services provided that:

(a) the advertising is reasonably precise as to the services offered for each fee quoted;

(b) the advertising states whether other amounts, such as disbursements and taxes, will be charged in addition to the fee; and

(c) the lawyer strictly adheres to the advertised fee in every applicable case.

Firm Name

4.2-2A A lawyer must not use a firm name that violates subrule (1).

Commentary

[1] Examples of law firm names that are permissible include:

(a) the lawyer's own name;

(b) the names of existing, original or former partners and associates, or a combination of all three, provided the partners or associates have consented to the use of their names either by agreement or by inference through the long use of their name without objection;

(c) a descriptive or trade name.

[2] Examples of law firm names that would contravene this rule include:

(a) failing to include the words "law corporation" in the name of the professional corporation;

(b) failing to include the phrase "limited liability partnership" or its abbreviation "LLP" at the end of a name of a Manitoba limited liability partnership;

(c) including phrases or language such as "and Associates", "and Partners", "and Company", or "Attorneys-at-law" unless there are in fact two or more lawyers in the firm;

(d) holding oneself out as a member of a firm when the lawyer shares office space and certain common expenses with other lawyers but otherwise practises as an independent practitioner.

4.3 ADVERTISING NATURE OF PRACTICE

General Practice

4.3-1 A lawyer or law firm may advertise that the lawyer or law firm is in general practice if such is the case.

Preferred and Restricted Areas of Practice

4.3-2 A lawyer may advertise that the lawyer has a preferred area of practice provided the advertisement does not contain a claim either directly or indirectly that the advertising lawyer is a specialist or expert.

4.3-3 A lawyer may advertise that the lawyer's practice is restricted to a particular area or areas of the law or may state that the lawyer practises in a certain area or areas of the law if such is the case.

Commentary
[1] Where a lawyer advertises in accordance with this rule, the advertisement should be designed to provide information to assist a potential client to choose a lawyer who has the appropriate skills and knowledge for the client's particular legal matter. [2] A lawyer may advertise areas of practice if the representations made are accurate (that is, demonstrably true) and are not misleading. For example, a lawyer may list preferred areas of practice or one or more areas without comment, provided that the lawyer actually practises and is competent in those areas. Similarly, an advertisement that a lawyer's practice is restricted to a certain area of law must be supported by an actual restriction of the practice as long as the advertisement remains outstanding. The object of advertising practice areas is to provide information that facilitates an informed choice of counsel. A misrepresentation as to the experience or skill of a lawyer would improperly influence that decision.

CHAPTER 5 – RELATIONSHIP TO THE ADMINISTRATION OF JUSTICE

5.1 THE LAWYER AS ADVOCATE

Advocacy

5.1-1 When acting as an advocate, a lawyer must represent the client resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy, and respect.

Commentary

[1] **Role in Adversarial Proceedings** – In adversarial proceedings, the lawyer has a duty to the client to raise fearlessly every issue, advance every argument, and ask every question, however distasteful, that the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law. The lawyer must discharge this duty by fair and honourable means, without illegality and in a manner that is consistent with the lawyer's duty to treat the tribunal with candour, fairness, courtesy and respect and in a way that promotes the parties' right to a fair hearing in which justice can be done. Maintaining dignity, decorum, and courtesy in the courtroom is not an empty formality because, unless order is maintained, rights cannot be protected.

[2] This rule applies to the lawyer as advocate, and therefore extends not only to court proceedings but also to appearances and proceedings before boards, administrative tribunals, arbitrators, mediators, and others who resolve disputes, regardless of their function or the informality of their procedures.

[3] The lawyer's function as advocate is openly and necessarily partisan. Accordingly, the lawyer is not obliged (except as required by law or under these rules and subject to the duties of a prosecutor set out below) to assist an adversary or advance matters derogatory to the client's case.

[4] Intentionally left blank.

[5] A lawyer should refrain from expressing the lawyer's personal opinions on the merits of a client's case to a court or tribunal. A lawyer's role is to present the evidence on behalf of a client fairly without assertion of any personal knowledge of the facts at issue.

[6] When opposing interests are not present, for example, in without notice or uncontested matters or in other situations where the full proof and argument inherent in the adversarial system cannot be achieved, the lawyer must take particular care to be accurate, candid, and comprehensive in presenting the client's

case so as to ensure that the tribunal is not misled.

[7] The lawyer should never waive or abandon the client's legal rights, for example, such as an available defence under a statute of limitations, without the client's informed consent.

[8] In civil proceedings, a lawyer should avoid and discourage the client from resorting to frivolous or vexatious objections, attempts to gain advantage from slips or oversights not going to the merits or tactics that will merely delay or harass the other side. Such practices can readily bring the administration of justice and the legal profession into disrepute.

[9] **Duty as Defence Counsel** - When defending an accused person, a lawyer's duty is to protect the client as far as possible from being convicted, except by a tribunal of competent jurisdiction and upon legal evidence sufficient to support a conviction for the offence with which the client is charged. Accordingly, and notwithstanding the lawyer's private opinion on credibility or the merits, a lawyer may properly rely on any evidence or defences including so-called technicalities, not known to be false or fraudulent.

[10] Admissions made by the accused to a lawyer may impose strict limitations on the conduct of the defence, and the accused should be made aware of this. For example, if the accused clearly admits to the lawyer the factual and mental elements necessary to constitute the offence, the lawyer, if convinced that the admissions are true and voluntary, may properly take objection to the jurisdiction of the court, the form of the indictment or the admissibility or sufficiency of the evidence, but must not suggest that some other person committed the offence or call any evidence that, by reason of the admissions, the lawyer believes to be false. Nor may the lawyer set up an affirmative case inconsistent with such admissions, for example, by calling evidence in support of an alibi intended to show that the accused could not have done or, in fact, has not done the act. Such admissions will also impose a limit on the extent to which the lawyer may attack the evidence for the prosecution. The lawyer is entitled to test the evidence given by each individual witness for the prosecution and argue that the evidence taken as a whole is insufficient to amount to proof that the accused is guilty of the offence charged, but the lawyer should go no further than that.

5.1-2 When acting as an advocate, a lawyer must not:

(a) abuse the process of the tribunal by instituting or prosecuting proceedings that, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring the other party;

(b) knowingly assist or permit the client to do anything that the lawyer considers to be dishonest or dishonourable;

(c) appear before a judicial officer when the lawyer, the lawyer's associates or the client have business or personal relationships with the officer that give rise to or might reasonably appear to give rise to pressure, influence or inducement affecting the impartiality of the officer, unless all parties consent and it is in the interests of justice;

(d) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of a tribunal or any of its officials in any case or matter by any means other than open persuasion as an advocate;

(e) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed or otherwise assisting in any fraud, crime or illegal conduct;

(f) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument or the provisions of a statute or like authority;

(g) knowingly assert as true a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal;

(h) make suggestions to a witness recklessly or knowing them to be false;

(i) deliberately refrain from informing a tribunal of any binding authority that the lawyer considers to be directly on point and that has not been mentioned by an opponent;

(j) improperly dissuade a witness from giving evidence or advise a witness to be absent;

(k) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another;

(l) knowingly misrepresent the client's position in the litigation or the issues to be determined in the litigation;

(m) needlessly abuse, hector or harass a witness;

(n) when representing a complainant or potential complainant, attempt to gain a benefit for the complainant by threatening the laying of a criminal charge or by offering to seek or to procure the withdrawal of a criminal charge; or

(o) needlessly inconvenience a witness.

Commentary

[1] In civil proceedings, a lawyer has a duty not to mislead the tribunal about the position of the client in the adversarial process. Thus, a lawyer representing a party to litigation who has made or is party to an agreement made before or during the trial by which a plaintiff is guaranteed recovery by one or more parties, notwithstanding the judgment of the court, should immediately reveal the existence and particulars of the agreement to the court and to all parties to the proceedings.

[2] A lawyer representing an accused or potential accused may communicate with a complainant or potential complainant, for example, to obtain factual information, to arrange for restitution or an apology from the accused, or to defend or settle any civil claims between the accused and the complainant. However, when the complainant or potential complainant is vulnerable, the lawyer must take care not to take unfair or improper advantage of the circumstances. If the complainant or potential complainant is unrepresented, the lawyer should be governed by the rules about unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused or potential accused. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

[3] It is an abuse of the court's process to threaten to bring an action or to offer to seek withdrawal of a criminal charge in order to gain a benefit. See also rules 3.2-5 and 3.2-6 and accompanying commentary.

[4] When examining a witness, a lawyer may pursue any hypothesis that is honestly advanced on the strength of reasonable inference, experience or intuition.

Incriminating Physical Evidence

5.1-2A A lawyer must not counsel or participate in the concealment, destruction or alteration of incriminating physical evidence or otherwise act so as to obstruct or attempt to obstruct the course of justice.

Commentary

[1] In this rule, "evidence" does not depend upon admissibility before a tribunal or upon the existence of criminal charges. It includes documents, electronic information, objects or substances relevant to a crime, criminal investigation or a criminal prosecution. It does not include documents or communications that are solicitor-client privileged or that the lawyer reasonably believes are otherwise available to the authorities.

[2] This rule does not apply where a lawyer is in possession of evidence tending to establish the innocence of a client, such as evidence relevant to an alibi. However, a lawyer must exercise prudent judgment in determining whether such evidence is wholly exculpatory, and therefore falls outside of the application of this rule. For example, if the evidence is both incriminating and exculpatory, improperly dealing with it may result in a breach of the rule and also expose a lawyer to criminal charges.

[3] A lawyer is never required to take or keep possession of incriminating physical evidence or to disclose its mere existence. Possession of illegal things could constitute an offense. A lawyer in possession of incriminating physical evidence should carefully consider his or her options. These options include, as soon as reasonably possible:

(a) delivering the evidence to law enforcement authorities or the prosecution, either directly or anonymously;

(b) delivering the evidence to the tribunal in the relevant proceeding, which may also include seeking the direction of the tribunal to facilitate access by the prosecution or defence for testing or examination; or

(c) disclosing the existence of the evidence to the prosecution and, if necessary, preparing to argue before a tribunal the appropriate uses, disposition or admissibility of it.

[4] A lawyer should balance the duty of loyalty and confidentiality owed to the client with the duties owed to the administration of justice. When a lawyer discloses or delivers incriminating physical evidence to law enforcement authorities or the prosecution, the lawyer has a duty to protect client confidentiality, including the client's identity, and to preserve solicitor-client privilege. This may be accomplished by the lawyer retaining independent counsel, who is not informed of the identity of the client and who is instructed not to disclose the identity of the instructing lawyer, to disclose or deliver the evidence. A lawyer cannot merely continue to keep possession of the incriminating physical evidence.

[5] A lawyer has no obligation to assist the authorities in gathering physical evidence of crime but cannot act or advise anyone to hinder an investigation or a prosecution. The lawyer's advice to a client that the client has the right to refuse to divulge the location of physical evidence does not constitute hindering an investigation. A lawyer who becomes aware of the existence of incriminating physical evidence or declines to take possession of it must not counsel or participate in its concealment, destruction or alteration.

[6] A lawyer may determine that non-destructive testing, examination or copying of documentary or electronic information is needed. A lawyer should ensure that there is no concealment, destruction or any alteration of the evidence and should exercise caution in this area. For example, opening or copying an electronic document may alter it. A lawyer who has decided to copy, test or examine evidence before delivery or disclosure should do so without delay.

Ex Parte Proceedings

5.1-2B In an *ex parte* proceeding, a lawyer must act with utmost good faith and inform the tribunal of all material facts, including adverse facts, known to the lawyer that will enable the tribunal to make an informed decision.

Commentary

[1] *Ex parte* proceedings are exceptional. The obligation to inform the tribunal of all material facts includes an obligation of full, fair and candid disclosure to the tribunal (see also Rules 5.1-1, 5.1-2).

[2] The obligation to disclose all relevant information and evidence is subject to a lawyer's duty to maintain confidentiality and privilege (see Rule 3.3).

[3] Before initiating *ex parte* proceedings, a lawyer should ensure that the proceedings are permitted by law and are justified in the circumstances. Where no prejudice would occur, a lawyer should consider giving notice to the opposing party or their lawyer (when they are represented), notwithstanding the ability to proceed *ex parte*.

Single-Party Communications with a Tribunal

5.1-2C Except where authorized by law, and subject to rule 5.1-2B, a lawyer must not communicate with a tribunal in the absence of the opposing party or their lawyer (when they are represented) concerning any matter of substance, unless the opposing party or their lawyer has been made aware of the content of the communication or has appropriate notice of the communication.

Commentary

[1] It is improper for a lawyer to attempt to influence, discuss a matter with, or make submissions to, a tribunal without the knowledge of the other party or the lawyer for the other party (when they are represented). A lawyer should be particularly diligent to avoid improper single-party communications when engaging with a tribunal by electronic means, such as email correspondence.

[2] When a tribunal invites or requests a communication from a lawyer, the lawyer should inform the other party or their lawyer. As a general rule, the other party or their lawyer should be copied on communications to the tribunal or given advance notice of the communication.

[3] This rule does not apply in the context of mediation or prohibit single-party communication with a tribunal on routine administrative or procedural matters, such as scheduling hearing dates or appearances. A lawyer should consider notifying the other party or their lawyer of administrative communications with the tribunal. Routine administrative communications should not include any submissions dealing with the substance of the matter or its merits.

[4] When considering whether single-party communication with a tribunal is authorized by law, a lawyer should review local rules, practice directives, and other relevant authorities that may regulate such a communication.

Duty as Prosecutor

5.1-3 When acting as a prosecutor, a lawyer must act for the public and the administration of justice resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy and respect.

Commentary

[1] When engaged as a prosecutor, the lawyer's primary duty is not to seek to convict but to see that justice is done through a fair trial on the merits. The prosecutor exercises a public function involving much discretion and power and must act fairly and dispassionately. The prosecutor should not do anything that might prevent the accused from being represented by counsel or communicating with counsel and, to the extent required by law and accepted practice, should make timely disclosure to defence counsel or directly to an unrepresented accused of all relevant and known facts and witnesses, whether tending to show guilt or innocence.

Disclosure of Error or Omission

5.1-4 A lawyer who has unknowingly done or failed to do something that, if done or omitted knowingly, would have been in breach of this rule and who discovers it, must, subject to section 3.3 (Confidentiality), disclose the error or omission and do all that can reasonably be done in the circumstances to rectify it.

Commentary
[1] If a client desires that a course be taken that would involve a breach of this rule, the lawyer must refuse and do everything reasonably possible to prevent it. If that cannot be done the lawyer should, subject to rule 3.7-1 (Withdrawal from Representation), withdraw or seek leave to do so.

Courtesy

5.1-5 A lawyer must be courteous, civil and act in good faith to the tribunal and all persons with whom the lawyer has dealings in the course of litigation.

Commentary
[1] Legal contempt of court and the professional obligation outlined here are not identical, and a consistent pattern of rude, provocative, or disruptive conduct by a lawyer, even though unpunished as contempt, may constitute professional misconduct.

Undertakings

5.1-6 A lawyer must strictly fulfill any undertakings given and honour any trust conditions accepted in the course of litigation.

Commentary
[1] The lawyer should also be guided by the provisions of rule 7.2-11 (Undertakings and Trust Conditions).

Agreement on Guilty Plea

5.1-7 Before a charge is laid or at any time after a charge is laid, a lawyer for an accused or potential accused may discuss with the prosecutor the possible disposition of the case, unless the client instructs otherwise.

5.1-8 A lawyer for an accused or potential accused may enter into an agreement with the prosecutor about a guilty plea if, following investigation,

(a) the lawyer advises his or her client about the prospects for an acquittal or finding of guilt;

(b) the lawyer advises the client of the implications and possible consequences of a guilty plea and particularly of the sentencing authority and discretion of the court, including the fact that the court is not bound by any agreement about a guilty plea;

(c) the client voluntarily is prepared to admit the necessary factual and mental elements of the offence charged; and

(d) the client voluntarily instructs the lawyer to enter into an agreement as to a guilty plea.

Commentary
[1] The public interest in the proper administration of justice should not be sacrificed in the interest of expediency.

5.2 THE LAWYER AS WITNESS

Submission of Evidence

5.2-1 A lawyer who appears as advocate must not testify or submit his or her own affidavit evidence before the tribunal unless permitted to do so by law, the tribunal, the rules of court or the rules of procedure of the tribunal, or unless the matter is purely formal or uncontroverted.

Commentary
[1] A lawyer should not express personal opinions or beliefs or assert as a fact anything that is properly subject to legal proof, cross-examination or challenge. The lawyer should not, in effect, appear as an unsworn witness or put the lawyer's own credibility in issue. The lawyer who is a necessary witness should testify and entrust the conduct of the case to another lawyer. There are no restrictions on the advocate's right to cross-examine another lawyer, however, and the lawyer who does appear as a witness should not expect to receive special treatment because of professional status.

Appeals

5.2-2 A lawyer who is a witness in proceedings must not appear as advocate in any appeal from the decision in those proceedings, unless the matter about which he or she testified is purely formal or uncontroverted.

5.3 INTERVIEWING WITNESSES

Interviewing Witnesses

5.3 *[Deleted]*

Amended 2016-09-09

5.4 COMMUNICATING WITH WITNESSES

5.4-1 A lawyer may seek information from any potential witness, provided that:

(a) before doing so, the lawyer discloses the lawyer's interest in the matter;

(b) the lawyer does not encourage the witness to suppress evidence or to refrain from providing information to other parties in the matter; and

(c) the lawyer observes Rule 7.2-6 to 7.2-8 on communicating with represented parties.

Commentary

[1] There is generally no property in a witness. To achieve the truth-seeking goal of the justice system, any person having information relevant to a proceeding should be free to impart it voluntarily and in the absence of improper influence. A lawyer should not advise a potential witness to refrain from speaking to other parties except as provided in this rule.

Expert Witnesses

[2] Special considerations may apply when communicating with expert witnesses. Depending on the area of practice and the jurisdiction, there may be legal or procedural limitations on the permissible scope of a lawyer's contact with an expert witness, including the application of litigation or solicitor-client privilege. This may include notifying an opposing party's counsel prior to communicating with that party's expert witness.

Conduct During Witness Preparation and Testimony

5.4-2 A lawyer must not influence a witness or potential witness to give evidence that is false, misleading or evasive.

5.4-3 A lawyer involved in a proceeding must not obstruct an examination or cross-examination in any manner.

Commentary

General Principles

[1] The ethical duty against improperly influencing a witness or a potential witness applies at all stages of a proceeding, including while preparing a witness to give evidence or to make a statement, and during testimony under oath or affirmation. The role of an advocate is to assist the witness in bringing forth the evidence in a manner that ensures fair and accurate comprehension by the tribunal and opposing parties.

[2] A lawyer may prepare a witness, for discovery and for appearances before tribunals, by discussing courtroom and questioning procedures and the issues in the case, reviewing facts, refreshing memory, and by discussing admissions, choice of words and demeanour. It is, however, improper to direct or encourage a witness to misstate or misrepresent the facts or to give evidence that is intentionally evasive or vague.

Communicating with Witnesses Under Oath or Affirmation

[3] During any witness testimony under oath or affirmation, a lawyer should not engage in conduct designed to improperly influence the witness' evidence.

[4] The ability of a lawyer to communicate with a witness at a specific stage of a proceeding will be influenced by the practice, procedures or directions of the relevant tribunal, and may be modified by agreement of counsel with the approval of the tribunal. Lawyers should become familiar with the rules and practices of the relevant tribunal governing communication with witnesses during examination-in-chief and cross-examination, and prior to or during re-examination.

[5] A lawyer may communicate with a witness during examination-in-chief. However, there may be local exceptions to this practice.

[6] It is generally accepted that a lawyer is not permitted to communicate with the witness during cross-examination except with leave of the tribunal or with the agreement of counsel. The opportunity to conduct a full-ranging and uninterrupted cross-examination is fundamental to the adversarial system. It is counterbalanced by an opposing advocate's ability to ensure clarity of testimony through initial briefing, direct examination and re-examination of that lawyer's witnesses. There is therefore no justification for obstruction of cross-examination by unreasonable interruptions, repeated objections to proper questions, attempts to have the witness change or tailor evidence or other similar conduct while the examination is ongoing.

[7] A lawyer should seek approval from the tribunal before speaking with a witness after cross-examination and before re-examination.

Discoveries and Other Examinations

[8] Rule 5.4 also applies to examinations under oath or affirmation that are not before a tribunal including examinations for discovery, examinations on affidavits and examinations in aid of execution. Lawyers should scrupulously avoid any attempts to influence witness testimony, particularly as the tribunal is unable to directly monitor compliance. This rule is not intended to prevent discussions or consultations that are necessary to fulfil undertakings given during such examinations.

5.5 RELATIONS WITH JURORS

Communications before Trial

5.5-1 When acting as an advocate before the trial of a case, a lawyer must not communicate with or cause another to communicate with anyone that the lawyer knows to be a member of the jury panel for that trial.

Commentary
[1] A lawyer may investigate a prospective juror to ascertain any basis for challenge, provided that the lawyer does not directly or indirectly communicate with the prospective juror or with any member of the prospective juror's family. But a lawyer should not conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of either a member of the jury panel or a juror.

Disclosure of Information

5.5-2 Unless the judge and opposing counsel have previously been made aware of the information, a lawyer acting as an advocate must disclose to them any information of which the lawyer is aware that a juror or prospective juror:

(a) has or may have an interest, direct or indirect, in the outcome of the case;

(b) is acquainted with or connected in any manner with the presiding judge, any counsel or any litigant; or

(c) is acquainted with or connected in any manner with any person who has appeared or who is expected to appear as a witness.

5.5-3 A lawyer must promptly disclose to the court any information that the lawyer reasonably believes discloses improper conduct by a member of a jury panel or by a juror.

Communication During Trial

5.5-4 Except as permitted by law, when acting as an advocate, a lawyer must not communicate with or cause another to communicate with any member of the jury during a trial of a case.

5.5-5 A lawyer who is not connected with a case before the court must not communicate with or cause another to communicate with any member of the jury about the case.

5.5-6 A lawyer must not have any discussion after trial with a member of the jury about its deliberations.

Commentary
[1] The restrictions on communications with a juror or potential juror should also apply to communications with or investigations of members of his or her family.

5.6 THE LAWYER AND THE ADMINISTRATION OF JUSTICE

Encouraging Respect for the Administration of Justice

5.6-1 A lawyer must encourage public respect for and try to improve the administration of justice.

Commentary

[1] The obligation outlined in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen. A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements. Yet for the same reason, a lawyer should not hesitate to speak out against an injustice.

[2] Admission to and continuance in the practice of law implies, on the part of a lawyer, a basic commitment to the concept of equal justice for all within an open, ordered and impartial system. However, judicial institutions will not function effectively unless they command the respect of the public, and, because of changes in human affairs and imperfections in human institutions, constant efforts must be made to improve the administration of justice and thereby, to maintain public respect for it.

[3] **Criticizing Tribunals -** Proceedings and decisions of courts and tribunals are properly subject to scrutiny and criticism by all members of the public, including lawyers, but judges and members of tribunals are often prohibited by law or custom from defending themselves. Their inability to do so imposes special responsibilities upon lawyers. First, a lawyer should avoid criticism that is petty, intemperate or unsupported by a bona fide belief in its real merit, since, in the eyes of the public, professional knowledge lends weight to the lawyer's judgments or criticism. Second, if a lawyer has been involved in the proceedings, there is the risk that any criticism may be, or may appear to be, partisan rather than objective. Third, when a tribunal is the object of unjust criticism, a lawyer, as a participant in the administration of justice, is uniquely able to, and should, support the tribunal, both because its members cannot defend themselves and because, in doing so, the lawyer is contributing to greater public understanding of, and therefore respect for, the legal system.

[4] A lawyer, by training, opportunity, and experience, is in a position to observe

the workings and discover the strengths and weaknesses of laws, legal institutions, and public authorities. A lawyer should, therefore, lead in seeking improvements in the legal system, but any criticisms and proposals should be bona fide and reasoned.

Seeking Legislative or Administrative Changes

5.6-2 A lawyer who seeks legislative or administrative changes must disclose the interest being advanced, whether the lawyer's interest, the client's interest or the public interest.

Commentary

[1] The lawyer may advocate legislative or administrative changes on behalf of a client although not personally agreeing with them, but the lawyer who purports to act in the public interest should espouse only those changes that the lawyer conscientiously believes to be in the public interest.

Security of Court Facilities

5.6-3 A lawyer who has reasonable grounds for believing that a dangerous situation is likely to develop at a court facility may inform the persons having responsibility for security at the facility and give particulars.

Commentary

[1] If possible, the lawyer should suggest solutions to the anticipated problem such as:

(a) further security, or

(b) reserving judgment.

[2] If possible, the lawyer should also notify other lawyers who are known to be involved in proceedings at the court facility where the dangerous situation is likely to develop. Beyond providing a warning of danger, this notice is desirable because it may allow them to suggest security measures that do not interfere with an accused's or a party's right to a fair trial.

[3] If client information is involved in those situations, the lawyer should be guided by the provisions of section 3.3 (Confidentiality).

5.7 LAWYERS AND MEDIATORS

Role of Mediator

5.7-1 A lawyer who acts as a mediator must, at the outset of the mediation, ensure that the parties to it understand fully that:

(a) the lawyer is not acting as a lawyer for either party but, as mediator, is acting to assist the parties to resolve the matters in issue; and

(b) although communications pertaining to and arising out of the mediation process may be covered by some other common law privilege, they will not be covered by solicitor-client privilege.

Commentary

[1] In acting as a mediator, generally a lawyer should not give legal advice, as opposed to legal information, to the parties during the mediation process. This does not preclude the mediator from giving direction on the consequences if the mediation fails.

[2] Generally, neither the lawyer-mediator nor a partner or associate of the lawyer-mediator should render legal representation or give legal advice to either party to the mediation, bearing in mind the provisions of section 3.4 (Conflicts) and its commentaries and the common law authorities.

[3] If the parties have not already done so, a lawyer-mediator generally should suggest and encourage the parties to seek the advice of separate counsel before and during the mediation process.

[4] If, in the mediation process, the lawyer-mediator prepares a draft contract for the consideration of the parties, the lawyer-mediator should expressly advise and encourage them to seek separate independent legal representation concerning the draft contract.

CHAPTER 6 – RELATIONSHIP TO STUDENTS, EMPLOYEES AND OTHERS

6.1 SUPERVISION

Direct Supervision Required

6.1-1 A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

Commentary

[1] A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion.

[2] A lawyer who practises alone or operates a branch or part-time office should ensure that:

(a) all matters requiring a lawyer's professional skill and judgment are dealt with by a lawyer qualified to do the work; and

(b) no unauthorized persons give legal advice, whether in the lawyer's name or otherwise.

[3] If a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

[4] A lawyer in private practice may permit a non-lawyer to perform tasks delegated and supervised by a lawyer so long as the lawyer maintains a direct relationship with the client. A lawyer in a community legal clinic funded by Legal Aid Manitoba may do so, so long as the lawyer maintains direct supervision of the client's case in accordance with the supervision requirements of the legal aid plan and assumes full professional responsibility for the work.

[5] Subject to the provisions of any statute, rule, or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer turns on the distinction between any special knowledge of the non-lawyer and the professional

and legal judgment of the lawyer, which in the public interest, must be exercised by the lawyer whenever it is required.

Application

6.1-2 In this rule, a non-lawyer does not include a student-at-law.

Delegation

6.1-3 Subject to any statutory exception, a lawyer must not permit a non-lawyer to:

(a) accept cases on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;

(b) give legal advice;

(c) give or accept undertakings or accept trust conditions, except at the direction of, and under the supervision of a lawyer responsible for the legal matter, providing that in any communications the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated, and the lawyer who is responsible for the legal matter is identified;

(d) act finally without reference to the lawyer in matters involving professional legal judgment;

(e) be held out as a lawyer;

(f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a support role to the lawyer appearing in such proceedings;

(g) be named in association with the lawyer in any pleading, written argument or other like document submitted to a court;

(h) be remunerated on a sliding scale related to the earnings of the lawyer, unless the non-lawyer is an employee of the lawyer;

(i) conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;

(j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;

(k) sign correspondence containing a legal opinion;

(l) sign correspondence, unless

i. it is of a routine administrative nature,

ii. the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,

iii. the fact the person is a non-lawyer is disclosed, and

iv. the capacity in which the person signs the correspondence is indicated;

(m) forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction;

(n) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or

(o) determine fees.

Commentary

[1] A lawyer is responsible for any undertaking given or accepted and any trust condition accepted by a non-lawyer acting under his or her supervision.

[2] A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers, public officials or with the public generally, whether within or outside the offices of the law firm of employment.

[3] In real estate transactions using a system for the electronic submission or registration of documents, a lawyer who approves the electronic registration of

documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

Suspended or Disbarred Lawyers

6.1-4 Without the express approval of the Society, a lawyer must not retain, occupy office space with, use the services of, partner or associate with or employ in any capacity having to do with the practice of law any person who, in any jurisdiction, has been disbarred and struck off the Rolls, suspended, undertaken not to practise or who has been involved in disciplinary action and been permitted to resign and has not been reinstated or readmitted.

Electronic Registration of Documents

6.1-5 A lawyer who has personalized encrypted electronic access to any system for the electronic submission or registration of documents must not:

(a) permit others, including a non-lawyer employee, to use such access; or

(b) disclose his or her password or access phrase or number to others.

6.1-6 When a non-lawyer employed by a lawyer has a personalized encrypted electronic access to any system for the electronic submission or registration of documents, the lawyer must ensure that the non-lawyer does not:

(a) permit others to use such access; or

(b) disclose his or her password or access phrase or number to others.

Commentary

[1] The implementation of systems for the electronic registration of documents imposes special responsibilities on lawyers and others using the system. The integrity and security of the system is achieved, in part, by its maintaining a record of those using the system for any transactions. Statements professing compliance with law without registration of supporting documents may be made only by lawyers in good standing. It is, therefore, important that lawyers should maintain and ensure the security and the exclusively personal use of the personalized access code, diskettes, etc., used to access the system and the personalized access pass phrase or number.

[2] In a real estate practice, when it is permissible for a lawyer to delegate responsibilities to a non-lawyer who has such access, the lawyer should ensure that

the non-lawyer maintains and understands the importance of maintaining the security of the system.

6.2 STUDENTS

Recruitment and Engagement Procedures

6.2-1 A lawyer must observe any procedures of the Society about the recruitment and engagement of articling or other students.

Duties of Principal

6.2-2 A lawyer acting as a principal to a student must provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession.

Duties of Articling Student

6.2-3 An articling student must act in good faith in fulfilling and discharging all the commitments and obligations arising from the articling experience.

6.3 DISCRIMINATION AND HARASSMENT

Discrimination

6.3-1 A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.

Commentary

[1] Lawyers are uniquely placed to advance the administration of justice, requiring lawyers to commit to equal justice for all within an open and impartial system. Lawyers are expected to respect the dignity and worth of all persons and to treat all persons fairly and without discrimination. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in such laws.

[2] In order to reflect and be responsive to the public they serve, a lawyer must refrain from all forms of discrimination and harassment, which undermine confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful, accessible, and inclusive, and should strive to recognize their own internal biases and take particular care to avoid engaging in practices that would reinforce those biases, when offering services to the public and when organizing their workplace.

[3] Indigenous peoples may experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being willfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.

[4] Lawyers should be aware that discrimination includes adverse effect and systemic discrimination, which arise from organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal treatment of a person or persons. Lawyers should consider the distinct needs and circumstances of their colleagues, employees, and clients, and should be alert to unconscious biases that may inform these relationships and that serve to perpetuate systemic discrimination and harassment. Lawyers should guard against any express or implicit assumption that another person's views, skills, capabilities, and contributions are necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.

[5] Discrimination is a distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, which has the effect of imposing burdens, obligations or disadvantages on the individual or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and advantages that are available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Intersecting grounds of discrimination require consideration of the unique oppressions that result from the interplay of two or more protected grounds in a given context.

[6] The principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this Rule and to Rules 6.3-2 to 6.3-4. A lawyer has a responsibility to stay apprised of developments in the law pertaining to discrimination and harassment, as what constitutes discrimination, harassment, and protected grounds continue to evolve over time and may vary by jurisdiction.

[7] Examples of behaviour that constitute discrimination include, but are not limited to:

(a) harassment (as described in more detail in the Commentary to Rules 6.3-2 and 6.3-3);

(b) refusing to employ or to continue to employ any person on the basis of any personal characteristic protected by applicable law;

(c) refusing to provide legal services to any person on the basis of any personal characteristic protected by applicable law;

(d) charging higher fees on the basis of any personal characteristic protected by applicable law;

(e) assigning lesser work or paying an employee or staff member less on the basis of any personal characteristic protected by applicable law;

(f) using derogatory racial, gendered, or religious language to describe a person or group of persons;

(g) failing to provide reasonable accommodation to the point of undue hardship;

(h) applying policies regarding leave that are facially neutral (i.e. that apply to all employees equally), but which have the effect of penalizing individuals who take parental leave, in terms of seniority, promotion or

partnership;

(i) providing training or mentoring opportunities in a manner which has the effect of excluding any person from such opportunities on the basis of any personal characteristic protected by applicable law;

(j) providing unequal opportunity for advancement by evaluating employees on facially neutral criteria that fail to take into account differential needs and needs requiring accommodation;

(k) comments, jokes or innuendos that cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive;

(l) instances when any of the above behaviour is directed toward someone because of their association with a group or individual with certain personal characteristics; or

(m) any other conduct which constitutes discrimination according to any applicable law.

[8] It is not discrimination to establish or provide special programs, services or activities which have the object of ameliorating conditions of disadvantage for individuals or groups who are disadvantaged for reasons related to any characteristic protected by applicable laws.

[9] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Harassment

6.3-2 A lawyer must not harass a colleague, employee, client or any other person.

Commentary

[1] Harassment includes an incident or a series of incidents involving physical, verbal or non-verbal conduct (including electronic communications) that might reasonably be expected to cause humiliation, offence or intimidation to the person who is subjected to the conduct. The intent of the lawyer engaging in the conduct is not determinative. It is harassment if the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation. Harassment may constitute or be linked to discrimination.

[2] Examples of behaviour that constitute harassment include, but are not limited to:

(a) objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments and displays that demean, belittle, intimidate or cause humiliation or embarrassment;

(b) behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;

(c) bullying;

(d) verbal abuse;

(e) abuse of authority where a lawyer uses the power inherent in their position to endanger, undermine, intimidate, or threaten a person, or otherwise interfere with another person's career;

(f) comments, jokes or innuendos that are known or ought reasonably to be known to cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive; or

(g) assigning work inequitably.

[3] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or non-verbal conduct. It is characterized by conduct that might reasonably be expected to harm or damage the physical or psychological integrity of another person, their reputation or their property. Bullying includes, but is not limited to:

(a) unfair or excessive criticism;

(b) ridicule;

(c) humiliation;

(d) exclusion or isolation;

(e) constantly changing or setting unrealistic work targets; or

(f) threats or intimidation.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Sexual Harassment

6.3-3 A lawyer must not sexually harass a colleague, employee, client or any other person.

Commentary

[1] Sexual harassment is an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. It is sexual harassment if the lawyer knew or ought to have known that the conduct would be unwelcome. Sexual harassment may occur:

(a) when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the person who is subjected to the conduct;

(b) when submission to such conduct is implicitly or explicitly made a condition for the provision of professional services;

(c) when submission to such conduct is implicitly or explicitly made a condition of employment;

(d) when submission to or rejection of such conduct is used as a basis for any employment decision, including;

i. Loss of opportunity;
ii. The allocation of work;
iii. Promotion or demotion;
iv. Remuneration or loss of remuneration;
v. Job security; or
vi. Benefits affecting the employee;

(e) when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;

(f) when a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees or colleagues; or

(g) when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[2] Examples of behaviour that constitute sexual harassment include, but are not limited to:

(a) displaying sexualized or other demeaning or derogatory images;

(b) sexually suggestive or intimidating comments, gestures or threats;

(c) comments, jokes that cause humiliation, embarrassment or offence, or which by their nature, and in their context, are clearly embarrassing, humiliating or offensive;

(d) innuendoes, leering or comments about a person's dress or appearance;

(e) gender-based insults or sexist remarks;

(f) communications with sexual overtones;

(g) inquiries or comments about a person's sex life;

(h) sexual flirtations, advances, propositions, invitations or requests;

(i) unsolicited or unwelcome physical contact or touching;

(j) sexual violence; or

(k) unwanted contact or attention, including after the end of a consensual relationship.

[3] Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes sexual harassment.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Reprisal

6.3-4 A lawyer must not engage or participate in reprisals against a colleague, employee, client or any other person because that person has:

(a) inquired about their rights or the rights of others;

(b) made or contemplated making a complaint of discrimination, harassment or sexual harassment;

(c) witnessed discrimination, harassment or sexual harassment; or

(d) assisted or contemplated assisting in any investigation or proceeding related to a complaint of discrimination, harassment or sexual harassment.

Commentary

[1] The purpose of this Rule is to enable people to exercise their rights without fear of reprisal. Conduct which is intended to retaliate against a person, or discourage a person from exploring their rights, can constitute reprisal. Examples of such behaviour include, but are not limited to:

(a) refusing to employ or to continue to employ any person;

(b) penalizing any person with respect to that person's employment or changing, in a punitive way, any term, condition or privilege of that person's employment;

(c) intimidating, retaliating against or coercing any person;

(d) imposing a pecuniary or any other penalty, loss or disadvantage on any person;

(e) changing a person's workload in a disadvantageous manner, or withdrawing opportunities from them; or

(f) threatening to do any of the foregoing.

CHAPTER 7 – RELATIONSHIP TO THE SOCIETY AND OTHER LAWYERS

7.1 RESPONSIBILITY TO THE SOCIETY AND THE PROFESSION GENERALLY

Communications from the Society

7.1-1 A lawyer must reply promptly and completely to any communication from the Society.

Meeting Financial Obligations

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.

Commentary

[1] In order to maintain the honour of the Bar, lawyers have a professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed or undertaken 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.

[2] When a lawyer retains a consultant, expert or other professional, the lawyer should clarify the terms of the retainer in writing, including specifying the fees, the nature of the services to be provided and the person responsible for payment. If the lawyer is not responsible for the payment of the fees, the lawyer should help in making satisfactory arrangements for payment if it is reasonably possible to do so.

[3] If there is a change of lawyer, the lawyer who originally retained a consultant, expert or other professional should advise him or her about the change and provide the name, address, telephone number, fax number and e-mail address of the new lawyer.

[4] Medical Reports Where a lawyer has requested a medical report and, upon receipt of same, is of the view that the fee being charged by the reporting physician is unreasonable in the circumstance, and the lawyer and the physician are unable to agree, it would not be inappropriate for the lawyer to pay such amount as he or she deems reasonable and to make a complaint to the College of Physicians and Surgeons. In making the initial request for a report, the lawyer may wish to agree to pay such "reasonable fee" as may be charged for the report rather than simply agreeing to pay the account when received. The lawyer may also, where appropriate, ask the physician for an estimate of the fee in advance.

[5] Government Remittances A lawyer is under both an ethical and legal

obligation to remit on a timely basis statutory deductions for income tax, Canada Pension Plan and employment insurance which have been withheld on behalf of employees. Due to the special nature of these deductions, the obligation to remit same to the government is even greater than a lawyer's general obligation to pay bills and accounts relating to the lawyer's practice on a timely basis.

[6] A lawyer is also obliged to remit on a timely basis the Goods and Services Tax (GST) collected during the course of business. GST funds are considered to be business related funds rather than client trust funds, and should be processed through a lawyer's general bank account.

[7] Insurance Deductibles Where a lawyer has notified the Society of a potential claim and it may be possible to repair the situation, the cost of retaining outside counsel to do the repair work will be subject to the lawyer's deductible. Repair costs in excess of the lawyer's deductible will be paid by the Society. In appropriate circumstances, the Society may give approval to the lawyer to do their own repair work, in which case the lawyer will bear his or her own costs. Lawyers are not to retain outside counsel to do repair work without first notifying the Society. The Society will not be responsible for any repair costs where the lawyer retains counsel without prior notification to and approval by the Society.

Duty to Report

7.1-3 Unless to do so would be unlawful or would involve a breach of solicitor-client privilege, a lawyer must report to the Society:

(a) the misappropriation or misapplication of trust monies;

(b) the abandonment of a law practice;

(c) participation in criminal activity related to a lawyer's practice;

(d) conduct that raises a substantial question as to another lawyer's honesty, trustworthiness or competency as a lawyer;

(e) conduct that raises a substantial question about the lawyer's capacity to provide professional services; and

(f) any situation in which a lawyer's clients are likely to be materially prejudiced.

Commentary

[1] Unless a lawyer who departs from proper professional conduct or competence is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer). In all cases, the report must be made without malice or ulterior motive.

[2] Nothing in this rule is meant to interfere with the traditional lawyer-client relationship.

[3] Instances of conduct described in this rule can arise from a variety of stressors, physical, mental or emotional conditions, disorders or addictions. Lawyers who face such challenges should be encouraged by other lawyers to seek assistance as early as possible. The Society supports professional support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received. A lawyer who provides such counselling does so on a confidential basis but will have an ethical duty to disclose any confidences to the extent necessary if:

(a) required by law or by order of a court of competent jurisdiction; or

(b) the lawyer has reasonable grounds for believing that an identifiable person or group is in imminent danger of death or serious bodily harm and believes that such disclosure is necessary to prevent the death or harm; and

(c) the lawyer does not reasonably believe that such disclosure will cause harm to the disclosing lawyer or to the lawyer's family or associates.

7.2 RESPONSIBILITY TO LAWYERS AND OTHERS

Courtesy and Good Faith

7.2-1 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.

Commentary

[1] The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their functions properly.

[2] Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.

[3] A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.

[4] 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.

7.2-2 A lawyer must avoid sharp practice and must not take advantage of or act without fair warning upon slips, irregularities or mistakes on the part of other lawyers not going to the merits or involving the sacrifice of a client's rights.

7.2-3 A lawyer must not use any device to record a conversation between the lawyer and a client or another lawyer, even if lawful, without first informing the other person of the intention to do so.

Communications

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.

7.2-5 A lawyer must answer with reasonable promptness all professional letters and communications from other lawyers that require an answer, and a lawyer must be punctual in fulfilling all commitments.

7.2-6 Subject to rules 7.2-6A and 7.2-7, if a person is represented by a lawyer in respect of a matter, another lawyer must not, except through or with the consent of the person's lawyer:

(a) approach, communicate or deal with the person on the matter; or

(b) attempt to negotiate or compromise the matter directly with the person.

7.2-6A Where a person is represented by a lawyer under a limited scope retainer on a matter, another lawyer may, without the consent of the lawyer providing the limited scope legal services, approach, communicate or deal with the person directly on the matter unless the lawyer has been given written notice of the nature of the legal services being provided under the limited scope retainer and the approach, communication or dealing falls within the scope of that retainer.

Commentary
[1] Where notice as described in rule 7.2-6A has been provided to a lawyer for an opposing party, the opposing lawyer is required to communicate with the person's lawyer, but only to the extent of the limited representation as identified by the lawyer. The opposing lawyer may communicate with the person on matters outside of the limited scope retainer.

7.2-7 A lawyer who is not otherwise interested in a matter may give a second opinion to a person who is represented by a lawyer with respect to that matter.

Commentary
[1] Rule 7.2-6 applies to communications with any person, whether or not a

party to a formal adjudicative proceeding, contract or negotiation, who is represented by a lawyer concerning the matter to which the communication relates. A lawyer may communicate with a represented person concerning matters outside the representation. This rule does not prevent parties to a matter from communicating directly with each other.

[2] The prohibition on communications with a represented person applies only where the lawyer knows that the person is represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but actual knowledge may be inferred from the circumstances. This inference may arise when there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of the other lawyer by closing his or her eyes to the obvious.

[3] Rule 7.2-7 deals with circumstances in which a client may wish to obtain a second opinion from another lawyer. While a lawyer should not hesitate to provide a second opinion, the obligation to be competent and to render competent services requires that the opinion be based on sufficient information. In the case of a second opinion, such information may include facts that can be obtained only through consultation with the first lawyer involved. The lawyer should advise the client accordingly and, if necessary consult the first lawyer unless the client instructs otherwise.

7.2-8 A lawyer retained to act on a matter involving a corporation or other organization represented by a lawyer must not approach an officer or employee of the organization:

(a) who has the authority to bind the organization;

(b) who supervises, directs or regularly consults with the organization's lawyer; or

(c) whose own interests are directly at stake in the representation,

in respect of that matter, unless the lawyer representing the organization consents or the contact is otherwise authorized or required by law.

Commentary

[1] This rule applies to corporations and other organizations. "Other organizations" include partnerships, limited partnerships, associations, unions, unincorporated groups, government departments and agencies, tribunals,

regulatory bodies and sole proprietorships. This rule prohibits a lawyer representing another person or entity from communicating about the matter in question with persons likely involved in the decision-making process for a corporation or other organization. If an agent or employee of the organization is represented in the matter by a lawyer, the consent of that lawyer to the communication will be sufficient for purposes of this rule. A lawyer may communicate with employees or agents concerning matters outside the representation.

[2] A lawyer representing a corporation or other organization may also be retained to represent employees of the corporation or organization. In such circumstances, the lawyer must comply with the requirements of section 3.4 (Conflicts), and particularly rules 3.4-5 to 3.4-9. A lawyer must not represent that he or she acts for an employee of a client, unless the requirements of section 3.4 have been complied with, and must not be retained by an employee solely for the purpose of sheltering factual information from another party.

7.2-9 When a lawyer deals on a client's behalf with an unrepresented person, the lawyer must:

(a) urge the unrepresented person to obtain independent legal representation;

(b) take care to see that the unrepresented person is not proceeding under the impression that his or her interests will be protected by the lawyer; and

(c) make it clear to the unrepresented person that the lawyer is acting exclusively in the interests of the client.

Commentary

[1] If an unrepresented person requests the lawyer to advise or act in the matter, the lawyer should be governed by the considerations outlined in Rules 3.4-5 through 3.4-9 (Joint Retainers).

Inadvertent Communications

7.2-10 A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent must promptly notify the sender.

Commentary

[1] Lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this rule requires the lawyer to notify the sender promptly in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these rules, as is the question of whether the privileged status of a document has been lost. Similarly, this rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this rule, "document" includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

[2] Some lawyers may choose to return a document unread, for example, when the lawyer learns before receiving the document that it was inadvertently sent to the wrong address. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer.

Undertakings and Trust Conditions

7.2-11 A lawyer must not give an undertaking that cannot be fulfilled and must fulfill every undertaking given and honour every trust condition once accepted.

Commentary

[1] Undertakings should be written or confirmed in writing and should be absolutely unambiguous in their terms. If a lawyer giving an undertaking does not intend to accept personal responsibility, this should be stated clearly in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given is entitled to expect that the lawyer giving it will honour it personally. The use of such words as "on behalf of my client" or "on behalf of the vendor" does not relieve the lawyer giving the undertaking of personal responsibility.

[2] Trust conditions should be clear, unambiguous and explicit and should state the time within which the conditions must be met. Trust conditions should be imposed in writing and communicated to the other party at the time the property is delivered. Trust conditions should be accepted in writing and, once accepted, constitute an obligation on the accepting lawyer that the lawyer must honour personally. The lawyer who delivers property without any trust condition cannot

retroactively impose trust conditions on the use of that property by the other party.

[3] The lawyer should not impose or accept trust conditions that are unreasonable, nor accept trust conditions that cannot be fulfilled personally. When a lawyer accepts property subject to trust conditions, the lawyer must fully comply with such conditions, even if the conditions subsequently appear unreasonable. It is improper for a lawyer to ignore or breach a trust condition he or she has accepted on the basis that the condition is not in accordance with the contractual obligations of the clients. It is also improper to unilaterally impose cross conditions respecting one's compliance with the original trust conditions.

[4] If a lawyer is unable or unwilling to honour a trust condition imposed by someone else, the subject of the trust condition should be immediately returned to the person imposing the trust condition, unless its terms can be forthwith amended in writing on a mutually agreeable basis.

[5] Trust conditions can be varied with the consent of the person imposing them. Any variation should be confirmed in writing. Clients or others are not entitled to require a variation of trust conditions without the consent of the lawyer who has imposed the conditions and the lawyer who has accepted them.

[6] Any trust condition that is accepted is binding upon a lawyer, whether imposed by another lawyer or by a lay person. A lawyer may seek to impose trust conditions upon a non-lawyer, whether an individual or corporation, but great caution should be exercised in so doing since such conditions would be enforceable only through the courts as a matter of contract law and not by reason of the ethical obligations that exist between lawyers.

[7] A lawyer should treat money or property that, on a reasonable construction, is subject to trust conditions or an undertaking in accordance with these rules.

7.3 OUTSIDE INTERESTS AND THE PRACTICE OF LAW

Maintaining Professional Integrity and Judgment

7.3-1 A lawyer who engages in another profession, business, or occupation concurrently with the practice of law must not allow such outside interest to jeopardize the lawyer's professional integrity, independence, or competence.

Commentary
[1] The lawyer must not carry on, manage or be involved in any outside interest in such a way that makes it difficult to distinguish in which capacity the lawyer is acting in a particular transaction, or that would give rise to a conflict of interest or duty to a client. [2] When acting or dealing in respect of a transaction involving an outside interest the lawyer should be mindful of potential conflicts and the applicable standards referred to in the Conflicts rule and disclose any personal interest.

7.3-2 A lawyer must not allow involvement in an outside interest to impair the exercise of the lawyer's independent judgment on behalf of a client.

Commentary
[1] The term "outside interest" covers the widest possible range of activities and includes activities that may overlap or be connected with the practice of law such as engaging in the mortgage business, acting as a director of a client corporation or writing on legal subjects, as well as activities not so connected, such as a career in business, politics, broadcasting or the performing arts. In each case, the question of whether and to what extent the lawyer may be permitted to engage in the outside interest will be subject to any applicable law or rule of the Society. [2] Where the outside interest is not related to the legal services being performed for clients, ethical considerations will usually not arise unless the lawyer's conduct might bring the lawyer or the profession into disrepute or impair the lawyer's competence, such as, if the outside interest might occupy so much time that clients' interests would suffer because of inattention or lack of preparation.

7.4 THE LAWYER IN PUBLIC OFFICE

Standard of Conduct

7.4 A lawyer who holds public office must, in the discharge of official duties, adhere to standards of conduct as high as those required of a lawyer engaged in the practice of law.

Commentary
[1] The rule applies to a lawyer who is elected or appointed to a legislative or administrative office at any level of government, regardless of whether the lawyer attained the office because of professional qualifications. Because such a lawyer is in the public eye, the legal profession can more readily be brought into disrepute by a failure to observe its ethical standards. [2] Generally, the Society will not be concerned with the way in which a lawyer holding public office carries out official responsibilities, but conduct in office that reflects adversely upon the lawyer's integrity or professional competence may be the subject of disciplinary action. [3] Lawyers holding public office are also subject to the provisions of section 3.4 (Conflicts) when they apply.

7.5 PUBLIC APPEARANCES AND PUBLIC STATEMENTS

Communication with the Public

7.5-1 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 may communicate information to the media and may make public appearances and statements.

Commentary

[1] Lawyers in their public appearances and public statements should conduct themselves in the same manner as with their clients, their fellow practitioners, the courts, and tribunals. Dealings with the media are simply an extension of the lawyer's conduct in a professional capacity. The mere fact that a lawyer's appearance is outside of a courtroom, a tribunal or the lawyer's office does not excuse conduct that would otherwise be considered improper.

[2] A lawyer's duty to the client demands that, before making a public statement concerning the client's affairs, the lawyer must first be satisfied that any communication is in the best interests of the client and within the scope of the retainer.

[3] Public communications about a client's affairs should not be used for the purpose of publicizing the lawyer and should be free from any suggestion that a lawyer's real purpose is self-promotion or self-aggrandizement.

[4] Given the variety of cases that can arise in the legal system, particularly in civil, criminal and administrative proceedings, it is impossible to set down guidelines that would anticipate every possible circumstance. Circumstances arise in which the lawyer should have no contact with the media, but there are other cases in which the lawyer should contact the media to properly serve the client.

[5] Lawyers are often involved in non-legal activities involving contact with the media to publicize such matters as fund-raising, expansion of hospitals or universities, programs of public institutions or political organizations. They sometimes act as spokespersons for organizations that, in turn, represent particular racial, religious or other special interest groups. This is a well-established and completely proper role for lawyers to play in view of the obvious contribution that it makes to the community.

[6] Lawyers are often called upon to comment publicly on the effectiveness of

existing statutory or legal remedies or the effect of particular legislation or decided cases, or to offer an opinion about cases that have been instituted or are about to be instituted. This, too, is an important role the lawyer can play to assist the public in understanding legal issues.

[7] Lawyers should be aware that, when they make a public appearance or give a statement, they ordinarily have no control over any editing that may follow or the context in which the appearance or statement may be used or under what headline it may appear.

Interference with Right to Fair Trial or Hearing

7.5-2 A lawyer must not communicate information to the media or make public statements about a matter before a tribunal if the lawyer knows or ought to know that the information or statement will have a substantial likelihood of materially prejudicing a party's right to a fair trial or hearing.

Commentary

[1] Fair trials and hearings are fundamental to a free and democratic society. It is important that the public, including the media, be informed about cases before courts and tribunals. The administration of justice benefits from public scrutiny. It is also important that a person's, particularly an accused person's, right to a fair trial or hearing not be impaired by inappropriate public statements made before the case has concluded.

7.6 PREVENTING UNAUTHORIZED PRACTICE

Preventing Unauthorized Practice

7.6 A lawyer must assist in preventing the unauthorized practice of law.

Commentary
[1] Statutory provisions against the practice of law by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal ability, but they are immune from control, regulation and, in the case of misconduct, from discipline by the Society. Moreover, the client of a lawyer who is authorized to practise has the protection and benefit of the lawyer-client privilege, the lawyer's duty of confidentiality, the professional standard of care that the law requires of lawyers, and the authority that the courts exercise over them. Other safeguards include professional liability insurance, the assessment of lawyers' bills, regulation of the handling of trust monies and the maintenance of compensation funds.

7.7 RETIRED JUDGES RETURNING TO PRACTICE

7.7 A judge who returns to practice after retiring, resigning or being removed from the bench must not, for a period of three years, unless the Society approves on the basis of exceptional circumstances, appear as a lawyer before the court of which the former judge was a member or before any courts of inferior jurisdiction to that court or before any administrative board or tribunal over which that court exercised an appellate or judicial review jurisdiction in any province in which the judge exercised judicial functions.

7.8 ERRORS AND OMISSIONS

Informing Client of Errors or Omission

7.8-1 When, in connection with a matter for which a lawyer is responsible, a lawyer discovers an error or omission that is or may be damaging to the client and that cannot be rectified readily, the lawyer must:

(a) promptly inform the client of the error or omission without admitting legal liability;

(b) recommend that the client obtain independent legal advice concerning the matter, including any rights the client may have arising from the error or omission; and

(c) advise the client of the possibility that, in the circumstances, the lawyer may no longer be able to act for the client.

Commentary
[1] In addition to the obligations imposed by Rule 7.8-1, the lawyer has the contractual obligation to report to the lawyer's insurer. Rule 7.8-2 also imposes an ethical duty to report to the insurer(s). Rule 7.8-1 does not relieve a lawyer from the duty to report to the insurer or other indemnitor even if the lawyer attempts to rectify.

Notice of Claim

7.8-2 A lawyer must give prompt notice of any circumstance that may give rise to a claim to an insurer or other indemnitor so that the client's protection from that source will not be prejudiced.

Commentary
[1] Under the lawyer's compulsory professional liability insurance policy, a lawyer is contractually required to give written notice to the insurer immediately after the lawyer becomes aware of any actual or alleged error or any circumstances that could give rise to a claim. The duty to report is also an ethical duty which is imposed on the lawyer to protect clients. The duty to report arises whether or not the lawyer considers the claim to have merit.

[2] The introduction of compulsory insurance has imposed additional obligations upon a lawyer, but these obligations must not impair the relationship and duties of the lawyer to the client. A lawyer has an obligation to comply with the provisions of the policy of insurance. The insurer's rights must be preserved and the lawyer, in informing the client of an error or omission should be careful not to prejudice any rights of indemnity that either of them may have under an insurance, client's protection or indemnity plan or otherwise. There may well be occasions when a lawyer believes that certain actions or a failure to take action have made the lawyer liable for damages to the client when, in reality, no liability exists. Further, in every case, a careful assessment will have to be made of the client's damages arising from the lawyer's negligence.

Co-operation

7.8-3 When a claim of professional negligence is made against a lawyer, he or she must assist and co-operate with the insurer or other indemnitor to the extent necessary to enable the claim to be dealt with promptly.

Responding to Client's Claim

7.8-4 If a lawyer is not indemnified for a client's errors and omissions claim or to the extent that the indemnity may not fully cover the claim, the lawyer must expeditiously deal with the claim and must not take unfair advantage that would defeat or impair the client's claim.

7.8-5 If liability is clear and the insurer or other indemnitor is prepared to pay its portion of the claim, a lawyer has a duty to pay the balance. (See also rule 7.1-2)

INDEX

Index

Rule

Advertising, *see* "Marketing," 4.2
Advertising of Fees 4.2-2
Administration of Justice, *see also* "Advocacy,"
Criticizing Tribunals 5.6-1
Encouraging Respect for Administration of Justice 5.6-1
Legislative or Administrative Change, Seeking 5.6-2
Security of Court Facilities, *see also 3.3-3B(e)* 5.6-3
Advocacy, *see also* "Administration of Justice,"
Abuse of Process ..... 5.1-2(a)
Agreement on Guilty Plea ..... 5.1-7 & 5.1-8
Communication with Witness 5.4-1
Courtesy 5.1-5
Deceiving the Tribunal, Prohibition ..... 5.1-2(e)
Dishonest or Dishonourable Conduct, Prohibition ..... 5.1-2(b)
Duties of Advocate 5.1-1
Duty as Defence Counsel 5.1-1
Duty as Prosecutor 5.1-3
Role in Adversarial Proceedings 5.1-1
Encouraging Respect for Administration of Justice 5.6-1
Errors or Omission, Disclosure of 5.1-4
***Ex Parte* Proceedings 5.1-2B**
Expert Witness 5.4-1
Incriminating Physical Evidence 5.1-2A
Interviewing Witnesses, s*ee also 7.2-6 to 7.2-8* 5.4-1
Jurors, Disclosure of Juror's Interest in the Case 5.5-2
Jurors, Prohibition on Communications Before Trial 5.5-1
Jurors, Prohibition on Communications During Trial ..... 5.5-4 to 5.5-6
Lawyer as Witness 5.2
Single-Party Communications with a Tribunal 5.1-2C
Tribunal ..... *Definitions*
Undertakings 5.1-6
Agreement on Guilty Plea ..... 5.1-7 to 5.1-8
Alternative Dispute Resolution,
Lawyers as Mediators 5.7-1
Arbitrator, *see also* "Advocacy,"
Tribunal ..... *Definitions*
Associate ..... *Definitions*
Borrowing from Client 3.4-31
Candour,
Advocacy 5.1-1

Honesty and Candour **3.2-2**
Duty of Prosecutor **5.1-3**
Certificate of Independent Legal Advice **3.4-30**
Civil Society Organization
..... ***Definitions***
Clients..... **3.6-1.2**
Confidentiality and Privilege..... **3.1-2**
Conflicts of Interest **3.4-16.1.1**
Delivery of Legal Services.....**3.1-2**
Fees and disbursements.....**3.6-1.2**
Financial or Other Rewards, Prohibition.....**3.6-7**
Scope of Legal Services.....**3.1-2**
Client,
Agreement on Guilty Plea .....**5.1-7 & 5.1-8**
Client..... ***Definitions***
Client with Diminished Capacity..... **3.2-9**
Preservation of Property..... **3.5**
Quality of Service **3.2**
Withdrawal from Representation..... **3.7**
Competence,
Competent Lawyer, Definition **3.1-1**
Limited Scope Retainers..... **3.1-2 & 3.2-1A**
Negligence and Mistakes.....**3.1-2**
Standard **3.1-2**
Technology.....**3.1-2**
Communications,
Abusive Communications, Prohibition..... **7.2-4**
Interference with Right to Fair Trial or Hearing **7.5-2**
Inadvertent Communications **7.2-10**
Expert Witnesses **5.4-1**
Jurors, Prohibition on Communications Before Trial **5.5-1**
Jurors, Prohibition on Communications During Trial..... **5.5-4 to 5.5-6**
Public Appearances..... **7.5**
Public Statements **7.5**
Punctuality..... **7.2-5**
Represented Person, Restriction ..... **5.4-1, 7.2-6 to 7.2-8**
Single-Party Communications with a Tribunal..... **5.1-2C**
Society, with..... **7.1-1**
Witnesses, Communicating With **5.4**
Witness, Preparation **5.4-2**
Witness, Testimony..... **5.4-3**
Confidentiality,
Confidential Information **3.3-1**
Disclosure, Authorized by Client..... **3.3-2 & 3.3-3B**

Disclosure, Mandatory ..... 3.3-3 & 3.3-3A
Disclosure Permitted 3.3-3B
Disclosure, Security of Court Facilities 3.3-3B
Disclosure, Where Prohibited 3.3-1
Joint Retainer 3.4-7
Lawyer Transferring Between Law Firms ..... 3.4-18 to 3.4-23
Literary Works 3.3-2
Mediation, Lawyer as Mediator 5.7
Secure Legal or Ethical Advice 3.3-3B
Security of Court Facilities, *see also 3.3-3B* 5.6-3
Conflict of Interest, *see also* "Doing Business with a Client," "Transfer Between Law Firms,"
Acting against Client 3.4-1
Acting for Borrower and Lender, Prohibition ..... 3.4-12 to 3.4-16
Borrowing from Clients 3.4-31
Conflict from Transfer Between Law Firms ..... 3.4-17 to 3.4-23
Consent 3.4-2
Contentious Issue, Joint Retainer 3.4-8
Conflict of Interest ..... *Definitions*
Dispute 3.4-3
Duty to avoid 3.4-1
Current Clients, Acting Against 3.4-1
Former Clients, Acting Against 3.4-10
Gifts and Testamentary Instruments ..... 3.4-37 to 3.4-39
Guarantees by a Lawyer 3.4-34
Independent Legal Advice 3.4-27
Independent Legal Representation 3.4-27
Joint Retainer ..... 3.4-5 to 3.4-9
Judicial Interim Release ..... 3.4-40 & 3.4-41
Lending to Clients 3.4-33
Lawyer Due-Diligence for Non-Lawyer Staff 3.4-23
Payment for Legal Services 3.4-36
Public Office 7.4
Short-term Summary Legal Services 3.4-2A, 3.4-2B, 3.4-2C, 3.4-2D
Testamentary Instruments and Gifts ..... 3.4-37 to 3.4-39
Transactions with Clients ..... 3.4-27 to 3.4-30
Unrepresented Persons 7.2-9
Consent,
Acting Against Client ..... 3.4-1 to 3.4-6
Avoidance of Conflicts of Interest ..... 3.4-1 & 3.4-2
Consent ..... *Definitions*
Investment by Client 3.4-29
Joint Retainer ..... 3.4-7 to 3.4-11
Literary Works 3.3-2

Referral Fees ..... **3.6-6 & 3.6-7**
Where Lawyer Transferring Between Law Firms **3.4-20, 3.3-23, 3.3-24**
Contingent Fees **3.6-2**
Courtesy,
Advocacy ..... **5.1-1 to 5.1-5**
Duty as Prosecutor **5.1-3**
Generally **7.2-1**
Criticizing Tribunals **5.6-1**
Definitions,
Associate ..... ***Definitions***
Civil Society Organization ..... ***Definitions***
Client ..... ***Definitions***
Competent Lawyer **3.1-1**
Confidential Information, where lawyer transferring between law firms ..... **3.4-17 & 3.4-18**
Conflict of Interest **3.4-1**
Consent ..... ***Definitions***
Harassment, *see also* "Sexual Harassment," **6.3-2**
Independent Legal Advice **3.4-27**
Independent Legal Representation **3.4-27**
Interprovincial Law Firm ..... ***Definitions***
Law Firm ..... ***Definitions***
Lawyer, *see also* 3.4-27 ..... ***Definitions***
Lending Client **3.4-13**
Limited Scope Retainer ..... ***Definitions***
Matter, Where Lawyer Transferring Between Law Firms **3.4-17**
Property, Clients' **3.5-1**
Related Persons, Where Lawyer Doing Business with a Client **3.4-27**
Reprisal **6.3-4**
Sexual Harassment **6.3-3**
Short-Term Summary Legal Services **3.4-2A**
Society ..... ***Definitions***
Tribunal ..... ***Definitions***
Delegation, *see also* "Supervision" **6.1-3**
Disbarred Persons **6.1-4**
Disbursements **3.6-1**
Disclosure, *see also* "Confidentiality,"
Authorized by Client ..... **3.3-1(a)**
Consent **3.4-2**
Mandatory ..... **3.3-3 & 3.3-3A**
Permitted **3.3-3B**
Prohibited, Where **3.3-1**
Security of Court Facilities, *see also 3.3-3B* **5.6-3**
Discrimination **6.3-1**

Discrimination Against Indigenous Peoples..... 6.3-1
Reprisal..... 6.3-3
Doing Business with a Client, *see also* "Conflict of Interest"
Borrowing from Client..... 3.4-27 to 3.4-32
Certificate of Independent Legal Advice..... 3.4-30
Guarantees by a Lawyer .....3.4-34 & 3.4-35
Independent Legal Advice, Definition..... 3.4-27
Independent Legal Representation, Definition 3.4-27
Investment by Client 3.4-29
Lending to Client..... 3.4-33
Loan or Mortgage Transactions .....3.4-33 & 3.4-34
Related Persons, Definition..... 3.4-27
Shares or Securities for Fees 3.4-30
Transactions with Client, Generally Prohibited ..... 3.4-27 to 3.4-30
Electronic Registration of Documents ..... 6.1-5 & 6.1-6
Errors or Omission, Disclosure of,
Advocacy 5.1-4
Co-operation with Insurer 7.8-3
Informing Client of Error or Omission..... 7.8-1
Notice of Claim..... 7.8-2
Responding to Client's Claim .....7.8-4 & 7.8-5
Fees,
Contingent Fees 3.6-2
Disbursements 3.6-1
Division of Fees ..... 3.6-5 to 3.6-7
Interest..... 3.6-1
Joint Retainer 3.6-4
Payment by Transfer of Shares or Securities..... 3.4-30
Prepaid Legal Services Plan 3.6-12
Reasonableness..... 3.6-1
Referral Fees.....3.6-6 & 3.6-7
Solicitor's Lien 3.6-13
Statement of Account 3.6-3
Withdrawal for Non-Payment..... 3.7-3
Good Faith..... 7.2-1
Guarantees by a Lawyer .....3.4-34 & 3.4-35
Harassment *see also* "Sexual Harassment"
Definition 6.3-2
Indigenous Peoples 6.3-1
Prohibition 6.3-2
Reprisal 6.3-4
Independent Legal Advice,
Borrowing from Client.....3.4-27 to 3.4-32
Certificate of Independent Legal Advice..... 3.4-30

Definition 3.4-27
Investment by Client 3.4-29
Joint Retainer, Continuing Relationship 3.4-8
Lending to Client 3.4-33
Independent Legal Representation,
Borrowing from Client..... 3.4-27 to 3.4-32
Definition 3.4-27
Guarantees by a Lawyer .....3.4-34 & 3.4-35
Investment by Client 3.4-29
Unrepresented Persons 7.2-9
Insurer,
Co-operation with Insurer 7.8-3
Financial Obligations, Deductible..... 7.1-2
Informing Client of Error or Omission..... 7.8-1
Notice of Claim..... 7.8-2
Responding to Client's Claim.....7.8-4 & 7.8-5
Integrity,
Duty of Lawyer 2.1-1
Outside Interests 7.3-1
Private Life..... 2.1-1
Interference with Right to Fair Trial or Hearing..... 7.5-2
Interprovincial Law Firm ..... *Definitions*
Joint Retainer,
Confidentiality.....3.4-5(b)
Conflict of Interest.....3.4-5(c)
Consent 3.4-9
Contentious Issue 3.4-8
Continuing Relationship 3.4-6
Fees..... 3.6-4
Spousal Wills..... 3.4-5
Jurors,
Disclosure of Juror's Interest in the Case 5.5-2
Prohibition on Communications Before Trial 5.5-1
Prohibition on Communications During Trial ..... 5.5-4 to 5.5-6
Language Rights,
Advising clients.....3.2-2A
Competence..... .3.2-2B
Law Firm,
.....*Definitions*
Interprovincial Law Firm..... *Definitions*
Name 4.2-2A
Lawyer,
..... *Definitions*
Abusive Communications, Prohibition 7.2-4

Communications with the Society **7.1-1**
Delegation, Where Improper **6.1-3**
Duty to Report **7.1-3**
Error or Omission ..... **5.1-4 & 7.8-1**
Financial Obligations, Meeting **7.1-2**
Integrity **2.1-1**
Lawyers and Others, Responsibility to **7.2**
Outside Interests **7.3**
Preventing Unauthorized Practice **7.6**
Public Appearances **7.5**
Public Office **7.4**
Public Statements **7.5**
Profession, Responsibility to **7.1**
Recording Conversation, Prohibition **7.2-3**
Sharp Practice, Avoiding **7.2-2**
Successor **3.7-10**
Supervision, Duty of ..... **6.1-1 & 6.1-2**
Lawyers' Professional Indemnity,
Co-operation with Insurer **7.8-3**
Financial Obligations, Deductible **7.1-2**
Informing Client of Error or Omission **7.8-1**
Notice of Claim **7.8-2**
Responding to Client's Claim ..... **7.8-4 & 7.8-5**
Law Firm Names **4.2-2A**
Lending Money to Client **3.4-33**
Limited Liability Partnership,
Firm Name **4.2-2A**
Limited Scope Retainers,
Advising Clients **3.2-1A**
Communications with Opposing Counsel **3.2-1A**
Communications with Persons Represented under Limited Scope Retainer **7.2-6A**
Competent Service, Duty to Provide **3.1-2**
Limited Scope Retainer ..... ***Definitions***
Summary Advice **3.2-1A**
Tribunals, Duty to **3.2-1A**
Marketing
Advertising of Fees **4.2-2**
Firm Name **4.2-2A**
General Practice **4.3-1**
Making Legal Services Available **4.1-1**
Marketing Professional Services **4.2-1**
Preferred Area of Practice **4.3-2**
Restricted Practice **4.3-3**

Restrictions 4.1-2
Mediator,
Lawyer as Mediator 5.7-1
Tribunal ..... *Definitions*
Misconduct,
Duty to Report, Lawyer's 7.1-3
Mortgage Transactions 3.4-34
Name, Law Firm 4.2-2A
Outside Interests,
Independent Judgment, Impairing 7.3-2
Professional Integrity 7.3-1
Practice,
Advertising 4.2
Advertising Nature of Practice 4.3
Advertising of Fees 4.2-2
Firm Name 4.2-2A
Interprovincial Law Firms ..... *Definitions*
Making Services Available 4.1-1
Marketing of Professional Services 4.2-1
Offering Professional Services, Restrictions 4.1-2
Preservation of Client's Property,
Accounting and Delivery ..... 3.5-6 & 3.5-7
Care 3.5-2
Identification ..... 3.5-4 & 3.5-5
Notification of Receipt 3.5-3
Professional Corporation 4.2-2A
Private Life Dishonourable Conduct 2.1-1
Prosecutor, Duty as 5.1-3
Public Appearances 7.5
Public Life, *see also* "Public Office,"
Criticizing Tribunals 5.6-1
Encouraging Respect for Administration of Justice 5.6-1
Legislative Change, Seeking 5.6-2
Public Office, *see also* "Public Life,"
Standard of Conduct 7.4
Public Statements ..... 7.5-1 & 7.5-2
Punctuality ..... 3.2-1 & 7.2-5
Quality of Service,
Advising Clients 3.2-2C
Candour 3.2-2
Client is an Organization 3.2-3
Client with Diminished Capacity 3.2-9
Compromise or Settlement, Encouraging 3.2-4
Courtesy 3.2-1

Dishonesty or Fraud by Client or Others ..... **3.2-7 & 3.2-8**
Honesty **3.2-2**
Inducement for Withdrawal of Proceedings **3.2-6**
Language Rights ..... **3.2-2A & 3.2-2B**
Limited Scope Retainers **3.2-1A**
Thorough and Prompt Service **3.2-1**
Threatening Criminal or Regulatory Proceedings, ... **3.2-5**
Recruitment Procedures **6.2-1**
Referral Fees ..... **3.6-5 to 3.6-7**
Retired Judges,
Appearance as Counsel **7.7**
Security of Court Facilities ..... **3.3-3B(e) & 5.6-3**
Sexual Harassment,
Definition **6.3-3**
Prohibition **6.3-3**
Reprisal **6.3-4**
Sharp Practice, Avoiding **7.2-2**
Short-term Limited Legal Services **3.4-2A, 3.4-2B, 3.4-2C, 3.4-2D**
Society,
Communications with Lawyer **7.1-1**
..... ***Definitions***
Lawyer ..... ***Definitions***
Duty to Report **7.1-3**
Solicitor's Lien **3.6-13**
Students,
Duties of Articling Student **6.2-3**
Duties of Principal **6.2-2**
Lawyer ..... ***Definitions***
Recruitment Procedures **6.2-1**
Supervision ..... **6.1-1 to 6.1-3**
Delegation, Where Improper **6.1-3**
Duty to Supervise **6.1**
Electronic Registration of Documents ..... **6.1-5 & 6.1-6**
Supervision **6.1**
Electronic Registration of Documents ..... **6.1-5 & 6.1-6**
Suspended & Disbarred Lawyers **6.1-4**
Suspended Lawyers **6.1-4**
Technological Competence **3.1-2**
Threatening Criminal Proceedings, Prohibition against **3.2-5**
Transfer Between Law Firms, *see also*, "Conflict of Interest"
Application of Rule **3.4-17**
Matter, Definition **3.4-17**
Confidential Information **3.4-18**
Disqualification, Law Firm **3.4-20**

Disqualification, Transferring Lawyer .....3.4-21 & 3.4-22
Due Diligence for Non-Lawyer Staff 3.4-23
Government Lawyer 3.4-19
Relevant Information 3.4-18
Tribunal ..... *Definitions*
Trust Conditions 7.2-11
Unauthorized Practice,
Disbarred Persons 6.1-4
Preventing 7.6
Suspended Lawyers 6.1-4
Undertakings,
Advocacy 5.1-6
Delegation, Where Improper 6.1-3
Duties 7.2-11
Unrepresented Persons,
Duty to 7.2-9
Withdrawal from Representation,
Cause 3.7-1
Leaving a Law Firm .....3.7-7A & 3.7-7B
Loss of Confidence 3.7-2
Manner of Withdrawal .....3.7-8 & 3.7-9
Non-Payment of Fees 3.7-3
Notice 3.7-1
Obligatory Withdrawal 3.7-7
Optional Withdrawal 3.7-2
Solicitor's Lien 3.6-13
Successor Lawyer, Duty of 3.7-10
Witnesses,
Expert Witnesses 5.4-1
Communicating with Witnesses, *see also 7.2-6 – 7.2-8* 5.4
Witness Testimony 5.4-3
Duty of Advocates to Witnesses 5.1-2
Witness Preparation 5.4-2
Lawyer as Witness 5.2