

Bencher Code of Conduct

Benchers fulfill several roles

1. The first role is as a governor of the Law Society responsible for governing and administering the affairs of the Law Society and taking such action as they consider necessary for the promotion, protection, interest or welfare of the Law Society.¹
2. The second is as a legislator making Rules for the governing of the Law Society, lawyers, law firms, articulated students and applicants, and for the carrying out of the Legal Profession Act² and prescribing a Code of Professional Conduct that expresses the views of the Benchers about standards that British Columbia lawyers must meet in fulfilling their professional obligations.³
3. The third role is as participants in our regulatory decisions and as members of panels, conduct reviews and conduct meetings.⁴
4. The fourth role is as confidential advisors to members of the profession in relation to matters involving professional conduct or the practice of law.
5. In these several capacities, it is the Benchers' duty to abide by the Legal Profession Act, the Law Society Rules and the Code of Professional Conduct, and faithfully discharge their duties as Benchers, according to the best of their ability; and to uphold the objects of the Law Society and ensure that they are guided by the public interest in the performance of their duties.⁵

Conflicts of Interest

6. Benchers are expected to avoid conflicts of interest to assure the public and the profession that both policy and adjudicative decision-making are being made free from external or improper interest, favour or bias. However, from time to time Benchers may have a conflict between their various roles at the Law Society and

¹ Legal Profession Act, s. 4(2)

² Legal Profession Act, s.11(1)

³ Introduction to the Code of Profession Conduct

⁴ Credentials Committee, Rule 2-50, Practice Standards, Rule 3-15, Discipline Committee, Rule 4-2, Complainants' Review Committee, Rule 3-13, Hearing Panels, Rule 5-2, Conduct Reviews, Rule 4-11, Conduct Meetings, Rule 4-10. The separate Code of Professional and Ethical Responsibilities for Tribunal Adjudicators covers the duties of Benchers when participating in regulatory decisions.

⁵ Oath of Office, Rule 1-3

other interests. Managing conflicts fairly, effectively and transparently serves the public interest.

7. A Bencher may have a conflict of interest where the Bencher has a personal interest, either pecuniary or non-pecuniary, not shared by others in the outcome of a decision. Upon recognizing a conflict of interest exists, a Bencher should disclose the conflict of interest and refrain from voting on and not participate, by leaving the meeting, in the consideration or discussion in the decision giving rise to the conflict.
8. A Bencher may have a conflict of duty when that duty to the Law Society may conflict with duties to another organization. Benchers will often encounter this situation, as Benchers sit on other boards or are involved with other organizations from time to time. When a specific conflict of duty arises, the Bencher should disclose the conflict of duty and, subject to section 10, may still participate in any decision-making.
9. A Bencher should withdraw from a role with another organization or outside activity or resign as a Bencher where participation in an organization or outside activity places the Bencher in a substantial or ongoing conflict between the Bencher's duties to the Law Society and the duties to another organization or the requirements of an outside activity such that the conflict materially interferes with the Bencher fulfilling the duties associated with the Bencher's role.
10. A Bencher should take care to avoid the perception of a conflict of interest or a conflict of duty. When a perceived conflict of interest or duty may exist with respect to a decision, the Bencher should consider whether continued participation in any decision-making as a Bencher is consistent with the Bencher's duties to the Law Society and act accordingly.

Conduct as Governors

Transactions that may benefit a Bencher or a Bencher's firm

11. The Benchers recognize the importance of avoiding even the appearance of conflicts of interest. However, it is in the interests of the Law Society and the legal profession as a whole that the Law Society obtain competent and cost-effective legal services from practitioners whose skills, training and experience are appropriate to the task. The Law Society may retain the legal services of a member of a Bencher's firm, with the approval of the Executive Director or the Executive

Committee as provided in the Rules⁶. But a Bencher must not participate in any way in a decision to retain the services of a member of the Bencher's firm.

Bencher Staff Relations

12. The Benchers are responsible for governing the affairs of the Law Society and for promoting and protecting the interests and welfare of the Law Society. The Executive Director, management and staff are responsible for the day-to-day management and co-ordination of all aspects of the operation, administration, finance, organization, supervision and maintenance of Law Society activities. The relationship among Benchers, management and staff should be one of trust in each other, respect for the distinct roles of Benchers, management and staff, and recognition that everyone at the Law Society is engaged with and has a role in protecting the public interest in the administration of justice.
13. All authority and accountability of Law Society management and staff to the Benchers is through the authority and accountability of the Executive Director, who is accountable to the Benchers, and Benchers should take care not to compromise the Executive Director's authority and accountability in dealing with management and staff.

Conduct as Legislators

14. Benchers are given the authority under the Legal Profession Act to make rules for the governing of those persons who are subject to Act, and for the carrying out of the Act.⁷
15. As a result, the legislature has delegated to the Benchers the authority to govern the professional activities of those persons who are subject to the Act, as well as managing the Society and seeing the requirements of the Legal Profession Act are fulfilled. In enacting, rescinding or amending proposed rules, the Benchers must ensure they have:
 - a) a clear and comprehensive understanding, based on evidence and analysis, of the problem or issue and that intervention by the Law Society is needed to address the problem or issue;

⁶ Rules 1-48(1) and 1-51(a)

⁷ LPA, s.11(1). Section 11(5) provides that no approval other than that of the Benchers is required to enact, rescind or amend a rule.

- b) sufficient information demonstrating through evidence and analysis that a rule is the best means to address the problem or issue;
- c) evidence that, where appropriate, engagement and consultation with stakeholders has occurred and been considered;
- d) sufficient understanding of the potential positive and negative effects, including costs and benefits, of a proposed rule on the delivery of legal services, access to justice and the public interest in the administration of justice and the operations of the Society; and
- e) an effective method for evaluating whether the proposed rule successfully addressed the problem or issue.

Appearing as Counsel

- 16. A person must not appear as counsel for any party in a Law Society proceeding for three years after the later of:
 - a. ceasing to be a Bencher, or
 - b. the completion of a hearing in which the person was a member of the panel.
- 17. A member of a committee must not appear personally on behalf of a member or the Law Society in any proceeding that relate to the work of that committee.
- 18. Former Benchers must not be retained to represent the Law Society in discipline or credentials matters.
- 19. A current Bencher must not appear before the courts on behalf of a member or the Law Society in a discipline or credentials matter.

Appearing as a Witness

- 20. A Bencher who gives evidence in court on a matter of legal ethics must make clear to all parties and to the court that the Bencher speaks to his or her own understanding of matters in issue and is not a spokesperson for the Law Society.

Conduct as Confidential Advisors

Confidentiality when giving practical or ethical advice

- 21. When Benchers and Life Benchers give practical or ethical advice in their capacity as Benchers, they have a discretion to keep confidential information that they would

otherwise have to disclose or report under the Code of Professional Conduct, s.7.1-3, other than information about a shortage of trust funds.

Annual Disclosure

Annual Disclosure Requirement

22. Each Bencher must annually:

- a) review the Code of Conduct and agree to act in accordance with the letter and spirit of the Code; and
- b) disclose:
 - (1) any organization of which the Bencher is a director or the controlling mind,
or
 - (2) any activities in which the Bencher is engaged,
the objects or purpose of which substantially relates to provision of legal services in BC.