



Practice Resource

Independent legal advice checklist*

When giving independent legal advice, it is important to go much further than explaining the legal aspects of the matter and assessing whether the client appears to understand your advice and the possible consequences. You must also consider whether the client has capacity and whether the client may be subject to undue influence by a third party. Further, if the client has communication issues (e.g. limited knowledge of the English language), you should ensure that the client understands or appears to understand your advice and the related documents. You may need to arrange for a competent interpreter.

We recommend that you take notes during your meeting with the client and make a written record of your meeting. Consider writing a brief reporting letter that covers the essential matters that you discussed, including the nature, extent and scope of services that you have provided.

You may use the following checklist in two ways: (1) to remind yourself of questions to ask a client seeking independent legal advice, and (2) as a form of record of your meeting. Before you begin, see the *BC Code*. Especially consider rules 3.4-27 to 3.4-27.1, 3.4-32 to 3.4-33, Appendix A, paragraph 1(c) and commentary [9] to [11] and 3.6-1, commentary [2]. Also consider the rules regarding a “limited scope retainer” (a defined term in rule 1.1-1). 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 (rules 3.1-2, 3.2-1.1, 7.2-6 and 7.2-6.1.). Further, consider whether you must inform the client of the availability of qualified advisors in other fields who would be in a position to advise the client on the matter from a business point of view (rule 3.4-27.1(c)).

The requirement that a lawyer either must or should recommend to a person that he or she have independent legal advice comes up in a number of places in the Code, particularly in the conflict rules under section 3.4, but also in other locations (see rules 3.4-2, commentary [5], 3.4-4. to 3.4-6, 3.4-27 to 3.4-36, 3.4-39, 7.2-9, and 7.8-1; Appendix B, paragraph 3(a); and Appendix C, paragraph 7).

** As noted in the resource [Giving ILA? Stop. Read this first.](#), a checklist is a seminal risk management tool for the ILA lawyer. Each item in this model checklist is important. For additional tips and suggestions, read the [annotated copy](#). Other resources that may be useful are “[Limited scope retainer rule added to BC Code](#),” *Practice Watch, Benchers’ Bulletin*, Winter 2013; [Managing the risk of a limited retainer](#), *Insurance Issues*, Summer 2010; [Retainer agreement](#), and [Witnessing a Signature? Stop. Read this first](#), *Insurance Issues*, Winter 2013.*

Model independent legal advice checklist

| | | | |
|--------------------------------------------------------------------------------------------|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| mm/dd/yyyy | Start time | Finish time | |
| Client's full name | | Occupation | |
| Home address | | City and Province | Postal code |
| Business address | | City and Province | Postal code |
| Telephone – residence | Telephone–business | | Telephone- cell |
| Fax | | Email | |
| Client's spoken languages | | Written languages | |
| Family status | | | Age |
| Referred by | Reason for independent legal advice | | |
| Security requested by lending institution | | | |
| The client has limited facility with English, so I obtained an interpreter whose name was: | | If client wishes another person to be present during our meeting, consider implications, e.g. privilege, undue influence, unrepresented persons. Record name and interest of any person present. | |
| I reviewed the following documents: | | | |

Part A — The client

- I advised the client that the client has the right to independent representation
- I reviewed the current state of the client's health and capacity
- I reviewed the current state of the client's marriage
- I asked about domestic violence and was told:

The client said that the reason for his or her consent to this transaction or agreement was:

I satisfied myself that the client did not appear to be subject to duress or undue influence and that the client was signing relevant documents freely and voluntarily, without pressure from anyone (see [undue influence](#) resource on Law Society website)

Part B — I explained the following to the client

The nature and consequences of a mortgage

The nature and consequences of a guarantee

The effect of power and sale / judicial sale and foreclosure

The effect of an action on the covenant and the liability for any insufficiency

The consequences of his or her spouse's default

The possible consequences of failure to honour the financial obligations (loss of her or his house, business and all other property)

The possibility of obtaining security for the financial obligations

That an indemnity will be worthless if the spouse declares bankruptcy

The risks to the client if there is a breakdown of the marriage

The client appeared to understand the advice given

The availability of qualified advisors in other fields who might advise the client from a business point of view

Part C — If the independent legal advice relates to a domestic contract

I obtained complete financial disclosure from both my client and the other side

I determined that the document was sufficiently well-drafted to accomplish my client's objectives

I ensured that the terms of the agreement were both certain and enforceable

I ensured that, if the agreement is to be filed against property or as an order of the court, the statutory requirements for filing have been met

I explained the final nature of the agreement

I reviewed the risks and consequences of the agreement

- I discussed the effect of the agreement upon the client if her or his spouse dies first
- I explained all the clauses of the agreement
- I witnessed the client's signature on these documents
- The client appeared to understand the advice given
- The availability of qualified advisors in other fields who might advise the client from a business point of view

Part D — When client signs contrary to advice

- I advised the client in writing against signing the documents, but the client wished to proceed contrary to my advice
- I explained my advice in the presence of a witness (consider using a witness from your firm), whose name was:

- The client signed an acknowledgement, in the presence of a witness, that she or he was signing the documents against my advice
- I declined to witness the client's execution of the documents

Part E — File management

- I opened a file
- I followed client identification and verification procedures
- I placed this checklist, a copy of the document and my notes in my general independent legal advice file
- I took notes of my meeting(s) with the client and retained these
- I docketed the time spent advising the client
- I sent a reporting letter that included the nature, extent and scope of services provided and that outlined the terms of the agreement or obligation assumed, together with my account
- My advice was verbal only and I sent no reporting letter
- I accepted payment from the client or if another person paid my bill, the payment was made with full disclosure to the client and with the client's consent. The payment from the other person did not affect my loyalty to the client or professional judgment.

Notes
