

## Independent legal advice checklist

When giving independent legal advice (“ILA”), we recommend that you use a checklist and take notes. You may use this checklist as a reference to remind you of topics to canvass with the client and also as a meeting record. You may find it useful to customize the checklist for your particular practice area. The checklist is not exhaustive; you may also find additional points that you want to include in a customized version.

Essentially, after first checking whether you have a conflict of interest, you will explain the legal aspects of the matter, assess whether the client understands your advice and the related documents, and the possible consequences. Consider these important points:

- Are you competent to provide ILA in the circumstances?
- Does the client have capacity to understand the information relevant to the decision that has to be made and appreciate the reasonably foreseeable consequences of the decision or lack of decision?
- Is the client subject to undue influence by a third party?
- Are there any indicators of dishonesty, crime or fraud?
- If the client has communication issues (e.g. limited knowledge of English), should you arrange for a competent interpreter?
- Does the client need an additional advisor in another field (e.g. tax)?
- Are you familiar with the relevant *BC Code*<sup>1</sup> provisions that may assist you?

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<sup>1</sup> Note *BC Code* rules 3.2-7 (Dishonesty, fraud by client); 3.2-9 (Clients with diminished capacity); 3.4-27 to 3.4-27.1 (Independent legal advice); 3.4-32 to 3.4-33 (Certificate of Independent legal advice); Appendix A, paragraph 1(c) and commentary [9] to [11] (appears to understand); and rule 3.6-1, commentary [2] (full disclosure to client and client’s consent if the lawyer’s fees are being paid by someone other than the client). Also consider the “limited scope retainer” obligations (see [Limited scope retainer FAQs](#) in the Benchers’ Bulletin, Fall 2017, p. 6). 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 *Code* obligation that a lawyer either must or should recommend ILA comes up in a number of places, particularly in the conflict rules under section 3.4, (see rules 3.4-2, commentary [5], 3.4-4. to 3.4-6, 3.4-27 to 3.4-36, 3.4-39) but also in other locations, including, 7.2-9 (dealing with unrepresented persons), and 7.8-1 (errors and omissions).

See the [Client File Opening and Closing Checklist](#) in the Practice Checklist Manual for threshold considerations and other relevant information. We also suggest reviewing the Lawyers Indemnity Fund (LIF) risk management tips for giving ILA. See [“Giving independent legal advice? Stop. Read this first.”](#)

If you are considering providing ILA by video-conference, consider its appropriateness in the circumstances. We encourage you to review the Law Society’s resource on [Video Conference Technology](#) and [LIF’s risks and tips when using video conference technology](#) before proceeding.

Contact a Law Society practice advisor if you have questions: [practiceadvice@lsbc.org](mailto:practiceadvice@lsbc.org) or 604.443.5797.

**Model independent legal advice checklist**

mm/dd/yyyy	Start time	Finish time	Meeting location
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 (not a family member) whose name and contact information was:	Names and interests of all persons present. It is preferable to meet with the client alone. If the client wishes another person's presence during the meeting, consider the implications, e.g. privilege, undue influence, unrepresented persons.	
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:

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

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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 their spouse's default

The possible consequences of failure to honour the financial obligations (loss of their home, business and all other property)

The possibility of obtaining security for the financial obligations

That an indemnity will be worthless if their 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 on the client if their 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 is:

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The client signed an acknowledgement, in the presence of a witness, that they were signing the documents against my advice

I declined to witness the client's execution of the documents

### **Part E — File management**

I checked for conflicts of interest and I had none

I opened a file

I followed client identification and verification procedures

There were no indicators of dishonesty, crime or fraud

I took notes of my meeting(s) with the client and retained them

I placed this checklist, a copy of the documents and my notes in the file

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 obligations assumed, together with my account

My advice was verbal only and I sent no reporting letter (not recommended)

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**

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