

PROFESSIONAL CONDUCT HANDBOOK

Published under the authority of the Benchers for the guidance of members of
The Law Society of British Columbia

Published by The Law Society of British Columbia
January, 1993, effective May, 1993

TABLE OF CONTENTS

Chapter 1 — Canons of Legal Ethics

1.	To the state	1
2.	To courts and tribunals	1
3.	To the client	2
4.	To other lawyers	3
5.	To oneself	4

Chapter 2 — Integrity

1.	Dishonourable conduct	5
2.	Duty to meet financial obligations	5
3.	Discrimination.....	5

Chapter 3 — Competence, Quality of Service and Relationship to Clients

1.	Knowledge and skill	7
2.1	Client capacity	7
2.4	Lack of capacity	8
3.	Quality of service	8
4.	Seeking assistance	8.1
5.	Promptness	8.1
6.	Duty of lawyer and law firm when a change affects clients	8.1
13.	Pro bono	8.2

Chapter 4 — Avoiding Questionable Conduct, Including Improper Communications

1.	Dealing with unrepresented persons	9
1.1	Communication with clients of other lawyers	9
2.	Threatening criminal or disciplinary proceedings	9
3.	Coercion, improper influence or offering compensation to avoid prosecution	9
5.	Errors and omissions	10
6.	Dishonesty, crime or fraud of client	10
7.	Restricting future representation	10
8.	Public representations	10.1

Chapter 5 — Confidential Information

1.	Duty of confidentiality	11
5.	Confidential information not to be used	11
9.	Confidential government information	11
11.	Disclosure authorized by client	12
12.	Disclosure to prevent a crime	12
13.	Disclosure required by law	12
15.	Use of opponent's documents	12
16.	Incapacity	13

Chapter 6 — Conflicts of Interest Between Clients

1.	General principles	15
4.	Acting for two or more clients	15
6.1	Space-sharing arrangements	16

PROFESSIONAL CONDUCT HANDBOOK

6.3	Acting against a current client	16
7.	Acting against a former client	16.1
7.01	Limited representation	16.1
7.1	Conflicts arising as a result of transfer between law firms	16.2
7.2	Application of Rules	16.3
7.4	Firm disqualification	16.3
7.5	Continued representation not to involve transferring lawyer	16.4
7.8	Determination of compliance	16.4
7.9	Due diligence	16.5
8.	Finders' fees	16.5
9.	Acting as a family law mediator	16.5
10.	Real property conveyancing transactions	16.5
 Chapter 7 — Conflicts of Interest Between Lawyer and Client		
1.	Direct or indirect financial interest	17
2.	Financial or membership interest in the client	17
3.	Transaction with a client	17
4.	Client loan, credit or guarantee	18
5.	Financial interest in a client	18
6.	Ancillary business or occupation	18
7.	Investing a client's funds	19
 Chapter 7.1 — Preservation of Client Valuables		
1.	Definitions	20.1
2.	Application of chapter	20.1
3.	Duty of safekeeping	20.1
4.	Notice to client	20.1
5.	Adequate measures	20.2
6.	Return of valuables	20.2
 Chapter 8 — The Lawyer as Advocate		
1.	Prohibited conduct	21
2.	Offering to give false testimony	21
6.	Inconsistent statements or testimony	22
7.	Duty to withdraw	22
9.	The lawyer as witness	23
12.	Interviewing witnesses	23
14.	Contacting an opponent's expert	24
18.	Duties of prosecutor	24
19.	Judicial interim release	24.1
20.	Representation of an accused on guilty plea	24.1
21.	Role in without notice proceedings	24.1
22.	Former judge or master	24.1
23.	Public representations	24.1
 Chapter 9 — Fees		
0.1	Definition	25
1.	Excessive fees	25
2.	Referral fees	25

TABLE OF CONTENTS

4.	Prepaid legal services plan	26
5.	Apportionment of fees	26
6.	Sharing fees	26
7.	Hidden fees	26
Chapter 10 — Withdrawal		
0.1	Definition	27
1.	Obligatory withdrawal	27
2.	Optional withdrawal.....	27
3.	Residual right to withdraw	28
6.	Withdrawal for non-payment of fee.....	28
8.	Procedure for withdrawal.....	29
9.	Confidentiality	29
10.	Limited retainer.....	29
Chapter 11 — Responsibility to Other Lawyers		
5.	Fulfilling professional commitments	31
6.	Responding to correspondence from other lawyers	31
7.	Undertakings and trust conditions.....	31
8.	Trust cheques	31
8.1	Real estate transactions	32
9.	Conditional undertakings	32
10.	Imposed undertakings	32
12.	Proceeding in default	32
13.	Acting against another lawyer.....	32
14.	Tape recording and monitoring conversations	33
15.	Threatening to report another lawyer.....	33
22.	Restrictive covenants	33
Chapter 12 — Supervision of Employees		
1.	Responsibility for all business entrusted to lawyer.....	35
2.	Matters requiring professional skill and judgement.....	35
3.	Signing correspondence	35
4.	Legal services performed by non-lawyers	35
10.	Real estate assistants	38
Chapter 13 — Responsibility to the Law Society		
1.	Reporting another lawyer to the Law Society.....	39
3.	Regulatory compliance	39
4.	The Law Society's disciplinary and competence procedures	40
5.	Associating with a person whose character and fitness are in question	40
6.	Apparent partnerships and associations	40
Chapter 14 — Marketing of Legal Services		
1.	Application of Chapter.....	41
2.	Definitions.....	41
4.	Content and format of marketing activities.....	41
5.	Examples.....	42
7.2	Former firm of current judge or master	42

PROFESSIONAL CONDUCT HANDBOOK

8.	Notary public.....	42
10.	Designation	43
16.	Preferred areas of practice.....	43
18.	Specialization	43
22.	Real estate sales	44
23.	Multi-disciplinary practice	44
Appendix 1 — Affidavits, Solemn Declarations and Officer Certifications		
1.	Affidavits and solemn declarations	49
2.	Witnessing the execution of an instrument	49
Appendix 2 — Family Law Mediation		
1.	Definitions.....	53
3.	Disqualifications	53
4.	Mediator’s duties.....	54
5.	Written agreement.....	54
Appendix 3 — Real Property Transactions		
1.	Application.....	55
2.	Acting for parties with different interests	55
3.	Simple conveyance	55
6.	Advice and consent	57
7.	Foreclosure proceedings	57
8.	Unrepresented parties in a real property transaction	58
Appendix 4 — Duty of Lawyer on Termination of Employment		
1.	Letter from departing lawyer	59
2.	Letter from law firm.....	59
Appendix 5 — Conflicts Arising as a Result of Transfer Between Law Firms		
1.	Matters to consider when interviewing a potential transferee.....	61
2.	Matters to consider before hiring a potential transferee.....	62
	(a) If a conflict does exist	62
	(b) If no conflict exists.....	62
	(c) If the new law firm is not sure whether a conflict exists.....	63
3.	Reasonable measures to ensure non-disclosure of confidential information	63
	Guidelines	64
Appendix 6 — Acting for Two or More Clients		
1.	Sample letter where lawyer acts jointly for two clients	67
2.	Sample letter where lawyer acts jointly for more than two clients	68

CHAPTER 1

CANONS OF LEGAL ETHICS

[In force January 1, 1992]

These Canons of Legal Ethics are a general guide, and not a denial of the existence of other duties equally imperative and of other rights, though not specifically mentioned.

A lawyer is a minister of justice, an officer of the courts, a client's advocate, and a member of an ancient, honourable and learned profession.

In these several capacities it is a lawyer's duty to promote the interests of the state, serve the cause of justice, maintain the authority and dignity of the courts, be faithful to clients, be candid and courteous in relations with other lawyers and demonstrate personal integrity.

1. To the state

- (1) A lawyer owes a duty to the state, to maintain its integrity and its law. A lawyer should not aid, counsel, or assist any person to act in any way contrary to the law.
- (2) When engaged as a Crown prosecutor, a lawyer's primary duty is not to seek a conviction but to see that justice is done; to that end the lawyer should make timely disclosure to the defence of all facts and known witnesses whether tending to show guilt or innocence, or that would affect the punishment of the accused.
- (3) A lawyer should accept without hesitation, and if need be without fee or reward, the cause of any person assigned to the lawyer by the court, and exert every effort on behalf of that person.

2. To courts and tribunals

- (1) A lawyer's conduct should at all times be characterized by candour and fairness. The lawyer should maintain toward a court or tribunal a courteous and respectful attitude and insist on similar conduct on the part of clients, at the same time discharging professional duties to clients resolutely and with self-respecting independence.
- (2) Judges, not being free to defend themselves, are entitled to receive the support of the legal profession against unjust criticism and complaint. Whenever there is proper ground for serious complaint against a judicial officer, it is proper for a lawyer to submit the grievance to the appropriate authorities.
- (3) A lawyer should not attempt to deceive a court or tribunal by offering false evidence or by misstating facts or law and should not, either in argument to the judge or in address to the jury, assert a personal belief in an accused's guilt or

PROFESSIONAL CONDUCT HANDBOOK

innocence, in the justice or merits of the client's cause or in the evidence tendered before the court.

- (4) A lawyer should never seek privately to influence a court or tribunal, directly or indirectly, in the lawyer's or a client's favour, nor should the lawyer attempt to curry favour with juries by fawning, flattery, or pretended solicitude for their personal comfort.

3. To the client

- (1) A lawyer should obtain sufficient knowledge of the relevant facts and give adequate consideration to the applicable law before advising a client, and give an open and undisguised opinion of the merits and probable results of the client's cause. The lawyer should be wary of bold and confident assurances to the client, especially where the lawyer's employment may depend on such assurances. The lawyer should bear in mind that seldom are all the law and facts on the client's side, and that *audi alteram partem* is a safe rule to follow.
- (2) 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 controversy, if any, which might influence whether the client selects or continues to retain the lawyer. A lawyer shall not act where there is a conflict of interests between the lawyer and a client or between clients.
- (3) Whenever the dispute will admit of fair settlement the client should be advised to avoid or to end the litigation.
- (4) A lawyer should treat adverse witnesses, litigants, and counsel with fairness and courtesy, refraining from all offensive personalities. The lawyer must not allow a client's personal feelings and prejudices to detract from the lawyer's professional duties. At the same time the lawyer should represent the client's interests resolutely and without fear of judicial disfavour or public unpopularity.
- (5) A lawyer should endeavour by all fair and honourable means to obtain for a client the benefit of any and every remedy and defence which is authorized by law. The lawyer must, however, steadfastly bear in mind that this great trust is to be performed within and not without the bounds of the law. The office of the lawyer does not permit, much less demand, for any client, violation of law or any manner of fraud or chicanery. No client has a right to demand that the lawyer be illiberal or do anything repugnant to the lawyer's own sense of honour and propriety.
- (6) It is a lawyer's right to undertake the defence of a person accused of crime, regardless of the lawyer's own personal opinion as to the guilt of the accused. Having undertaken such defence, the lawyer is bound to present, by all fair and honourable means and in a manner consistent with the client's instructions, every defence that the law of the land permits, to the end that no person will be convicted but by due process of law.
- (7) A lawyer should not, except as by law expressly sanctioned, acquire by purchase or otherwise any interest in the subject-matter of the litigation being conducted

by the lawyer. A lawyer should scrupulously guard, and not divulge or use for personal benefit, a client's secrets or confidences. Having once acted for a client in a matter, a lawyer must not act against the client in the same or any related matter.

- (8) A lawyer must record, and should report promptly to a client the receipt of any moneys or other trust property. The lawyer must use the client's moneys and trust property only as authorized by the client, and not co-mingle it with that of the lawyer.
- (9) A lawyer is entitled to reasonable compensation for services rendered, but should avoid charges which are unreasonably high or low. The client's ability to pay cannot justify a charge in excess of the value of the service, though it may require a reduction or waiver of the fee.
- (10) A lawyer should try to avoid controversies with clients regarding compensation so far as is compatible with self-respect and with the right to receive reasonable recompense for services. A lawyer should always bear in mind that the profession is a branch of the administration of justice and not a mere money-making business.
- (11) A lawyer who appears as an advocate should not submit the lawyer's own affidavit to or testify before a court or tribunal except as to purely formal or uncontroverted matters, such as the attestation or custody of a document, unless it is necessary in the interests of justice. If the lawyer is a necessary witness with respect to other matters, the conduct of the case should be entrusted to other counsel.

4. To other lawyers

- (1) A lawyer's conduct toward other lawyers should be characterized by courtesy and good faith. Any ill feeling that may exist between clients or lawyers, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. Personal remarks or references between lawyers should be scrupulously avoided, as should quarrels between lawyers which cause delay and promote unseemly wrangling.
- (2) A lawyer should neither give nor request an undertaking that cannot be fulfilled and should fulfil every undertaking given. A lawyer should never communicate upon or attempt to negotiate or compromise a matter directly with any party who the lawyer knows is represented therein by another lawyer, except through or with the consent of that other lawyer.
- (3) A lawyer should avoid all sharp practice and should take no paltry advantage when an opponent has made a slip or overlooked some technical matter. A lawyer should accede to reasonable requests which do not prejudice the rights of the client or the interests of justice.

5. To oneself

- (1) A lawyer should assist in maintaining the honour and integrity of the legal profession, should expose without fear or favour before the proper tribunals, unprofessional or dishonest conduct by any other lawyer and should accept without hesitation a retainer against any lawyer who is alleged to have wronged the client.
- (2) It is the duty of every lawyer to guard the Bar against the admission to the profession of any candidate whose moral character or education renders that person unfit for admission.
- (3) A lawyer should make legal services available to the public in an efficient and convenient manner that will command respect and confidence. A lawyer's best advertisement is the establishment of a well-merited reputation for competence and trustworthiness.
- (4) No client is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the state, or disrespect for the judicial office, or the corruption of any persons exercising a public or private trust, or deception or betrayal of the public.
- (5) A lawyer should recognize that the oaths taken upon admission to the Bar are solemn undertakings to be strictly observed.
- (6) All lawyers should bear in mind that they can maintain the high traditions of the profession by steadfastly adhering to the time-honoured virtues of probity, integrity, honesty and dignity.

CHAPTER 2

INTEGRITY

Dishonourable conduct

1. A lawyer must not, in private life, extra-professional activities or professional practice, engage in dishonourable or questionable conduct that casts doubt on the lawyer's professional integrity or competence, or reflects adversely on the integrity of the legal profession or the administration of justice.¹

[amended 09/94]

Duty to meet financial obligations

2. The lawyer has a professional duty, quite apart from any legal liability, to meet professional financial obligations incurred or assumed in the course of practice, such as agency accounts, obligations to members of the profession, fees or charges of witnesses, sheriffs, special examiners, registrars, reporters and public officials when called upon to do so.

Discrimination

3. A lawyer has a special responsibility to respect the requirements of human rights laws.

[added 09/94; amended 10/08]

- 3.1 A lawyer must not refuse to employ or refuse to continue to employ a person or discriminate against a person regarding employment or any term or condition of employment because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

[added 10/08]

4. Rule 3.1 does not apply
 - (a) as it relates to age, to a bona fide scheme based on seniority,
 - (b) as it relates to marital status, physical or mental disability, sex or age, to the operation of a bona fide retirement, superannuation or pension plan or to a bona fide group or employee insurance plan, whether or not the plan is the subject of a contract of insurance between an insurer and an employer, or

PROFESSIONAL CONDUCT HANDBOOK

- (c) to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

[added 09/94; amended 10/08]

4.1 A lawyer must not, without a bona fide and reasonable justification,

- (a) deny to a person or class of persons any service customarily available to the public, or
- (b) discriminate against a person or class of persons regarding any service customarily available to the public

because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or class of persons.

[added 10/08]

5. A lawyer must not engage in any form of harassment, including sexual harassment,² based on the prohibited grounds in Rule 3.1.

[added 09/94; amended 10/08]

6. Rules 3.1 and 4.1 do not preclude any program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups.

[added 09/94; amended 10/08]

FOOTNOTES:

1. A lawyer must not exploit the relationship between solicitor and client to the lawyer's own advantage. An intimate relationship between a lawyer and a client, such as a sexual one, may constitute exploitation.

An intimate relationship with a client is also likely to affect a lawyer's professional judgement, which could cast doubt on a lawyer's ability to represent the client competently. A lawyer owes each client a duty to provide objective legal advice and perform services in a professional manner. The lawyer must not permit any personal interest to interfere with that objectivity.

[added 06/95]

INTEGRITY

2. This reflects the Supreme Court of Canada's decision in *Janzen v. Platy Enterprises Ltd.*, [1989] 1 SCR 1252. The Court discusses the issue at pp. 1276-1291. Chief Justice Dickson said:

Common to all of these descriptions of sexual harassment is the concept of using a position of power to import sexual requirements into the workplace thereby negatively altering the working conditions of employees who are forced to contend with sexual demands. (at p. 1281)

Sexual harassment is not limited to demands for sexual favours made under threats of adverse job consequences should the employee refuse to comply with the demands ... Sexual harassment also encompasses situations in which sexual demands are foisted upon unwilling employees or in which employees must endure sexual groping, propositions, and inappropriate comments, but where no tangible economic rewards are attached to involvement in the behaviour. (at p. 1282)

He concluded:

... sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. (at p. 1284)

While the *Janzen* case dealt with sexual harassment in an employment situation, these Rules cover more than lawyers' conduct as employers or employees. They also deal with relations among counsel, among partners, between lawyers and clients and between lawyers and court personnel.

[renumbered 06/95; amended 10/08]

[This page is intentionally left blank.]

CHAPTER 3

COMPETENCE, QUALITY OF SERVICE AND RELATIONSHIP TO CLIENTS

Knowledge and skill

1. With respect to each area of law in which a lawyer practises, he or she must acquire and maintain adequate:
 - (a) knowledge of the substantive law,
 - (b) knowledge of the practice and procedures¹ by which that substantive law can be effectively applied, and
 - (c) skills to represent the client's interests effectively.

[amended 03/03]

2. Before accepting a retainer, a lawyer must be satisfied that he or she has the ability and capacity to deal adequately with any legal matters to be undertaken.

[amended 03/03]

Client capacity

- 2.1 If a client cannot adequately instruct counsel for any reason,² the lawyer must maintain a normal client-lawyer relationship with the client, to the extent reasonably possible.

[added 03/03]

- 2.2 A lawyer may seek the appointment of a guardian or take other protective action with respect to a client only if the lawyer:

- (a) reasonably believes that the client cannot adequately instruct counsel,
- (b) reasonably believes the appointment or other protective action is necessary to protect the client's interest, and
- (c) does not take any action contrary to any instructions given to the lawyer by the client when the client was capable of giving such instructions.³

[added 03/03]

- 2.3 A lawyer who reasonably believes that a client cannot adequately instruct counsel may, pending appointment of a representative of the client, continue to act for the client to the extent that instructions are implied or as otherwise permitted by law.

[added 03/03]

PROFESSIONAL CONDUCT HANDBOOK

Lack of capacity

- 2.4 A lawyer who is prevented from entering into a client-lawyer relationship with a person because of the person's lack of capacity⁴ may provide reasonable and necessary minimal assistance to the person and disclose confidential information provided the lawyer:
- (a) is satisfied that the person cannot adequately instruct counsel generally or about possible protective action the lawyer might take,
 - (b) makes it clear to anyone who may be misled by the lawyer's involvement that the lawyer does not represent the person,
 - (c) discloses the minimum amount of information required, and
 - (d) does not take action contrary to any direction given to the lawyer by the person.⁵

[added 03/03]

Quality of service

3. A lawyer shall serve each client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation. Without limiting the generality of the foregoing, the quality of service provided by a lawyer may be measured by the extent to which the lawyer:
- (a) keeps the client reasonably informed,
 - (b) answers reasonable requests from the client for information,
 - (c) responds, when necessary, to the client's telephone calls,
 - (d) keeps appointments with the client,
 - (e) having informed the client that something will happen or that some step will be taken by a certain date, does not allow that date to pass without follow-up information or explanation,
 - (f) answers within a reasonable time a communication that requires a reply,
 - (g) does the work in hand in a prompt manner so that its value to the client is not diminished or lost,
 - (h) prepares documents and performs other legal tasks accurately,
 - (i) maintains office staff and facilities adequate to the lawyer's practice,
 - (j) informs the client of proposals of settlement, and explains them properly,

COMPETENCE, QUALITY OF SERVICE AND RELATIONSHIP TO CLIENTS

- (k) discloses all relevant information to the client, and candidly advises the client about the position of a matter, whether such disclosure or advice might reveal neglect or error by the lawyer,
- (l) makes a prompt and complete report when the work is finished or, if a final report cannot be made, makes an interim report where one might reasonably be expected,
- (m) practises free of any self-induced disability, for example intoxicants or drugs, which would interfere with the member's services to the client.

Seeking assistance

- 4. A lawyer shall be alert to recognize any lack of competence for a particular task and, if consulted in such circumstances, shall either:
 - (a) decline to act, or
 - (b) obtain the client's instructions to retain, consult or collaborate with:
 - (i) a lawyer who is competent in that area of law, or
 - (ii) an expert in non-legal matters,as is appropriate in the circumstances.

Promptness

- 5. A lawyer shall make all reasonable efforts to provide prompt service to each client and, if the lawyer foresees undue delay, shall promptly inform the client.

Duty of lawyer and law firm when a change affects clients

- 6. When a lawyer leaves a law firm to practise alone or to join another law firm, the departing lawyer and the law firm have a duty to inform all clients for whom the departing lawyer is the responsible lawyer in a legal matter that the clients have a right to choose who will continue to represent them. The same duty may arise when a firm is winding up or dividing into smaller units.

[added 04/2010]

- 7. This duty does not arise if the lawyers affected by the changes, acting reasonably, conclude that the circumstances make it obvious that a client will continue as a client of a particular lawyer or law firm.

[added 04/2010]

PROFESSIONAL CONDUCT HANDBOOK

8. When this Chapter requires a notification to clients, each client must receive a letter as soon as practicable after the effective date of the changes is determined, informing the client of the right to choose his or her lawyer.

[added 04/2010]

9. It is preferable that this letter be sent jointly by the firm and any lawyers affected by the changes. However, in the absence of a joint announcement, the firm or any lawyers affected by the changes may send letters in substantially the form set out in Appendix 4.

[added 04/2010]

10. Lawyers whose clients are affected by changes in a law firm have a continuing obligation to protect client information and property, and must minimize any adverse effect on the interests of clients.⁶

[added 04/2010]

11. The right of a client to be informed of changes to a law firm and to choose his or her lawyer cannot be curtailed by any contractual or other arrangement.

[added 04/2010]

12. With respect to communication other than that required by these Rules, lawyers should be mindful of the common law restrictions upon uses of proprietary information, and interference with contractual and professional relations between the law firm and its clients.

[added 04/2010]

Pro bono

13. A lawyer's professional responsibility to provide quality legal services to all clients is not affected by the limited ability of some clients to pay for those services, or the fact that the services are provided wholly or partly on a pro bono basis.⁷

[added 06/2010]

FOOTNOTES:

1. For a discussion of the correct procedure in swearing an affidavit or taking a solemn declaration, see Appendix 1 to this *Handbook*.
2. Such as, but not limited to, minority or mental disability.

[added 03/2003]

COMPETENCE, QUALITY OF SERVICE AND RELATIONSHIP TO CLIENTS

3. A lawyer may have special duties of confidentiality to a client lacking capacity. See Chapter 5, Rule 16.

[added 03/2003]

4. A lawyer may not form a client-lawyer relationship with a person who has never been the lawyer's client and who lacks the capacity to instruct the lawyer, except if the lawyer is appointed to act by a court or tribunal, by operation of statute or in a proceeding in which some aspect of the client's mental capacity is in issue. However, a lawyer may act for a person of marginal capacity who is capable of giving instructions on some matters but not others.

[added 03/2003]

5. For example, such assistance might consist of appearing at a scheduled court appearance to protect the person's interests or advising the Public Guardian and Trustee, family members or others of the person's need for assistance. Lawyers must act with great care in these situations since the disclosure of confidential information could open a lawyer to a claim and an accusation of acting unlawfully.

[added 03/2003]

6. This obligation generally includes an obligation to ensure that files transferred to a new lawyer or law firm are properly transitioned, including, when necessary, describing the status of the file and noting any unfulfilled undertakings and other outstanding commitments.

[added 04/2010]

7. The provision of pro bono legal services has been a long tradition of the legal profession, which is consistent with Chapter 1, Canon 3(9). It is up to each lawyer to decide how much pro bono services he or she can provide.

[added 06/2010]

[This page is intentionally left blank.]

CHAPTER 4

AVOIDING QUESTIONABLE CONDUCT, INCLUDING IMPROPER COMMUNICATIONS

Dealing with unrepresented persons

1. A lawyer acting for a client in a matter in which there is an unrepresented person must advise that client and unrepresented person that the latter's interests are not being protected by the lawyer.

[amended 03/2005]

Communication with clients of other lawyers

- 1.1 A lawyer who has an interest in a matter, or represents a client who has an interest in a matter, must not communicate with any person regarding the matter if, to the lawyer's knowledge, the person is represented by another lawyer, except through or with the consent of the person's lawyer.¹

[added 04/1996; amended 12/1999]

Threatening criminal or disciplinary proceedings

2. A lawyer must not threaten, or advise a person to threaten, to:
 - (a) initiate or proceed with a criminal or quasi-criminal charge, or
 - (b) make a complaint to a regulatory authority,for the collateral purpose of enforcing the payment of a civil claim or securing any other civil advantage.

[amended 03/2005]

Coercion, improper influence or offering compensation to avoid prosecution

3. A lawyer must not *wrongfully* influence any person to prevent the Crown from proceeding with charges or cause the Crown to withdraw or stay charges in a criminal or quasi-criminal charge against the lawyer's client.

[amended 03/2005]

4. A lawyer must not:
 - (a) advise a person to give, or

PROFESSIONAL CONDUCT HANDBOOK

- (b) personally give or offer to give,

any valuable consideration to another person in exchange for influencing the Crown not to proceed with a criminal or quasi-criminal charge that has been instituted against a client of the lawyer, unless the lawyer obtains the consent of the Attorney General or his or her agent.

[amended 03/2005]

Errors and omissions

- 5. A lawyer must comply with the terms of each professional liability insurance policy.²

[amended 01/1994]

- 5.1 If, in respect of a matter in which the lawyer is or was engaged, the lawyer has a reasonable apprehension that an error or omission:

- (a) has been made,
- (b) is one for which the lawyer is or may be responsible, and
- (c) is or may be damaging to the client,

then the lawyer must promptly:

- (d) inform the client of the facts of the error or omission, without admitting legal liability, and
- (e) recommend that the client obtain independent legal advice.

[added 01/1994]

Dishonesty, crime or fraud of client

- 6. A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.³

[heading and rule amended 03/2005; heading amended 05/2005; rule amended 06/2011]

Restricting future representation

- 7. A lawyer must not participate in offering or making an agreement in which a restriction on any lawyer's right to practise is part of the settlement of a client lawsuit or other controversy.

[added 10/2006]

Public representations

8. A lawyer must not endorse or lend his or her credibility as a lawyer to the promotion or advertisement of any product, property, investment or service for sale to the public except:
 - (a) a law practice with which the lawyer is affiliated,
 - (b) a book or other publication that the lawyer has written or assisted in writing, or
 - (c) a product designed to assist in the practice of law and with which the lawyer has experience.

[moved from Chapter 14, Rule 6 05/2009]

FOOTNOTES:

1. A lawyer who is not otherwise interested in a matter may provide a second opinion to a person with other legal representation, whether or not the lawyer is formally retained to do so.

This rule is subject to a lawyer's right to contact a witness under the conditions set out in Chapter 8.

[added 04/1996; amended 05/1996; 12/1999]

2. Under both the Lawyers' Compulsory Professional Liability Insurance Policy and any excess professional liability insurance policy in effect, 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 which could reasonably be expected to be the basis of a claim or suit covered under the policy. A lawyer who fails to comply with this contractual requirement risks having coverage denied, assuming personal liability for any damages awarded. Rule 5 imposes an ethical duty to report to the insurer. Imposing such an ethical obligation is necessary, in the public interest, to reduce the risk of coverage being denied.

[amended 01/1994; renumbered 04/1996; amended 03/2010]

3. A lawyer has a duty to be on guard against becoming the tool or dupe of an unscrupulous client or of persons associated with such a client and, in some circumstances, may have a duty to make inquiries. For example, a lawyer should make inquiries of a client who:
 - (a) seeks the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matters, or
 - (b) promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so.

[renumbered 04/1996; amended 03/2005; 05/2005]

[This page is intentionally left blank.]

CHAPTER 5

CONFIDENTIAL INFORMATION

Duty of confidentiality

1. A lawyer shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, regardless of the nature or source of the information or of the fact that others may share the knowledge, and shall not divulge any such information unless disclosure is expressly or impliedly¹ authorized by the client, or is required by law or by a court.

[amended 11/99]

2. A lawyer shall take all reasonable steps to ensure the privacy and safekeeping of a client's confidential information.
3. A lawyer shall not disclose the fact of having been consulted or retained by a person unless the nature of the matter requires such disclosure.
4. A lawyer shall preserve the client's secrets even after the termination of the retainer, whether or not differences have arisen between them.

Confidential information not to be used

5. A lawyer shall not use any confidential information respecting a client for the benefit of the lawyer or another person, or to the disadvantage of the client. When engaging in a business transaction with a client or former client in the limited circumstances permitted by Chapter 7, the lawyer shall not use for personal benefit any confidential information acquired in the course of acting for the client.
6. A lawyer who engages in literary work such as an autobiography or memoirs shall not disclose confidential information.
7. A lawyer shall not disclose to one client confidential information concerning or received from another client in a different matter, and shall decline employment or withdraw from a retainer which might require such disclosure.
8. A lawyer shall avoid indiscreet conversations or gossip, and shall not repeat gossip or information about a client's affairs, even though the client is not named or otherwise identified.

Confidential government information

9. A lawyer who, while in public employment, had substantial responsibility or confidential information relating to a matter shall not, after leaving public employment, represent any other party in connection with that matter, without the consent of the lawyer's former public employer.

PROFESSIONAL CONDUCT HANDBOOK

10. A lawyer who, while in public employment, acquired confidential government information about a person shall not, unless that person consents, represent a client other than the agency of which the lawyer was a public officer or employee, where that client's interests are adverse to that person, in a matter in which the information could be used to the material disadvantage of that person.

Disclosure authorized by client

11. A lawyer may:
 - (a) with the express or implied authority of the client, disclose confidential information, and
 - (b) unless the client directs otherwise, disclose the client's affairs to partners, associates and articled students and, to the extent necessary, to legal assistants, non-legal staff such as secretaries and filing clerks, and to others whose services are utilized by the lawyer.

Disclosure to prevent a crime

12. A lawyer may disclose information received as a result of a solicitor-client relationship if the lawyer has reasonable grounds to believe that the disclosure is necessary to prevent a crime involving death or serious bodily harm to any person.

[amended 06/97]

Disclosure required by law

13. A lawyer who is required by law or by order of a court to disclose a client's affairs shall not divulge more information than is necessary.
14. A lawyer who is required, under the *Criminal Code*, the *Income Tax Act* or any other federal or provincial legislation, to produce or surrender a document or provide information which is or may be privileged shall, unless the client waives the privilege, claim a solicitor-client privilege in respect of the document.

Use of opponent's documents

15. A lawyer who has access to or comes into possession of a document which the lawyer has reasonable grounds to believe belongs to or is intended for an opposing party and was not intended for the lawyer to see, shall:
 - (a) return the document, unread and uncopied, to the party to whom it belongs, or
 - (b) if the lawyer reads part or all of the document before realizing that it was not intended for him or her, cease reading the document and promptly return it, uncopied, to the party to whom it belongs, advising that party:

- (i) of the extent to which the lawyer is aware of the contents, and
- (ii) what use the lawyer intends to make of the contents of the document.

Incapacity

16. A lawyer may disclose a client's confidential information for the purpose of securing the appointment of a guardian or in conjunction with other protective action taken on behalf of the client, provided:
- (a) the lawyer reasonably believes the client cannot adequately instruct counsel regarding the issue of disclosure,
 - (b) the lawyer reasonably believes the disclosure is necessary to protect the client's interests,
 - (c) the disclosure is not contrary to any instructions concerning disclosure given to the lawyer by the client when the client was capable of giving such instructions, and
 - (d) the lawyer discloses the minimum amount of information required.²

[added 03/03]

FOOTNOTES:

1. A client who voluntarily discloses or authorizes disclosure of a privileged communication, who makes legal advice an issue in proceedings, who commences a malpractice action against a lawyer or who instigates a disciplinary proceeding manifests an intention to waive privilege, at least to the extent necessary for the lawyer to mount a defence: see *CED* (Western 3rd) Vol. 12 "Evidence," Section 1054, p. 733, and cases cited, including *R. v. Dunbar and Logan* (1982), 68 CCC (2d) 13 (Ont. CA).

[amended 11/99]

2. A lawyer may have duties of confidentiality to a non-client lacking capacity. See Chapter 3, Rule 2.4.

[added 03/03]

[This page is intentionally left blank.]

CHAPTER 6

CONFLICTS OF INTEREST BETWEEN CLIENTS

General principles

1. As a general principle, a lawyer has a duty to give undivided loyalty to every client.

[amended 07/01]

2. A lawyer may act for clients adverse in interest in circumstances permitted in this chapter.

[amended 07/01]

3. A lawyer may, with informed client consent, represent clients in circumstances that might, in the future, give rise to divided loyalties.

[amended 07/01]

Acting for two or more clients

4. A lawyer may jointly represent two or more clients if, at the commencement of the retainer, the lawyer:

- (a) explains to each client the principle of undivided loyalty,
- (b) advises each client that no information received from one of them as a part of the joint representation can be treated as confidential as between them,
- (c) receives from all clients the fully informed consent to one of the following courses of action to be followed in the event the lawyer receives from one client, in the lawyer's separate representation of that client, information relevant to the joint representation:
 - (i) the information must not be disclosed to the other jointly represented clients, and the lawyer must withdraw from the joint representation;
 - (ii) the information must be disclosed to all other jointly represented clients, and the lawyer may continue to act for the clients jointly, and
- (d) secures the informed consent of each client (with independent legal advice, if necessary) as to the course of action that will be followed if a conflict arises between them.

[amended 01/95]

PROFESSIONAL CONDUCT HANDBOOK

5. If a lawyer jointly represents two or more clients, and a conflict arises between any of them, the lawyer must cease representing all the clients, unless all of the clients:
- (a) consented, under paragraph 4(d), to the lawyer continuing to represent one of them or a group of clients that have an identity of interests, or
 - (b) give informed consent to the lawyer assisting all of them to resolve the conflict.

[amended 01/95]

6. A lawyer who ceased joint representation under Rule 5 or who continued to represent one or more clients under paragraph 5(a) may, with the informed consent of all the clients, resume representation of all of them after the conflict has been resolved.

[amended 01/95]

- 6.01 Appendix 6 to this *Handbook* sets out two precedent letters that lawyers may use as the basis for compliance with Rules 4 to 6.

[added 04/00]

Space-sharing arrangements

- 6.1 In Rules 6.1 to 6.3 and 7.1, “**sharing space**” means sharing office space with one or more other lawyers, but not practising or being held out to be practising in partnership or association with the other lawyer or lawyers.¹

[added 05/96]

- 6.2 Unless all lawyers sharing space together agree that they will not act for clients adverse in interest to the client of any of the others,² each lawyer who is sharing space must disclose in writing to all of the lawyer’s clients:

- (a) that an arrangement for sharing space exists,
- (b) the identity of the lawyers who make up the firm acting for the client, and
- (c) that lawyers sharing space with the firm are free to act for other clients who are adverse in interest to the client.³

[added 05/96]

Acting against a current client

- 6.3 A lawyer must not represent a client for the purpose of acting against the interests of another client of the lawyer unless:
- (a) both clients are informed that the lawyer proposes to act for both clients and both consent, and

CONFLICTS OF INTEREST BETWEEN CLIENTS

- (b) the matters are substantially unrelated and the lawyer does not possess confidential information arising from the representation of one client that might reasonably affect the other representation.

[added 07/2001]

6.4 For the purposes of Rule 6.3, the consent of a client to the lawyer acting for another client adverse in interest may be inferred in the absence of contrary instructions if, in the reasonable belief of the lawyer, the client would consent in the matter in question because the client has

- (a) previously consented to the lawyer, or another lawyer, acting for another client adverse in interest,
- (b) commonly permitted a lawyer to act against the client while retaining the same lawyer in other matters to act on the client's behalf, or
- (c) consented, generally, to the lawyer acting for another client adverse in interest.

[added 07/2001]

Acting against a former client

7. Subject to Rule 7.4, a lawyer must not represent a client for the purpose of acting against the interests of a former client of the lawyer unless:

- (a) the former client is informed that the lawyer proposes to act for a client adverse in interest to the former client and the former client consents to the new representation, or
- (b) the new representation is substantially unrelated to the lawyer's representation of the former client, and the lawyer does not possess confidential information arising from the representation of the former client that might reasonably affect the new representation.

[amended 02/1995; 07/2001]

Limited representation

7.01 In Rules 7.01 to 7.04,⁴ **“limited legal services”** means advice or representation of a summary nature provided by a lawyer to a client under the auspices of a not-for-profit organization with the expectation by the lawyer and the client that the lawyer will not provide continuing representation in the matter.

[added 01/2009]

PROFESSIONAL CONDUCT HANDBOOK

- 7.02 A lawyer must not provide limited legal services if the lawyer is aware of a conflict of interest and must cease providing limited legal services if at any time the lawyer becomes aware of a conflict of interest.

[added 01/2009]

- 7.03 A lawyer may provide limited legal services notwithstanding that another lawyer has provided limited legal services under the auspices of the same not-for-profit organization to a client adverse in interest to the lawyer's client, provided no confidential information about a client is available to another client from the not-for-profit organization.

[added 01/2009]

- 7.04 If a lawyer keeps information obtained as a result of providing limited legal services confidential from the lawyer's partners and associates, the information is not imputed to the partners or associates, and a partner or associate of the lawyer may

- (a) continue to act for another client adverse in interest to the client who is obtaining or has obtained limited legal services, and
- (b) act in future for another client adverse in interest to the client who is obtaining or has obtained limited legal services.

[added 01/2009]

Conflicts arising as a result of transfer between law firms

- 7.1 In Rules 7.1 to 7.9 and Appendix 5:

"client" includes anyone to whom a lawyer owes a duty of confidentiality, whether or not a solicitor-client relationship exists between them;

"confidential information" means information not generally known to the public that is obtained from a client;

"law firm" includes one or more lawyers practising:

- (a) in a sole proprietorship,
- (b) in a partnership,
- (c) in an arrangement for sharing space,⁵
- (d) as a law corporation,
- (e) in a government, a Crown corporation or any other public body,⁶
- (f) in a corporation or other body,⁷ and
- (g) in a multi-disciplinary practice (MDP);^{7.1}

[amended 12/2009, effective 07/2010]

CONFLICTS OF INTEREST BETWEEN CLIENTS

“lawyer” means a member of the Society, and includes an articulated student registered in the Law Society Admission Program;

“matter” means a case or client file, but does not include general “know-how” and, in the case of a government lawyer, does not include policy advice unless the advice relates to a particular case.

[added 02/95; amended 05/96]

Application of Rules⁸

7.2 Rules 7.1 to 7.9 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) the new law firm represents a client in a matter that is the same as or related to a matter in which the former law firm represents its client (“former client”),
- (b) the interests of those clients in that matter conflict, and
- (c) the transferring lawyer actually possesses relevant information respecting that matter.

[added 02/95]

7.3 Rules 7.4 to 7.7 do not apply to a lawyer employed by the federal or a provincial or territorial attorney general or department of justice who continues to be employed by that attorney general or department of justice after transferring from one department, ministry or agency to another.

[added 02/95]

Firm disqualification

7.4 If the transferring lawyer actually possesses confidential information relevant to a matter referred to in paragraph 7.2(a) 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 can establish, in accordance with Rule 7.8, when called upon to do so by a party adverse in interest, that:
 - (i) it is reasonable that its representation of its client in the matter continue, having regard to all relevant circumstances, including:

PROFESSIONAL CONDUCT HANDBOOK

- (A) the adequacy of the measures taken under subparagraph (ii),
 - (B) the extent of prejudice to the affected clients, and
 - (C) the good faith of the former client and the client of the new law firm, and
- (ii) it has 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.⁹

[added 02/95; amended 02/09]

Continued representation not to involve transferring lawyer

- 7.5 If the transferring lawyer actually possesses information relevant to a matter referred to in paragraph 7.2(a) respecting the former client, but that information is not confidential information that may prejudice the former client if disclosed to a member of the new law firm, the new law firm must notify its client of the relevant circumstances and its intended action under Rules 7.1 to 7.9.

[added 02/95; heading and rule amended 02/09]

- 7.6 Unless the former client consents, a transferring lawyer to whom Rule 7.4 or 7.5 applies must not:
- (a) participate in any manner in the new law firm's representation of its client in that matter, or
 - (b) disclose any confidential information respecting the former client.

[added 02/95]

- 7.7 Unless the former client consents, a member 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 to whom Rule 7.4 or 7.5 applies.

[added 02/95]

Determination of compliance

- 7.8 Anyone who has an interest in, or who represents a party in, a matter referred to in Rules 7.1 to 7.9 may apply to a court of competent jurisdiction for a determination of any aspect of those Rules, or seek the opinion of the Society on the application of those Rules.

[added 02/95]

Due diligence

- 7.9 A lawyer must exercise due diligence in ensuring that each member and employee of the lawyer's law firm, and each other person whose services the lawyer has retained:
- (a) complies with Rules 7.1 to 7.9, and
 - (b) does not disclose:
 - (i) confidences of clients of the firm, and
 - (ii) confidences of clients of another law firm in which the person has worked.

[added 02/95]

Finders' fees

8. A lawyer who, in exchange for making an introduction between a borrower and a lender, receives any payment from one of them, shall not act for the other of them in any resulting transaction between them, unless the lawyer:
- (a) makes full disclosure to the client, and
 - (b) pays the fee over to the client or credits the same against the lawyer's own account to the client.

The principle here involved is that the lawyer should not, by receiving or bargaining for compensation from any source except the client, be put in a position which might interfere with the lawyer's undivided loyalty to the client.

These principles apply to fees received from mutual fund corporations and other financial institutions for procuring investment in those institutions.

Acting as a family law mediator

9. A lawyer who acts as a family law mediator shall comply with Appendix 2 to this *Handbook* and, to the extent they are not inconsistent with Appendix 2, the Rules in this Chapter.

Real property conveyancing transactions

10. A lawyer who agrees to act in a real property conveyancing transaction for two or more parties with different interests shall comply with this Chapter and with Appendix 3 to this *Handbook*.

PROFESSIONAL CONDUCT HANDBOOK

FOOTNOTES:

1. Different rules apply when lawyers are held out as practising in partnership or association. See Chapter 13, Rule 6.

[added 05/96]

2. Like other lawyers, those who share space must take all reasonable measures to ensure client confidentiality. Lawyers who do not wish to act for clients adverse in interest to clients of lawyers with whom they share space should establish an adequate conflicts check system.

In order both to ensure confidentiality and to avoid conflicts, a lawyer must have the consent of each client before disclosing any information about the client for the purpose of conflicts checks. Consent may be implied in some cases but, if there is any doubt, the best course is to obtain express consent.

[added 05/96]

3. While disclosure is required of all lawyers sharing space who reserve the right to act for clients adverse in interest, disclosure is recommended for all lawyers sharing space, including those who agree not to act for clients adverse in interest to the clients of the lawyers with whom they share space.

[added 05/96]

4. These Rules contemplate that, in some instances when a lawyer provides limited legal services, it may be impractical for the lawyer to perform a conflicts check before providing legal services to a client.

[added 01/09]

5. This recognizes
 - (a) the concern that opposing clients may have about the appearance of proximity of lawyers sharing space, and
 - (b) the risk that lawyers sharing space may be exposed inadvertently to confidential information of an opposing client.

[added 02/95; amended 12/95; renumbered 05/96; 01/09]

6. Rules 7.1 to 7.9 apply to lawyers transferring to or from government service and into or out of an in-house counsel position, but do not extend to purely internal transfers in which, after transfer, the employer remains the same.

[added 02/95; renumbered 05/96; 01/09]

CONFLICTS OF INTEREST BETWEEN CLIENTS

7. Rules 7.1 to 7.9 treat as one “law firm” such entities as the various legal services units of a government, a corporation with separate regional legal departments, an inter-provincial law firm and a legal aid program with many community law offices. The more autonomous that each such unit or office is, the easier it should be, in the event of a conflict, for the new firm to obtain the former client’s consent.

[added 02/1995; renumbered 05/1996; 01/09; amended 02/2009]

- 7.1 See the definition of “**MDP**” in Rule 1 and Rules 2-23.1 to 2-23.12 of the Law Society Rules.

[added 12/2009, effective 07/2010]

8. Rules 7.1 to 7.9 are intended to regulate lawyers and articled students who transfer between law firms. They also impose a general duty on lawyers to exercise due diligence in the supervision of non-lawyer staff, to ensure that they comply with the Rules and with the duty not to disclose confidences of clients of:

- (a) the lawyer’s firm, or
- (b) other law firms in which the non-lawyer staff have worked.

[added 02/1995; renumbered and amended 05/1996; renumbered 01/2009]

9. Appendix 5 to this *Handbook* may be helpful in determining what constitutes “reasonable measures” in this context.

Issues arising as a result of a transfer between law firms should be dealt with promptly. A lawyer’s failure to promptly raise any issues identified may prejudice clients and may be considered sharp practice.

[added 02/1995; amended 06/1995; renumbered and amended 05/1996; renumbered 01/2009; amended 02/2009]

[This page is intentionally left blank.]

CHAPTER 7

CONFLICTS OF INTEREST BETWEEN LAWYER AND CLIENT

The purpose of this Chapter is to state the general principles that should guide a lawyer's conduct when the lawyer is invited to act both as legal advisor and business associate.

Generally speaking, a lawyer may act as legal advisor or as business associate, but not both.

These principles are not intended to preclude a lawyer from performing legal services on his or her own behalf. Lawyers should be aware, however, that acting in certain circumstances may cause them to be uninsured as a result of Exclusion 6 in the B.C. Lawyers' Compulsory Professional Liability Insurance Policy and similar provisions in other insurance policies.¹

[amended 04/03]

Direct or indirect financial interest

1. Except as otherwise permitted by the *Handbook*, a lawyer must not perform any legal services for a client if:²
 - (a) the lawyer has a direct or indirect financial interest in the subject matter of the legal services, or
 - (b) anyone, including a relative, partner, employer, employee, business associate or friend of the lawyer, has a direct or indirect financial interest that would reasonably be expected to affect the lawyer's professional judgement.

[amended 04/03]

Financial or membership interest in the client

2. A lawyer must not perform any legal services for a client with whom or in which the lawyer or anyone, including a relative, partner, employer, employee, business associate or friend of the lawyer, has a financial or membership interest that would reasonably be expected to affect the lawyer's professional judgement.

[amended 04/03]

Transaction with a client

3. A lawyer must not purchase anything from or sell anything to a client of the lawyer's firm unless the transaction is clearly severable from any legal work performed by the lawyer or by another lawyer in the firm for the client, and either:

PROFESSIONAL CONDUCT HANDBOOK

- (a) the transaction is of a routine nature to and in the ordinary course of business of the client, or
- (b) the client is independently represented in all aspects of the transaction.

[amended 04/03]

Client loan, credit or guarantee

- 4. Unless the transaction is of a routine nature to and in the ordinary course of business of the client, a lawyer must not borrow money or obtain credit from a client of the lawyer's firm, or obtain a benefit from any security or guarantee given by such a client.

[amended 04/03]

Financial interest in a client

- 5. A lawyer must not acquire a financial interest in a client of the lawyer's firm unless:
 - (a) the acquisition is effected on or through the facilities of a stock exchange, or
 - (b) the client:
 - (i) acknowledges in writing that the lawyer is not representing the client in the acquisition and the client will not rely on the lawyer's advice in the matter, and
 - (ii) is independently represented in all aspects of the acquisition.

[amended 04/03]

Ancillary business or occupation

- 6. A lawyer must not carry on any business or occupation other than the practice of law in such a way that a person might reasonably:
 - (a) find it difficult to determine whether in any matter the lawyer is acting as a lawyer, or
 - (b) expect that in the carrying on of the other business or occupation the lawyer will exercise legal judgement or skill for the protection of that person.

A lawyer who concurrently practises law and carries on another business or occupation must not act for a client if the client's interests and the lawyer's business or occupational interests differ.

[amended 04/03]

Investing a client's funds

7. A lawyer must not invest the funds of a client of the lawyer's firm or advise such a client to invest the client's funds in anything in which the lawyer or anyone, including a relative, partner, employer, employee, business associate or friend of the lawyer, has a personal interest, if that interest would reasonably be expected to affect the lawyer's professional judgement.

[amended 04/03]

FOOTNOTES:

1. Whether or not insurance coverage under the compulsory policy is lost is determined separate and apart from the ethical obligations addressed in this chapter. Review the current policy for the exact wording of Exclusion 6 or contact the Lawyers Insurance Fund regarding the application of the Exclusion to a particular set of circumstances.

[rescinded and replaced 04/03]

2. This rule does not prohibit a lawyer from acquiring an ownership interest in a client in lieu of a cash fee for providing legal services, provided the lawyer complies with Rules 2 and 5 of this Chapter.

[added 04/03]

[This page is intentionally left blank.]

CHAPTER 7.1

PRESERVATION OF CLIENT VALUABLES

Definitions

1. In this chapter,

“**client**” includes any person on whose behalf a lawyer holds valuables; and

“**valuables**” means:
 - (a) cash,¹
 - (b) negotiable securities such as shares and bonds, and
 - (c) property of value such as jewellery and precious metals.

[added 09/96]

Application of chapter

2. This chapter deals only with a lawyer’s obligation to preserve and account for valuables entrusted to the lawyer by a client. It does not affect a lawyer’s duty to preserve other client property and funds.

[added 09/96]

Duty of safekeeping

3. A lawyer owes a duty to preserve and keep safe any valuables that a client entrusts to the lawyer, including a duty to take the same care of entrusted valuables as a professional fiduciary would take when dealing with similar valuables.

[added 09/96]

Notice to client

4. A lawyer who receives valuables of or relating to a client must notify the client promptly, unless the lawyer is satisfied that the client is aware that the valuables have come into the lawyer’s custody.

[added 09/96]

Adequate measures

5. A lawyer must take the following steps as a minimum to preserve adequately and keep safe a client's valuables:
 - (a) clearly label and identify the client's valuables;
 - (b) place the valuables in a secure place apart from the lawyer's own property;
 - (c) maintain with the lawyer's accounting records a complete listing of clients' valuables in the lawyer's custody.

[added 09/96]

Return of valuables

6. Subject to any right of lien or any agreement to the contrary, a lawyer must return valuables to the client promptly on request or at the conclusion of the lawyer's retainer.²

[added 09/96]

FOOTNOTES:

1. This chapter applies when a lawyer receives cash for safekeeping, as distinct from holding funds in trust. A lawyer's duties regarding clients' funds held in trust are set out in Part 3, Division 7 of the Law Society Rules.

[updated 12/99]

2. In case of a dispute as to the person entitled to receive the valuables, the lawyer may have recourse to the courts to resolve the dispute.

CHAPTER 8

THE LAWYER AS ADVOCATE

Prohibited conduct

1. A lawyer must not:
 - (a) abuse the process of a court or 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 another party,
 - (b) knowingly assist the client to do anything or acquiesce in the client doing anything 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 may reasonably be perceived to affect the officer's impartiality,
 - (d) attempt or acquiesce in anyone else attempting, directly or indirectly, to influence the decision or actions of a court or tribunal or any of its officials by any means except open persuasion as an advocate,
 - (e) knowingly assert something for which there is no reasonable basis in evidence, or the admissibility of which must first be established,
 - (e.1) make suggestions to a witness recklessly or that the lawyer knows to be false,¹
 - (f) deliberately refrain from informing the court or tribunal of any pertinent authority directly on point that has not been mentioned by an opponent,
 - (g) dissuade a material witness from giving evidence, or advise such a witness to be absent,
 - (h) knowingly permit a party or a witness to be presented in a false way, or to impersonate another person, or
 - (i) appear before a court or tribunal while impaired by alcohol or a drug.

[amended 09/06; 09/07]

Offering to give false testimony

2. When a client advises a lawyer that the client intends to offer false testimony in a proceeding, the lawyer must explain to the client the lawyer's professional duty to withdraw if the client insists on offering, or in fact does offer, false testimony.

[amended 09/06]

PROFESSIONAL CONDUCT HANDBOOK

3. When a client who has been counselled in accordance with Rule 2 advises the lawyer that the client intends to offer false testimony in a proceeding, the lawyer must withdraw from representing the client in that matter, in accordance with Chapter 10.

[amended 09/06]

4. A lawyer who withdraws under Rule 3 must not disclose to the court or tribunal, or to any other person, the fact that the withdrawal was occasioned by the client's insistence on offering false testimony.

[amended 09/06]

5. A lawyer must not call as a witness in a proceeding a person who has advised the lawyer that the witness intends to offer false testimony.

[amended 09/06]

Inconsistent statements or testimony

6. Mere inconsistency in a client's or witness's statements or testimony, or between two proffered defences, is insufficient to support the conclusion that the person will offer or has offered false testimony. However, when such inconsistency exists, the lawyer must explore the inconsistency with the client or witness at the first available opportunity. If, based on that enquiry, the lawyer is certain that the client or witness intends to offer false testimony, the lawyer must comply with Rules 2 to 5. Otherwise, the lawyer is entitled to proceed, leaving it to the court or tribunal to assess the truth or otherwise of the client's or witness's statements or testimony.

[amended 09/06]

Duty to withdraw

7. When a client wishes to adopt a course prohibited by this Chapter, the lawyer must do everything reasonably possible to prevent it.

[amended 09/06]

8. If, despite the lawyer's actions under Rule 7, the client does anything prohibited under this Chapter, the lawyer must withdraw from representing the client, subject to Rules 2 to 5 and in accordance with Chapter 10.

[amended 09/06]

The lawyer as witness

9. A lawyer who gives *viva voce* or affidavit evidence in a proceeding must not continue to act as counsel in that proceeding unless
- (a) the evidence relates to a purely formal or uncontroverted matter, or
 - (b) it is necessary in the interests of justice.

[amended 09/06]

10. A lawyer who was a witness in proceedings must not appear as advocate in any appeal from the decision in those proceedings, when the lawyer's evidence may reasonably be expected to be an issue on the appeal.

[amended 09/06]

Interviewing witnesses

11. [rescinded 05/96]

12. There is no property in a witness, and a lawyer may properly seek information from any potential witness, whether or not the witness is under subpoena.

This Rule is subject to Rules 12.1 to 17 when the lawyer has an interest in the proceeding or represents a client who has an interest in the proceeding.

[amended 05/96; 12/99]

- 12.1 If a lawyer knows that a potential witness is represented in the proceeding by another lawyer, the lawyer must:

- (a) notify the other lawyer before contacting the potential witness, and
- (b) if the potential witness is a party to the proceeding, make no contact except through or with the consent of the other lawyer.

[added 05/96]

- 12.2 A lawyer must disclose to a potential witness the lawyer's interest in the proceeding before seeking any information from him or her.

[added 05/96]

- 12.3 In contacting a potential witness, a lawyer must take care not to:

- (a) subvert or suppress any evidence, or
- (b) procure the witness to stay out of the way.

[added 05/96]

PROFESSIONAL CONDUCT HANDBOOK

13. A lawyer must not advise a person, who is a potential witness on behalf of the lawyer's client, that the person must not communicate with an opposing party or with that party's counsel.

[amended 12/99]

Contacting an opponent's expert

14. A lawyer acting for one party must not question an opposing party's expert on matters properly protected by the doctrine of legal professional privilege, unless the privilege has been waived.

[amended 12/99]

15. Before contacting an opposing party's expert, the lawyer must notify the opposing party's counsel of the lawyer's intention to do so.

[amended 12/99]

16. When a lawyer contacts an opposing party's expert in accordance with Rules 14 and 15, the lawyer must, at the outset:

- (a) state clearly for whom the lawyer is acting, and that the lawyer is not acting for the party who has retained the expert, and
- (b) raise with the expert whether the lawyer is accepting responsibility for payment of any fee charged by the expert arising out of the lawyer's contact with the expert.

[amended 09/06]

17. In Rules 14 to 16, "lawyer" includes a lawyer's agent.

Duties of prosecutor

18. When engaged as a prosecutor the lawyer's prime duty is not to seek a conviction, but to see that justice is done. 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 to an unrepresented accused of all relevant facts and known witnesses, whether tending to show guilt or innocence, or that would affect the punishment of the accused.²

[amended 03/04]

Judicial interim release

19. A lawyer must not act as surety for, deposit the lawyer's own money or other valuable security for or act in a supervisory capacity to an accused person for whom the lawyer acts.³

[amended 12/07]

Representation of an accused on guilty plea

20. A lawyer may represent an accused on a guilty plea provided that the accused:
- (a) admits to all the factual elements of the offence, and
 - (b) is competent to instruct the lawyer.

Role in without notice proceedings

21. In without notice proceedings, a lawyer must inform the court or tribunal of all material facts known to the lawyer that will enable the court or tribunal to make an informed decision, even if the facts are adverse to the interests of the lawyer's client.

[heading and rule amended 09/06]

Former judge or master

22. A lawyer who has served as a judge or master in any court must not use any judicial title or otherwise allude to the lawyer's former status in addressing any court as counsel.

[added effective 05/98]

Public representations

23. A lawyer must not:
- (a) comment publicly on the validity, worth or probable outcome of a legal proceeding in which the lawyer acts, or
 - (b) state publicly that the lawyer speaks on behalf of the legal profession unless the lawyer has been expressly authorized to state the official position of the legal profession.

[moved from Chapter 14, Rule 6 05/09]

PROFESSIONAL CONDUCT HANDBOOK

24. Before making a public statement concerning a client's affairs, a lawyer must be satisfied that any communication is in the best interests of the client and made with the client's consent.⁴

[moved from Chapter 14, Rule 6.1 05/09]

FOOTNOTES:

1. The Supreme Court of Canada in *R. v. Lyttle*, [2004] 1 S.C.R. 193 reviewed the question of what foundation counsel must have before cross-examining a witness on an issue and concluded that a lawyer may pursue any hypothesis that is honestly advanced on the strength of reasonable inference, experience or intuition.

[added 09/07]

2. In view of the policy, legal and constitutional considerations that favour permitting prosecutors to function independently, this rule is not intended to interfere with the proper exercise of a prosecutor's discretion. See *Krieger v. Law Society of Alberta*, [2002] 3 S.C.R. 372 and other cases.

[added 03/04; renumbered 09/07]

3. This rule does not apply when the accused is in a family relationship with the lawyer and the accused is represented by the lawyer's partner or associate.

[added 12/07]

4. The lawyer owes a duty to the client to be qualified to represent the client effectively before the public and not to permit any personal interest or other cause to conflict with the client's interests.

[moved from Chapter 14 05/09]

CHAPTER 9

FEES

Definition

- 0.1 In this chapter, **“another lawyer”** includes a lawyer who is:
- (a) a member of a recognized legal profession in any other jurisdiction, and
 - (b) acting in compliance with the law and any rules of the legal profession of the other jurisdiction.

[added 03/2004]

Excessive fees

1. A lawyer must not charge an excessive fee.

[amended 03/2004]

Referral fees

2. A lawyer must not:
- (a) pay any remuneration to a person, other than another lawyer, in exchange for that person referring a client to the lawyer, or
 - (b) act for a client if, to the lawyer’s knowledge, a person other than another lawyer was paid any remuneration by the client in exchange for being referred to the lawyer.

[amended 05/1998; 03/2004]

3. A lawyer acting for a client who was referred to the lawyer by another lawyer may pay that other lawyer remuneration for the referral only if, at the commencement of the retainer, the lawyer fully discloses the remuneration to the client and the client consents in writing to its payment.

[amended 03/2004]

PROFESSIONAL CONDUCT HANDBOOK

Prepaid legal services plan

4. 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.

[amended 03/2004]

Apportionment of fees

5. A lawyer who acts for two or more clients in the same matter must apportion the fees and disbursements equitably among them, in the absence of an agreement to the contrary.

[amended 03/2004]

Sharing fees

6. Subject to Rule 6.1, a lawyer must not split, share or divide a client's fee with any person other than another lawyer.¹

[amended 05/1998; 03/2004; 12/2009, effective 07/2010]

- 6.1 A lawyer permitted to practise in a multi-disciplinary practice (MDP) under the Rules may share fees, profits or revenue from the practice of law in the MDP with a non-lawyer member of the MDP only if all the owners of the MDP are individuals or professional corporations² actively involved in the MDP's delivery of legal services to clients or in the management of the MDP.³

[added 12/2009, effective 07/2010]

Hidden fees

7. A lawyer must fully disclose, to the client or to any other person who is paying part or all of the lawyer's fee, any fee that is being charged or accepted.

[amended 03/2004]

8. A lawyer must take no fee, reward, costs, commission, interest, rebate, agency or forwarding allowance or other compensation whatsoever related to the lawyer's professional employment from anyone other than the client or the person who is paying part or all of the lawyer's fee on behalf of the client, without full disclosure to and consent of the client or that other person.

[amended 03/2004]

FEES

9. A lawyer who is financially interested in the person to whom disbursements are made or by whom services are performed, such as an investigating, brokerage or copying company, must expressly disclose this fact to the client.

[amended 03/2004]

FOOTNOTES:

1. This provision does not prohibit a lawyer from paying an employee for services other than referring clients based on the revenue of the lawyer's firm or practice.

[added 05/1998]

2. See the definition of "professional corporation" in Rule 1 of the Law Society Rules.

[added 12/2009, effective 07/2010]

3. This rule also allows a lawyer to share fees or profits of an MDP with a non-lawyer for the purpose of paying out the ownership interest of the non-lawyer acquired by the non-lawyer's active participation in the MDP's delivery of services to clients or in the management of the MDP.

See also the definition of "**MDP**" in Rule 1 and Rules 2-23.1 to 2-23.12 of the Law Society Rules.

[added 12/2009, effective 07/2010]

[This page is intentionally left blank.]

CHAPTER 10

WITHDRAWAL

Definition

- 0.1 In this Chapter, to “**withdraw**” includes to
- (a) sever the solicitor-client relationship, or
 - (b) withdraw as counsel.

[added 03/2005]

Obligatory withdrawal

1. A lawyer is required to sever the solicitor-client relationship or withdraw as counsel if:
- (a) discharged by the client,
 - (b) instructed by the client to do something inconsistent with the lawyer’s professional responsibility, including the duty to the court,
 - (c) the client takes a position solely to harass or maliciously injure another,
 - (d) the lawyer’s continued involvement will place the lawyer in a conflict of interest, or
 - (e) the lawyer is not competent to handle the matter.

[amended 03/2005]

Optional withdrawal

2. A lawyer is permitted, but is not required, to withdraw if there has been a serious loss of confidence between the lawyer and client.¹

[amended 03/2005]

PROFESSIONAL CONDUCT HANDBOOK

Residual right to withdraw

3. In situations not covered by Rules 1 and 2, a lawyer may withdraw only if the withdrawal is not:

- (a) unfair to the client, or
- (b) done for an improper purpose.

[amended 03/2005]

4. Unfairness to the client depends on the circumstances of each case, but normally includes consideration of whether the withdrawal would:

- (a) occur at a stage in the proceedings requiring the client to retain another lawyer to do the same work, or part of it, again,
- (b) leave the client with insufficient time to retain another lawyer, and
- (c) give a replacement lawyer insufficient time to prepare to represent the client.

[amended 03/2005]

5. Impropriety depends on the circumstances of each case, but includes withdrawal in order to:

- (a) delay court proceedings, or
- (b) assist the client in effecting an improper purpose.

[amended 03/2005]

Withdrawal for non-payment of fee

6. If a lawyer and client agree that the lawyer will act only if the lawyer's fee is paid in advance, the lawyer must confirm that agreement in writing to the client, specifying a payment date.

[amended 03/2005]

7. A lawyer must not withdraw because the client has not paid the lawyer's fee when due unless there is sufficient time for the client to obtain the services of another lawyer and for that other lawyer to prepare adequately for a hearing or trial.

[amended 03/2005; 09/2010]

WITHDRAWAL

Procedure for withdrawal

8. Upon withdrawal, the lawyer must immediately:
 - (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) notify in writing the court registry where the lawyer's name appears as counsel for the client that the lawyer has withdrawn and, where applicable, comply with any other requirements of the tribunal,²
 - (c) notify in writing all other parties, including the Crown where appropriate, of the severance or withdrawal,
 - (d) account to the client for:
 - (i) any money received for fees or disbursements, and
 - (ii) any valuable property held on behalf of the client, and
 - (e) take all reasonable steps to assist in the transfer of the client's file.

[amended 03/2005; 09/2010]

Confidentiality

9. Subject to exceptions permitted by law,³ if the reason for withdrawal results from confidential communications between the lawyer and the client the lawyer must not disclose the reason for the withdrawal unless the client consents.

[amended 03/2005; 09/2010]

Limited retainer

10. A lawyer who acts for a client only in a limited capacity must promptly disclose the limited retainer to the court and to any other interested person in the proceeding, if failure to disclose would mislead the court or that other person.

[amended 03/2005]

PROFESSIONAL CONDUCT HANDBOOK

FOOTNOTES:

1. Examples of circumstances to which this rule may apply include circumstances in which a client has:
 - (a) deceived the lawyer,
 - (b) refused to give adequate instructions to the lawyer, or
 - (c) refused to accept and act upon the lawyer's advice on a significant point.

[added 03/2005]

2. In criminal matters, if withdrawal is a result of non-payment of the lawyer's fees, the court may exercise its discretion to refuse to allow the withdrawal. The court's order refusing counsel's withdrawal may be enforced by the court's contempt power. See *R. v. Cunningham*, 2010 SCC 10.

The relationship between a lawyer and client is contractual in nature, and the general rules respecting breach of contract and repudiation apply. Except in criminal matters involving non-payment of fees, if a lawyer decides to withdraw as counsel in a proceeding, the court has no jurisdiction to prevent the lawyer from doing so, and the decision to withdraw is not reviewable by the court, subject to its authority to cite a lawyer for contempt if there is evidence that the withdrawal was done for some improper purpose. Otherwise, the decision to withdraw is a matter of professional responsibility, and a lawyer who withdraws in contravention of this Chapter is subject to disciplinary action by the Benchers. See *Re Leask and Cronin* (1985), 66 BCLR 187 (SC). In civil proceedings the lawyer is not required to obtain the court's approval before withdrawing as counsel, but must comply with the Rules of Court before being relieved of the responsibilities that attach as "solicitor acting for the party." See *Luchka v. Zens* (1989), 37 BCLR (2d) 127 (CA).

[deleted 04/2004; footnote 1 renumbered footnote 2 03/2005; amended 09/2010]

3. One such exception is that set out in *R. v. Cunningham*, 2010 SCC 10, which establishes that, in a criminal case, if the disclosure of information related to the payment of the lawyer's fees is unrelated to the merits of the case and does not prejudice the accused, the lawyer may properly disclose such information to the court. See para. 31:

Disclosure of non-payment of fees in cases where it is unrelated to the merits and will not cause prejudice to the accused is not an exception to privilege, such as the innocence at stake or public safety exceptions (see generally *R. v. McClure*, 2001 SCC 14 and *Smith v. Jones*, [1999] 1 S.C.R. 455). Rather, non-payment of legal fees in this context does not attract the protection of solicitor-client privilege in the first place. However, nothing in these reasons, which address the application, or non-application, of solicitor-client privilege in disclosures to a court, should be taken as affecting counsel's ethical duty of confidentiality with respect to payment or non-payment of fees in other contexts.

[added 09/2010]

CHAPTER 11

RESPONSIBILITY TO OTHER LAWYERS

1 – 4. [Rescinded 09/94 — see Chapter 2]

Fulfilling professional commitments

5. A lawyer must be punctual in fulfilling all professional commitments.

[amended 09/07]

Responding to correspondence from other lawyers

6. A lawyer must reply reasonably promptly to any communication from another lawyer that requires a response.

[amended 09/07]

Undertakings and trust conditions

7. A lawyer must

- (a) not give an undertaking that cannot be fulfilled,
- (b) fulfil every undertaking given, and
- (c) scrupulously honour any trust condition once accepted.

[amended 09/95]

7.1 Undertakings and trust conditions should be

- (a) written, or confirmed in writing, and
- (b) unambiguous in their terms.

[added 09/95]

Trust cheques

8. Except in the most unusual and unforeseen circumstances, which the lawyer must justify, a lawyer who withdraws or authorizes the withdrawal of funds from a trust account by cheque undertakes that the cheque

- (a) will be paid, and
- (b) is capable of being certified if presented for that purpose.¹

[amended 09/95; 06/99; footnote added 09/07]

Real estate transactions

- 8.1 If a lawyer acting for a purchaser of real property accepts the purchase money in trust and receives a registrable conveyance from the vendor in favour of the purchaser, then the lawyer is deemed to have undertaken to pay the purchase money to the vendor on completion of registration.

[added 09/95]

Conditional undertakings

9. If a lawyer gives an undertaking conditional on something else happening or in respect of which the lawyer does not intend to accept personal responsibility, this must be stated clearly in the undertaking itself.

[amended 09/95]

Imposed undertakings

10. A lawyer must not impose on other lawyers impossible, impractical or manifestly unfair conditions of trust.

[amended 09/95]

11. If a lawyer is unable or unwilling to honour a trust condition imposed by someone else, the subject of the trust condition must be immediately returned to the person imposing the trust condition unless its terms can be forthwith amended in writing on a mutually agreeable basis.

[amended 09/95]

Proceeding in default

12. A lawyer who knows that another lawyer has been consulted in a matter must not proceed by default in the matter without inquiry and reasonable notice.

[amended 09/07]

Acting against another lawyer

13. A lawyer must 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.

[amended 09/07]

Tape recording and monitoring conversations

14. Even if it is lawful to do so, a lawyer must not:

- (a) use, or permit another person to use, a tape recorder or other device to record, or
- (b) permit anyone to listen to,

the statements of another lawyer with whom the lawyer is having a conversation, without first informing the other lawyer of the intention to do so.

[amended 09/2007]

14.1 Rule 14 does not apply if the lawyer has reasonable grounds to believe that, during the conversation, the other lawyer will commit or indicate an intention to commit a criminal offence.

[added 09/2007]

Threatening to report another lawyer

15. A lawyer must not threaten to report another lawyer's past illegal or unprofessional conduct to the Law Society.²

[amended 09/2007]

16 to 21. [moved to Chapter 3, Rules 6 to 12 04/2010]

Restrictive covenants

22. A lawyer or a law firm must not require, as a condition of employment of an articulated student, agreement to a restrictive covenant limiting either in time or distance the freedom of the articulated student to engage in practice upon the termination of such employment.

[amended 09/2007]

FOOTNOTES:

- 1. Unless funds are to be paid under an agreement that specifically requires another form of payment or payment by another person, a lawyer must not refuse to accept another lawyer's uncertified cheque for the funds. It is not improper for a lawyer, at his or her own expense, to have another lawyer's cheque certified.

[added 09/2007]

PROFESSIONAL CONDUCT HANDBOOK

2. The duty to report another lawyer to the Law Society under Chapter 13 must be clearly distinguished from the situation where a lawyer threatens to report another lawyer. It is proper for a lawyer to forewarn another lawyer, where an illegality or a violation of a standard of professional responsibility contained in this *Handbook* has not yet occurred, that the other lawyer will be reported to the Law Society if the illegal or unprofessional conduct occurs. It is improper, however, for a lawyer to threaten to report another lawyer for the latter's past illegal or unprofessional conduct. There is a risk that the threatening lawyer will use the threat, or the threatened lawyer will perceive the threat being made, for the purpose of gaining an advantage for the threatening lawyer or his or her client. A lawyer must not use the Law Society's disciplinary machinery to coerce another lawyer into a course of conduct.

It is proper for a lawyer who reasonably believes that another lawyer has committed an illegality or unprofessional conduct, to draw to the latter's attention the specific provision of this *Handbook* or other authority proscribing such conduct.

[renumbered 09/1994; 09/2007]

CHAPTER 12

SUPERVISION

Direct supervision required

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.¹

[rescinded and replaced 06/2012]

Definitions

2. In this Chapter,

“designated paralegal” means an individual permitted under rule 6 to give legal advice and represent clients before a court or tribunal

“non-lawyer” means an individual who is neither a lawyer nor an articulated student;

“paralegal” means a non-lawyer who is a trained professional working under the supervision of a lawyer.

[rescinded and replaced 06/2012]

Delegation

3. A lawyer must not permit a non-lawyer to:
 - (a) accept new matters 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;
 - (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 supporting 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;

PROFESSIONAL CONDUCT HANDBOOK

- (h) be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer's law firm, unless the non-lawyer is an employee of the lawyer or the law firm;
- (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) issue statements of account.

[rescinded and replaced 06/2012]

4. The limitations imposed by subrule (3) do not apply when a non-lawyer is
- (a) a community advocate funded and designated by the Law Foundation;
 - (b) a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and
 - (c) with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.

[rescinded and replaced 06/2012]

5. A lawyer may employ as a paralegal a person who
- (a) possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;

SUPERVISION

- (b) possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and
- (c) carries out his or her work in a competent and ethical manner.²

[rescinded and replaced 06/2012]

5.1 [rescinded 06/2012]

6. Despite Rule 3 and subject to the Law Society Rules, where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal

- (a) to give legal advice; or
- (b) to represent clients before a court or tribunal, as permitted by the court or tribunal.

[rescinded and replaced 06/2012]

7 to 9. [rescinded 06/2012]

Real estate assistants

10. In Rules 10 to 12,

“**purchaser**” includes a lessee or person otherwise acquiring an interest in a property;

“**sale**” includes lease and any other form of acquisition or disposition;

“**show,**” in relation to marketing real property for sale, includes:

- (a) attending at the property for the purpose of exhibiting it to members of the public;
- (b) providing information about the property, other than preprinted information prepared or approved by the lawyer; and
- (c) conducting an open house at the property.

[added 10/2004]

11. A lawyer may employ an assistant in the marketing of real property for sale in accordance with this chapter, provided:

- (a) the assistant is employed in the office of the lawyer; and
- (b) the lawyer personally shows the property.

[added 10/2004]

12. A real estate marketing assistant may:

- (a) arrange for maintenance and repairs of any property in the lawyer’s care and control;
- (b) place or remove signs relating to the sale of a property;

PROFESSIONAL CONDUCT HANDBOOK

- (c) attend at a property without showing it, in order to unlock it and let members of the public, real estate licensees or other lawyers enter; and
- (d) provide members of the public with preprinted information about the property prepared or approved by the lawyer.

[added 10/2004]

FOOTNOTES:

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. A lawyer must limit the number of non-lawyers that he or she supervises to ensure that there is sufficient time available for adequate supervision of each non-lawyer.

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.

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 a provincial legal aid plan 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.

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 generally 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.

[rescinded and replaced 06/2012]

2. A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner.

In arriving at this determination, lawyers should be guided by Appendix 7.

Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

[added 06/2012]

CHAPTER 13

RESPONSIBILITY TO THE LAW SOCIETY

Reporting another lawyer to the Law Society

1. Subject to Rule 2, a lawyer must report to the Law Society another lawyer's:
 - (a) breach of undertaking that has not been consented to or waived by the recipient of the undertaking,
 - (b) shortage of trust funds,¹ and
 - (c) other conduct that raises a substantial question as to the other lawyer's honesty or trustworthiness as a lawyer.

[amended 05/2004]

2. In making a report under Rule 1, a lawyer must not disclose any confidential information respecting the lawyer's client acquired in the course of the professional relationship or any privileged communications between them, unless the client expressly or implicitly consents.

[amended 05/2004]

Regulatory compliance

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

[amended 05/2004; 11/2010]

The Law Society's disciplinary and competence procedures

4. A lawyer must not use the Law Society's disciplinary and competence procedures, or suggest to a client that such procedures be used, vexatiously or solely to further the client's civil claim against another lawyer.

[amended 05/2004]

Associating with a person whose character and fitness are in question

5. Except with the written approval of the Law Society, a lawyer must not employ, retain or otherwise associate in any capacity having to do with the practice of law with a person who, in any jurisdiction:
 - (a) is suspended from the practice of law,
 - (b) is disbarred,
 - (c) as a result of disciplinary proceedings, is no longer permitted to practise law,
 - (c.1) failed to complete a Bar admission program for reasons relating to lack of good character and repute or fitness to be a member of the Bar,
 - (d) has been the subject of a hearing ordered, whether commenced or not, with respect to an application for enrolment as an articulated student, call and admission or reinstatement, unless the person was subsequently enrolled, called and admitted or reinstated in the same jurisdiction, or
 - (e) was required to withdraw or was expelled from a Bar admission program.

[amended 07/1997; 05/2004; heading and rule amended 12/2009, effective 07/2010]

Apparent partnerships and associations

6. Any lawyer held out as practising in partnership or association with one or more lawyers has the same professional responsibilities to the general public, other lawyers and to the Law Society, for the actions of any lawyer or lawyers with whom he or she is practising in an apparent partnership or association, as the lawyer would have if carrying on practice with such lawyer or lawyers in a partnership.

[amended 05/2004]

FOOTNOTE:

1. Law Society Rule 3-66 imposes additional duties on lawyers respecting their own trust shortages or their inability to deliver up trust funds when due.

[updated 12/1999; amended 05/2004]

CHAPTER 14

MARKETING OF LEGAL SERVICES

Application of Chapter

1. This Chapter applies to any marketing activity undertaken or authorized by a lawyer in which he or she is identified as a lawyer, mediator or arbitrator.

[amended effective 05/98]

Definitions

2. In this Chapter:

“lawyer” includes a member of the Law Society, and a person enrolled in the Law Society Admission Program; and

“marketing activity” includes any publication or communication in the nature of an advertisement, promotional activity or material, letterhead, business card, listing in a directory, public appearance or any other means by which professional legal services are promoted or clients are solicited.

[amended effective 01/00; amended 10/04; 05/09]

3. [rescinded 05/09]

Content and format of marketing activities

4. Any marketing activity undertaken or authorized by a lawyer must not be:
 - (a) false,
 - (b) inaccurate,
 - (c) unverifiable,
 - (d) reasonably capable of misleading the recipient or intended recipient, or
 - (e) contrary to the best interests of the public.

[amended 05/09]

4.1 and 4.2 [rescinded 05/09]

PROFESSIONAL CONDUCT HANDBOOK

Examples

5. For example, a marketing activity violates Rule 4 if it:
- (a) is calculated or likely to take advantage of the vulnerability, either physical or emotional, of the recipient,
 - (b) is likely to create in the mind of the recipient or intended recipient an unjustified expectation about the results which the lawyer can achieve, or
 - (c) otherwise brings the administration of justice into disrepute.

[amended effective 01/00; amended 11/02; 05/09]

6. [moved to Chapter 4, Rule 8 and Chapter 8, Rule 23 05/09]

- 6.1 [moved to Chapter 8, Rule 24 05/09]

- 7 and 7.1 [moved to Law Society Rule 2-54 05/09]

Former firm of current judge or master

- 7.2 A lawyer must not state on any letterhead or business card or in any other marketing activity the name of a judge or master as being a predecessor or former member of the lawyer's firm.

[added effective 05/98]

Notary Public

8. A lawyer who, on any letterhead, business card or sign, or in any other marketing activity:
- (a) uses the term "Notary," "Notary Public" or any similar designation, or
 - (b) in any other way represents to the public that the lawyer is a notary public,
- must also indicate in the same publication or marketing activity the lawyer's status as a lawyer.

[amended 10/04]

9. [rescinded 05/09]

Designation

10. A lawyer must not list a person not entitled to practise law in British Columbia on any letterhead or in any other marketing activity without making it clear in the marketing activity that the person is not entitled to practise law in British Columbia.

In particular, a person who fits one or more of the following descriptions must not be listed without an appropriate indication of the person's status:

- (a) a retired member,
- (a.1) a non-practising member,
- (b) a deceased member,
- (c) an articled student,
- (d) a legal assistant or paralegal,
- (e) a patent agent, if registered as such under the *Patent Act*,
- (f) a trademark agent, if registered as such under the *Trade-marks Act*,
- (g) a practitioner of foreign law, if that person holds a valid permit issued under Law Society Rule 2-18, or
- (h) a qualified member of another profession, trade or occupation, provided that the lawyer and the other person are members of a multi-disciplinary practice (MDP)¹ permitted under the Rules.

[amended 03/1994; updated 12/1999; amended 06/2001; 05/2009; 12/2009, effective 07/2010]

11 to 13.1, 14 and 15. [rescinded 05/2009]

Preferred areas of practice

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

[amended effective 01/2000; amended 05/2009]

17. [rescinded 05/09]

Specialization

18. Unless otherwise authorized by the *Legal Profession Act*, the Rules, or this *Handbook* or by the Benchers, a lawyer must:

- (a) not use the title "specialist" or any similar designation suggesting a recognized special status or accreditation in any marketing activity, and

PROFESSIONAL CONDUCT HANDBOOK

- (b) take all reasonable steps to discourage use, in relation to the lawyer by another person, of the title “specialist” or any similar designation suggesting a recognized special status or accreditation in any marketing activity.

[amended effective 01/2000; amended 05/2009]

19. [moved to Law Society Rule 3-20 05/2009]

20 and 21. [rescinded 05/2009]

Real estate sales

22. When engaged in marketing of real property for sale or lease, a lawyer must include in any marketing activity:

- (a) the name of the lawyer or the lawyer’s firm, and
- (b) if a telephone number is used, only the telephone number of the lawyer or the lawyer’s firm.

[added 10/2004]

Multi-disciplinary practice

23. Unless permitted to practise law in an MDP under the Law Society Rules, a lawyer must not, in any marketing activity

- (a) use the term multi-disciplinary practice or MDP, or
- (b) state or imply that the lawyer’s practice or law firm is an MDP.

[added 12/2009, effective 07/2010]

24. A lawyer practising law in an MDP must ensure that all marketing activity for the firm indicates that the firm is an MDP.

[added 12/2009, effective 07/2010]

FOOTNOTE:

- 1 See the definition of “**MDP**” in Rule 1 and Rules 2-23.1 to 2-23.12 of the Law Society Rules. The definition of “**member of an MDP**” in Rule 2-23.1 applies in the context of this chapter.

[added 12/2009, effective 07/2010]

[The next page is page 49.]

APPENDIX 1

AFFIDAVITS, SOLEMN DECLARATIONS AND OFFICER CERTIFICATIONS

[Chapter 3, Rule 1(b)]

Affidavits and solemn declarations

1. A lawyer¹ must not swear an affidavit or take a solemn declaration unless the deponent:
 - (a) is physically present before the lawyer,²
 - (b) acknowledges that he or she is the deponent,³
 - (c) understands or appears to understand the statement contained in the document,⁴
 - (d) in the case of an affidavit, swears, declares or affirms⁵ that the contents of the document are true,⁶
 - (e) in the case of a solemn declaration, orally states that the deponent makes the solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath,⁷ and
 - (f) signs the document, or if permitted by statute, swears that the signature on the document is that of the deponent.⁸

[amended 10/97]

Witnessing the execution of an instrument

2. When a lawyer⁹ witnesses the execution of an instrument by an individual under the *Land Title Act*, RSBC 1996, c. 250, the lawyer's signature is a certification by the lawyer that:
 - (a) the individual appeared before and acknowledged to the lawyer that he or she is the person named in the instrument as transferor, and
 - (b) the signature witnessed by the lawyer is the signature of the individual who made the acknowledgment. (See section 43 of the *Land Title Act*.)

[amended 10/97]

FOOTNOTES

1. **Non-practising and retired members**

Non-practising and retired members are not permitted to act as notaries public or commissioners for the purpose of taking affidavits or solemn declarations. See Law Society Rules 2-3 and 2-4 for the definitions of non-practising and retired members.

Interjurisdictional practice

A British Columbia lawyer, as a notary public, may administer oaths and take affidavits, declarations and affirmations only within British Columbia: See section 14 of the *Legal Profession Act* for a lawyer's right to act as a notary public, and section 18 of the *Notaries Act*, RSBC 1996, c. 334 for rights and powers of a notary public, including the right to draw affidavits, affirmations or statutory declarations for other jurisdictions.

A British Columbia lawyer, as a commissioner for taking affidavits for British Columbia, has authority to administer oaths and take affidavits, declarations and affirmations outside of BC *for use in BC*: See sections 59, 63 and related sections of the *Evidence Act*, RSBC 1996, c.124.

Notwithstanding Law Society mobility provisions across Canada, a British Columbia lawyer cannot swear an affidavit in another province or territory for use in that jurisdiction unless the lawyer is a member of the bar in that jurisdiction or the jurisdiction's own legislation allows it. For example, because of Alberta legislation, a member of the Law Society of British Columbia, while in Alberta acting under the mobility provisions on an Alberta matter, cannot swear an affidavit for use in Alberta.

British Columbia lawyers should contact the law society of the other province or territory if they need to check whether they are entitled to swear an affidavit in that jurisdiction.

Likewise, lawyers from other jurisdictions visiting British Columbia may not swear affidavits in BC for use in BC: See section 60 of the *Evidence Act* and the definition of "practising lawyer" in section 1(1) of the *Legal Profession Act*.

[added 10/97; amended 07/05]

2. See *R. v. Schultz*, [1922] 2 WWR 582 (Sask. CA) in which the accused filled in and signed a declaration and left it on the desk of a commissioner for taking oaths, later meeting the commissioner outside and asking him to complete it. The court held that it was not a solemn declaration within the meaning of the *Canada Evidence Act*, stating that: "The mere fact that it was signed by the accused does not make it a solemn declaration. The written statement by the commissioner that it was 'declared before him' is not true. The essential requirement of the *Act* is not the signature of the declarant but his solemn declaration made before the commissioner." (p. 584) Likewise, it has been held in the U.S. that the taking of an affidavit over the telephone is grounds for a charge of negligence and professional misconduct: *Bar Association of New York City v. Napolis* (1915), 155 N.Y. Sup. 416 (N.Y. Sup. Ct. App. Div.). In B.C., the conduct of a lawyer who affixed his name to the jurat of the signed affidavit without ever having seen the deponent constituted professional misconduct: *Law Society Discipline Case Digest* 83/14.

[amended and renumbered 10/97]

3. The commissioner should be satisfied that the deponent is who the deponent represents himself or herself to be. Where the commissioner does not know the deponent personally, identification should be inspected and/or appropriate introductions should be obtained.

[added 10/97]

4. To be satisfied of this, the commissioner may read the document aloud to the deponent, have the deponent read it aloud or accept the deponent's statement that its contents are understood: *R. v. Whynot* (1954), 110 CCC 35 at 42 (NSCA).

It is also important that the deponent understands the significance of the oath or declaration he or she is proposing to take. See *King v. Phillips* (1908), 14 CCC 239 (B.C. Co. Ct.); *R. v. Nichols*, [1975] 5 WWR 600 (Alta SC); and *Owen v. Yorke*, (6 December, 1984), Vancouver A843177 (BCSC).

If it appears that a deponent is unable to read the document, the commissioner must certify in the jurat that the document was read in his or her presence and the commissioner was satisfied that the deponent understood it: B.C., *Rules of Court*, Rule 51(5). If it appears that the deponent does not understand English, the lawyer must arrange for a competent interpreter to interpret the document to the deponent and certify by endorsement in Form 60 that he or she has done so: *Rules of Court*, Rule 51(6).

[amended and renumbered 10/97]

5. The British Columbia Law Reform Commission has raised the question of whether an affidavit may properly be created by solemn affirmation under provincial law. For this reason, in cases where a deponent does not want to swear an affidavit, it may be prudent to create the affidavit by solemn declaration rather than by solemn affirmation. See Appendix B to Law Reform Commission of British Columbia, *Report on Affidavits: Alternatives to Oaths* LRC 115 (1990).

[added 10/97]

6. This can be accomplished by the commissioner asking the deponent: "Do you swear that the contents of this affidavit are true, so help you God?" or, if the affidavit is being affirmed, "Do you solemnly affirm [or words with the same effect] that the evidence given by you is the truth, the whole truth and nothing but the truth?" to which the deponent must answer in the affirmative. In taking an affirmation the lawyer should comply with section 20 of the *Evidence Act*, RSBC 1996, c. 124 and the *Affirmation Regulation*, B.C. Reg. 396/89.

Section 29 of the *Interpretation Act*, RSBC 1996, c. 238, defines an affidavit or oath as follows:

"affidavit" or "oath" includes an affirmation, a statutory declaration, or a solemn declaration made under the *Evidence Act*, or under the *Canada Evidence Act*; and the word "swear" includes solemnly declare or affirm;

If an affidavit is altered after it has been sworn, it cannot be used unless it is resworn. Reswearing can be done by the commissioner initialling the alterations, taking the oath again from the deponent and then signing the altered affidavit. A second jurat should be added, commencing with the word "resworn."

Generally, an affidavit is sworn and filed in a proceeding that is already commenced. An affidavit may also be sworn before the proceeding is commenced: *Rules of Court*, Rule 51(12). However, an affidavit may not be postdated: *Re: Stanley Foo*, hearing report pending, May, 1997.

PROFESSIONAL CONDUCT HANDBOOK

Swearing to an affidavit exhibits that are not in existence can amount to professional misconduct: *Re: Stanley Foo*.

[amended and renumbered 10/97; amended 12/98]

7. The declaration should be made in the words of the statute: *King v. Phillips, supra; R. v. Whynot, supra*.

The proper form for a solemn declaration is set out in section 41 of the *Canada Evidence Act*, RSC 1985, c. C-5:

Solemn declaration

41. Any judge, notary public, justice of the peace, provincial court judge, recorder, mayor or commissioner authorized to take affidavits to be used either in the provincial or federal courts, or any other functionary authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making the declaration before him, in the following form, in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing:

I,, solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Declared before me at this day of, 19

and in section 69 of the *Evidence Act*, RSBC 1996, c. 124:

Statutory declarations

69. A gold commissioner, mayor or commissioner authorized to take affidavits, or any other person authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making it before him or her in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing, in the following words:

I, A.B., solemnly declare that [state the facts declared to], and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath.

[amended and renumbered 10/97]

8. A deponent unable to sign an affidavit may place his or her mark on it: *Rules of Court*, Rule 51(3)(b)(ii). An affidavit by a person who could not make any mark at all was accepted by the court in *R. v. Holloway* (1901), 65 JP 712 (Magistrates Ct.).

[added 10/97]

9. Non-practising and retired members are not permitted to act as officers for the purpose of witnessing the execution of instruments under the *Land Title Act*.

[added 10/97]

APPENDIX 2

FAMILY LAW MEDIATION

[Chapter 6, Rule 9]

Definitions

1. In this Appendix:
 - (a) **“family law mediation”** means a process by which two adult persons (“participants”) attempt, with the assistance of an impartial person (the family law mediator), to reach a consensual settlement of issues relating to their marriage, cohabitation, separation or divorce;
 - (b) without limiting the generality of the foregoing, “family law mediation” includes one or more of the following acts when performed by a lawyer acting as a family mediator:
 - (i) informing the participants of the legal issues involved,
 - (ii) advising the participants of a court’s probable disposition of the issue,
 - (iii) preparing any agreement between the participants other than a memorandum recording the results of the mediation,
 - (iv) giving any other legal advice.
2. [Rescinded 02/93]

Disqualifications

3.
 - (a) If a lawyer, or a partner, associate or employee of that lawyer has previously acted or is presently acting for one or both of the participants to the mediation in a solicitor-client relationship with respect to any matter which may reasonably be expected to become an issue during the family law mediation, that lawyer may not act as a family law mediator for the participants.
 - (b) If a lawyer has acted as a family law mediator for the participants, neither that lawyer, nor any partner, associate or employee of that lawyer may act in a solicitor-client relationship for either participant against the other participant.
 - (c) If a lawyer, or a partner, associate or employee of that lawyer has acted as a family law mediator for the participants, neither that lawyer, nor a partner, associate or employee of that lawyer may act for or against any person where to do so might require the lawyer to disclose or make use of confidential information given in the course of mediation.

Mediator's duties

4. A lawyer who acts as a family law mediator must ensure that if agreement is reached between the participants and as a result the lawyer drafts a document representing the agreement reached, the lawyer actively encourages each participant to obtain independent legal advice before executing the agreement.

Written agreement

5. A lawyer who acts as a family law mediator and the participants with respect of whom the lawyer mediates shall, before mediation commences, enter into a written agreement which shall include at least the following provisions:
 - (a) an agreement that the lawyer, throughout the mediation process, is not acting as legal counsel for either participant,
 - (b) an agreement that the lawyer may disclose fully to each participant all information provided by the other participant which is relevant to the issues being mediated,
 - (c) an agreement that the mediation process is part of an attempt to settle the differences between the participants and that all communications between the participants and between each participant and the mediator will be "without prejudice" so that:
 - (i) neither participant will attempt to introduce evidence of the communications in any legal proceedings,
 - (ii) neither participant will attempt to call the mediator as a witness in any legal proceedings,
 - (d) an acknowledgment that the lawyer must report to the Superintendent of Family and Child Services any instance arising from the mediation in which the lawyer has reasonable grounds to believe that a child is in need of protection,
 - (e) an agreement as to the lawyer's rate of remuneration and terms of payment,
 - (f) an agreement as to the circumstances in which mediation will terminate.

APPENDIX 3

REAL PROPERTY TRANSACTIONS

[Chapter 6, Rule 10]

Application

1. This Appendix does not apply to a real property transaction between corporations, societies, partnerships, trusts, or any of them, that are effectively controlled by the same person or persons or between any of them and such person or persons.

[amended 11/1999]

Acting for parties with different interests

2. A lawyer must not act for more than one party with different interests in a real property transaction unless:
 - (a) because of the remoteness of the location of the lawyer's practice, it is impracticable for the parties to be separately represented,
 - (b) the transaction is a simple conveyance, or
 - (c) paragraph 10 of this Appendix applies.

[renumbered 11/99]

- 2.1 When a lawyer acts jointly for more than one client in a real property transaction, the lawyer must comply with the obligations set out in Chapter 6, Rules 4, 5 and 6.

[added 05/2005]

Simple conveyance

3. In determining whether or not a transaction is a simple conveyance, a lawyer should consider:
 - (a) the value of the property or the amount of money involved,
 - (b) the existence of non-financial charges, and
 - (c) the existence of liens, holdbacks for uncompleted construction and vendor's obligations to complete construction.

[renumbered 11/1999]

4. The following are examples of transactions that may be treated as simple conveyances when paragraph 5 does not apply to exclude them:
 - (a) the payment of all cash for clear title,
 - (b) the discharge of one or more encumbrances and payment of the balance, if any, in cash,

PROFESSIONAL CONDUCT HANDBOOK

- (c) the assumption of one or more existing mortgages or agreements for sale and the payment of the balance, if any, in cash,
- (d) a mortgage that does not contain any commercial element, given by a mortgagor to an institutional lender to be registered against the mortgagor's residence, including a mortgage that is
 - (i) a revolving mortgage that can be advanced and re-advanced,
 - (ii) to be advanced in stages, or
 - (iii) given to secure a line of credit.
- (e) transfer of a leasehold interest if there are no changes to the terms of the lease,
- (f) the sale by a developer of a completed residential building lot at any time after the statutory time period for filing claims of builders' liens has expired, or
- (g) any combination of the foregoing.

[amended 11/1999; 05/2001; 03/2006]

5. The following are examples of transactions that must not be treated as simple conveyances:

- (a) a transaction in which there is any commercial element,¹ such as
 - (i) a conveyance included in a sale and purchase of a business,
 - (ii) a transaction involving a building containing more than three residential units, or
 - (iii) a transaction for a commercial purpose involving either a revolving mortgage that can be advanced and re-advanced or a mortgage given to secure a line of credit,
- (b) a lease or transfer of a lease, other than as set out in paragraph 4(e),
- (c) a transaction in which there is a mortgage back from the purchaser to the vendor,
- (d) an agreement for sale,
- (e) a transaction in which the lawyer's client is a vendor who:
 - (i) advertises or holds out directly or by inference through representations of sales staff or otherwise as an inducement to purchasers that a registered transfer or other legal services are included in the purchase price of the property, or
 - (ii) [rescinded 10/2009]

[amended 11/1999; 05/2001; 03/2006; 10/2009]

- (iii) is or was the developer of property being sold, unless paragraph 4(f) applies, or
- (f) a conveyance of residential property with substantial improvements under construction at the time the agreement for purchase and sale was signed, unless the lawyer's clients are a purchaser and a mortgagee and construction is completed before funds are advanced under the mortgage.

[amended 11/99; 05/01; 03/06]

Advice and consent

6. If a lawyer acts for more than one party in the circumstances as set out in paragraph 2 of this Appendix, then the lawyer must, as soon as is practicable,
 - (a) advise each party in writing that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned and that, if a conflict of interest arises, the lawyer cannot continue to act for any of them in the transaction,
 - (b) obtain the consent in writing of all such parties, and
 - (c) raise and explain the legal effect of issues relevant to the transaction that may be of importance to each such party.

If a written communication is not practicable at the beginning of the transaction, the advice may be given and the consent obtained orally, but the lawyer must confirm that advice to the parties in writing as soon as possible, and the lawyer must obtain consent in writing prior to completion.

The consent in writing may be set out in the documentation of the transaction or may be a blanket consent covering an indefinite number of transactions.

[amended 11/99]

Foreclosure proceedings

7. In this paragraph, "mortgagor" includes "purchaser," and "mortgagee" includes "vendor" under an agreement for sale, and "foreclosure proceeding" includes a proceeding for cancellation of an agreement for sale.

If a lawyer acts for both a mortgagor and a mortgagee in the circumstances set out in paragraph 2 of this Appendix, the lawyer must not act in any foreclosure proceeding relating to that transaction for either the mortgagor or the mortgagee.

This prohibition does not apply if

- (a) the lawyer acted for a mortgagee and attended on the mortgagor only for the purposes of executing the mortgage documentation,
- (b) the mortgagor for whom the lawyer acted is not made a party to the foreclosure proceeding, or

PROFESSIONAL CONDUCT HANDBOOK

- (c) the mortgagor has no beneficial interest in the mortgaged property and no claim is being made against the mortgagor personally.

[amended 11/99]

Unrepresented parties in a real property transaction

- 8. If one party to a real property transaction does not want or refuses to obtain independent legal representation, the lawyer acting for the other party may allow the unrepresented party to execute the necessary documents in the lawyer's presence as a witness if the lawyer advises that party in writing that:

- (a) the party is entitled to obtain independent legal representation but has chosen not to do so,
- (b) the lawyer does not act for or represent the party with respect to the transaction, and
- (c) the lawyer has not advised that party with respect to the transaction but has only attended to the execution and attestation of documents.

[amended 11/99]

- 9. If the lawyer witnesses the execution of the necessary documents as set out in paragraph 8, it is not necessary for the lawyer to obtain the consent of the party or parties for whom the lawyer acts.

[amended 11/99]

- 10. If one party to the real property transaction is otherwise unrepresented but wants the lawyer representing another party to the transaction to act for him or her to remove existing encumbrances, the lawyer may act for that party for those purposes only and may allow that party to execute the necessary documents in the lawyer's presence as witness if the lawyer advises the party in writing that:

- (a) the lawyer's engagement is of a limited nature, and
- (b) if a conflict arises between the parties, the lawyer will be unable to continue to act for that party.

[amended 11/99]

FOOTNOTE:

- 1. A transaction is not considered to have a commercial element merely because one of the parties is a corporation.

[added 05/05]

APPENDIX 4

DUTY OF LAWYER ON TERMINATION OF EMPLOYMENT

[Chapter 3, Rule 9]

1. Letter from departing lawyer

Dear Client:

Re: [Matter]

On [date], I am leaving [or left] ABC law firm to join the law firm of XYZ [or to commence practice as a sole practitioner]. As I am presently the responsible lawyer on the above matter, I am required to inform you that you may retain me (in my new capacity) to continue to represent you in this matter or you may choose to have ABC law firm continue to represent you.

If you wish to retain me to continue in this matter, arrangements to secure your account with ABC law firm will have to be made before the file can be released to me.

Please advise ABC law firm or me in writing of your decision so that continuity in your representation is assured.

Yours very truly,

2. Letter from law firm

Dear Client:

Re: [Matter]

On [date], [departing lawyer] is leaving [or left] our firm to join the law firm of XYZ [or to commence practice as a sole practitioner].

As [departing lawyer] was the responsible lawyer on the above matter, we are required to inform you that you may choose to have [departing lawyer] continue (in his/her new capacity) to represent you in this matter, or you may have our firm continue to represent you, in which case, the file will be handled by [new lawyer].

If you wish to have [departing lawyer] continue to represent you, arrangements to secure your outstanding account with us will have to be made before the file can be released to [departing lawyer].

Please advise us or [departing lawyer] in writing of your decision so that continuity in your representation is assured.

Yours very truly,

ABC Law Firm

[This page is intentionally left blank.]

APPENDIX 5

CONFLICTS ARISING AS A RESULT OF TRANSFER BETWEEN LAW FIRMS

[Chapter 6, Rules 7.1 to 7.9]

Matters to consider when interviewing a potential transferee

1. When a law firm considers hiring a lawyer or articulated student (“transferring lawyer”) from another law firm, the transferring lawyer and the new law firm need to determine, *before transfer*, whether any conflicts of interest will be created. Conflicts can arise with respect to clients of the 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.

During the interview process, the transferring lawyer and the new law firm need to identify, first, all cases in which:

- (a) the new law firm represents a client in a matter that is the same as or related to a matter in which the former law firm represents its client,
- (b) the interests of these clients in that matter conflict, and
- (c) the transferring lawyer actually possesses relevant information respecting that matter.

When these three elements exist, the transferring lawyer is personally disqualified from representing the new client unless the former client consents.

Second, they must determine whether, in each such case, the transferring lawyer actually possesses relevant information respecting the former client that is confidential and that may prejudice the former client if disclosed to a member of the new law firm.

If this element exists, then the transferring lawyer is disqualified unless the former client consents, and the new law firm is disqualified unless the firm takes measures set out in Rules 7.1 to 7.9 and Appendix 5 to preserve the confidentiality of information.

In Rules 7.1 to 7.9, “confidential” information refers to information not generally known to the public that is obtained from a client. It 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.

In determining whether the transferring lawyer possesses confidential information, both the transferring lawyer and the new law firm need to be very careful to ensure that they do not disclose client confidences during the interview process itself.

[added 02/95; amended 02/09]

Matters to consider before hiring a potential transferee

2. After completing the interview process and before hiring the transferring lawyer, the new law firm should determine whether a conflict exists.

(a) If a conflict does exist

If the new law firm concludes that the transferring lawyer does possess relevant information respecting a former client that is confidential and that may prejudice the former client if disclosed to a member of the new law firm, then the new law firm will be prohibited from continuing to represent its client in the matter if the transferring lawyer is hired, unless:

- (i) the new law firm obtains the former client's consent to its continued representation of its client in that matter, or
- (ii) the new law firm complies with paragraph 7.4(b).

If the new law firm seeks the former client's consent to the new law firm continuing to act, it will, in all likelihood, be required to satisfy the former client that it has taken reasonable measures to ensure that there will be no disclosure of the former client's confidential information to any member of the new law firm. The former client's consent must be obtained before the transferring lawyer is hired.

Alternatively, if the new law firm applies under Rule 7.8 for an opinion of the Society or a determination by a court that it may continue to act, it bears the onus of establishing the matters referred to in paragraph 7.4(b). Again, this process must be completed before the transferring lawyer is hired.

An application under Rule 7.8 may be made to the Society or to a court of competent jurisdiction. The Society has a procedure for considering disputes under Rule 7.8 that is intended to provide informal guidance to applicants.

The circumstances referred to in paragraph 7.4(b) are drafted in broad terms to ensure that all relevant facts will be taken into account.

(b) If no conflict exists

If the new law firm concludes that the transferring lawyer possesses relevant information respecting a former client, but that information is not confidential information that may prejudice the former client if disclosed to a member of the new law firm, the new law firm must notify its client "of the relevant circumstances and its intended action under Rules 7.1 to 7.9."

Although Rule 7.5 does not require that the notice be in writing, it would be prudent for the new law firm to confirm these matters in writing. Written notification eliminates any later dispute as to the fact of notification, its timeliness and content.

The new law firm might, for example, seek the former client's consent to the transferring lawyer acting for the new law firm's client in the matter because, absent such consent, the transferring lawyer must not act.

If the former client does not consent to the transferring lawyer acting, it would be prudent for the new law firm to take reasonable measures to ensure that there will be no disclosure of the former client's confidential information to any member of the new law firm. If such measures are taken, it will strengthen the new law firm's position if it is later determined that the transferring lawyer did in fact possess confidential information that, if disclosed, may prejudice the former client.

A former client who alleges that the transferring lawyer has such confidential information may apply under Rule 7.8 for an opinion of the Society or a determination by a court on that issue.

(c) If the new law firm is not sure whether a conflict exists

There may be some cases in which the new law firm is not sure whether the transferring lawyer possesses confidential information respecting a former client that may prejudice the former client if disclosed to a member of the new law firm.

In such circumstances, it would be prudent for the new law firm to seek guidance from the Society before hiring the transferring lawyer.

[added 02/95; amended 02/09]

Reasonable measures to ensure non-disclosure of confidential information

3. As noted above, there are two circumstances in which the new law firm should consider the implementation of reasonable measures to ensure that there will be no disclosure of the former client's confidential information to any member of the new law firm:
 - (a) if the transferring lawyer actually possesses confidential information respecting a former client that may prejudice the former client if disclosed to a member of the new law firm, and
 - (b) if the new law firm is not sure whether the transferring lawyer possesses such confidential information, but it wants to strengthen its position if it is later determined that the transferring lawyer did in fact possess such confidential information.

It is not possible to offer a set of "reasonable measures" that will be appropriate or adequate in every case. Rather, the new law firm that seeks to implement reasonable measures must exercise professional judgement in determining what steps must be taken "to ensure that there will be no disclosure to any member of the new law firm."

PROFESSIONAL CONDUCT HANDBOOK

In the case of law firms with multiple offices, the degree of autonomy possessed by each office will be an important factor in determining what constitutes “reasonable measures.” For example, the various legal services units of a government, a corporation with separate regional legal departments, an inter-provincial law firm or a legal aid program may be able to argue 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.

Adoption of all guidelines may not be realistic or required in all circumstances, but lawyers should document the reasons for declining to conform to a particular guideline. Some circumstances may require extra measures not contemplated by the guidelines.

When a transferring lawyer joining a government legal services unit or the legal department of a corporation actually possesses confidential information respecting a former client that may prejudice the former client if disclosed to a member of the new “law firm,” the interests of the new client (i.e., Her Majesty or the corporation) must continue to be represented. Normally, this will be effected either by instituting satisfactory screening measures or, when necessary, by referring conduct of the matter to outside counsel. As each factual situation will be unique, flexibility will be required in the application of paragraph 7.4(b).

[added 02/95; amended 02/09]

GUIDELINES:

1. The screened lawyer should have no involvement in the new law firm’s representation of its client.
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 prior representation with the screened lawyer.

4 to 6. [rescinded 02/09]

7. The measures taken by the new law firm to screen the transferring lawyer should be stated in a written policy explained to all lawyers and support staff within the firm, supported by an admonition that violation of the policy will result in sanctions, up to and including dismissal.

8. [rescinded 02/09]

CONFLICTS ARISING AS A RESULT OF TRANSFER BETWEEN LAW FIRMS

9. The former client, or if the former client is represented in that matter by a lawyer, that lawyer, should be advised:
 - (a) that the screened lawyer is now with the new law firm, which represents the current client, and
 - (b) of the measures adopted by the new law firm to ensure that there will be no disclosure of confidential information.
10. Unless to do so otherwise is unfair, insignificant or impracticable, the screened lawyer should not participate in the fees generated by the current client matter.

[amended 02/09]
11. The screened lawyer's office or work station should be located away from the offices or work stations of those working on the matter.
12. The screened lawyer should use associates and support staff different from those working on the current client matter.

[This page is intentionally left blank.]

APPENDIX 6

ACTING FOR TWO OR MORE CLIENTS

[Chapter 6, Rule 6.01]

1. Sample letter from lawyer acting jointly for two clients. Any letter must be tailored to individual circumstances.

Dear Client A and Client B:

Re: [Matter]

We confirm that we agree to act for both of you jointly with respect to this matter. Representing you jointly simply means that we will be engaged by both of you to act on the same matter at the same time. We are allowed to act jointly for clients only when their interests are not in conflict. We believe your interests are currently not in conflict; however, it is possible that your interests could diverge or even conflict in the future.

The rules of the Law Society of British Columbia require that, before we represent you jointly, we must raise certain issues with you and obtain your consent as to the course to be followed in the future if a conflict arises. The following will apply to our joint representation of you:

- (a) We owe each of you a duty of undivided loyalty. This means that we must act in each of your best interests at all times and must not favour the interests of one of you over the interests of another, or allow anything to interfere with our loyalty to each of you or our judgement on your behalf. If we are unable to fulfill this duty of undivided loyalty to each of you, we will have to withdraw.
- (b) No information we receive from one of you or from any other source with respect to this matter can be treated as confidential from either of you. This means that, as long as the joint retainer continues, we must disclose relevant information to both of you. However, should we receive information from any source that makes it clear we are in a conflict by acting for you jointly, we must cease acting for both of you in the matter. In that event, however, we would not be permitted to disclose that information to you.
- (c) If we act for one of you in a matter separate from this one, and we receive confidential information from that separate matter that is relevant to this matter, we will have to withdraw from this matter unless we receive the consent of the client in the separate matter to disclose that information.
- (d) If a conflict arises between you, we may be permitted to assist you in attempting to resolve the conflict if you so desire. If it is resolved, we may continue to represent both of you.

PROFESSIONAL CONDUCT HANDBOOK

[Lawyer when drafting letter must choose either (e) or (f) following]

- (e) If a conflict arises between you that is not resolved, then we will cease to represent both of you.

or substitute the following for (e)

- (f) If a conflict arises between you and that conflict is not resolved, we will cease to act for Client A but will continue to act for Client B if the rules permit that in the circumstances. [State reasons why lawyer would continue to act for client B. For example: “We confirm that Client B is a continuing client of this firm and is regularly represented by lawyers in this firm on different matters.”]

Although joint representation of a number of clients by a single lawyer or law firm has some advantages, there are aspects of joint representation that could lead to the potential problems we have outlined above. For that reason, we ask that you consent to the potential course of action we have outlined before we commence acting for both of you jointly. We recommend that you obtain independent legal advice before you give us that consent.

If you are satisfied that you wish us to continue to act for you on the basis outlined above, please sign the enclosed duplicate copy of this letter and return it to us.

Yours very truly,

2. Sample letter from lawyer acting jointly for more than two clients. Any letter must be tailored to individual circumstances.

Dear Client A, Client B and Client C:

Re: [Matter]

We confirm that we agree to act for all of you jointly with respect to this matter. Representing you jointly simply means that we are engaged by all of you to act on the same matter at the same time. We are allowed to act jointly for clients when their interests are not in conflict. We believe your interests are currently not in conflict; however, it is possible that your interests could diverge or even conflict in the future.

The rules of the Law Society of British Columbia require that, before we represent clients jointly, we must raise certain issues with you and obtain your consent as to the course to be followed in the future if a conflict arises. The following will apply to our joint representation of all of you:

- (a) We owe each of you a duty of undivided loyalty. This means that we must act in each of your best interests at all times and must not favour the interests of one of you over the interests of another, or allow anything to interfere with our loyalty to each of you or our judgement on your behalf. If we are unable to fulfill this duty of undivided loyalty to each of you, we will have to withdraw.

ACTING FOR TWO OR MORE CLIENTS

- (b) No information we receive from one of you or from any other source with respect to this matter can be treated as confidential from the others. This means that, as long as the joint retainer continues, we must disclose relevant information to all of you. However, should we receive information from any source that makes it clear we are in a conflict by acting for you jointly, we must cease acting for all of you in the matter. In that event, however, we would not be permitted to disclose that information to you.
- (c) If we act for one of you in a matter separate from this one, and we receive confidential information from that separate matter that is relevant to this matter, we will have to withdraw from this matter unless we receive the consent of the client in the separate matter to disclose that information.
- (d) If a conflict arises among any of you, we may be permitted to assist you in attempting to resolve the conflict if you so desire. If it is resolved, we may continue to represent all of you.

[Lawyer when drafting letter must choose either (e) or (f) following]

- (e) If a conflict arises among any of you that is not resolved, then we will cease to represent any of you.

or substitute the following for (e)

- (f) If a conflict arises among any of you and that conflict is not resolved, we will cease to act for Client A and Client B but will continue to act for Client C if the rules permit that in the circumstances. [State reasons why lawyer would continue to act for client C. For example “We confirm that Client C is a continuing client of this firm and is regularly represented by lawyers in this firm on different matters.”]

Although joint representation of a number of clients by a single lawyer or law firm has some advantages, there are aspects of joint representation that could lead to the potential problems we have outlined above. For that reason, we ask that you consent to the potential course of action we have outlined before we commence acting for all of you jointly. We recommend that you obtain independent legal advice before you give us that consent.

If you are satisfied that you wish us to continue to act for you on the basis outlined above, please sign the enclosed duplicate copy of this letter and return it to us.

Yours very truly,

[Appendix 6 added 04/2000; amended 10/2009]

[This page is intentionally left blank.]

APPENDIX 7

SUPERVISION OF PARALEGALS

[Chapter 12]

Key concepts

1. Lawyers who use paralegals need to be aware of several key concepts:
 - (a) The lawyer maintains ultimate responsibility for the supervision of the paralegal and oversight of the file;
 - (b) Although a paralegal may be given operational carriage of a file, the retainer remains one between the lawyer and the client and the lawyer continues to be bound by his or her professional, contractual and fiduciary obligations to the client;
 - (c) The Society will protect the public by regulating the lawyer who is responsible for supervising the paralegal in the event of misconduct or a breach of the *Legal Profession Act* or Law Society Rules committed by the paralegal;
 - (d) A lawyer must limit the number of persons that he or she supervises to ensure that there is sufficient time available for adequate supervision of each person;
 - (e) A paralegal must be identified as such in correspondence and documents he or she signs and in any appearance before a court of tribunal;
 - (f) A lawyer must not delegate any matter to a paralegal that the lawyer would not be competent to conduct himself or herself.

Best practices for supervising paralegals

2. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:
 - (a) Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?
 - (b) Does the paralegal have relevant work experience and or education relating to the matter being delegated?
 - (c) How complex is the matter being delegated?
 - (d) What is the risk of harm to the client with respect to the matter being delegated?

PROFESSIONAL CONDUCT HANDBOOK

3. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:
 - (a) Train the paralegal as if he or she were training an articulated student. A lawyer must be satisfied the paralegal is competent to engage in the work assigned;
 - (b) Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;
 - (c) Gradually increasing the paralegal's responsibilities;
 - (d) A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:
 - (i) testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;
 - (ii) engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;
 - (iii) ensuring the paralegal follows best practices regarding client communication and file management.
4. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.
5. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and deal with the mistake.
6. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

Best practices for training paralegals

7. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.
8. Review the guidelines for supervising articulated students and adopt concepts that are appropriate to the scope of responsibility being entrusted to the paralegal.
9. Facilitate continuing legal education for the paralegal.

SUPERVISION OF PARALEGALS

10. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.
11. Have their paralegals “junior” the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal’s training.
12. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

A checklist for assessing the competence of paralegals

13. Does the paralegal have a legal education? If so, consider the following:
 - (a) What is the reputation of the institution?
 - (b) Review the paralegal’s transcript;
 - (c) Review the courses that the paralegal took and consider reviewing the course outline for relevant subject matters to assess what would have been covered in the course, consider total number of credit hours, etc.
 - (d) Ask the paralegal about the education experience.
14. Does the paralegal have other post-secondary education that may provide useful skills? Consider the reputation of the institution and review the paralegal’s transcripts.
15. What work experience does the paralegal have, with particular importance being placed on legal work experience?
 - (a) Preference/weight should be given to work experience with the supervising lawyer and/or firm;
 - (b) If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;
 - (c) Does the paralegal have experience in the relevant area of law?
 - (d) What responsibilities has the paralegal undertaken in the past in dealing with legal matters?
16. What personal qualities does the paralegal possess that make him or her well-suited to take on enhanced roles:
 - (a) How responsible, trustworthy and mature is the paralegal?
 - (b) Does the paralegal have good interpersonal and language skills?

PROFESSIONAL CONDUCT HANDBOOK

- (c) Is the paralegal efficient and well organized?
- (d) Does the paralegal possess good interviewing and diagnostic skills?
- (e) Does the paralegal display a strong understanding of both the substantive and procedural law governing the matter to be delegated?
- (f) Does the paralegal strive for continuous self-improvement, rise to challenges, etc.?

[Appendix 7 added 06/2012]