Law Society of British Columbia

Ethics Advisory

Use of recording devices

EA-2025-08[1] August 18, 2025[2]

Introduction

While the proliferation of smartphones has made the use of recording devices increasingly common place, lawyers should remain mindful of their professional obligations in this respect. This ethics advisory provides some additional context in regard to the ethical requirements and practices arising from the use of recording devices.

Professional responsibility considerations

Code of Professional Conduct for British Columbia ("Code") rule 7.2-3 states:

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

Lawyers should note that the Code rule requires notification, not consent, for recording. The other person may reasonably, upon being notified of the lawyer's intention to record, terminate the conversation if not comfortable with recording commencing.

The *Professional Conduct Handbook* ("PCH"), which was the governing document concerning professional responsibility for British Columbia lawyers before the Code was adopted on January 1, 2013, addressed recording devices in a somewhat different fashion in Chapter 11:

> *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,*

[1] This Ethics Advisory represents the amalgamation of Ethics Committee Opinions on use of recording devices. Ethics Advisories are reviewed and approved by the Ethics & Lawyer Independence Advisory Committee.
[2] Inaugural publication of this Ethics Advisory.

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.

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.

Even under the requirements as described in the PCH, lawyers had to exercise caution about recording conversations with individuals other than other lawyers.[3] Code rule 7.2-3 does not contain the specific exemption to permit a lawyer to record the conversation of another lawyer where the lawyer has reasonable grounds to believe the other lawyer will commit or indicate an intention to commit a criminal offence in the way that the old rule, Chapter 11, Rule 14.1 of the PCH did. Ethical rules do not need to identify every possible exception that might be made to them in unusual circumstances. In an appropriate circumstance, it may be reasonable to imply the exception described in Chapter 11, Rule 14.1 to Code rule 7.2-3.[4]

Conclusion

A lawyer should consider Code rule 7.2-3 anytime the lawyer contemplates using a recording device and, when required, advance notice must be provided to the person being recorded.[5]

Questions

If you would like to discuss a specific professional responsibility issue regarding use of recording advices or any other issue, feel welcome to contact a practice advisor.

[3] Original consideration: EC June 1993, Item 6. Original summary: "As the CBA Code prohibits recording conversations with anyone without first informing the other person of the intention to do so, it is improper for a member to tape record a non-member in a situation where the member will subsequently be a witness against the non-member."

[4] Original consideration: EC June 2013, Item 6. Original summary: "Rule 7.2-3 does not contain a specific exemption to permit a lawyer to record the conversation of another lawyer where the lawyer has reasonable grounds to believe the other lawyer will commit or indicate an intention to commit a criminal offence in the way that the old rule, Chapter 11, Rule 14.1 of the Professional Conduct Handbook, did. However, it would be reasonable to imply the exception to the new BC Code rule 7.2-3 in appropriate circumstances and it is unnecessary to amend the rule to describe this particular exception expressly."

[5] Lawyers are also reminded that the use of recording devices also engages questions involving substantive law, including privacy law and the rules of decision-makers respecting the use recording devices in their hearings, which lawyers will have to consider. These factors will also be amongst the matters for a lawyer to consider in the context of self-represented party.