CODE OF PROFESSIONAL CONDUCT

The Law Society of Saskatchewan

Adopted by the Benchers of the Law Society of Saskatchewan
on February 10, 2012
to be effective on July 1, 2012*

Contents

Note on decisions and rulings

Digests of discipline decisions dated between 1995 and 2007 can be found in the Historical Discipline Database on the Law Society of Saskatchewan website. Decisions rendered after 2008 are available in full, by year or alphabetically by the lawyer's name, in the website's Discipline Decisions section.

Admissions and Education decisions are also available on the website.

Ethics rulings can be found in the Ethics Rulings Database.

Conduct review rulings can be found in the Conduct Review Database.

If you are having trouble finding a ruling or decision, please contact the Law Society at 306-569-8242.

PLEASE NOTE that the annotations included in this Code are for reference and convenience only. They should not be relied upon without independent review.

FOREWORD

Canadian Law Societies are committed to facilitating interprovincial mobility for lawyers through uniform national standards. The Law Society of Saskatchewan *Code of Professional Conduct, 2012* was modeled on a draft developed by the Federation of Law Societies of Canada as a national code and replaces the *Code* that has guided lawyers in the province since 1991.

The draft national Code was referred to as the "Model Code." The first Model Code committee was chaired by the Law Society of Saskatchewan's Executive Director at the time, Allan Snell Q.C., and began its work in 2004. That committee circulated a draft for review and feedback to all law societies in Canada in August of 2007.

Law societies across Canada then made minor provincial variations in recognition of the fact that regional differences exist. The Benchers of the Law Society of Saskatchewan added Saskatchewan context to the Model Code and it was approved in February of 2012 with an effective date of July 1, 2012. The amendments focus largely on better overall organization of the rules, with improved "best practice guidance" in the commentaries to the rules and a view to creating a uniform ethical standard for all lawyers in Canada.

The Law Society of Saskatchewan wishes to recognize and thank the many individuals who contributed to the development of the Model Code over the last eight years. This includes the tireless efforts of staff from various Law Societies across Canada and the volunteer members of the five incarnations of the Model Code committee over the past eight years. It also includes past and present Law Society of Saskatchewan Benchers and staff that have undertaken a line-by-line comparison of the various drafts of the Model Code.

PREFACE

The Rule of Law is a cornerstone of the Constitution and Canadian society. Lawyers are essential participants in a justice system that advances the Rule of Law. They represent the interests of their clients, are members of a profession and are officers of the Court. They enjoy a unique and privileged position in society. Lawyers have a professional and ethical responsibility to serve their clients, the profession and the judicial system in terms that protect and promote their clients and the public interest.

The responsibility and authority to regulate lawyers has been delegated by government to the Law Society of Saskatchewan. This power must be exercised at all times in the public interest.

The Legal Profession Act, 1990, codifies this duty at Section 3.1:

> 3.1 In the exercise of its powers and the discharge of its responsibilities, it is the duty of the society, at all times:
>
> (a) to act in the public interest;
>
> (b) to regulate the profession and to govern the members in accordance with this Act and the rules; and
>
> (c) to protect the public by assuring the integrity, knowledge, skill, proficiency and competence of members.

The Law Society of Saskatchewan discharges this duty by defining and enforcing the standards of professional competency and conduct, including ethical conduct, expected of all lawyers. *The Legal Profession Act* specifically directs the Law Society to establish rules governing lawyers' professional conduct. This Code of Professional Conduct creates the Rules and their interpretation intended to provide a framework within which a lawyer will fulfill his or her core duties of integrity, competency and loyalty. In some respects this Code articulates aspirations consistent with the importance of the lawyer's role serving clients and the administration of justice. This Code also articulates standards of conduct for which lawyers are held strictly accountable.

The standard of acceptable ethical conduct is enforced by the Law Society's discipline process which holds lawyers accountable for conduct found to be "conduct unbecoming", defined by the *Act* as:

> 2(1)(d)[…] any act or conduct, whether or not disgraceful or dishonourable, that:

(i) is inimical to the best interests of the public or the members; or

(ii) tends to harm the standing of the legal profession generally;

The Benchers of the Law Society of Saskatchewan are responsible for determining what constitutes conduct unbecoming in any circumstance. In this Code, the Benchers attempt to define and illustrate appropriate standards of conduct expected in a lawyer's professional relationship with clients, the profession and the justice system. It is impossible for any code to prescriptively or exhaustively establish what might constitute conduct unbecoming. That determination is left to the Benchers who are guided by the legislation, this Code, other decisions of the Benchers of the Law Society of Saskatchewan and other Law Societies, the jurisprudential authority of the Courts and the legitimate expectations of the public.

The rules and principles in this Code are therefore intended to prohibit some conduct, and to otherwise provide general guidance for these purposes. This Code, and its interpretation, is intended to provide a framework within which the lawyer may fulfill the core duties of integrity, competency and loyalty.

This Code should not be construed as all-encompassing or as limiting other duties imperative to the protection of the public, and the public interest generally. Instead, this Code is intended to articulate those immutable ethical principles that assure a philosophy where the legal profession is dedicated to the high standards of ethical behaviour that are required, and must evolve over time in a changing society.

This preface is part of this Code.

CHAPTER 1 – INTERPRETATION AND DEFINITIONS

1.1 DEFINITIONS

1.1-1 In this Code, unless the context indicates otherwise,

"associate" includes:

(a) a lawyer who practises law in a law firm through an employment or other contractual relationship; and

(b) a non-lawyer employee of a multi-discipline practice providing services that support or supplement the practice of law;

"client" means a person who:

(a) consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or

(b) having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on his or her behalf;

and includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client's work.

Commentary
[1] A lawyer-client relationship may be established without formality. **[2]** When an individual consults a lawyer in a representative capacity, the client is the corporation, partnership, organization, or other legal entity that the individual is representing; **[3]** For greater clarity, a client does not include a near-client, such as an affiliated entity, director, shareholder, employee or family member, unless there is objective evidence to demonstrate that such an individual had a reasonable expectation that a lawyer-client relationship would be established.

A "**conflict of interest"** means the existence of a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person.

"consent" means fully informed and voluntary consent after disclosure

(a) in writing, provided that, if more than one person consents, each signs the same or a separate document recording the consent; or

(b) orally, provided that each person consenting receives a separate written communication recording the consent as soon as practicable;

"law firm" includes one or more lawyers practising:

(a) in a sole proprietorship;

(b) in a partnership;

(c) as a clinic under *The Legal Aid Act*, including an area office;

(d) in association for the purpose of sharing common expenses but who are otherwise independent practitioners;

(e) as a professional law corporation;

(f) in a government, a Crown corporation or any other public body; or

(g) in a corporation or other organization;

"lawyer" means a member of the Society and includes a law student registered in the Society's pre-call training program;

"limited scope retainer" means the provision of legal services for part, but not all, of a client's legal matter by agreement with the client;

"Society" means the Law Society of Saskatchewan;

"tribunal" includes a court, board, arbitrator, mediator, administrative agency or other body that resolves disputes, regardless of its function or the informality of its procedures.

["limited scope retainer" definition added Feb. 14, 2014]
["client" definition amended; "disclosure" and "interprovincial law firm" definitions deleted, Feb. 13, 2015]

CHAPTER 2 – STANDARDS OF THE LEGAL PROFESSION

2.1 INTEGRITY

2.1-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

Commentary

[1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.

[2] The principle of integrity is a key element of each rule of the Code.

[3] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

[4] Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action.

[5] Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity.

Annotations

Saskatchewan Court of Appeal

Kumar v The Law Society of Saskatchewan, 2015 SKCA 132
The Court upheld the sentence on the basis that it was reasonable.
Original decision: 2013 SKLSS 4.
It is conduct unbecoming for a lawyer to provide false and misleading information in their application for admission to the Law Society. Misleading information included failing to disclose their former membership, name changes, and disbarment.

Oledzki v The Law Society of Saskatchewan, 2010 SKCA 120
The Court upheld the disbarment on the basis that it was reasonable.
Original decision: 2009 SKLSS 5

It is conduct unbecoming to forge signatures, create forged wills, and mislead other lawyers. Forgery is an obvious breach of a lawyer's duty of integrity. Where the lawyer's conduct manifests a pattern of dishonesty, the character of the lawyer becomes incompatible with the standards required to practice.

Rault v The Law Society of Saskatchewan, 2009 SKCA 81

The Court overturned the discipline committee decision, as they erred in failing to consider a joint submission.

Original decision: 2008 SKLS 2. It is conduct unbecoming to alter documents by cutting and pasting in real estate transactions on 16 occasions.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v de Whytell, 2020 SKLSS 7

It is conduct unbecoming to send correspondence to a client that contains abusive, offensive, or language otherwise inconsistent with the proper tone of a lawyer. Here, the lawyer sent an email with a satirical poem with vulgar language and references to death, suicide and killing, and violent metaphors. The email was sent in the context of preparing for a criminal proceeding for sexual assault. Although the intent may have been to reinforce the client's confidence and candour, this went beyond the boundaries of appropriate conduct.

Law Society of Saskatchewan v Turner, 2020 SKLSS 1

Lawyers have a very privileged role when it comes to dealing with the Court and other bodies, such as ISC. With that privilege comes the responsibility to ensure documents that are submitted are accurate and executed appropriately. Any deviation from the high standard expected of lawyers threatens the protection of the public and the perception of the profession.

It is conduct unbecoming to fabricate a transfer authorization by cutting and pasting the client's signature from another document and then to cause it to be submitted to, and thereby misleading ISC.

It is conduct unbecoming to have clients swear Affidavits purporting to exhibit documents that were not yet in existence and which contained information that the lawyer knew to be false.

Law Society of Saskatchewan v Halford, 2019 SKLSS 6

It is conduct unbecoming to instruct office assistants to sign trust cheques on the Lawyer's behalf and to not be forthcoming with the Law Society.

Law Society of Saskatchewan v Bachynski, 2018 SKLSS 5

It is conduct unbecoming to repeatedly mislead a client and another lawyer at firm about the unfavourable results of a court decision.

Law Society of Saskatchewan v de Whytell, 2017 SKLSS 5

Conduct unbecoming is conduct that is inimical to the best interests of the public or lawyers or tends to harm the standing of the legal profession generally. The Lawyer was not acting in a legal capacity and the Law Society is not generally concerned with the purely private or extra-professional activities of a lawyer, unless it calls into question the lawyer's integrity. Lawyer was acquitted.

Law Society of Saskatchewan v Martens, 2016 SKLSS 12

It is conduct unbecoming to mislead other lawyers and to create and use false documents with the intent or belief that others would act on them.

Law Society of Saskatchewan v Wappel, 2016 SKLSS 9
It is conduct unbecoming to falsify signatures on corporate client documents with the intent that they would be relied upon.
Law Society of Saskatchewan v Pradzynski, 2016 SKLSS 6
It is conduct unbecoming to knowingly mislead opposing counsel.
Law Society of Saskatchewan v Zawislak, 2016 SKLSS 1
It is conduct unbecoming to breach undertakings and mislead their practice supervisor.
Law Society of Saskatchewan v Kumar, 2013 SKLSS 4
See above for SKCA review decision.
Law Society of Saskatchewan v Ferraton, 2014 SKLSS 2
It is conduct unbecoming to fabricate a signature by cutting and pasting previous client signatures, to mislead ISC by submitting the fabricated document, to enter into a business transaction with a client where that client may expect the Lawyer to be protecting their interests, and to acquire property from a client without ensuring the client received independent legal advice.
Law Society of Saskatchewan v Ottenbreit, 2012 SKLSS 4
It is conduct unbecoming to sign as a witness without having actually witnessed the client sign the document and to mislead a Law Society practice advisor.
Law Society of Saskatchewan v Goby, 2011 SKLSS 10
It is conduct unbecoming to prepare and submit false affidavits of property value, to mislead ISC, and to misuse trust accounts of clients by withdrawing funds before completing work or accounts due.
Law Society of Saskatchewan v Armitage, 2009 SKLSS 4
It is conduct unbecoming for a lawyer to file a false registration on behalf of their client and to provide inaccurate information to the Law Society.
Law Society of Saskatchewan v Oledzki, 2009 SKLSS 5
See above for SKCA review decision.
Law Society of Saskatchewan v Nolin, 2008 SKLSS 4
It is conduct unbecoming to misappropriate funds held in trust on behalf of clients and to prepare documents, including accounting records, cheques, and trust statements that contained false information.
Law Society of Saskatchewan v Rault, 2008 SKLSS 2
See above for SKCA review decision.
Law Society of Saskatchewan v Laporte, 2006 SKLS 12
It is conduct unbecoming to have sex with a client while concurrently representing them at trial. This is a conflict of interest. This is also a breach of integrity.
It is conduct unbecoming to suggest to a work colleague that you would like to have sexual relations with them. These acts constitute sexual harassment. This is also a breach of integrity.
Law Society of Saskatchewan v Megaw, 2004 SKLS 5
It is conduct unbecoming for a lawyer to not fulfill their duty to their client and to lie to the client about what they had (not) done.
Law Society of Saskatchewan v Tilling, 2004 SKLS 1
It is conduct unbecoming for a lawyer to lie to their client and to a fellow lawyer about steps they had not taken regarding an appeal.

Law Society of Saskatchewan v Bornek, 2003 SKLS 9
Lawyer plead guilty to sexual assault, obstruction of justice, and communication for purposes of prostitution.
Law Society of Saskatchewan v Dynna, 2003 SKLS 11
Lawyer swore and submitted an affidavit without having the client swear it before them.
Law Society of Saskatchewan v Mahon, 2001 SKLS 3
Lawyer forged a witness signature on a mortgage document.
Law Society of Saskatchewan v Durocher, 2000 SKLS 3
Lawyer was found guilty of deliberate theft and criminally charged. Application for resignation was denied and the Lawyer was disbarred.
Law Society of Saskatchewan v Hawrish, 1999 SKLS 7
Lawyer was convicted of theft.
Law Society of Saskatchewan v Churchman, 1998 SKLS 2
Lawyer falsely altered documents by forging signatures and intentionally misled another professional.
Law Society of Saskatchewan v Simonot, 1997 SKLS 2
Lawyer was charged with mischief for listing themself as a secured creditor.
Law Society of Saskatchewan v Wasylyshen, 1997 SKLS 3
Lawyer was convicted of three accounts of drinking and driving and one charge of obtaining credit by undischarged bankruptcy without informing the creditors.
Law Society of Saskatchewan v Zawislak, 1996 SKLS 4
Lawyer knowingly prepared a false affidavit and submitted it.

Law Society of Saskatchewan Ethics Rulings

2005 SKLSPC 13
Even if the change is immaterial, a lawyer cannot change a previously signed document without further consent. Once consent is obtained, a lawyer has a positive duty to advise opposing counsel of changes made.
2005 SKLSPC 2
A lawyer's letter offering to settle the debt of opposing client's parents in exchange for the opposing client to stop pursuing arrears in child support is unacceptable.
2004 SKLSPC 18
A lawyer must have a client sign a document before them and commission it at the same time. A client must only swear to (or affirm) items which exist at the time of swearing.
1999 SKLSPC 9
When swearing a document (here, a Certificate of Independent Legal Advice), a lawyer can only certify what has already occurred. A lawyer can agree on the form of a certificate but not the actual content ahead of time.
1989 SKLSPC 4
If a scheme is illegal or if there is any doubt as to its legality, it is unethical for a lawyer to participate in it.
1989 SKLSPC 3
A lawyer should not be complicit in a sale of land by tender scheme to gauge and inflate property value.

Law Society of Saskatchewan Admissions and Education Decisions

Law Society of Saskatchewan v Rogers, 2016 SKLSS 11

Application for readmission is done according to the six elements of the "*Bates* test":

(1) Applicant must show a long course of conduct that they are a person to be trusted and fit to be a lawyer.
(2) Applicant must show that their conduct is unimpeached and unimpeachable. This is established by evidence from trustworthy persons, such as lawyers.
(3) Applicant must show that a sufficient period of time has elapsed.
(4) Applicant must show that they have entirely purged their guilt.
(5) Applicant must show by substantial and satisfactory evidence that it is extremely unlikely they will misconduct themselves if permitted to resume practice.
(6) Applicant must show that they have remained current or that they have a plan to become current in the law.

Applicant's previous misconduct was connected to mental health issues and the Applicant showed that he had made significant progress in treatment, which weighed in favour of readmission. The Applicant had been out of the practice of law for 6 ½ years, where he maintained a high-stress workload. Three lawyers testified in favour of readmission. The Hearing Panel determined that the Applicant met the test for readmission.

Law Society of Saskatchewan v Guist, 2016 SKLSS 4

A student-at-law was alleged to have misled Social Services, Student Loans, and the CRA. The student successfully established their suitability to practice.

Law Society of Saskatchewan v Mapagunaratne, 2015 SKLSS 7

The candidate had misrepresented their membership status in Manitoba in efforts to gain employment. This was investigated and the Law Society of Manitoba refused admission. The Applicant then applied in Saskatchewan but did not disclose that Manitoba had denied entry. The Applicant did not meet the test of good character required to become a lawyer, as they failed to appreciate the seriousness of failing to advise the LSS of their prior issues in Manitoba. The Committee did not find their suggestion that they did not read the questions carefully credible and further felt it called into question their integrity.

Law Society of Saskatchewan v Bachynski, 2013 SKLSS 2

Student-at-law plagiarized CPLED competency assignment and failed the course component. Initially, the Student was not forthright when confronted with the allegations. The importance of honesty and integrity in the law cannot be emphasized enough. It is critical that the public have confidence in and trust the legal system and members of it. Student required to write a supplemental competency evaluation, contribute to costs of hearing, write an essay, and prohibited from applying for admission for four months.

Law Society of Saskatchewan v Paquin, 2013 SKLSS 1

Student-at-law plagiarized CPLED competency assignment and failed the course component. The student readily admitted their

mistake. Student required to write a supplemental competency evaluation, contribute to costs of hearing, write an essay, and prohibited from applying for admission for three months.
Law Society of Saskatchewan v Frost-Hinz, 2012 SKLSS 7
Student-at-law plagiarized CPLED competency assignment and failed the course component. Integrity offences are often the most serious violation in the legal profession. Committee did not accept that stress and job loss should be mitigating factors. The student was required to write a supplemental competency evaluation, contribute to costs of hearing, and prohibited from applying for admission for three months.

2.1-2 A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.

Commentary

[1] Collectively, lawyers are encouraged to enhance the profession through activities such as:

(a) sharing knowledge and experience with colleagues and students informally in day-to-day practice as well as through contribution to professional journals and publications, support of law school projects and participation in panel discussions, legal education seminars, bar admission courses and university lectures;

(b) participating in legal aid and community legal services programs or providing legal services on a pro bono basis;

(c) filling elected and volunteer positions with the Society;

(d) acting as directors, officers and members of local, provincial, national and international bar associations and their various committees and sections; and

(e) acting as directors, officers and members of non-profit or charitable organizations.

CHAPTER 3 – RELATIONSHIP TO CLIENTS

3.1 COMPETENCE

Definitions

3.1-1 In this section

"Competent lawyer" means a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement, including:

(a) knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the lawyer practises;

(b) investigating facts, identifying issues, ascertaining client objectives, considering possible options and developing and advising the client on appropriate courses of action;

(c) implementing as each matter requires, the chosen course of action through the application of appropriate skills, including:

  (i) legal research;

  (ii) analysis;

  (iii) application of the law to the relevant facts;

  (iv) writing and drafting;

  (v) negotiation;

  (vi) alternative dispute resolution;

  (vii) advocacy; and

  (viii) problem solving;

(d) communicating at all relevant stages of a matter in a timely and effective manner;

(e) performing all functions conscientiously, diligently and in a timely and cost-effective manner;

(f) applying intellectual capacity, judgment and deliberation to all functions;

(g) complying in letter and spirit with all rules pertaining to the appropriate professional conduct of lawyers;

(h) recognizing limitations in one's ability to handle a matter or some aspect of it and taking steps accordingly to ensure the client is appropriately served;

(i) managing one's practice effectively;

(j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and

(k) otherwise adapting to changing professional requirements, standards, techniques and practices.

Competence

3.1-2 A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.

Commentary

[1] As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf.

[2] Competence is founded upon both ethical and legal principles. This rule addresses the ethical principles. Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.

[3] In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include:

(a) the complexity and specialized nature of the matter;

(b) the lawyer's general experience;

(c) the lawyer's training and experience in the field;

(d) the preparation and study the lawyer is able to give the matter; and

(e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.

[4] In some circumstances, expertise in a particular field of law may be required; often the necessary degree of proficiency will be that of the general practitioner.

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:

a) The lawyer's or law firm's practice areas;
b) The geographic locations of the lawyer's or firm's practice; and
c) The requirements of clients.

[5] A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk or expense to the client. The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.

[6] A lawyer must recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:

(a) decline to act;

(b) obtain the client's instructions to retain, consult or collaborate with a lawyer who is competent for that task; or

(c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.

[7] The lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting or other

non-legal fields, and, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.

[7A] When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also Rule 3.2-1A.

[7B] In providing short-term summary legal services under Rules 3.4-2A to 3.4-2D, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term summary legal services may be required or are advisable, and encourage the client to seek such further assistance.

[8] A lawyer should clearly specify the facts, circumstances and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications. A lawyer should only express his or her legal opinion when it is genuinely held and is provided to the standard of a competent lawyer.

[9] A lawyer should be wary of providing unreasonable or over-confident assurances to the client, especially when the lawyer's employment or retainer may depend upon advising in a particular way.

[10] In addition to opinions on legal questions, a lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, economic, policy or social complications involved in the question or the course the client should choose. In many instances the lawyer's experience will be such that the lawyer's views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

[11] In a multi-discipline practice, a lawyer must ensure that the client is made aware that the legal advice from the lawyer may be supplemented by advice or services from a

non-lawyer. Advice or services from non-lawyer members of the firm unrelated to the retainer for legal services must be provided independently of and outside the scope of the legal services retainer and from a location separate from the premises of the multi-discipline practice. The provision of non-legal advice or services unrelated to the legal services retainer will also be subject to the constraints outlined in the rules/by-laws/regulations governing multi-discipline practices.

[12] The requirement of conscientious, diligent and efficient service means that a lawyer should make every effort to provide timely service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[13] The lawyer should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.

[14] A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

[15] **Incompetence, Negligence and Mistakes-** This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule. However, evidence of gross neglect in a particular matter or a pattern of neglect or mistakes in different matters may be evidence of such a failure, regardless of tort liability. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.

Annotations

Saskatchewan Court of Appeal

Peet v The Law Society of Saskatchewan, 2014 SKCA 109

The Court upheld the Hearing Committee's decision for being reasonable. Discipline proceedings of this sort do not engage s.11(b) of the *Charter*, nor did the delay result in a breach of administrative law principles.

Original Decision: 2013 SKLSS 5.

It is conduct unbecoming to fail to return phone calls or to complete applications as instructed in a timely manner, and it is below the standard expected of a competent lawyer.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Sirois, 2015 SKLSS 4
It is conduct unbecoming to sign blank trust cheques for use by support staff when away from office, to fail to supervise staff adequately such that staff are conducting legal files with little to no involvement by a lawyer, to not comply with client identification rules, to rely on an invalid power of attorney, to allow a third party to execute mortgage documents on behalf of a client, and to not inform a client that documents were executed by a third party. The Lawyer had demonstrated significantly improved practice management since the offenses were identified, which warranted a lesser penalty.

Law Society of Saskatchewan v Shirkey, 2014 SKLSS 9
It is conduct unbecoming to not provide a valid separation agreement to the standard of a competent lawyer, which left both parties exposed to future claims.

Law Society of Saskatchewan v McLean, 2013 SKLSS 6
It is conduct unbecoming to defend an action on behalf of clients without or contrary to their instructions.
It is conduct unbecoming to withdraw funds in trust on behalf of clients to settle an action contrary to their instructions.
It is conduct unbecoming to fail to advance a matter for approximately nine years.
It is conduct unbecoming to fail to finalize an estate within six and a half years, without any explanation for the delay.

Law Society of Saskatchewan v Peet, 2013 SKLSS 5
See above for SKCA review decision.

Law Society of Saskatchewan v MacLowich, 2003 SKLS 8
It is conduct unbecoming to not perform legal services, draft documents, and act for the client in a competent manner. The Lawyer failed to follow instructions to obtain an appraisal of the family home, repeatedly withheld critical information regarding the status of a client's appeal and failed to inform the client that Notice of Appeal had been improperly completed, then failed to correct previous errors. The Lawyer failed to seek instructions from a client, failed to appear, and failed to report the result of the application.

Law Society of Saskatchewan v Dellow, 2010 SKLSS 9
The Lawyer resigned in the face of discipline.
It is conduct unbecoming to falsely inform a client that proceedings were to take place and then give false reasons that they were cancelled on over thirty occasions, and to fail to file any documents to protect the client's rights.
It is conduct unbecoming to neglect to prepare and file appropriate documents, to pay out trust funds before security was in place and to delay fulfilling many obligations.

Law Society of Saskatchewan Conduct Reviews

2014 SKLSCR 8
It is important to maintain clear and complete notes of all conversations with clients.

2014 SKLSCR 2
It is important to properly diarize matters and to take steps to reduce the risk of missing court dates, to prepare materials in a timely manner, to inform a client of reasonable timelines.

2013 SKLSCR 1
It is important to promptly witness documents at the same time as the lawyer witnesses the signature.

Law Society of Saskatchewan Ethics Rulings

2018 SKLSPC 2
Lawyers have an ethical duty to explore and apply the law in unique and rare circumstances. Specifically, a Lawyer must know how circumstances may impact or alter normal processes and procedures of the law.

2005 SKLSPC 2
A Lawyer's letter offering to settle the debt of opposing client's parents in exchange for the opposing client to stop pursuing arrears in child support is unacceptable.

2004 SKLSPC 18
A Lawyer must have a client sign a document before them and commission it at the same time. A client must only swear to (or affirm) items which exist at the time of swearing.

2004 SKLSPC 1
A third party may amend a document with a signatory's consent in the absence of an attesting witness. See also 2003 SKLSPC 17.

2003 SKLSPC 22
In these circumstances, the Lawyer's involvement in a transfer of land to the Town was not unethical, because the Town had remedies if they did not want the land.

2003 SKLSPC 17
It is inappropriate to alter a document with the expectation of "deferred approval" from the client. At the very least, there must be some record of client approval before changes are made

2003 SKLSPC 1
It is unethical to deliberately advise a client to avoid creditors by registering a particular name and taking advantage of an automated Writ of Execution system.

1999 SKLSPC 9
When swearing a document (here, a Certificate of Independent Legal Advice), a lawyer can only certify what has already occurred. A lawyer can agree on the form of a certificate but not the actual content ahead of time.

[3.1-2, Commentary [7A] on limited scope retainers added, Feb. 14, 2014]
[3.1-2, Commentary [7B] on short-term summary legal services added, Feb. 13, 2015]
[3.1-2, Competence, Commentary [8] and [9] amended, September 22, 2017]

3.2 QUALITY OF SERVICE

Quality of Service

3.2-1 A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.

Commentary

[1] This rule should be read and applied in conjunction with section 3.1 regarding competence.

[2] A lawyer has a duty to provide a quality of service at least equal to that which lawyers generally expect of a competent lawyer in a like situation. An ordinarily or otherwise competent lawyer may still occasionally fail to provide an adequate quality of service.

[3] A lawyer has a duty to communicate effectively with the client. What is effective will vary depending on the nature of the retainer, the needs and sophistication of the client and the need for the client to make fully informed decisions and provide instructions.

[4] A lawyer should ensure that matters are attended to within a reasonable time frame. If the lawyer can reasonably foresee undue delay in providing advice or services, the lawyer has a duty to so inform the client, so that the client can make an informed choice about his or her options, such as whether to retain new counsel.

[5] Examples of expected practices

The quality of service to a client may be measured by the extent to which a lawyer maintains certain standards in practice. The following list, which is illustrative and not exhaustive, provides key examples of expected practices in this area:

(a) keeping a client reasonably informed;

(b) answering reasonable requests from a client for information;

(c) responding to a client's telephone calls;

(d) keeping appointments with a client, or providing a timely explanation or apology when unable to keep such an appointment;

(e) taking appropriate steps to do something promised to a client, or informing or explaining to the client when it is not possible to do so; ensuring, where appropriate, that all instructions are in writing or confirmed in writing;

(f) answering, within a reasonable time, any communication that requires a reply;

(g) ensuring that work is done in a timely manner so that its value to the client is maintained;

(h) providing quality work and giving reasonable attention to the review of documentation to avoid delay and unnecessary costs to correct errors or omissions;

(i) maintaining office staff, facilities and equipment adequate to the lawyer's practice;

(j) informing a client of a proposal of settlement, and explaining the proposal properly;

(k) providing a client with complete and accurate relevant information about a matter;

(l) making a prompt and complete report when the work is finished or, if a final report cannot be made, providing an interim report when one might reasonably be expected;

(m) avoiding the use of intoxicants or drugs that interferes with or prejudices the lawyer's services to the client;

(n) being civil.

[6] A lawyer should meet deadlines, unless the lawyer is able to offer a reasonable explanation and ensure that no prejudice to the client will result. Whether or not a specific deadline applies, a lawyer should be prompt in handling a matter, responding to communications and reporting developments to the client. In the absence of developments, contact with the client should be maintained to the extent the client reasonably expects.

Annotations

Saskatchewan Court of Appeal

Hesje v The Law Society of Saskatchewan, 2015 SKCA 2
Court upheld the finding of conduct unbecoming for being reasonable. The Lawyer received adequate particulars to be able to meet their case. The Hearing Committee's interpretation of "conduct unbecoming" was reasonable and disclosed no error, as "conduct unbecoming" can include acts of negligence and does not necessarily include moral turpitude. The Hearing Committee articulated a flexible standard and that standard was not a standard of perfection. The Hearing Committee did not require any additional evidence as to what a competent lawyer would do in a similar circumstance to that faced by the Lawyer. The Hearing Committee did not fail to take into account relevant circumstances. There is no reason for this Court to interfere with the Hearing Committee's weighing of the evidence.
Original Decision: 2013 SKLSS 13
It is conduct unbecoming for a lawyer to fail to keep their client informed of the outcome of their litigation matter for over five years. The duty to inform a client throughout the litigation varies with the sophistication of the client and the importance of the matter. Where the client is unsophisticated and lacks a grasp of their legal options, the client must be kept informed throughout the litigation proceedings. A client always has a right to be advised when judgment is rendered against them. It is inimical to the best interests of the public to permit a lawyer to fail to communicate with their client and it harms the standing of the legal profession generally to condone such conduct.

Peet v The Law Society of Saskatchewan, 2014 SKCA 109
The Court upheld the Hearing Committee's decision for being reasonable. Discipline proceedings of this sort do not engage s.11(b) of the *Charter*, nor did the delay result in a breach of administrative law principles.
Original decision: 2013 SKLSS 5.
It is conduct unbecoming to allow an unexplained period of over one year, where there was poor, if any, communication with the client and not appreciable work advanced on the file.

McLean v The Law Society of Saskatchewan, 2012 SKCA 7
The Court reduced the penalty, because the Hearing Committee erred when it refused to consider and weigh the explanations for the actions and the Committee mischaracterized the Lawyer's conduct, turning mitigating factors into aggravating ones.
Original decision: 2009 SKLSS 3
It is conduct unbecoming to fail to complete an application for probate nearly one year after the date of death without any justification for such delay, or to fail to finalize a real estate transaction for approximately seventeen months.

Rault v The Law Society of Saskatchewan, 2009 SKCA 81
The Court overturned the discipline committee decision, as they erred in failing to consider a joint submission.
Original decision: 2008 SKLS 2.
It is conduct unbecoming to be dishonest with clients and others as to the status of documents and to not diligently complete required work.

Saskatchewan Court of King's Bench

Stebner v Canadian Broadcasting Corporation, 2019 SKQB 91
A lawyer is not merely a mouthpiece of the client. They are expected to bring their knowledge, skill, best judgment, and experience when dealing with a client's issues.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Bachynski, 2018 SKLSS 5
It is conduct unbecoming to fail to inform and lie to a client about an unfavourable outcome for a period of four months.
Law Society of Saskatchewan v Zawislak, 2016 SKLSS 1
It is conduct unbecoming to repeatedly fail to communicate with a client in a prompt and reasonable manner.
Law Society of Saskatchewan v Sirois, 2015 SKLSS 4
It is conduct unbecoming to sign blank trust cheques for use by support staff when away from office, to fail to supervise staff adequately such that staff are conducting legal files with little to no involvement by a lawyer, to not comply with client identification rules, to rely on an invalid power of attorney, to allow a third party to execute mortgage documents on behalf of a client, and to not inform a client that documents were executed by a third party. The Lawyer had demonstrated significantly improved practice management since the offences were identified, which warranted a lesser penalty.
Law Society of Saskatchewan v Armitage, 2014 SKLSS 14
It is conduct unbecoming to appear in court on behalf of a client while inebriated.
Law Society of Saskatchewan v Valkenburg, 2014 SKLSS 13
It is conduct unbecoming to not take action as instructed by a client, and to not communicate with the client in a reasonable time frame.
Law Society of Saskatchewan v Hesje, 2013 SKLSS 13
See above for SKCA review decision.
Law Society of Saskatchewan v Tilling, 2013 SKLSS 12
It is conduct unbecoming to fail to advance files in any way for approximately a year up to four years
Law Society of Saskatchewan v McLean, 2013 SKLSS 6
It is conduct unbecoming to defend an action on behalf of clients without or contrary to their instructions.
It is conduct unbecoming to withdraw funds in trust on behalf of clients to settle an action contrary to their instructions.
It is conduct unbecoming to fail to advance a matter for approximately nine years.
It is conduct unbecoming to fail to finalize an estate within six and a half years without any explanation for the delay.
Law Society of Saskatchewan v Peet, 2013 SKLSS 5
See above for SKCA review decision.
Law Society of Saskatchewan v Hardy, 2012 SKLSS 3
It is conduct unbecoming to fail to advance an urgent immigration file for approximately five years.
It is conduct unbecoming to fail to serve an opposing party for approximately two years.
Law Society of Saskatchewan v Rogers, 2011 SKLSS 9
Lawyer resigned in the face of discipline, equivalent to disbarment.

Due to mental health issues, the Lawyer was paralyzed on several files and failed to provide complete, accurate, or prompt action with respect to several clients.

Law Society of Saskatchewan v Anne Elizabeth Hardy, 2011 LSS 6

It is conduct unbecoming to fail to keep the client reasonably informed, respond to communications from them or act in a timely manner. This kind of service puts the reputation of the Lawyer and the entire profession in a bad light, increases costs to clients, and creates unnecessary delay.

Law Society of Saskatchewan v Walper-Bossence, 2011 SKLSS 4

It is conduct unbecoming to fail to advance or keep a client informed about an urgent child support arrears application for three months.

It is conduct unbecoming to fail to act on client instructions for approximately two years.

Law Society of Saskatchewan v Kloppenburg, 2011 SKLSS 3

It is conduct unbecoming to fail to perform duties and keep client reasonably informed of the status of a guardianship application.

It is conduct unbecoming to fail to complete tasks necessary to ensure an estate is probated within six months of Minutes of Settlement being signed.

Law Society of Saskatchewan v Dellow, 2010 SKLSS 9

The Lawyer resigned in the face of discipline.

It is conduct unbecoming to falsely inform a client that proceedings were to take place and then give false reasons that they were cancelled on over thirty occasions, and to fail to file any documents to protect the client's rights.

It is conduct unbecoming to neglect to prepare and file appropriate documents, to pay out trust funds before security was in place and to delay fulfilling many obligations.

Law Society of Saskatchewan v Werry, 2010 LSS 3

Three requests from a client, another lawyer, or the Society, with a reasonable deadline given to respond, should be sufficient to justify a complaint to the Society. (Sometimes referred to as the "Three Strike Rule".)

Law Society of Saskatchewan v Baumgartner, 2010 SKLSS 1

It is conduct unbecoming to not complete the necessary steps in a land transaction for over eight months and to not respond to inquiries from the client for updates.

It is conduct unbecoming to not provide a file report for a transaction that closed approximately ten months prior.

Law Society of Saskatchewan v McLean, 2009 SKLSS 3

See above for SKCA review decision.

Law Society of Saskatchewan v Braun, 2009 SKLS 1

It is conduct unbecoming to fail to keep several clients informed and to fail to respond to telephone calls over a period that ranged from several months to several years.

Law Society of Saskatchewan v Brown, 2008 SKLS 6

It is conduct unbecoming to breach an undertaking that they would only disburse mortgage funds on the satisfaction of certain conditions, when the conditions were not satisfied, or to provide a report within a certain amount of time and then failing to do so.

It is conduct unbecoming to fail to provide a final report to a client.

It is conduct unbecoming to mislead a client by advising that there were not encroachments on a property, when there in fact were.

Law Society of Saskatchewan v Peet, 2008 SKLSS 5

It is conduct unbecoming to fail to complete the tasks necessary to ensure a client's estate administration is completed within a reasonable time.

Law Society of Saskatchewan v Rault, 2008 SKLS 2

See above for SKCA review decision.

Law Society of Saskatchewan v Filyk, 2008 SKLS 1

It is conduct unbecoming to consistently delay completing tasks and in communicating with clients for nearly two years.

Law Society of Saskatchewan v Simaluk, 2007 SKLS 1

It is conduct unbecoming to not provide for a client in a competent, diligent, or efficient manner.

Law Society of Saskatchewan v McLean, 2006 SKLS 8

It is conduct unbecoming to fail to provide an acceptable level of service.

Law Society of Saskatchewan v Hagen, 2006 SKLS 3

It is conduct unbecoming to fail to communicate with clients and accomplish the Lawyer's duties.

Law Society of Saskatchewan v Hardy, 2006 SKLS 10

It is conduct unbecoming for a lawyer to fail repeatedly to provide an acceptable level of service to clients and to be dishonest in their representation of the work completed on their files.

Law Society of Saskatchewan v Zawislak, 2005 SKLS 6

It is conduct unbecoming to agree to act for a client but never to proceed to do so.

Law Society of Saskatchewan v Tilling, 2005 SKLS 2

It is conduct unbecoming to advise a client to sign an incomplete affidavit with unattached exhibits and not complete or file an application.

Law Society of Saskatchewan v Peet, 2004 SKLS 8

It is conduct unbecoming to fail to treat client matters with diligence and competence on multiple occasions.

Law Society of Saskatchewan v Kowalchuk, 2004 SKLS 7

It is conduct unbecoming to fail to provide a brief of law to an arbitrator, which then results in undue delay, and to fail to keep the client reasonably informed.

Law Society of Saskatchewan v Hardy, 2004 SKLS 4

It is conduct unbecoming to fail to follow instructions and advance matters for clients. One such instance resulted in the lapse of the client's appeal period.

Law Society of Saskatchewan v Caron, 2004 SKLS 2

It is conduct unbecoming to not return correspondence or phone calls of two clients over an extended period of time.

Law Society of Saskatchewan v Nugent, 2002 SKLS 7

It is conduct unbecoming to fail to advance a client's case and to not treat a client with courtesy.

Law Society of Saskatchewan v Lannan, 2001 SKLS 4

It is conduct unbecoming to not keep clients reasonably informed and to fail to complete work in a timely manner.

Law Society of Saskatchewan v Peet, 1999 SKLS 10

It is conduct unbecoming to not properly represent or meet the needs of clients.

Law Society of Saskatchewan Conduct Review

2017 SKLSCR 2

Inadequate communication and indecision on strategy can lead to a client's perception that the matter may not have been adequately represented to the Court. In these situations, maintaining regular and clear communication with the client, seeking assistance from other counsel and ensuring materials are adequate are important.

2014 SKLSCR 2

It is important to properly diarize matters and to take steps to reduce the risk of missing court dates, to prepare materials in a timely manner, and to inform a client of reasonable timelines.

2012 SKLSCR 8

Lawyer took nearly a year to make copies of documents and return originals to the client. Being too busy is not a sufficient excuse for poor communication with and service to a client. When a lawyer takes on a client, a lawyer has a duty to that client to do the work required in a competent manner and timely manner.

2012 SKLSCR 1

It is unprofessional to engage in reactionary responses with a client and to call a client "high maintenance". A Lawyer should use a more judicious approach to email.

Law Society of Saskatchewan Ethics Rulings

2018 SKLSPC 4

Lawyers often receive instructions from third parties on wills (i.e., accountants, estate planners, financial institutions, etc.). When a lawyer receives instructions for drafting a will from independent third parties, the lawyer needs to ensure due diligence to ensure that the client has capacity and understanding of their property, potential beneficiaries, and that the instructions concord with their wishes.

Compare: 2003 SKLSPC 2

2003 SKLSPC 2

Taking will instructions from third parties without seeing the testator or confirming the testator's instructions is not appropriate. Of particular concern was that the Lawyer was not a witness to the will, so they did not see the testator at all.

Compare: 2018 SKLSPC 4

2002 SKLSPC 30

Clients should be advised that they may not always achieve their desired result by backdating a commercial document with "effective as of".

2002 SKLSPC 19

It is not inappropriate or unethical to follow a client or executor's instructions not to provide a copy of a will to an estranged family member.

2002 SKLSPC 11

Absent undertakings, accepted trust conditions, or any illegality, a lawyer is bound to follow the instructions of their client. If the required actions breach a document or agreement, a lawyer should advise their client of the potential consequences.

2001 SKLSPC 19

Where there is a legitimate legal question to be answered, a lawyer's refusal to transfer money to a successor lawyer without conditions is not unethical.

1994 SKLSPC 11
The Lawyer sent a letter to the purchaser with inappropriate language and demonstrated poor taste and judgment. It was improper for the Lawyer to copy the letter to the purchaser's bank and real estate agent.
1000 SKLSPC 1
The solicitor-client relationship is a personal one. If a lawyer who accepts a client's file is not going to do the work themselves and hands the file over to a junior partner, the Lawyer must tell the client in advance and be satisfied the client is in agreement.

Limited Scope Retainers

3.2-1A Before undertaking a limited scope retainer the lawyer must advise the client about the nature, extent and scope of the services that the lawyer can provide and must confirm in writing to the client as soon as practicable what services will be provided.

Commentary

[1] Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer.

[2] A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting in a way that suggests that the lawyer is providing full services to the client.

[3] Where the limited services being provided include an appearance before a tribunal a lawyer must be careful not to mislead the tribunal as to the scope of the retainer and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.

[4] A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed (See Rule 7.2-6A).

[5] This rule does not apply to situations in which a lawyer is providing summary advice, for example over a telephone hotline or as duty counsel, or to initial consultations that may result in the client retaining the lawyer.

Honesty and Candour

3.2-2 When advising a client, a lawyer must be honest and candid and must inform the client of all information known to the lawyer that may affect the interests of the client in the matter.

Commentary

[1] 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 matter, if any that might influence whether the client selects or continues to retain the lawyer.

[2] A lawyer's duty to a client who seeks legal advice is to give the client a competent opinion based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law and the lawyer's own experience and expertise. The advice must be open and undisguised and must clearly disclose what the lawyer honestly thinks about the merits and probable results.

[3] Occasionally, a lawyer must be firm with a client. Firmness, without rudeness, is not a violation of the rule. In communicating with the client, the lawyer may disagree with the client's perspective, or may have concerns about the client's position on a matter, and may give advice that will not please the client. This may legitimately require firm and animated discussion with the client.

Annotations

Supreme Court of Canada

Canadian National Railway Co. v McKercher LLP, 2013 SCC 39
A lawyer's duty of loyalty has three salient dimensions: a duty to avoid conflicting interests; a duty of commitment to the client's cause; and a duty of candour. The duty of candour requires disclosure of any factors relevant to the ability to provide effective representation. A lawyer should advise an existing client before accepting a retainer that will require them to act against the client.

Saskatchewan Court of Appeal

Rault v The Law Society of Saskatchewan, 2009 SKCA 81
The Court overturned the Discipline Committee decision, as they erred in failing to consider a joint submission.
Original decision: 2008 SKLS 2.
It is conduct unbecoming to be dishonest with clients and others as to the status of documents and to not diligently complete required work.
McLean v The Law Society of Saskatchewan, 2012 SKCA 7
The Court reduced the penalty, because the Hearing Committee erred when it refused to consider and weigh the explanations for the

actions and mischaracterized the Lawyer's conduct, turning mitigating factors into aggravating ones.
Original decision: 2009 SKLSS 3
It is conduct unbecoming to represent to a client that something has been paid when it has not.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Bachynski, 2018 SKLSS 5
It is conduct unbecoming to fail to inform and lie to a client about an unfavourable outcome for a period of four months.
Law Society of Saskatchewan v Tilling, 2013 SKLSS 12
It is conduct unbecoming to intentionally mislead clients as to the status of their legal matters, when, in fact, nothing has been done.
Law Society of Saskatchewan v Dellow, 2010 SKLSS 9
The Lawyer resigned in the face of discipline.
It is conduct unbecoming to falsely inform a client that proceedings were to take place and then give false reasons that they were cancelled on over thirty occasions, and to fail to file any documents to protect the client's rights.
It is conduct unbecoming to neglect to prepare and file appropriate documents, to pay out trust funds before security was in place and to delay fulfilling many obligations.
Law Society of Saskatchewan v Baumgartner, 2010 SKLSS 1
It is conduct unbecoming to mislead a client by certifying that certain work had been completed, when it had not.
Law Society of Saskatchewan v McLean, 2009 SKLSS 3
See above for SKCA review decision.
Law Society of Saskatchewan v Brown, 2008 SKLS 6
It is conduct unbecoming to mislead a client by advising that there were not encroachments on a property, when there in fact were.
Law Society of Saskatchewan v Rault, 2008 SKLS 2
See above for SKCA review decision.
Law Society of Saskatchewan v MacLowich, 2003 SKLS 8
It is conduct unbecoming to not perform legal services, draft documents, and act for the client in a competent manner. The Lawyer failed to follow instructions to obtain an appraisal of the family home, repeatedly withheld critical information regarding the status of a client's appeal and failed to inform the client that Notice of Appeal had been improperly completed, then failed to correct previous errors. The Lawyer failed to seek instructions from a client, failed to appear, and failed to report the result of the application.
Law Society of Saskatchewan v Hardy, 2006 SKLS 10
It is conduct unbecoming for a lawyer to fail repeatedly to provide an acceptable level of service to clients and to be dishonest in their representation of the work completed on their files.
Law Society of Saskatchewan v Knox, 2003 SKLS 1
It is conduct unbecoming to lead a client to believe matters are progressing when no action had been taken.
Law Society of Saskatchewan v Churchman, 1998 SKLS 2
It is conduct unbecoming for a lawyer to mislead their client about the status of proceedings and work performed on their behalf.
Law Society of Saskatchewan v Duncan, 1997 SKLS 5
It is conduct unbecoming to not inform the client of the outcome of a proceeding at the first opportunity.

Law Society of Saskatchewan v Nakonechny, 1996 SKLS 6
It is conduct unbecoming to pursue a questionable claim not likely to result in an award and to falsely claim a settlement had been reached.

Law Society of Saskatchewan Ethics Rulings

2010 SKLSPC 10
The Committee determined that the third party was not a client of the lawyer, as the client was the only person who provided instructions. However, it was not appropriate for the lawyer to invoice the third party (and commence an action against the third party) without fully disclosing the fee to the third party.
The Committee clarified that there may be a duty of care owed to a third party, even though there is no solicitor-client relationship.
1999 SKLSPC 1
Although a Lawyer may have an obligation to predict the outcome of a trial, the client should not be given an unrealistic expectation and the Lawyer should not be overly bold.
1993 SKLSPC 1
A lawyer must advise their client to be honest and cease to represent them if the client fails to do so.
1000 SKLSPC 1
The solicitor-client relationship is a personal one. If a Lawyer who accepts a client's file is not going to do the work themselves and hands the file over to a junior partner, the Lawyer must tell the client in advance and be satisfied the client is in agreement.

Law Society of Saskatchewan Admissions and Education Decisions

Law Society of Saskatchewan v Rogers, 2016 SKLSS 11
The Applicant applied for re-instatement after resigning in the face of discipline for misleading their clients and acting dishonestly. See Integrity section for further notes.

Language Rights

3.2-2A A lawyer must, when appropriate, advise a client of the client's language rights, including the right to proceed in the official language of the client's choice.

3.2-2B Where a client wishes to retain a lawyer for representation in the official language of the client's choice, the lawyer must not undertake the matter unless the lawyer is competent to provide the required services in that language.

Commentary
[1] The lawyer should advise the client of the client's language rights as soon as possible.

[2] The choice of official language is that of the client not the lawyer. The lawyer should be aware of relevant statutory and Constitutional law relating to language rights including the Canadian Charter of Rights and Freedoms, s.19-1 and Part XVII of the Criminal Code regarding language rights in courts under federal jurisdiction and in criminal proceedings. The lawyer should also be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages.

[3] When a lawyer considers whether to provide the required services in the official language chosen by the client, the lawyer should carefully consider whether it is possible to render those services in a competent manner as required by Rule 3.1-2 and related Commentary.

When the Client is an Organization

3.2-3 Although a lawyer may receive instructions from an officer, employee, agent or representative, when a lawyer is employed or retained by an organization, including a corporation, the lawyer must act for the organization in exercising his or her duties and in providing professional services.

Commentary

[1] A lawyer acting for an organization should keep in mind that the organization, as such, is the client and that a corporate client has a legal personality distinct from its shareholders, officers, directors and employees. While the organization or corporation acts and gives instructions through its officers, directors, employees, members, agents or representatives, the lawyer should ensure that it is the interests of the organization that are served and protected. Further, given that an organization depends on persons to give instructions, the lawyer should ensure that the person giving instructions for the organization is acting within that person's actual or ostensible authority.

[2] In addition to acting for the organization, a lawyer may also accept a joint retainer and act for a person associated with the organization. For example, a lawyer may advise an officer of an organization about liability insurance. In such cases the lawyer acting for an organization should be alert to the prospects of conflicts of interests and should comply with the rules about the avoidance of conflicts of interests (section 3.4).

Annotations

Law Society of Saskatchewan Discipline Decisions
Law Society of Saskatchewan v Avram, 2002 SKLS 2
When acting for a corporation, it is conduct unbecoming to take instructions from one shareholder over the other, thereby preferring the interests of the shareholder over those of the corporation.

Encouraging Compromise or Settlement

3.2-4 A lawyer must advise and encourage a client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and must discourage the client from commencing or continuing useless legal proceedings.

Commentary

[1] A lawyer should consider the use of alternative dispute resolution (ADR) when appropriate, inform the client of ADR options and, if so instructed, take steps to pursue those options.

Annotations

Law Society of Saskatchewan Discipline Decisions
Law Society of Saskatchewan v Nakonechny, 1996 SKLS 6
It is conduct unbecoming to pursue a questionable claim not likely to result in an award and to falsely claim a settlement had been reached.

Law Society of Saskatchewan Ethics Rulings
2000 SKLSPC 21
There is no ethical duty to contact an opposing party's lawyer prior to attempting to garnishee wages, but it is likely best practice as it may result in settlement.

Threatening Criminal or Regulatory Proceedings

3.2-5 A lawyer must not, in an attempt to gain a benefit for a client, threaten, or advise a client to threaten:

(a) to initiate or proceed with a criminal or quasi-criminal charge; or

(b) to make a complaint to a regulatory authority.

Commentary

[1] It is an abuse of the court or regulatory authority's process to threaten to make or advance a complaint in order to secure the satisfaction of a private grievance. Even

if a client has a legitimate entitlement to be paid monies, threats to take criminal or quasi-criminal action are not appropriate.

[2] It is not improper, however, to notify the appropriate authority of criminal or quasi-criminal activities while also taking steps through the civil system. Nor is it improper for a lawyer to request that another lawyer comply with an undertaking or trust condition or other professional obligation or face being reported to the Society. The impropriety stems from threatening to use, or actually using, criminal or quasi-criminal proceedings to gain a civil advantage.

Annotations

Law Society of Saskatchewan Conduct Review

2017 SKLSCR 3

The act of combining in the same paragraph both a reference to reporting professional conduct to the Law Society and seeking abandonment of a claim shows poor judgment, because a paragraph is intended to be a set of related sentences. The result was that the Lawyer implied that they would report opposing counsel if the latter did not agree to abandon a claim.

Law Society of Saskatchewan Ethics Rulings

2011 SKLSPC 2

Suggesting that the Lawyer "will personally see to it that [the opposing parties] are charged with theft" is very close to the line, but not a breach of the Code (Note: the Committee interpreted the former Code). A lawyer must remain objective and must not allow personal animosity or emotions to cloud their judgment and/or communications with an opposing party, particularly a self-represented individual. A lawyer should guard against unprofessional letters or letters which could be construed as such.

2010 SKLSPC 2

Lawyers have a responsibility not to attempt to influence a decision of a tribunal by use of threat, whether intended or not. Inappropriate conduct is inappropriate whether or not the lawyer is acting on the instruction of their client and it does not alleviate a lawyer's responsibility.

2005 SKLSPC 5

A threatening statement in a letter from a lawyer is unacceptable and may be viewed as an abuse of a lawyer's position of power against a self-represented party.

2001 SKLSPC 14

A statement made by a lawyer that criminal consequences may flow from particular actions does not constitute a threat of criminal action for civil advantage.

1999 SKLSPC 26

Stating that if an opposing party does not return property by a certain date that the Lawyer would proceed with criminal charges is an attempt to threaten criminal charges to obtain civil advantage.

1999 SKLSPC 25
When advising that a client may report conduct to the Law Society, there is no obligation to give details of the client's potential complaint as it is the client's right to make a complaint on their own behalf. Simply stating or advising what a client planned to do is not misconduct.
1998 SKLSPC 20
There is no breach of ethics in threatening to sue another lawyer in a dispute over a civil matter.
1997 SKLSPC 3
While a lawyer may be prohibited, by virtue of this Code section, from advising the opposing party that the matter would be referred to the police if they didn't settle, the client is entitled to report the matter to the police at any time.
1989 SKLSPC 2
Writing demand or collection letters that threaten to bring a criminal prosecution is improper conduct.
1989 SKLSPC 1
It is improper for a lawyer to advise, threaten or bring a criminal or quasi-criminal prosecution in order to secure an advantage.

Inducement for Withdrawal of Criminal or Regulatory Proceedings

3.2-6 A lawyer must not:

(a) give or offer to give, or advise an accused or any other person to give or offer to give, any valuable consideration to another person in exchange for influencing the Crown or a regulatory authority's conduct of a criminal or quasi-criminal charge or a complaint, unless the lawyer obtains the consent of the Crown or the regulatory authority to enter into such discussions;

(b) accept or offer to accept, or advise a person to accept or offer to accept, any valuable consideration in exchange for influencing the Crown or a regulatory authority's conduct of a criminal or quasi-criminal charge or a complaint, unless the lawyer obtains the consent of the Crown or regulatory authority to enter such discussions; or

(c) wrongfully influence any person to prevent the Crown or regulatory authority from proceeding with charges or a complaint or to cause the Crown or regulatory authority to withdraw the complaint or stay charges in a criminal or quasi-criminal proceeding.

Commentary
[1] "**Regulatory authority**" includes professional and other regulatory bodies.

[2] A lawyer for an accused or potential accused must never influence a complainant or potential complainant not to communicate or cooperate with the Crown. However, this rule does not prevent a lawyer for an accused or potential accused from communicating with a complainant or potential complainant to obtain factual information, arrange for restitution or an apology from an accused, or defend or settle any civil matters between the accused and the complainant. When a proposed resolution involves valuable consideration being exchanged in return for influencing the Crown or regulatory authority not to proceed with a charge or to seek a reduced sentence or penalty, the lawyer for the accused must obtain the consent of the Crown or regulatory authority prior to discussing such proposal with the complainant or potential complainant. Similarly, lawyers advising a complainant or potential complainant with respect to any such negotiations can do so only with the consent of the Crown or regulatory authority.

[3] A lawyer cannot provide an assurance that the settlement of a related civil matter will result in the withdrawal of criminal or quasi-criminal charges, absent the consent of the Crown or regulatory authority.

[4] When the complainant or potential complainant is unrepresented, the lawyer should have regard to the rules respecting unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused. If the complainant or potential complainant is vulnerable, the lawyer should take care not to take unfair or improper advantage of the circumstances. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Knott, 2015 SKLSS 3
It is conduct unbecoming to include a provision in an agreement which attempts to prevent the opposing client from pursuing allegations of conflict of interest against the Lawyer.

Law Society of Saskatchewan v Duncan-Bonneau, 2014 SKLSS 11
It is conduct unbecoming for a lawyer to abuse their power as the sole executor of an estate by threatening to increase fees in an attempt to compel a beneficiary to abandon a complaint.

Law Society of Saskatchewan v Blenner-Hassett, 2014 SKLSS 4
It is conduct unbecoming to threaten to sue the opposing party in response to a complaint made to the Law Society or to offer to forego the proceedings in exchange for withdrawal of the complaint. It offends public interest if a term of settlement requires refraining from or withdrawing a complaint.

Law Society of Saskatchewan v Wilson, 2011 SKLSS 8
It is conduct unbecoming to offer to reduce legal fees in exchange for a written agreement that the client not proceed with a complaint to the Society.

Law Society of Saskatchewan Conduct Review

2013 SKLSCR 4
It is inappropriate to make the withdrawal of a Law Society complaint a condition of a civil settlement.

Law Society of Saskatchewan Ethics Rulings

2002 SKLSPC 6
See also 2002 SKLSPC 2. Just as it is improper to require a complaint to be abandoned as part of a settlement, it is improper for a lawyer to impose a condition that correspondence not be disclosed to the Law Society. No matter what a lawyer says in a letter or by way of agreement, if the Law Society is investigating a matter, no provision will prevent the Society from carrying out its statutory duty.
1998 SKLSPC 20
There is no breach of ethics in threatening to sue another lawyer in a dispute over a civil matter.
1998 SKLSPC 17
It is improper to bargain a complaint away by offering to pay the account of an expert witness as an exchange for withdrawal of a complaint.
1998 SKLSPC 3
It is not appropriate to accept an offer from a client to accept a lesser amount for an account in exchange for the withdrawal of a complaint.
1995 SKLSPC 12
Threatening civil action is improper if used as an intimidation tactic, but if a Lawyer has a genuine belief that another lawyer is acting improperly, it is improper for the Lawyer not to say so.

Dishonesty, Fraud by Client or Others

3.2-7 A lawyer must never:

(a) knowingly assist in or encourage any dishonesty, fraud, crime or illegal conduct;

(b) do or omit to do anything that the lawyer ought to know assists in or encourages any dishonesty, fraud, crime, or illegal conduct by a client or others; or

(c) instruct a client or others on how to violate the law and avoid punishment.

Commentary

[1] A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.

[2] A lawyer should be alert to and avoid unwittingly becoming involved with a client or others engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.

[3] If a lawyer has suspicions or doubts about whether he or she might be assisting a client or others in dishonesty, fraud, crime or illegal conduct, the lawyer should make reasonable inquiries to obtain information about the client or others and, in the case of a client, about the subject matter and objectives of the retainer. These should include verifying who are the legal or beneficial owners of property and business entities, verifying who has the control of business entities, and clarifying the nature and purpose of a complex or unusual transaction where the purpose is not clear. The lawyer should make a record of the results of these inquiries.

[4] A bona fide test case is not necessarily precluded by this rule and, so long as no injury to a person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case. In all situations, the lawyer should ensure that the client appreciates the consequences of bringing a test case.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Scharfstein, 2020 SKLSS 5

It is conduct unbecoming for a lawyer, through recklessness, to assist a client commit fraud.

The Hearing Panel accepted a joint submission for resignation, a three-month period before the lawyer can reapply, and costs. There was a dissenting opinion suggesting that the penalty was not severe enough, as it did not reflect the seriousness of the conduct, the consequence of the actions, the lack of remorse and the Law Society's duty to the public.

Law Society of Saskatchewan v Rintoul, 2020 SLSS 4
It is conduct unbecoming to accept cash in the aggregate amount of $28,000 in one transaction contrary to LSS Rule 909(1). The Rules related to the amount of cash that a lawyer may accept are to ensure that those involved in money laundering do not use the cloak of solicitor/client privilege to conceal money laundering activities. The Rules balance maintaining the integrity of solicitor-client privilege while also protecting members of the public and the public interest.
Law Society of Saskatchewan v Heinricks, 2020 SKLSS 3
It is conduct unbecoming to accept cash in the aggregate amount of $13,000 in one transaction contrary to LSS Rule 909(1). Money laundering is not in the public interest and law societies need to police this strictly or risk eroding the public's trust in law societies' ability to do so.
Law Society of Saskatchewan v Buitenhuis, 2020 SKLSS 2
It is conduct unbecoming to accept cash in an aggregate amount of $249,700 in one transaction, contrary to Law Society of Saskatchewan Rule 909. The fact that the client was "bank averse" and preferred to deal in cash was not relevant. Money laundering is a serious problem and governments are taking steps to curtail it. To ensure that law societies continue to be allowed to regulate trust accounts, law societies must rigorously enforce the Rules.
Law Society of Saskatchewan v Migneault, 2017 SKLSS 7
A lawyer must be diligent dealing with a client with a long history of fraud so as not to facilitate fraudulent behaviour and/or allow the client to use the law firm to legitimize their fraudulent activities.
Law Society of Saskatchewan v MacLowich, 2005 SKLS 1
It is conduct unbecoming to assist a client to avoid a legal obligation to pay garnishees when due.
Law Society of Saskatchewan v Smith, 2003 SKLS 7
It is conduct unbecoming to counsel a client to route money received for stolen goods into a trust account to avoid seizure by the police.
Law Society of Saskatchewan v Segal, 1999 SKLS 4
Where a client makes false testimony, the Lawyer should request an adjournment or bring the incorrectness to the attention of counsel opposite. Failing to do so is conduct unbecoming. If the client refuses to cooperate, the Lawyer must withdraw.

Law Society of Saskatchewan Ethics Rulings

1986 SKLSPC 1
It is unethical for a lawyer to knowingly participate in a "zero-down payment arrangement", where the offer to purchase includes a down payment and is presented to the financial institution for financing, but then a side arrangement is made to not actually pay the down payment, without notifying the financial institution. This would be a breach of the Lawyer's duty to their client, the financial institution.

Other Sources

Law Society of Upper Canada v Michael Andrew Osborne, 2012 ONLSHP 57
It is willful blindness where a lawyer is aware of suspicious circumstances, but refrains from asking questions, or where they

become aware of circumstances that call for an explanation but decline to make an inquiry because they prefer to remain ignorant. *First Can Title Co. v Law Society of BC*, 2004 BCSC 197
It is inappropriate for a lawyer to permit documents executed in one location to be sent to another location for completion by a witness as it would provide increased opportunity for fraud and would fail to preserve integrity of the system.

Dishonesty, Fraud when Client an Organization

3.2-8 A lawyer who is employed or retained by an organization to act in a matter in which the lawyer knows that the organization has acted, is acting or intends to act dishonestly, fraudulently, criminally or illegally, must do the following, in addition to his or her obligations under Rule 3.2-7:

(a) advise the person from whom the lawyer takes instructions and the chief legal officer, or both the chief legal officer and the chief executive officer, that the proposed conduct is, was or would be dishonest, fraudulent, criminal, or illegal and should be stopped;

(b) if necessary because the person from whom the lawyer takes instructions, the chief legal officer or the chief executive officer refuses to cause the proposed conduct to be stopped, advise progressively the next highest persons or groups, including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the proposed conduct was, is or would be dishonest, fraudulent, criminal, or illegal and should be stopped; and

(c) if the organization, despite the lawyer's advice, continues with or intends to pursue the proposed wrongful conduct, withdraw from acting in the matter in accordance with section 3.7.

Commentary

[1] The past, present, or proposed misconduct of an organization may have harmful and serious consequences, not only for the organization and its constituency, but also for the public who rely on organizations to provide a variety of goods and services. In particular, the misconduct of publicly traded commercial and financial corporations may have serious consequences for the public at large. This rule addresses some of the professional responsibilities of a lawyer acting for an organization, including a corporation, when he or she learns that the organization has acted, is acting, or proposes to act in a way that is dishonest, fraudulent, criminal or

illegal. In addition to these rules, the lawyer may need to consider, for example, the rules and commentary about confidentiality (section 3.3).

[2] This rule speaks of conduct that is dishonest, fraudulent, criminal or illegal. Such conduct includes acts of omission. Indeed, often it is the omissions of an organization, such as failing to make required disclosure or to correct inaccurate disclosures that constitute the wrongful conduct to which these rules relate. Conduct likely to result in substantial harm to the organization, as opposed to genuinely trivial misconduct by an organization, invokes these rules.

[3] In considering his or her responsibilities under this section, a lawyer should consider whether it is feasible and appropriate to give any advice in writing.

[4] A lawyer acting for an organization who learns that the organization has acted, is acting, or intends to act in a wrongful manner, may advise the chief executive officer and must advise the chief legal officer of the misconduct. If the wrongful conduct is not abandoned or stopped, the lawyer must report the matter "up the ladder" of responsibility within the organization until the matter is dealt with appropriately. If the organization, despite the lawyer's advice, continues with the wrongful conduct, the lawyer must withdraw from acting in the particular matter in accordance with Rule 3.7-1. In some but not all cases, withdrawal means resigning from his or her position or relationship with the organization and not simply withdrawing from acting in the particular matter.

[5] This rule recognizes that lawyers as the legal advisers to organizations are in a central position to encourage organizations to comply with the law and to advise that it is in the organization's and the public's interest that organizations do not violate the law. Lawyers acting for organizations are often in a position to advise the executive officers of the organization, not only about the technicalities of the law, but also about the public relations and public policy concerns that motivated the government or regulator to enact the law. Moreover, lawyers for organizations, particularly in-house counsel, may guide organizations to act in ways that are legal, ethical, reputable and consistent with the organization's responsibilities to its constituents and to the public.

Clients with Diminished Capacity

3.2-9 When a client's ability to make decisions is impaired because of minority or mental disability, or for some other reason, the lawyer must, as far as reasonably possible, maintain a normal lawyer and client relationship.

Commentary

[1] A lawyer and client relationship presupposes that the client has the requisite mental ability to make decisions about his or her legal affairs and to give the lawyer instructions. A client's ability to make decisions depends on such factors as age, intelligence, experience and mental and physical health and on the advice, guidance and support of others. A client's ability to make decisions may change, for better or worse, over time. A client may be mentally capable of making some decisions but not others. The key is whether the client has the ability to understand the information relative to the decision that has to be made and is able to appreciate the reasonably foreseeable consequences of the decision or lack of decision. Accordingly, when a client is, or comes to be, under a disability that impairs his or her ability to make decisions, the lawyer will have to assess whether the impairment is minor or whether it prevents the client from giving instructions or entering into binding legal relationships.

[2] A lawyer who believes a person to be incapable of giving instructions should decline to act. However, if a lawyer reasonably believes that the person has no other agent or representative and a failure to act could result in imminent and irreparable harm, the lawyer may take action on behalf of the person lacking capacity only to the extent necessary to protect the person until a legal representative can be appointed. A lawyer undertaking to so act has the same duties under these rules to the person lacking capacity as the lawyer would with any client.

[3] If a client's incapacity is discovered or arises after the solicitor-client relationship is established, the lawyer may need to take steps to have a lawfully authorized representative, such as a litigation guardian, appointed or to obtain the assistance of the Office of the Public Trustee to protect the interests of the client. Whether that should be done depends on all relevant circumstances, including the importance and urgency of any matter requiring instruction. In any event, the lawyer has an ethical obligation to ensure that the client's interests are not abandoned. Until the appointment of a legal representative occurs, the lawyer should act to preserve and protect the client's interests.

[4] In some circumstances when there is a legal representative, the lawyer may disagree with the legal representative's assessment of what is in the best interests of the client under a disability. So long as there is no lack of good faith or authority, the judgment of the legal representative should prevail. If a lawyer becomes aware of conduct or intended conduct of the legal representative that is clearly in bad faith or outside that person's authority, and contrary to the best interests of the client with diminished capacity, the lawyer may act to protect those interests. This may require

reporting the misconduct to a person or institution such as a family member or the Public Trustee.

[5] When a lawyer takes protective action on behalf of a person or client lacking in capacity, the authority to disclose necessary confidential information may be implied in some circumstances: See Commentary under Rule 3.3-1 (Confidentiality) for a discussion of the relevant factors. If the court or other counsel becomes involved, the lawyer should inform them of the nature of the lawyer's relationship with the person lacking capacity.

Annotations

Supreme Court of Canada

Hopp v Lepp,[1980] 2 SCR 192
Note: this is a medical case. Consent gives protection to the professional only so far as the client is sufficiently informed and capable of making a choice.

Saskatchewan Court of Appeal

Hrycyna v Hood, 2019 SKCA 30
Discussions surrounding the issue of capacity and power of attorney.

Karpinski v Zookewich Estate, 2018 SKCA 56
The relevant time to assess testamentary capacity is the time of giving instruction and/or the time of executing the will.

Saskatchewan Court of King's Bench

Kushnerek v Hawryluk, 2008 SKQB 454
The Lawyer acted appropriately in ensuring and testifying to a client's testamentary capacity and lack of undue influence.

Other Sources

Boughton v Knight (1873), LR 3 PD 64
Whether a party is incapable of understanding the nature of a contract must be determined at the time of contracting.

Stevens v Morrisroe, 2001 ABCA 195
The relevant time period to assess testamentary capacity is the time of giving instruction and/or the time of executing the will.

Andrew Kaufman, "Representing a Minor: A Shared Dilemma in Ontario and Massachusetts" (2008) 46 Osgoode Hall LJ 159
A commentary on how a lawyer should work with clients who are minors.
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[Rule 3.2 -1A added with Commentary, Feb. 14, 2014]
[Rules 3.2 -2A and 3.2-2B added with Commentary, Feb. 13, 2015]
[3.2-1, Commentary [5](m) and 3.2-1, Commentary [6] amended, April 29, 2016]
[3.2-7 amended, Commentary [2] and [3] amended, September 22, 2017]

3.3 CONFIDENTIALITY

Confidential Information

3.3-1 A lawyer at all times must hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship and must not divulge any such information unless:

(a) expressly or impliedly authorized by the client;

(b) required by law or a court to do so;

(c) required to deliver the information to the Law Society, or

(d) otherwise permitted by this rule.

Commentary

[1] A lawyer cannot render effective professional service to a client unless there is full and unreserved communication between them. At the same time, the client must feel completely secure and entitled to proceed on the basis that, without any express request or stipulation on the client's part, matters disclosed to or discussed with the lawyer will be held in strict confidence.

[2] This rule must be distinguished from the evidentiary rule of lawyer and client privilege, which is also a constitutionally protected right, concerning oral or documentary communications passing between the client and the lawyer. The ethical rule is wider and applies without regard to the nature or source of the information or the fact that others may share the knowledge.

[3] A lawyer owes the duty of confidentiality to every client without exception and whether or not the client is a continuing or casual client. The duty survives the professional relationship and continues indefinitely after the lawyer has ceased to act for the client, whether or not differences have arisen between them.

[4] A lawyer also owes a duty of confidentiality to anyone seeking advice or assistance on a matter invoking a lawyer's professional knowledge, although the lawyer may not render an account or agree to represent that person. A solicitor and client relationship is often established without formality. A lawyer should be cautious in accepting confidential information on an informal or preliminary basis, since

possession of the information may prevent the lawyer from subsequently acting for another party in the same or a related matter. (See Rule 3.4-1 Conflicts.)

[5] Generally, unless the nature of the matter requires such disclosure, a lawyer should not disclose having been:

(a) retained by a person about a particular matter; or

(b) consulted by a person about a particular matter, whether or not the lawyer-client relationship has been established between them.

[6] A lawyer should take care to avoid disclosure to one client of confidential information concerning or received from another client and should decline employment that might require such disclosure.

[7] Sole practitioners who practise in association with other lawyers in cost-sharing, space-sharing or other arrangements should be mindful of the risk of advertent or inadvertent disclosure of confidential information, even if the lawyers institute systems and procedures that are designed to insulate their respective practices. The issue may be heightened if a lawyer in the association represents a client on the other side of a dispute with the client of another lawyer in the association. Apart from conflict of interest issues such a situation may raise, the risk of such disclosure may depend on the extent to which the lawyers' practices are integrated, physically and administratively, in the association.

[8] A lawyer should avoid indiscreet conversations and other communications, even with the lawyer's spouse or family, about a client's affairs and should shun any gossip about such things even though the client is not named or otherwise identified. Similarly, a lawyer should not repeat any gossip or information about the client's business or affairs that is overheard or recounted to the lawyer. Apart altogether from ethical considerations or questions of good taste, indiscreet shoptalk among lawyers, if overheard by third parties able to identify the matter being discussed, could result in prejudice to the client. Moreover, the respect of the listener for lawyers and the legal profession will probably be lessened. Although the rule may not apply to facts that are public knowledge, a lawyer should guard against participating in or commenting on speculation concerning clients' affairs or business.

[9] In some situations, the authority of the client to disclose may be inferred. For example, in court proceedings some disclosure may be necessary in a pleading or other court document. Also, it is implied that a lawyer may, unless the client directs otherwise, disclose the client's affairs to partners and associates in the law firm and,

to the extent necessary, to administrative staff and to others whose services are used by the lawyer. But this implied authority to disclose places the lawyer under a duty to impress upon associates, employees, students and other lawyers engaged under contract with the lawyer or with the firm of the lawyer the importance of non-disclosure (both during their employment and afterwards) and requires the lawyer to take reasonable care to prevent their disclosing or using any information that the lawyer is bound to keep in confidence.

[10] The client's authority for the lawyer to disclose confidential information to the extent necessary to protect the client's interest may also be inferred in some situations where the lawyer is taking action on behalf of the person lacking capacity to protect the person until a legal representative can be appointed. In determining whether a lawyer may disclose such information, the lawyer should consider all circumstances, including the reasonableness of the lawyer's belief the person lacks capacity, the potential harm that may come to the client if no action is taken, and any instructions the client may have given the lawyer when capable of giving instructions about the authority to disclose information. Similar considerations apply to confidential information given to the lawyer by a person who lacks the capacity to become a client but nevertheless requires protection.

[11] A lawyer may have an obligation to disclose information under Rules 5.5-2, 5.5-3 and 5.6-3. If client information is involved in those situations, the lawyer should be guided by the provisions of this rule.

Annotations

Supreme Court of Canada

Société d'énergie Foster Wheeler Ltée c Société intermunicipale de gestion & d'élimination des déchets inc, 2004 SCC 18
A review of the scope of a lawyer's duty of confidentiality.

Maranda v Richer, 2003 SCC 67
Confidentiality due to the solicitor-client relationship is essential to the proper functioning of the justice system. It is important that lawyers who are ethically bound do not have their offices turned into archives for the use of the prosecution

Goodman Estate v Geffen, [1991] 2 SCR 353
A lawyer's confidentiality obligation is not extinguished by the client's death.

MacDonald Estate v Martin, [1990] 3 SCR 1235
Note: this case is sometimes referred to as *Martin v Gray*.
Nothing is more important in a solicitor-client relationship than confidentiality.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Sheppard, 2014 SKLSS 5

The duty of loyalty is not terminated when services rendered are completed. Where a lawyer represents an opposing party on a related matter (i.e., one based on the same facts/evidence as the previous action), this puts the lawyer in a position to be tempted to breach confidentiality. This is conduct unbecoming, even if the duty of confidentiality was not breached

Law Society of Saskatchewan Conduct Review

2014 SKLSCR 8

A lawyer's belief that certain actions may help their client does not negate a lawyer's duties to the clients and the potential conflict of interest.

2003 SKLSPC 10

If a lawyer only represents one individual, they can only disclose materials to the individual or their solicitor. If a lawyer acts for an individual and a company, they can only disclose to that individual, the company and/or their solicitors.

Law Society of Saskatchewan Ethics Rulings

2018 SKLSPC 5

Materials disclosed for criminal defence should not be released to third parties by the lawyer representing the accused. While a victim has the right to request information about the location, progress, and outcome of the proceedings, a lawyer is not entitled to review disclosure with the victim.

2016 SKLSPC 1

When communicating with any party, a lawyer should take steps to guard against potential embarrassment caused by disclosure of personal and private information to an unintended individual.

2015 SKLSPC 11

A lawyer should disclose the existence and location of a will upon request. Otherwise, when a lawyer receives an inquiry into a deceased person's will, the lawyer should only disclose the minimum information necessary.

2010 SLKSPC 6

Where a letter contains confidential information about a person (here, medical information), a lawyer should not cc an opposing party on that correspondence without the consent of that person. Doing so is a breach of confidentiality.

2006 SKLSPC 1

It is prudent for a lawyer to give notification when contacting the opposing client's physician without specific authorization.

2003 SLKSPC 19

A lawyer cannot provide a deceased client's incomplete change of beneficiary document without a court order.

2003 SKLSPC 18

When acting for both sides of a real estate transaction, a lawyer should utilize a disclosure statement. The lawyer should disclose information if it is material to the vendors and the mortgage company.

2003 SKLSPC 3
The release of a deceased client's files to the executor(s) is more than a simple transfer. The files must be reviewed to ensure the protection of privileged information.
2002 SKLSPC 31
A lawyer has no choice but to send their client to another lawyer for advice if the issue may breach the confidentiality of a former client.
2001 SKLSPC 4
When working as an elected official, it is unethical for a lawyer to reveal that they had previously acted for a client. A lawyer should not disclose having been consulted or retained unless the nature of the matter requires such disclosure.
2000 SKLSPC 17
When a lawyer who has explicit instructions not to contact their client by phone or email needs to contact their client one of these ways, the lawyer should take reasonable steps to do so in a non-identifying manner.
2000 SKLSPC 8
While a lawyer should keep the fact that they have been retained by a client confidential, informing opposing counsel of representation of their expert witness in another action provides an exception.
2000 SKLSPC 2
It is extremely inappropriate and unethical for a lawyer to speak in public about a client's legal affairs. Indiscreet shoptalk, if overheard, could result in prejudice to a client.
1999 SKLSPC 15
The preservation of client confidentiality overrides the duty to report a client believed to be practicing without proper Saskatchewan Law Society accreditation.
1999 SKLSPC 6
There is a duty to turn trust funds remaining after the death of a client over to the client's estate without disclosing how the lawyer received those funds.
1999 SKLSPC 5
It is all right to discuss the referral of a client file with the receiving Lawyer, but a lawyer must be careful the conversation does not qualify as mere gossip. It is inexcusable to tell the other party about representation of the client, especially in a matrimonial matter.
1998 SKLSPC 1
In light of a conflict over the validity of power of attorney, a lawyer is advised not to release documents without a court order.
1996 SKLSPC 8
A deceased's executors are entitled to the actual property of the deceased. There is an exception to the law of privilege regarding intention for wills and the division of property, but that is as far as the exception goes. Otherwise, a lawyer should not disclose confidential information.
1994 SKLSPC 14
A lawyer should be aware of any dangers regarding the loss of confidential information through accounting and review possible solutions with their accountants.

1994 SKLSPC 1
A lawyer should not disclose whether they were consulted or retained by a person unless the nature of the matter requires such disclosure.
1993 SKLSPC 4
A lawyer is justified in disclosing information via testimony to defend themselves. The information in this case was provided by a third party and therefore was not privileged.
1992 SKLSPC 5
A lawyer must advise their client to report errors regarding Revenue Canada and point out the ramifications of failure to do so. If the client refuses to comply, the lawyer must no longer act for the client.
1990 SKLSPC 1
It is not improper to use accounts receivable as security for a line of credit, but names of clients should not be disclosed.
1986 SKLSPC 8
If the information a lawyer wishes to disclose was obtained in a manner that gave rise to privilege, a lawyer may not give advice to the spouse of the client.
1986 SKLSPC 9
If a client falsely informs the lawyer of a material fact, the Lawyer should advise a client that they have committed an offence. If the client will not correct their actions, the Lawyer should cease to act for them and advise that any information obtained after withdrawal will be reported.
1984 SKLSPC 1
If there is more than one reasonable apprehension in a child custody matter that the child(ren) may be taken out of the jurisdiction, a lawyer must not stand on solicitor-client confidentiality
1000 SKLSPC 2
If a lawyer wishes to interview with the RCMP, they must not disclose privileged information unless solicitor-client privilege is waived.

Use of Confidential Information

3.3-2 A lawyer must not use or disclose a client's or former client's confidential information to the disadvantage of the client or former client, or for the benefit of the lawyer or a third person without the consent of the client or former client.

Commentary

[1] The fiduciary relationship between a lawyer and a client forbids the lawyer or a third person from benefiting from the lawyer's use of a client's confidential information. If a lawyer engages in literary works, such as a memoir or autobiography, the lawyer is required to obtain the client's or former client's consent before disclosing confidential information.

Annotations

Saskatchewan Court of Appeal

Abrametz v The Law Society of Saskatchewan, 2018 SKCA 37

The Court upheld the two-month suspension for being reasonable, but allowed in part the appeal relating to costs.

There is no fixed penalty or sanction for conflict of interest. The range of reasonable sentences in disciplinary matters is elastic. A two-month suspension fell within the range of reasonable sentences.

When making a costs order, a discipline committee should consider the factors in *Hills v Nova Scotia (Provincial Dental Board),* 2009 NSCA 13: (a) the balance between effect of the award on the member and the need to be able to effectively administer the disciplinary process; (b) the respective degrees of success of the parties; (c) that costs awards are not to be punitive; (d) the other sanctions imposed and their associated expenses; (e) the relative time and expense of the investigation and hearing associated with each of the charges and in particular those on which guilt were entered and those where the member was found not guilty.

In addition, the Court noted that this list of factors is not exhaustive and a discipline body needs to take into account the unique circumstances of each case.

The cost order was reduced because the Discipline Committee failed to give any weight to the mixed results of the hearing or the cost ruling on the judicial review application. In doing so, the Discipline Committee failed to take relevant factors into consideration.

Original Decision: 2017 SKLSS 4:

It is conduct unbecoming to use information acquired during the representation of clients to obtain a benefit for the Lawyer or their associates.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Abrametz, 2017 SKLSS 4

See above for SKCA review decision

Law Society of Saskatchewan v Phillips, 2015 SKLSS 8

All charges were dismissed. Refusing to deliver the original birth certificate of a beneficiary to an estate is not preferring the interests of a third party over those of the client (executor) or a breach of the duty of loyalty to the client (executor).

Law Society of Saskatchewan Ethics Rulings

2017 SKLSPC 1

It is not abnormal nor improper for a lawyer to include a separate family member in communications with the client's consent.

2003 SKLSPC 14

A verbal commitment from one client to use their personal history to assist another client is not a sufficient waiver of privilege. A lawyer must always explain the possible consequences of waiver and receive consent in writing.

1000 SKLSPC 38

A non-lawyer (here, financial planner) receiving instructions and providing information to a law firm to prepare documents, which are then returned to the non-lawyer to provide to the client, creates

several problems including indirect touting, breach of confidentiality and the possibility of abetting unauthorized practice.

3.3-3 Future Harm/Public Safety Exception *[moved to 3.3-3A]*

Mandatory Disclosure – Future Harm/Public Safety Exception

3.3-3A A lawyer must disclose confidential information, but only to the extent necessary if the lawyer has reasonable grounds for believing that an identifiable person or group is in imminent danger of death or serious bodily harm and believes disclosure is necessary to prevent the death or harm.

Commentary

[1] While a lawyer is generally justified in obeying a court order to disclose confidential information, this may not be the case where a lawyer believes in good faith that the order is in error. In these circumstances, provided that an appeal from the order is taken, the lawyer has an obligation to withhold disclosure pending final adjudication of the matter.

[2] A decision to disclose the confidential information of a client cannot be taken lightly. In making that decision the lawyer should be guided by the commentary to Rule 3.3-3B. In the case of mandatory disclosure, a significant factor to be considered is the imminence of the perceived danger. In the absence of an imminent danger, there may be other alternatives available to the lawyer short of disclosure.

[3] Disclosure of information necessary to prevent a crime will be justified if the lawyer has reasonable grounds for believing that a crime is likely to be committed and will be mandatory when the anticipated crime is one involving violence against the person.

[4] Mandatory disclosure of imminent danger of death or bodily harm is not conditional on a crime occurring. Accordingly, this rule could apply in circumstances such as a threatened suicide or self-mutilation.

[5] A lawyer may be relieved from the mandatory obligation to disclose information arising from a reasonable belief that a person is in imminent danger of death or serious bodily harm if the lawyer reasonably believes that disclosure will bring harm upon the lawyer or the lawyer's family or colleagues. This might occur where the lawyer expects that the client is likely to retaliate or has threatened retaliation.

[6] Serious psychological harm may constitute serious bodily harm, so long as the psychological harm substantially interferes with the health or well-being of the complainant.

Annotations

Supreme Court of Canada

Smith v Jones, [1999] 1 SCR 455

Privilege is not absolute and is subject to exceptions. The public safety exception applies whether or not there is a clear risk to an identifiable person or group, whether there is a risk of serious bodily harm or death, and whether the danger is imminent.

Permitted Disclosure

3.3-3B A lawyer may divulge confidential information, but only to the extent necessary:

(a) in accordance with rule 3.3-1;

(b) in order to establish or collect a fee;

(c) in order to secure legal or ethical advice about the lawyer's proposed conduct;

(d) if the lawyer has reasonable grounds for believing that a crime is likely to be committed and believes disclosure could prevent the crime; or

(e) if the lawyer has reasonable grounds for believing that a dangerous situation is likely to develop at a court facility.

Commentary

[1] When a client undermines the lawyer and client relationship by impugning the lawyer's conduct or refusing to pay the lawyer's account, fairness dictates that there is a waiver of confidentiality to such an extent so as to allow a lawyer to defend the allegations or prosecute the claim for fees.

[2] Clients are entitled to have information with respect to past conduct held in confidence but the same rationale does not apply with respect to a prospective crime. While the principles relating to solicitor-client confidentiality warrant special protection in our judicial system, disclosure may be permissible in limited circumstances in the interests of protecting the public.

[3] A decision to disclose pursuant to Rules 3.3-3B(d) and 3.3-3B(e) should be made only in exceptional circumstances. The decision to do so can be based on a number of factors including:

(a) Are there reasonable grounds for believing that a crime will be carried out?

(b) What is the nature of the crime and its impact? How serious is the crime? For example, is it a petty crime without a victim, or a crime that can potentially harm one or more persons or their property? Is it a crime that is likely to involve violence?

(c) Is the information, if disclosed, likely to prevent the crime?

(d) Will the information be disclosed through other means in any event, or does urgency dictate more immediate action?

(e) Does the client envision involving the lawyer in the events relating to the crime? Is the lawyer being duped into participating in a fraud, for example?

(f) Is the communication part of a conspiracy to commit a crime or in furtherance of a crime? If so, no (evidentiary) privilege attaches to it as it cannot be said to be a legitimate communication for the purpose of obtaining legal advice.

(g) Is there reliance on the lawyer by a victim?

(h) What is the impact of disclosure on the client? Will disclosure make a difference to the client? For example, could the client be subject to a reduced charge if the crime is not carried out?

(i) What is the impact on the lawyer's practice?

(j) What is the impact on the lawyer? Are there concerns about the personal safety of either the lawyer or the lawyer's family?

(k) What will disclosure mean to the administration of justice and our legal system?

(l) What does the lawyer's conscience say?

[4] Once a decision to disclose is made, the lawyer will then need to consider how to disclose, to whom, and how to ensure that the disclosure is no more than is necessary to prevent the crime or dangerous situation at the court facility from occurring. Furthermore, the lawyer must also be mindful of the obligations under Rule

3.2-2 to be honest and candid with the client and to inform the client of the disclosure where appropriate.

Annotations

Supreme Court of Canada

Descôteaux et al. v Mierzwinski, [1982] 1 SCR 860
There are exceptions to the principle of the confidentiality of solicitor-client communications – those that are in themselves criminal or that are made with a view to obtaining legal advice to facilitate the commission of a crime will not be privileged.

Saskatchewan Court of Appeal

Law Society of Saskatchewan v Merchant, 2008 SKCA 128
Where the Law Society demands access to materials that are subject to solicitor-client privilege, the question of what constitutes "absolutely necessary" is not whether the Law Society or legislature have done everything necessary to protect privileged records but whether they have respected privilege to the extent necessary to achieve the objectives of their Act.
Law Society (Saskatchewan) v Robertson Stromberg, 1995 CanLII 3909, [1995] 3 WWR 601
A member of the Law Society does not have a right to maintain silence before a disciplinary body and is a compellable witness.

Law Society of Saskatchewan Ethics Rulings

2002 SKLSPC 1
In providing confidential information to creditors, advising the trustee in bankruptcy was sufficient, while advising all of the creditors was beyond the extent necessary.
2001 SKLSPC 33
If a client requires a lawyer not to allow any information to get back to the client's family, but the client dies before their account is paid, a lawyer may present their bill to the Estate Lawyer who may disclose the matter to the executor, if necessary.
2000 SKLSPC 20
When speaking to the RCMP about a former client, a lawyer should not provide gratuitous comments.
2000 SKLSPC 11
Where there is a risk a client may be cut off from Social Services for receiving settlement monies, a lawyer should inquire with Social Services, without exposing the identity of their client, as to their policy for a client receiving settlement monies and whether that client can donate the money to charity so as not to be cut off from social assistance. See also 2002 SKLSPC 20.
1999 SKLSPC 11
A lawyer should advise their clients of the consequences if they participate in a fraudulent transaction, but need not disclose the client's actions unless it is necessary to protect the lawyer's reputation.

1999 SKLSPC 5
It is all right to discuss the referral of a client file with the receiving Lawyer, but a lawyer must be careful the conversation does not qualify as mere gossip. It is inexcusable to tell the other party about representation of the client, especially in a matrimonial matter.
1999 SKLSPC 2
Fraud presents a strong argument as an exception to privilege.
1998 SKLSPC 1
In light of a conflict over the validity of a power of attorney, a lawyer is advised not to release documents without a court order.
1985 SKLSPC 1
A lawyer should appear pursuant to a subpoena and ask the Court to decide whether testifying at a trial as to what a lawyer said to a client as independent legal advice is a breach of solicitor-client privilege.
1000 SKLSPC 3
A lawyer may disclose communications, give evidence, or assist or cooperate with adjusters or representatives of Saskatchewan Lawyers' Insurance Association.

Other Sources
David Layton, "The Public Safety Exception: Confusing Confidentiality, Privilege and Ethics" (2001) 6 Can Crim L Rev 217
Discusses navigation between a lawyer's duties of confidentiality and public safety exceptions to that rule while focusing on *Smith v Jones*.

3.3-4 If it is alleged that a lawyer or the lawyer's associates or employees:

(a) have committed a criminal offence involving a client's affairs;

(b) are civilly liable with respect to a matter involving a client's affairs;

(c) have committed acts of professional negligence; or

(d) have engaged in acts of professional misconduct or conduct unbecoming a lawyer,

the lawyer may disclose confidential information in order to defend against the allegations, but must not disclose more information than is required.

Annotations

Law Society of Saskatchewan Ethics Rulings
1999 SKLSPC 11
A lawyer should advise their clients of the consequences if they participate in a fraudulent transaction, but need not disclose the client's actions unless it is necessary to protect the lawyer's reputation.
1998 SKLSPC 18
A lawyer should treat the reasons for termination of the solicitor-client relationship as privileged unless they are disclosed to protect the

lawyer's reputation or integrity against allegations of malpractice or misconduct, and only to the extent necessary
1992 SKLSPC 10
A lawyer may disclose confidential information in order to protect themselves from allegations of negligence or misconduct from a former client, but only to the extent necessary.

3.3-5 ***[deleted]***

3.3-6 ***[deleted]***

3.3-7 A lawyer may disclose confidential information to the extent reasonably necessary to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a law firm, but only if the information disclosed does not compromise the solicitor-client privilege or otherwise prejudice the client.

Commentary

[1] As a matter related to clients' interests in maintaining a relationship with counsel of choice and protecting client confidences, lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice.

[2] In these situations (see Rules 3.4-17 to 3.4-23 on Conflicts From Transfer Between Law Firms), Rule 3.3-7 permits lawyers and law firms to disclose limited information. This type of disclosure would only be made once substantive discussions regarding the new relationship have occurred.

[3] This exchange of information between the firms needs to be done in a manner consistent with the transferring lawyer's and new firm's obligations to protect client confidentiality and privileged information and avoid any prejudice to the client. It ordinarily would include no more than the names of the persons and entities involved in a matter. Depending on the circumstances, it may include a brief summary of the general issues involved, and information about whether the representation has come to an end.

[4] The disclosure should be made to as few lawyers at the new law firm as possible, ideally to one lawyer of the new firm, such as a designated conflicts lawyer. The information should always be disclosed only to the extent reasonably necessary

to detect and resolve conflicts of interest that might arise from the possible new relationship.

[5] As the disclosure is made on the basis that it is solely for the use of checking conflicts where lawyers are transferring between firms and for establishing screens, the disclosure should be coupled with an undertaking by the new law firm to the former law firm that it will:

(a) limit access to the disclosed information;

(b) not use the information for any purpose other than detecting and resolving conflicts; and

(c) return, destroy, or store in a secure and confidential manner the information provided once appropriate confidentiality screens are established.

[6] The client's consent to disclosure of such information may be specifically addressed in a retainer agreement between the lawyer and client. In some circumstances, however, because of the nature of the retainer, the transferring lawyer and the new law firm may be required to obtain the consent of clients to such disclosure or the disclosure of any further information about the clients. This is especially the case where disclosure would compromise solicitor-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge).

[Rule 3.3-8 added with Commentary, Feb. 13, 2015]
[Rule 3.3-3 *Future Harm/Public Safety Exception* deleted, Commentary 1 – 6 moved to 3.3-3A, thereby re-numbering current Commentary in 3.3-3A to [6A] – [6D] 3.3-3A (a) amended, (f) added; 3.3-5 and 3.3-6 deleted, September 22, 2017]
[Rule 3.3-3A *Permitted Disclosure* amended to re-add *Mandatory Disclosure* as 3.3-3A and *Permitted Disclosure* as 3.3-3B, to clearly mark the difference between the standards of disclosure, February 9, 2018]

3.4 CONFLICTS

Duty to Avoid Conflicts of Interest

3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

Commentary

[1] Lawyers have an ethical duty to avoid conflicts of interest. Some cases involving conflicts of interest will fall within the scope of the bright line rule as articulated by the Supreme Court of Canada. The bright line rule prohibits a lawyer or law firm from representing one client whose legal interests are directly adverse to the immediate legal interests of another client even if the matters are unrelated unless the clients consent. However, the bright line rule cannot be used to support tactical abuses and will not apply in the exceptional cases where it is unreasonable for the client to expect that the lawyer or law firm will not act against it in unrelated matters. See also Rule 3.4-2 and the commentary to that rule regarding implied consent.

[2] In cases where the bright line rule is inapplicable, the lawyer or law firm will still be prevented from acting if representation of the client would create a substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's own interests or by the lawyer's duties to another current client, a former client, or a third person. The risk must be more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation arising from the retainer.

[3] This rule applies to a lawyer's representation of a client in all circumstances in which the lawyer acts for, provides advice to, or exercises judgment on behalf of, a client. Effective representation may be threatened where a lawyer is tempted to prefer other interests over those of his or her own client: the lawyer's own interests, those of a current client, a former client, or a third party.

The Fiduciary Relationship, the Duty of Loyalty and Conflicting Interests

[4] The rule governing conflicts of interest is founded in the duty of loyalty which is grounded in the law governing fiduciaries. The lawyer-client relationship is based on trust. It is a fiduciary relationship and as such, the lawyer has a duty of loyalty to the client. To maintain public confidence in the integrity of the legal profession and the administration of justice, in which lawyers play a key role, it is essential that lawyers

respect the duty of loyalty. Arising from the duty of loyalty are other duties, such as a duty to commit to the client's cause, the duty of confidentiality, the duty of candour and the duty to avoid conflicting interests.

[5] A client must be assured of the lawyer's undivided loyalty, free from any material impairment of the lawyer and client relationship. The relationship may be irreparably damaged where the lawyer's representation of one client is directly adverse to another client's immediate legal interests. One client may legitimately fear that the lawyer will not pursue the representation out of deference to the other client.

Other Duties Arising from the Duty of Loyalty

[6] The lawyer's duty of confidentiality is owed to both current and former clients, with the related duty not to attack the legal work done during a retainer or to undermine the former client's position on a matter that was central to the retainer.

[7] The lawyer's duty of commitment to the client's cause prevents the lawyer from summarily and unexpectedly dropping a client to circumvent conflict of interest rules. The client may legitimately feel betrayed if the lawyer ceases to act for the client to avoid a conflict of interest.

[8] The duty of candour requires a lawyer or law firm to advise an existing client of all matters relevant to the retainer.

Identifying Conflicts

[9] A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest. Factors for the lawyer's consideration in determining whether a conflict of interest exists include:

(a) the immediacy of the legal interests;

(b) whether the legal interests are directly adverse;

(c) whether the issue is substantive or procedural;

(d) the temporal relationship between the matters;

(e) the significance of the issue to the immediate and long-term interests of the clients involved; and

(f) the clients' reasonable expectations in retaining the lawyer for the particular matter or representation.

Examples of Areas where Conflicts of Interest may Occur

[10] Conflicts of interest can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that may give rise to conflicts of interest. The examples are not exhaustive.

1. A lawyer acts as an advocate in one matter against a person when the lawyer represents that person on some other matter.

2. A lawyer provides legal advice on a series of commercial transactions to the owner of a small business and at the same time provides legal advice to an employee of the business on an employment matter, thereby acting for clients whose legal interests are directly adverse.

3. A lawyer, an associate, a law partner or a family member has a personal financial interest in a client's affairs or in a matter in which the lawyer is requested to act for a client, such as a partnership interest in some joint business venture with a client.

    - A lawyer owning a small number of shares of a publicly traded corporation would not necessarily have a conflict of interest in acting for the corporation because the holding may have no adverse influence on the lawyer's judgment or loyalty to the client.

4. A lawyer has a sexual or close personal relationship with a client.

    - Such a relationship may conflict with the lawyer's duty to provide objective, disinterested professional advice to the client. The relationship may obscure whether certain information was acquired in the course of the lawyer and client relationship and may jeopardize the client's right to have all information concerning his or her affairs held in strict confidence. The relationship may in some circumstances permit exploitation of the client by his or her lawyer. If the lawyer is a member of a firm and concludes that a conflict exists, the conflict is not imputed to the lawyer's firm, but would be cured if another lawyer in the firm who is not involved in such a relationship with the client handled the client's work.

5. A lawyer or his or her law firm acts for a public or private corporation and the lawyer serves as a director of the corporation.

    - These two roles may result in a conflict of interest or other problems because they may:

(a) affect the lawyer's independent judgment and fiduciary obligations in either or both roles,

(b) obscure legal advice from business and practical advice,

(c) jeopardize the protection of lawyer and client privilege, and

(d) disqualify the lawyer or the law firm from acting for the organization.

6. Sole practitioners who practise with other lawyers in cost-sharing or other arrangements represent clients on opposite sides of a dispute.

    - The fact or the appearance of such a conflict may depend on the extent to which the lawyers' practices are integrated, physically and administratively, in the association.

The Role of the Court and Law Societies

[11] These rules set out ethical standards to which all members of the profession must adhere. The courts have a separate supervisory role over court proceedings. In that role, the courts apply fiduciary principles developed by the courts to govern lawyers' relationships with their clients, to ensure the proper administration of justice. A breach of the rules on conflicts of interest may lead to sanction by a law society even where a court dealing with the case may decline to order disqualification as a remedy.

Annotations

Supreme Court of Canada

Canadian National Railway Co. v McKercher LLP, 2013 SCC 39

A lawyer's duty of loyalty has three salient dimensions: a duty to avoid conflicting interests; a duty of commitment to the client's cause; and a duty of candour. The duty to avoid conflicts is mainly concerned with protecting a former or current client's confidential information and with ensuring the effective representation of a current client. The duty of commitment entails that, subject to law society rules, a lawyer or law firm as a general rule should not summarily drop a client simply to avoid conflicts of interest. The duty of candour requires disclosure of any factors relevant to the ability to provide effective representation. A lawyer should advise an existing client before accepting a retainer that will require him to act against the client. The duty of candour requires disclosure of any factors relevant to the ability to provide effective representation. A lawyer should advise an existing client before accepting a retainer that will require him to act against the client.

When asked to act against an existing client on an unrelated matter, a lawyer must determine whether or not they contravene the bright line rule and whether the immediate legal interests of the new client are directly adverse to those of the existing client; whether the existing client is seeking to exploit the bright line rule, and whether the existing client can reasonably expect the law firm will not act against them in unrelated matters. A lawyer cannot terminate a client relationship purely to attempt to circumvent their duty of loyalty to that client.

Strother v 3464920 Canada Inc, 2007 SCC 24

A lawyer may act for different clients in the same line of business unless there is a real risk of impairment in the lawyer's ability to provide fair representation.

R v Neil, 2002 SCC 70

It is conduct unbecoming for a lawyer to put themselves in a position where the duties they undertook to one client conflict with their duty of loyalty to another client. A lawyer's duty of loyalty to a client is essential to the integrity of the administration of justice, and a lawyer may not concurrently represent clients adverse in interest without first obtaining their consent.

Macdonald Estate v Martin, [1990] 3 SCR 1235

Note: this case is sometimes referred to as *Martin v Gray*

A lawyer who had been extensively involved in the representation of a client in a litigation matter left their firm and ultimately became a member of the firm that represented the opposite party in the litigation. Though the new law firm and the lawyer assured the Court and the clients that nothing untoward had taken place – specifically, that no confidential information had been shared between the lawyer and their new firm, and that none would be shared – the Court did not regard this as a sufficient assurance.

The Court established a high standard for lawyers based on the 'appearance of impropriety'. In the circumstances, there was a 'possibility' that confidential information could be shared between the lawyers and, accordingly, a presumption should exist that such information was shared. However, the majority of the court concluded that in appropriate circumstances, and provided that law societies had sanctioned 'appropriate institutional mechanisms', the presumption of shared information could be rebutted.

Saskatchewan Court of Appeal

Abrametz v The Law Society of Saskatchewan, 2018 SKCA 37

The Court upheld the two-month suspension for being reasonable, but allowed in part the appeal relating to costs.

There is no fixed penalty or sanction for conflict of interest. The range of reasonable sentences in disciplinary matters is elastic. A two-month suspension fell within the range of reasonable sentences. When making a costs order, a discipline committee, should consider the factors in *Hills v Nova Scotia (Provincial Dental Board),* 2009 NSCA 13: (a) the balance between effect of the award on the member and the need to be able to effectively administer the disciplinary process; (b) the respective degrees of success of the parties; (c) that costs award are not to be punitive; (d) the other sanctions imposed and their associated expenses; (e) the relative time and expense of the investigation and hearing associated with

each of the charges and in particular those on which guilt were entered and those where the member was found not guilty.
In addition, the Court noted that this list of factors is not exhaustive and a discipline body needs to take into account the unique circumstances of each case.
The cost order was reduced because the Discipline Committee failed to give any weight to the mixed results of the hearing or the cost ruling on the judicial review application. In doing so, the Discipline Committee failed to take relevant factors into consideration.
Original Decision: 2017 SKLSS 4: It is conduct unbecoming to enter into a business transaction with clients when the Lawyer's interests or the interests of the Lawyer's associates were in conflict with those of the client.

Saskatchewan Court of King's Bench

Swan v Schoeman, 2013 SKQB 103
A law firm is disqualified from acting for a client, where a lawyer has previous acted for an opposing party, even if the lawyer represented the opposing party while employed at another firm. This is a breach of the duty of loyalty and *Code* section 2.04(1) [now 3.4-1].
Dr N Vankoughnett Dental Prof. Corp. v Miller Thomson LLP, 2012 SKQB 84
Provides a good summary of the law around applications to disqualify law firms. Must establish the connection between the previous and current retainers. Where a connection exists, the Court will presume confidential information was obtained. There is a different standard for current versus former clients.
The Court dismissed the disqualification application, as the applicant was deemed to be a former client and not afforded the same duty of loyalty as a current client.
Wallace v Canadian Pacific Railway, 2011 SKCA 108
The Court approved the two-way test in *MacDonald Estate v Martin* to address the prospect of disqualifying a law firm on the basis that confidential information may have been imparted to the law firm: (1) Did the Lawyer receive confidential information attributable to a solicitor and client relationship relevant to the matter at hand? (2) Is there a risk that it will be used to the prejudice of the client?
The acquisition of confidential information is inferred not from the nature of the solicitor-client relationship, but rather from the relationship between the previous and current retainers.
Lubs v Ahmad, 2008 SKQB 62
The Court reviewed the same fact scenario as in LSS Ethics Ruling: 2007 SKLSPC 9. They disagreed with the majority in that ruling and disqualified the lawyer and law firm from acting. The fact that the firm did not represent the opposing party in a personal capacity is irrelevant. The present issues are neither new nor distinct from the work the firm did for the deceased previously. The agreement that was prepared is the very foundation of the claim in the present case.
The safeguards available under the Code are intended to prevent or minimize the negative impact of a conflict problem, not to support bringing a problem to existence when it can easily be avoided by the new client retaining other counsel.
Original decision: **2007 SKLSPC 9**: The significant passage of time between the initial representation of one client and the later

representation of the second client on a related matter does not remove the potential for conflict by acting against a former party.

Two matters are related, unless the new matter can be considered a "fresh, independent, wholly unrelated matter".

The majority found that where the opposing party in the new matter was not involved in or associated with the initial matter (here, they were seen to have benefited from the former client's breach), there is no conflict of interest.

The minority found that where the issues at stake in the new litigation are sufficiently connected to the initial matter and the opposing party is seen to have benefited from a breach of the agreement reached in the initial matter, the opposing party is a person sufficiently related to the former client and there is a conflict of interest.

Further, there is confidential information related to the initial representation, even it is only in the first lawyer's knowledge, insights, and memory. There is a presumption that that knowledge has been shared with the current lawyer. The lawyer's word is insufficient to rebut the presumption.

Still further, where the two lawyers (initial and current) have practiced in the same firm without institutional mechanisms in place, they will not be able to rebut the presumption that confidential information was shared.

Wolfe v Wolfe, 2003 SKQB 474

A prospective client and a lawyer do not need to get to the point of discussing a specific strategy or detailed legal advice before their relationship may be described as one of solicitor-client.

There is a rebuttable presumption that confidential information was imparted in a solicitor-client relationship.

The burden of rebuttal on the lawyer is significant, as the integrity of the profession and public confidence in the administration of justice require that duty of confidentiality be maintained. The focus is not whether the Lawyer believes they received anything of importance.

Kolody v Saskatchewan Economic Development Corp., 1994 CanLII 4918, [1995] 1 WWR 283

The Court rejected the argument that any financial information or identification of assets is not confidential due to a party's obligation to disclose those assets in the proceeding.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Tollefson, 2019 SKLSS 7

It is conduct unbecoming to continue to act for a family law client while in a conflict of interest, because the lawyer had engaged in an intimate relationship with them.

Law Society of Saskatchewan v Kwochka, 2018 SKLSS 2

It is conduct unbecoming to represent a rural municipality, and then provide legal advice to the Reeve and a developer but fail to disclose to the RM that there was a profit-sharing plan by which the Reeve would benefit. This is a conflict of interest and a breach of the duty of loyalty.

Law Society of Saskatchewan v Abrametz, 2017 SKLSS 4

See above for SKCA review decision

Law Society of Saskatchewan v Phillips, 2015 SKLSS 8
All charges were dismissed. Refusing to deliver a beneficiary to an estate's original birth certificate is not preferring the interests of a third party over those of the client (executor) or a breach of the duty of loyalty to the client (executor).
The third count was dismissed as the evidence showed that the file contents were transferred to the new counsel on a timely basis.
Law Society of Saskatchewan v Duncan-Bonneau, 2015 SKLSS 6
It is conduct unbecoming, when acting as a client's POA, to prefer one's own interests over those of the client.
It is conduct unbecoming to continue acting for a client when the Lawyer's and the client's interests conflict.
Law Society of Saskatchewan v Clements, 2013 SKLSS 10
Where a client is educated and experienced in business and law, it may not be reasonable to use the "deemed client test" to determine whether a solicitor-client relationship exists. The "deemed client test" is whether the potential client might reasonably feel entitled to look to the lawyer for guidance and advice in the matter. Here, the committee found there to be no solicitor-client relationship, actual or deemed, and dismissed all counts against the Lawyer.
Law Society of Saskatchewan v Laporte, 2006 SKLS 12
It is conduct unbecoming to have sex with a client while concurrently representing them at trial. This is a conflict of interest. This is also a breach of integrity.
It is conduct unbecoming to engage in a personal relationship with a client without regard to the resulting conflict of interest that would create and contrary to the best interests of the client.
Law Society of Saskatchewan v MacLowich, 2005 SKLS 1
It is a conflict of interest to receive and pay out monies from a client who is subject to a garnishee at the direction of another client, as the Lawyer will be preferring the interests of the directing client over those of the paying client.
Law Society of Saskatchewan v Borden, 2002 SKLS 3
It is a conflict of interest to represent the purchasers of the Lawyer's own property. Further, it is conduct unbecoming to fail to advise the clients of certain writs of execution against the Lawyer and the potential adverse effect the writs could have against the purchasers.
Law Society of Saskatchewan v Avram, 2002 SKLS 2
When acting for a corporation, it is conduct unbecoming to take instructions from one shareholder over the other, thereby preferring the interests of the shareholder over those of the corporation.

Law Society of Saskatchewan Conduct Review

2016 SKLSCR 1
Representing the complainant in the sale of the family home after the Lawyer had formerly represented the late spouse in an interspousal agreement with the complainant does not create a conflict of interest. The complainant's interests were not directly adverse to any immediate legal interests of the deceased client. There was no breach of the duty of loyalty.

2014 SKLSCR 8
A lawyer's belief that certain actions may help their client does not negate a lawyer's duties to the client and the potential conflict of interest.
2014 SKLSCR 7
Having a client execute a mortgage to secure payment for legal fees in the middle of a matter places the Lawyer and the client in a conflict of interest. Renegotiating fee arrangement midway through a file places the client in a position of bargaining under pressure. It must be done at the outset of a legal matter. Independent legal advice is essential and a lawyer should insist that the client get ILA prior to execution.
2012 SKLSCR 6
If a Lawyer is a potential witness in a matter, they cannot continue to act for a party in the action, as there is a conflict of interest. Acting on a file through pretrial preparation and fact-finding is considered advocacy just as much as appearing in court.
2012 SKLSCR 2
Representing a couple on the sale of the family home, when the Lawyer already represents one of the parties in the family law matter, puts the Lawyer into a real danger of a conflict arising. Coupled with poor communication, this became a situation that lawyers should be careful to avoid.

Law Society of Saskatchewan Ethics Rulings

2023 SKLSPC 1
The use of a waiver or release to limit a lawyer's liability is improper. Such a release only protects the lawyer's interest. A lawyer asking or advising a client to sign such a waiver or release would raise concerns about a conflict between the client's interest and the interests of the lawyer. There are more appropriate methods of protecting a lawyer from liability than the use of a waiver.
2022 SKLSPC 3
Generally, there is no inherent conflict of interest in a private lawyer acting as a "prosecutor" in a professional disciplinary action and also issuing a civil claim on behalf of a client against the party who is the subject of the professional disciplinary action. There is potential for a conflict to develop, however, depending on the specific facts of the matter, and a lawyer should remain vigilant.
2021 SKLSPC 1
Advising an opposing party that their past relationship with the firm prevents the lawyer from representing their current client if litigation ensues, implies a duty of loyalty to the opposing party. This is sufficient to create a conflict of interest for the lawyer where they cannot act without the opposing party's consent.
2020 SKLSPC 5
Where an appeal is brought by the Crown to overturn a sentence imposed by the trial judge that is lower than the sentence put forward under a joint submission, circumstances in which trial/sentencing defence counsel could continue to represent the client on the appeal are extremely limited and would depend on the specific facts of the matter.

2018 SKLSPC 12

Patients who have been certified under *The Mental Health Services Act* who meet with a lawyer as part of their duties as an "Official Representative" are clients, like any individuals that the lawyer represents. A conflict search should be completed before accepting the engagement.

2018 SKLSPC 7

Individuals seeking legal advice, and not the referral entity, are the true clients and individual files should be opened under their names for the purposes of conflict searches.

It is inappropriate for a lawyer to structure their corporation such that the client may not know which lawyer is performing the work on their file, as this may prevent the client from being able to complain to the Law Society or to commence a negligence claim.

2018 SKLSPC 3

In drafting a will, a lawyer is not in conflict of interest by accepting instructions from third parties so long as the lawyer takes steps to ensure the instructions given are in accordance with the testator's wishes.

2017 SKLSPC 2

In determining conflict of interest, the major question to consider is whether a lawyer's access to a former litigation file now poses a substantial risk to the legal interests of the opposing client. Here, the subject property in the litigation file was also the subject property in the family law file. Any information about the property would have to be fully disclosed in the family law context. Therefore, there is not a substantial risk and there was no conflict.

2016 SKLSPC 4

There is no presumption of conflict of interest by virtue of a lawyer at a firm having acted for a father while another lawyer represents a son. There may be a potential for conflict should one of the lawyers need to testify, but to assert a conflict was premature based on the facts at the time.

2015 SKLSPC 7

A client can waive the duty of loyalty, if they are aware of the other lawyer acting against them but continue to instruct their lawyer without raising any concern. The Ethics Committee applied 2012 SKQB 84 (see above) and determined there was no conflict.

2012 SKLSPC 5

A lawyer does not have the right to register a miscellaneous interest against a client's property to secure payment of a legal bill. A solicitor's lien does not extend to real property.

2012 SKLSPC 4

The Ethics Committee has the power to consider matters of conflict of interest already considered by the courts, because the *Code of Professional Conduct* has a broader view of conflicts of interest than the courts.

2012 SKLSPC 1

A lawyer representing corporate officials may attempt to negotiate disputes between shareholders, but when it is apparent that a dispute cannot be resolved, parties must be referred to outside counsel.

2010 SKLSPC 5
To complete work for joint executors of an estate, a lawyer requires instructions from *all* executors.
2009 SKLSPC 7
The duty of loyalty to a client does not end upon the end of the solicitor-client relationship. A lawyer must be careful to avoid circumstances where a client may reasonably feel that their former lawyer has become their adversary.
2009 SKLSPC 2
Political contributions may be made by lawyers but must be made with care since the reality or perception of a conflict of interest can compromise the ability of a lawyer to continue to act for their client.
2007 SKLSPC 17
A lawyer cannot advise a client of information received from a cold-call client where generic legal advice has been provided. Such information is subject to privilege. A lawyer must immediately ask cold-call clients if their matter relates to an actual client matter and act accordingly. See also 2006 SKLSPC 9.
2007 SKLSPC 9
See above *Lubs v Ahmad*, 2008 SKQB 62
2006 SKLSPC 9
A lawyer should inform a cold-call client that information they provide may be disclosed to existing clients in order to avoid the potential for conflict. A person seeking advice is not entitled to any privilege once they have been informed that the lawyer will not act on their behalf. If a cold-call client continues to talk after a conflict has been identified, the lawyer must firmly interrupt or simply hang up the phone. See also 2007 SKLSPC 17.
2005 SKLSPC 11
A lawyer must exercise extreme caution in pursuing the recovery of their outstanding accounts so as to avoid using confidential information from their clients in order to do so and so as to avoid potential conflicts between the interests of the clients and the lawyer's own interests.
2005 SKLSPC 8
Where a lawyer has acted for an estate, that lawyer cannot act for one co-executor against or to remove the other. A lawyer must be cautious not to place themselves in a quagmire of conflict between clients.
2004 SKLSPC 17
A lawyer may provide Certificates of Independent Legal Advice for both a corporation and its two shareholders without being in conflict.
2004 SKLSPC 15
The grantor of power of attorney is the Lawyer's client.
It is inappropriate for the Lawyer to act on behalf of the client's friends in a dispute over power of attorney.
2004 SKLSPC 4
In acting for an estranged couple in two separate matters, a lawyer is likely outside of the strict conflict of interest rules.
2003 SKLSPC 14
A verbal commitment to use one client's personal history to assist the other client is not a sufficient waiver of privilege. A lawyer should always explain the possible consequences of the waiver and receive consent in writing. The Lawyer was in a conflict of interest.

2003 SKLSPC 10
In corporate issues, if a lawyer only represents one individual, the lawyer can only disclose material to the individual or their solicitor. If a lawyer acts for an individual and a company, the lawyer can only disclose to that individual, the company, and their solicitors.
2003 SKLSPC 5
If a lawyer takes instructions from a testator, that lawyer should not act for the common-law spouse in related issues. There is, at the very least, a perception of conflict.
2003 SKLSPC 2
Taking instructions from third parties for construction of a will without seeing or receiving confirmation from the testator is not appropriate.
2002 SKLSPC 31
A lawyer has no choice but to send their client to another lawyer for advice on a former client's affairs as a lawyer may not breach the confidentiality of a former client.
2002 SKLSPC 12
Whether it is appropriate for municipal counsel to prosecute a company when it is possible for another lawyer to prosecute the municipality is a question of prosecutorial discretion and not conflict of interest. See also 2002 SKLSPC 8.
2002 SKLSPC 8
There is no presumption of conflict if a lawyer acts for two municipal departments. It is the lawyer's duty to advise their clients and not to direct them. See also 2002 SKLSPC 12.
2002 SKLSPC 7
A lawyer must turn down a new retainer from a former client, where the new retainer would have the lawyer acting against a current client.
2002 SKLSPC 4
While there is a potential for divergent interests to develop and create a conflict of interest in representing both parties in a child protection matter, if a conflict has not yet been realized, a lawyer cannot divide a couple if both parents are on-side and wish to be represented by the same lawyer.
2001 SKLSPC 15
There is no presumption of a conflict of interest when a lawyer's siblings are on opposite sides of a matter.
2001 SKLSPC 4
There is clearly a conflict of interest if a lawyer working as an elected official divulges confidential client information, as the lawyer is promoting their own interests.
2000 SKLSPC 8
There is no conflict of interest when a medical expert for one side is represented by opposing counsel in another matter.
1999 SKLSPC 27
It is unethical to take instructions from a third party without receiving confirmation of those instructions from the client.
1999 SKLSPC 18
A firm should not represent both parties in a real estate dispute arising from the firm's previous transactions.

1999 SKLSPC 17
Conflict checks should be carefully monitored between work performed by separate offices of the same firm in order to avoid conflicts of interest.
1999 SKLSPC 14
There is a potential conflict of interest if a lawyer defends an estate against the claim of an assignee when the lawyer previously acted for the assignee's lawyer on an issue of taxation.
1999 SKLSPC 13
The test for determining whether there is a conflict or appearance of conflict is (a) did the lawyer receive confidential information attributable to a solicitor-client relationship relevant to the matter at hand; and (b) is there a risk that it will be used to the prejudice of the client?
1999 SKLSPC 12
There is no breach of ethics if a lawyer had no way of knowing there might be a possible conflict of interest and if they disclose the conflict once it is discovered.
1999 SKLSPC 3
It is improper for a lawyer to advise one director of a corporation against another as a director or an employee. In a dispute, the parties should obtain independent legal advice. If the lawyer is retained as a corporate solicitor, their responsibility is to the corporation and not its directors.
1998 SKLSPC 21
A lawyer acting as a commercial property manager, a property management firm, and for others involved in a transaction creates a series of potential conflicts of interest.
1998 SKLSPC 12
If one party uses a firm exclusively as its address for service, there is no conflict or appearance of conflict if that firm represents an opposing party because there is no exchange of confidential information and there are no related matters.
1998 SKLSPC 11
If there is a conflict of interest in a different, unrelated matter there is not necessarily a conflict of interest in the matter at hand.
1998 SKLSPC 3
The former spouse of a current client married a different current client. When accepting employment from more than one client, a potential conflict exists. There should be documentation disclosing the status of and changes to relationships, and the clients should be advised that no information received from one party can be treated as confidential insofar as any of the other parties is concerned.
1997 SKLSPC 7
The Lawyer's proposed plan while acting for both sides of a sale favours one party over the other and cannot be completed. The Lawyer can no longer act for either party and should hold funds in trust until a solution is determined.
1997 SKLSPC 4
When one lawyer acts for a Band, the Board of Trustees of the Land Settlement Funds and individual Band members, there is great potential for conflict of interest.

1997 SKLSPC 2
If a lawyer formerly worked as in-house counsel drafting documents on behalf of an employer, it would be inappropriate for them to conduct an arbitration on behalf of the employees against the corporation unless written consent is obtained.
1997 SKLSPC 1
It is not appropriate for a lawyer who has moved to a new firm to represent a former client they had withdrawn from because of a conflict at their old firm. The perception of a conflict of interest from the possibility that the lawyer obtained information at their former firm is improper.
1996 SKLSPC 9
There is a potential conflict of interest if the spouse of a lawyer's client in a matrimonial property matter attempts to purchase property from another client of that same lawyer because of the potential information received by the vendors of the property and consequently the lawyer.
1995 SKLSPC 20
A lawyer employed or retained by an organization represents that organization by acting through its duly authorized constituents.
1995 SKLSPC 10
When the best interests of an insurance company are at odds with the best interests of the policy holder, the lawyer is obliged to inform the policy holder(s) that their claim may be beyond coverage and that they are free to retain separate counsel. The lawyer is not to refer to the gap in coverage.
1994 SKLSPC 3
It is proper for a lawyer to wait to receive concurring instructions from both clients when there are conflicting instructions.
1993 SKLSPC 7
There is no conflict of interest if the same firm represents an accused in a new trial of the same issue after a mistaken guilty plea.
1992 SKLSPC 6
If an allegation is made that confidential information has been disclosed to a lawyer substantially related to the matter, then there is a presumption of an appearance of conflict of interest.
1992 SKLSPC 1
In the absence of special circumstances, the use of a release from all liability relating to a lawyer's involvement in an estate including negligence is self-serving and possibly improper.
1990 SKLSPC 2
A lawyer must act in the best interests of their client(s). In acting for both sides of a real estate transaction, if the lawyer is aware of a fact that would be in the best interests of the purchaser to know, it should be disclosed, but if the lawyer is unable to disclose by virtue of the vendor's request for confidentiality, the lawyer cannot be candid and must withdraw.
1988 SKLSPC 4
An opposing party should not be able to remove a lawyer as counsel if the lawyer has a personal action for defamation against the opposing party. The represented party should seek independent legal advice, however, because the personal suit could impact the assets of the opposing party.

1988 SKLSPC 2 and 1987 SKLSPC 7
Lawyers should withdraw from actions if there is any appearance of conflict.
1986 SKLSPC 10
If any files obtained through the purchase of another firm are in conflict with past or current work, the lawyer should not continue to act for the new client.
1985 SKLSPC 6
Although matters may appear to be wholly unrelated, if there is a possibility that they would not remain so, a firm should only continue to act for one of the matters.
1984 SKLSPC 5
Acting for too many related parties in an issue creates a conflict of interest, and a lawyer must not do so even if they are the only provider of legal services in the geographical area.
1981 SKLSPC 1
A lawyer must not advise or represent both sides of a dispute except after adequate disclosure to and with consent of the clients. The lawyer should not act where there is likely to be a conflict of interest.
1000 SKLSPC 19
If it is not prohibited by a lawyer's employment contract with a corporation, a lawyer might, if holding a practice certificate, also act privately for other clients but must take care not to enter into a conflict of interest.
1000 SKLSPC 10
It would be improper for a lawyer to bring up past convictions of an opposing party (and former client) while not bringing them up would also prejudice their client's case. A lawyer should not act against a client with knowledge of their criminal record.
1000 SKLSPC 9
If a lawyer had doubts as to the propriety of representing one the parties to a Matrimonial Property Agreement in the sale of property which may be subject to that agreement, they should not act.
1000 SKLSPC 8
When there is no previous relationship to raise the presumption that a lawyer received any confidential information, there is no conflict of interest. Speaking to someone through a referral service does not necessarily constitute a relationship.
1000 SKLSPC 7
There is a conflict of interest if a lawyer is responsible for the incorporation of a company and they represent a client against the shareholders of that company.
1000 SKLSPC 6
It is *not* a conflict of interest for a lawyer to handle a divorce proceeding if their only prior involvement was preparing a Separation Agreement as an articling student four years prior.

Consent

3.4-2 A lawyer must not represent a client in a matter when there is a conflict of interest unless there is express or implied consent from all affected clients and the lawyer reasonably believes that he or she is able to represent the client without having a material adverse effect upon the representation of or loyalty to the client or another client.

(a) Express consent must be fully informed and voluntary after disclosure.

(b) Consent may be inferred and need not be in writing where all of the following apply:

(i) the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel;

(ii) the matters are unrelated;

(iii) the lawyer has no relevant confidential information from one client that might reasonably affect the other; and

(iv) the client has commonly consented to lawyers acting for and against it in unrelated matters.

Commentary

Disclosure and consent

[1] Disclosure is an essential requirement to obtaining a client's consent and arises from the duty of candour owed to the client. Where it is not possible to provide the client with adequate disclosure because of the confidentiality of the information of another client, the lawyer must decline to act.

[2] Disclosure means full and fair disclosure of all information relevant to a person's decision in sufficient time for the person to make a genuine and independent decision, and the taking of reasonable steps to ensure understanding of the matters disclosed. The lawyer therefore should inform the client of the relevant circumstances and the reasonably foreseeable ways that the conflict of interest could adversely affect the client's interests. This would include the lawyer's relations to the parties and any interest in or connection with the matter.

[2A] While this rule does not require that a lawyer advise a client to obtain independent legal advice about the conflict of interest, in some cases the lawyer should recommend such advice. This is to ensure that the client's consent is informed, genuine and uncoerced, especially if the client is vulnerable or not sophisticated.

[3] Following the required disclosure, the client can decide whether to give consent. As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf not be subject to other interests, duties or obligations, in practice this factor may not always be decisive. Instead, it may be only one of several factors that the client will weigh when deciding whether or not to give the consent

referred to in the rule. Other factors might include, for example, the availability of another lawyer of comparable expertise and experience, the stage that the matter or proceeding has reached, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs.

Consent in Advance

[4] A lawyer may be able to request that a client consent in advance to conflicts that might arise in the future. As the effectiveness of such consent is generally determined by the extent to which the client reasonably understands the material risks that the consent entails, the more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. A general, open-ended consent will ordinarily be ineffective because it is not reasonably likely that the client will have understood the material risks involved. If the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, for example, the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation.

[5] While not a pre-requisite to advance consent, in some circumstances it may be advisable to recommend that the client obtain independent legal advice before deciding whether to provide consent. Advance consent must be recorded, for example in a retainer letter.

Implied consent

[6] In limited circumstances consent may be implied, rather than expressly granted. In some cases it may be unreasonable for a client to claim that it expected that the loyalty of the lawyer or law firm would be undivided and that the lawyer or law firm would refrain from acting against the client in unrelated matters. In considering whether the client's expectation is reasonable, the nature of the relationship between the lawyer and client, the terms of the retainer and the matters involved must be considered. Governments, chartered banks and entities that might be considered sophisticated consumers of legal services may accept that lawyers may act against them in unrelated matters where there is no danger of misuse of confidential information. The more sophisticated the client is as a consumer of legal services, the more likely it will be that an inference of consent can be drawn. The mere nature of the client is not, however, a sufficient basis upon which to assume implied consent; the

matters must be unrelated, the lawyer must not possess confidential information from one client that could affect the other client, and there must be a reasonable basis upon which to conclude that the client has commonly accepted that lawyers may act against it in such circumstances.

Annotations

Supreme Court of Canada

R v Neil, 2002 SCC 70

The general rule is that a lawyer may not represent one client whose interests are directly adverse to the immediate interests of another current client — even if the two mandates are unrelated — unless both clients consent after receiving full disclosure (and preferably independent legal advice), and the lawyer reasonably believes that they are able to represent each client without adversely affecting the other.

Law Society of Saskatchewan Conduct Reviews

2014 SKLSCR 7

Having a client execute a mortgage to secure payment for legal fees in the middle of a matter places the Lawyer and the client in a conflict of interest. Renegotiating fee arrangement midway through a file places the client in a position of bargaining under pressure. It must occur at the outset of the matter. Independent legal advice is essential and a lawyer should insist that the client get ILA prior to execution.

Law Society of Saskatchewan Ethics Rulings

2020 SKLSPC 5

Where an appeal is brought by the Crown to overturn a sentence imposed by the trial judge that is lower than the sentence put forward under a joint submission, circumstances in which trial/sentencing defence counsel could continue to represent the client on the appeal are extremely limited and would depend on the specific facts of the matter.

22015 SKLSPC 7

A client can waive the duty of loyalty, if they are aware of the other lawyer acting against them, but continue to instruct their lawyer without raising any concern. The Ethics Committee applied 2012 SKQB 84 (see annotations to Rule 3.4-1) and determined there was no conflict.

2008 SKLSPC 4

Although a lawyer should obtain specific consent of all parties when acting for both a corporation and its shareholders, in this situation, consent was implied through past actions.

2007 SKLSPC 12

Conflict can be waived by not raising the issue of representation in prior course of dealings.

1996 SKLSPC 4

It is not improper for two lawyers at the same firm to continue to act on related opposing files if the opposing parties provide initial

consent and continued non-objection. Best practice for consent to be given in writing.
1996 SKLSPC 1
If a lawyer has a personal interest in a matter, they should advise the client and obtain written consent from the client before acting on their behalf.
1992 SKLSPC 8
A lawyer employed by a charitable organization working privately with estate planning and wills is in conflict if their clients wish to leave money to the organization. At a minimum, the clients must sign a waiver acknowledging the existence of the conflict and that it was strongly recommended that they seek independent legal advice.

Short-term Summary Legal Services

3.4-2A In Rules 3.4-2B to 3.4-2D, "Short-term summary legal services" means advice or representation to a client under the auspices of a *pro bono* or not-for-profit legal services provider with the expectation by the lawyer and the client that the lawyer will not provide continuing legal services in the matter.

3.4-2B A lawyer may provide short-term summary legal services without taking steps to determine whether there is a conflict of interest.

3.4-2C Except with consent of the clients as provided in Rule 3.4-2, a lawyer must not provide, or must cease providing short-term summary legal services to a client where the lawyer knows or becomes aware that there is a conflict of interest.

3.4-2D A lawyer who provides short-term summary legal services must take reasonable measures to ensure that no disclosure of the client's confidential information is made to another lawyer in the lawyer's firm.

Commentary

[1] Short-term summary legal service and duty counsel programs are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the not-for-profit legal services provider and the lawyers and law firms who provide these services. Performing a full conflict screening in circumstances in which the short-term summary services described in these rules are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided.

[2] The limited nature of short-term summary legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm.

Accordingly, the lawyer is disqualified from acting for a client receiving short-term summary legal services only if the lawyer has actual knowledge of a conflict of interest between the client receiving short-term summary legal services and an existing client of the lawyer or an existing client of the *pro bono* or not-for-profit legal services provider or between the lawyer and the client receiving short-term summary legal services.

[3] Confidential information obtained by a lawyer providing the services described in Rules 3.4-2A to 3.4-2D will not be imputed to the lawyers in the lawyer's firm or to non-lawyer partners or associates in a multi-discipline partnership. As such, these individuals may continue to act for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services, and may act in future for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services. See the commentary following Rule 3.4-20 for guidance as to what constitutes reasonable measures to ensure non-disclosure of confidential information.

[4] In the provision of short-term summary legal services, the lawyer's knowledge about possible conflicts of interest is based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of consulting with the *pro bono* or not-for-profit legal services provider to receive its services.

Annotations

Law Society of Saskatchewan Ethics Rulings
2018 SKLSPC 12
Patients who have been certified under *The Mental Health Services Act* who meet with a lawyer as part of their duties as an "Official Representative" are clients, like any individuals that the lawyer represents. A conflict search should be completed before accepting the engagement. In this case, the Lawyer is paid by the government and therefore the Rules regarding short-term legal services do not apply.

Dispute

3.4-3 Despite Rule 3.4-2, a lawyer must not represent opposing parties in a dispute.

Commentary

[1] A lawyer representing a client who is a party in a dispute with another party or parties must competently and diligently develop and argue the position of the client. In a dispute, the parties' immediate legal interests are clearly adverse. If the lawyer were permitted to act for opposing parties in such circumstances even with consent, the lawyer's advice, judgment and loyalty to one client would be materially and adversely

affected by the same duties to the other client or clients. In short, the lawyer would find it impossible to act without offending these rules.

Annotations

Law Society of Saskatchewan Ethics Rulings

2009 SKLSPC 3

Once it is clear that there is a dispute incapable of resolution, a lawyer should withdraw without taking steps on behalf of either party.

2007 SKLSPC 8

A lawyer should not continue to act for either client in a dispute once the lawyer is no longer able to negotiate the dispute and acting would prefer the interests of one client over the other.

2003 SKLSPC 9

A lawyer cannot continue to represent one co-executor against the other or remove the other. A lawyer cannot continue to represent both executors while they are in conflict.

1988 SKLSPC 7

When a firm acts for a series of groups in potential conflict and for individuals in those groups, a firm must be cautious that if disputes materialize, the firm must not act on both sides and would be required to withdraw from all matters.

Concurrent Representation with Protection of Confidential Client Information

3.4-4 Where there is no dispute among the clients about the matter that is the subject of the proposed representation, two or more lawyers in a law firm may act for current clients with competing interests and may treat information received from each client as confidential and not disclose it to the other clients, provided that:

(a) disclosure of the risks of the lawyers so acting has been made to each client;

(b) the lawyer recommends each client receive independent legal advice, including on the risks of concurrent representation;

(c) the clients each determine that it is in their best interests that the lawyers so act and consent to the concurrent representation;

(d) each client is represented by a different lawyer in the firm;

(e) appropriate screening mechanisms are in place to protect confidential information; and

(f) all lawyers in the law firm withdraw from the representation of all clients in respect of the matter if a dispute that cannot be resolved develops among the clients.

Commentary

[1] This rule provides guidance on concurrent representation, which is permitted in limited circumstances. Concurrent representation is not contrary to the rule prohibiting representation where there is a conflict of interest provided that the clients are fully informed of the risks and understand that if a dispute arises among the clients that cannot be resolved the lawyers may have to withdraw, resulting in potential additional costs.

[2] An example is a law firm acting for a number of sophisticated clients in a matter such as competing bids in a corporate acquisition in which, although the clients' interests are divergent and may conflict, the clients are not in a dispute. Provided that each client is represented by a different lawyer in the firm and there is no real risk that the firm will not be able to properly represent the legal interests of each client, the firm may represent both even though the subject matter of the retainers is the same. Whether or not a risk of impairment of representation exists is a question of fact.

[3] The basis for the advice described in the rule from both the lawyers involved in the concurrent representation and those giving the required independent legal advice is whether concurrent representation is in the best interests of the clients. Even where all clients consent, the lawyers should not accept a concurrent retainer if the matter is one in which one of the clients is less sophisticated or more vulnerable than the other.

[4] In cases of concurrent representation lawyers should employ, as applicable, the reasonable screening measures to ensure non-disclosure of confidential information within the firm set out in the rule on conflicts from transfer between law firms (see Rule 3.4-20).

Annotations

Law Society of Saskatchewan Ethics Rulings
2022 SKLSPC 4
It is a conflict of interest for a lawyer to have or have had access to a client file belonging to the opposing party when their firm currently represents the other side of the litigation, even if their reason for accessing the file was to address a Law Society complaint and was not related to the underlying litigation. Conflict screens are not sufficient to remedy this conflict of interest.

Joint Retainers

3.4-5 Before a lawyer acts in a matter or transaction for more than one client, the lawyer must advise each of the clients that:

(a) the lawyer has been asked to act for both or all of them;

(b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and

(c) if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

Commentary

[1] Although this rule does not require that a lawyer advise clients to obtain independent legal advice before the lawyer may accept a joint retainer, in some cases, the lawyer should recommend such advice to ensure that the clients' consent to the joint retainer is informed, genuine and uncoerced. This is especially so when one of the clients is less sophisticated or more vulnerable than the other.

[2] There are also many situations where more than one person may wish to retain the lawyer to handle a transaction and, although their interests appear to coincide, in fact a potential conflict of interest exists. Examples are co-purchasers of real property and persons forming a partnership or corporation. Such cases will be governed by the Commentary for Rule 3.4-2 in this Code.

[3] Notwithstanding any other provisions of the Code of Professional Conduct, a lawyer shall not act for both the builder or developer and the purchaser in a real estate transaction resulting from the construction of a new home, even if the parties consent.

[4] A lawyer who receives instructions from spouses or partners to prepare one or more wills for them based on their shared understanding of what is to be in each will should treat the matter as a joint retainer and comply with Rule 3.4-5. Further, at the outset of this joint retainer, the lawyer should advise the spouses or partners that, if subsequently only one of them were to communicate new instructions, such as instructions to change or revoke a will:

(a) the subsequent communication would be treated as a request for a new retainer and not as part of the joint retainer;

(b) in accordance with Rule 3.3-1, the lawyer would be obliged to hold the subsequent communication in strict confidence and not disclose it to the other spouse or partner; and

(c) the lawyer would have a duty to decline the new retainer, unless:

(i) the spouses or partners had annulled their marriage, divorced, permanently ended their conjugal relationship or permanently ended their close personal relationship, as the case may be;

(ii) the other spouse or partner had died; or

(iii) the other spouse or partner was informed of the subsequent communication and agreed to the lawyer acting on the new instructions.

[5] After advising the spouses or partners in the manner described above, the lawyer should obtain their consent to act in accordance with Rule 3.4-7.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Johnston, 2011 SKLSS 7
It is conduct unbecoming to act for both the builder/developer and purchaser in a real estate agreement.

Law Society of Saskatchewan v Wilson, 2004 SKLS 6
Where a lawyer acts for both sides of a property sale, it is a conflict of interest to pay out money to the purchasers for potential damage without the consent of the vendors. When there was a clear conflict between the purchasers and the vendors over this issue, it was a conflict of interest to continue to act.
It was a further conflict of interest to release mortgage proceeds prior to ensuring that the mortgage had first status.

Law Society of Saskatchewan Conduct Review

2019 SKLSCR 3
After contentious issues arise on a joint retainer file, a lawyer cannot continue to act for one of the parties without consent of the other(s). Prior written instructions and approval are not sufficient. The lawyer should seek further clarification about whether and/or how their role may change.

2019 SKLSCR 3
It is a conflict of interest to continue to represent one half of a joint retainer on the same matter after being released by the other. The result (here, a resolution of the file) is irrelevant to a lawyer placing themselves in a conflict of interest.

2015 SKLSCR 2
A lawyer should not assume that they are retained by a potential client unless there is recognition or acceptance of this relationship by the client. An indication by the opposing party or in the purchase

agreement is not sufficient. A lawyer should take care and positive steps to clarify the relationship between them and the client and ensure that the client is given an opportunity to be represented by other counsel.
A lawyer should communicate the rules regarding joint retainers when the solicitor-client relationship is formed, as soon as possible after the file is opened, and before the lawyer acts under the joint retainer.

Law Society of Saskatchewan Ethics Rulings

2018 SKLSPC 3
As an incentive to purchase the home builder's homes, a lawyer for a home builder is not allowed to offer, to cover the legal and ISC costs associated with the purchase by having their lawyer also act for the purchaser. This offends Commentary [3] to Rule 3.4-5 and Rules 3.4-9.
2013 SKLSPC 4
The prohibition in Commentary [3] to Rules 3.4-5 and 3.4-9 applies to a situation where a developer is selling a finished home to a related corporation in a non-arm's length transaction, as such a situation falls within a "real estate transaction resulting from the construction of a new home."
2010 SKLSPC 8
Where a lawyer represents all parties involved in a real estate transaction, a joint representation letter outlining the relationship and providing the required disclosure should be provided to both parties in the transaction. In addition, the joint representation letter must set forth what will happen in the event a conflict should arise.
2010 SKLSPC 1
In joint retainer situations, letters detailing the relationship between the lawyer and both parties specifically setting out the manner in which matters will proceed in the event of a conflict should be sent to and signed by both parties in a joint representation situation.
2009 SKLSPC 3
Once it is clear that there is a dispute incapable of resolution, a lawyer should withdraw without taking steps on behalf of either party.
2007 SKLSPC 8
A lawyer should not continue to act for either client in a dispute once the lawyer is no longer able to negotiate the dispute and acting would prefer the interests of one client over the other.
2003 SKLSPC 18
When acting for both sides of a real estate transaction, a lawyer should utilize a disclosure statement. The lawyer should disclose information if it is material to the vendors and the mortgage company.
2003 SKLSPC 9
A lawyer cannot continue to represent one co-executor against the other or remove the other. A lawyer cannot continue to represent both executors while they are in conflict.
2002 SKLSPC 7
A lawyer must turn down a new retainer from a former client, where the new retainer would have the lawyer acting against a current client.

1988 SKLSPC 7
When a firm acts for a series of groups in potential conflict and for individuals in those groups, a firm must be cautious that if disputes materialize, the firm must not act on both sides and would be required to withdraw from all matters.

3.4-6 If a lawyer has a continuing relationship with a client for whom the lawyer acts regularly, before the lawyer accepts joint employment for that client and another client in a matter or transaction, the lawyer must advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

3.4-7 When a lawyer has advised the clients as provided under Rules 3.4-5 and 3.4-6 and the parties are content that the lawyer act, the lawyer must obtain their consent.

Commentary

[1] Consent in writing, or a record of the consent in a separate written communication to each client is required. Even if all the parties concerned consent, a lawyer should avoid acting for more than one client when it is likely that a contentious issue will arise between them or their interests, rights or obligations will diverge as the matter progresses.

3.4-8 Except as provided by Rule 3.4-9, if a contentious issue arises between clients who have consented to a joint retainer,

(a) the lawyer must not advise them on the contentious issue and must:

i. refer the clients to other lawyers; or

ii. advise the clients of their option to settle the contentious issue by direct negotiation in which the lawyer does not participate, provided:

A. no legal advice is required; and

B. the clients are sophisticated.

(b) if the contentious issue is not resolved, the lawyer must withdraw from the joint representation.

Commentary

[1] This rule does not prevent a lawyer from arbitrating or settling, or attempting to arbitrate or settle, a dispute between two or more clients or former clients who are not under any legal disability and who wish to submit the dispute to the lawyer.

[2] If, after the clients have consented to a joint retainer, an issue contentious between them or some of them arises, the lawyer is not necessarily precluded from advising them on non-contentious matters.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Shirkey, 2014 SKLSS 9
It is conduct unbecoming to continue to act for one party in a joint retainer where there was or was likely to be a conflicting interest, without the consent of the other party.

Law Society of Saskatchewan Conduct Reviews

2014 SKLSCR 5
Upon receipt of correspondence from new counsel of one joint client, a Lawyer should cease to act for either party. To continue to act would be to prefer one client over the other.

Law Society of Saskatchewan Ethics Rulings

2013 SKLSPC 5
A lawyer is not allowed to take instruction from one co-executor while ignoring or excluding the other. This includes situations where one co-executor is being "uncooperative". The client in an estate matter is the estate itself, not the executors. The executors are the "instructors" on behalf of the estate. If a conflict arises between co-executors that cannot be resolved, the appropriate course of action is for one or both co-executors to commence an action to have the other removed.
2009 SKLSPC 3
Once it is clear that there is a dispute incapable of resolution, a lawyer should withdraw without taking steps on behalf of either party.
2007 SKLSPC 8
A lawyer should not continue to act for either client in a dispute once the lawyer is no longer able to negotiate the dispute and acting would prefer the interests of one client over the other.
2004 SKLSPC 16
If a lawyer is acting for both sides of a real estate transaction, the Lawyer will be in a conflict of interest as soon as they believe one client's interests were not being protected and the Lawyer needs to withdraw. The Lawyer should not file a caveat against a client and the instructions of another.

2003 SKLSPC 9
A lawyer cannot continue to represent one co-executor against the other or remove the other. A lawyer cannot continue to represent both executors while they are in conflict.
1986 SKLSPC 11
When joint clients are unsuccessful in a litigation matter, it is a conflict of interest for the Lawyer to take instructions from one joint client to commence an action against the other joint client for payment. Once that occurs, the Lawyer must withdraw.

3.4-9 Subject to this rule, if clients consent to a joint retainer and also agree that if a contentious issue arises the lawyer may continue to advise one of them, the lawyer may advise that client about the contentious matter and must refer the other or others to another lawyer.

Commentary

[1] This rule does not relieve the lawyer of the obligation when the contentious issue arises to obtain the consent of the clients when there is or is likely to be a conflict of interest, or if the representation on the contentious issue requires the lawyer to act against one of the clients.

[2] When entering into a joint retainer, the lawyer should stipulate that, if a contentious issue develops, the lawyer will be compelled to cease acting altogether unless, at the time the contentious issue develops, all parties consent to the lawyer's continuing to represent one of them. Consent given before the fact may be ineffective since the party granting the consent will not at that time be in possession of all relevant information.

[3] Notwithstanding any other provisions of The Code of Professional Conduct, a lawyer shall not act for both the builder or developer and the purchaser in a real estate transaction resulting from the construction of a new home, even if the parties consent.

[4] It is improper for a lawyer to act on a mortgage foreclosure if the lawyer or his or her firm were involved in placing the original mortgage and advising the mortgagor. This prohibition does not apply in the following cases:

(a) Where foreclosure proceedings are based upon events subsequent and unrelated to the preparation, execution and registration of the mortgage;

(b) Where the lawyer who is acting for the mortgagee attended on the mortgagor merely for the purposes of executing the mortgage documentation;

(c) Where the mortgagor for whom the lawyer has acted has not been a party to the foreclosure proceedings;

(d) Where the mortgagor has no beneficial interest in the mortgaged lands and no claim has been made against the mortgagor personally;

(e) Where the mortgagor consents in writing.

[5] In this commentary, mortgagor includes purchaser and mortgagee includes vendor under an agreement for sale.

Annotations

Law Society of Saskatchewan Conduct Review

2018 SKLSPC 3

As an incentive to purchase the home builder's homes, a lawyer for a home builder is not allowed to offer, to cover the legal and ISC costs associated with the purchase by having their lawyer also act for the purchaser. This offends Commentary [3] to Rule 3.4-5 and Rules 3.4-9.

2015 SKLSCR 2

A lawyer should not assume that they are retained by a potential client, unless there is recognition or acceptance of this relationship by the client. An indication by the opposing party or in the purchase agreement is not sufficient. A lawyer should take care and positive steps to clarify the relationship between them and the client and ensure that the client is given an opportunity to be represented by other counsel.

A lawyer should communicate the rules regarding joint retainers when the solicitor-client relationship is formed, as soon as possible after the file is opened, and before the Lawyer acts under the joint retainer.

Law Society of Saskatchewan Ethics Rulings

2013 SKLSPC 4

The prohibition in Commentary [3] to Rules 3.4-5 and 3.4-9 applies to a situation where a developer is selling a finished home to a related corporation in a non-arm's length transaction, as such a situation falls within a "real estate transaction resulting from the construction of a new home."

2010 SKLSPC 8

Where a lawyer represents all parties involved in a real estate transaction, a joint representation letter outlining the relationship and providing the required disclosure should be provided to both parties in the transaction. In addition, the joint representation letter must set forth with what will happen in the event a conflict should arise.

The lawyer must ensure that if and when a conflict does arise, they take appropriate steps to ensure both parties are advised of the conflict and both parties are then referred to alternative counsel.

The lawyer involved must take no further steps with respect to the action to either assist one or both of the parties or to attempt to

resolve any potential difficulties. In the event of potential difficulties, the lawyer must withdraw and provide no further advice.
2010 SKLSPC 1
In joint retainer situations, letters detailing the relationship between the lawyer and both parties, specifically setting out the manner in which matters will proceed in the event of a conflict should be sent to and signed by both parties.
When issues between the parties arise, the Lawyer should take additional steps to determine whether there is a conflict of interest. Once it was determined a conflict had arisen between the parties, the Lawyer should have withdrawn and referred both parties out to other lawyers without providing any further advice to either party.

Acting Against Former Clients

3.4-10 Unless the former client consents, a lawyer must not act against a former client in:

(a) the same matter,

(b) any related matter, or

(c) any other matter if the lawyer has relevant confidential information arising from the representation of the former client that may prejudice that client.

Commentary

[1] This rule guards against the misuse of confidential information from a previous retainer and ensures that a lawyer does not attack the legal work done during a previous retainer, or undermine the client's position on a matter that was central to the retainer. It is not improper for a lawyer to act against a former client in a fresh and independent matter wholly unrelated to any work the lawyer has previously done for that client if previously obtained confidential information is irrelevant to that matter.

Annotations

Supreme Court of Canada
Goodman Estate v Geffen, [1991] 2 SCR 353
A lawyer's confidentiality obligation is not extinguished by the client's death.
MacDonald Estate v Martin, [1990] 3 SCR 1235
Note: this case is sometimes referred to as *Martin v Gray*
Once it is shown that a previous relationship existed sufficiently related to the situation, the Court should infer that confidential information was imparted unless the lawyer satisfies the Court that no information was imparted which could be relevant. A lawyer who

has relevant confidential information cannot act against a former client.

Saskatchewan Court of King's Bench

Kelln v Mryglod, 2020 SKQB 237

To have a law firm or lawyer disqualified from acting, the claimant must first demonstrate that there was confidential information in the former lawyer's possession. Information that must be disclosed to an opposing party in a new matter (by virtue of the rules of disclosure) cannot be considered "relevant confidential information arising from the representation of the former client that may prejudice that client".

Dr N Vankoughnett Dental Prof. Corp. v Miller Thomson LLP, 2012 SKQB 84

Provides a good summary of the law around applications to disqualify law firms. Must establish the connection between the previous and current retainers. Where a connect exists, the Court will presume confidential information was obtained. There is a different standard for current versus former clients.

The Court dismissed the disqualification application, as the applicant was deemed to be a former client and not afforded the same duty of loyalty as a current client.

Wallace v Canadian Pacific Railway, 2011 SKCA 108

The Court approved the two-way test in *MacDonald Estate v Martin* to address the prospect of disqualifying a law firm on the basis that confidential information may have been imparted to the law firm: (1) Did the Lawyer receive confidential information attributable to a solicitor and client relationship relevant to the matter at hand? (2) Is there a risk that it will be used to the prejudice of the client?

The acquisition of confidential information is inferred not from the nature of the solicitor-client relationship, but rather from the relationship between the previous and current retainers.

Lubs v Ahmad, 2008 SKQB 62

The Court reviewed the same fact scenario as in LSS Ethics Ruling: 2007 SKLSPC 9. They disagreed with the majority in that ruling and disqualified the lawyer and law firm from acting. The fact that the firm did not represent the opposing party in a personal capacity is irrelevant. The present issues are neither new nor distinct from the work the firm did for the deceased previously. The agreement that was prepared is the very foundation of the claim in the present case.

The safeguards available under the Code are intended to prevent or minimize the negative impact of a conflict problem, not to bring a problem into existence when it can easily be avoided by the new client retaining other counsel.

Original decision: **2007 SKLSPC 9**: The significant passage of time between the initial representation of one client and the later representation of the second client on a related matter does not remove the potential for conflict by acting against a former party.

Two matters are related, unless the new matter can be considered a "fresh, independent, wholly unrelated matter".

The Majority found that where the opposing party in the new matter was not involved in or associated with the initial matter (here, they were seen to have benefited from the former client's breach), there is no conflict of interest.

The minority found that where the issues at stake in the new litigation are sufficiently connected to the initial matter and that the opposing party is seen to have benefited from a breach of the agreement reached in the initial matter, the opposing party is a person sufficiently related to the former client and that there is a conflict of interest.

Further, there is confidential information related to the initial representation, even it is only in the first lawyer's knowledge, insights, and memory. There is a presumption that that knowledge has been shared with the current Lawyer. The Lawyer's word is insufficient to rebut the presumption.

Still further, where the two Lawyers (initial and current) have practiced in the same firm without institutional mechanisms in place, they will not be able to rebut the presumption that confidential information was shared.

Yurkowski v Century 21 Drive Realty Ltd, 1997 CanLII 10976, 162 Sask R 190

A lawyer who has relevant confidential information cannot act against their client or former client. In such a case disqualification is automatic. Having acted previously for the now opposing client in a related matter warrants disqualification.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Scharfstein, 2020 SKLSS 5

It is conduct unbecoming to continue to act on a matter when there was or was likely to be a conflict of interest between a client and a former client on a related matter.

The Hearing Panel accepted a joint submission for resignation, a three-month period before the lawyer can reapply, and costs. There was a dissenting opinion suggesting that the penalty was not severe enough, as it did not reflect the seriousness of the conduct, the consequence of the actions, the lack of remorse and the Law Society's duty to the public.

Law Society of Saskatchewan v Sheppard, 2014 SKLSS 5

It is conduct unbecoming to act against the interests of a former family law client by representing their former spouse in a related domestic violence matter.

The Discipline Committee applied an expansive interpretation of the concept of two legal matters being related. The matters were deemed related, because the charges against the former spouse were based on the same facts/evidence as the former client's custody action.

Law Society of Saskatchewan Ethics Rulings

2018 SKLSPC 6

There is a conflict of interest when a lawyer represents a client on one matter where there is a factor relevant to the representation (here, alcohol) and then the same lawyer attempts to represent a different client against the first client, where that same factor is an issue. There is sufficient overlap between the two issues such that confidential information in the prior representation may be relevant to the second matter.

2015 SKLSPC 12

A solicitor-client relationship is not created merely by a spouse attending a few meetings with their spouse (who is the actual client and the only one receiving legal advice).

Representing a couple in criss-cross wills does not prevent the Lawyer from later representing one of them in a family law matter. Any confidential information that the Lawyer may have gained in the representation on the wills would be fully disclosable in the family law matter.

A client does not implicitly consent to a lawyer acting where there is a conflict by not raising the potential conflict immediately, as long as the client is not using the conflict as a litigation tactic.

It is not a conflict of interest (but there is potential for one) when a lawyer pleads in a family law matter a date of separation earlier than the execution of criss-cross wills.

Compare 2005 SKLSPC 6.

2015 SKLSPC 9

A lawyer may not act for any of a corporation's shareholders after withdrawing from acting for the corporation as the shareholder's interests may be adverse to the interests of the former client, the corporation.

2011 SKLSPC 4

A lawyer may act against a former corporate client and neighbour in a family law matter, as long as there is no confidential information gleaned in the former matter that could be used in the new matter.

2010 SKLSPC 9

Upon identifying that the potential new matter would be pursued against a former client and noting that an old file existed, the lawyer/law firm should review such an old file to determine if there is any confidential information on the file or if the matters were related so as to identify any potential for conflict of interest on the new matter.

2009 SKLSPC 7

The duty of loyalty to a client does not end upon the end of the solicitor-client relationship, although it is somewhat diminished. A lawyer must be careful to avoid circumstances where a client may reasonably feel that their former lawyer has become their adversary. This may include situations where the Lawyer has gained information about the former client's situation or vulnerabilities.

When a lawyer is in a situation where they would have to cross-examine a former client, there is a conflict of interest.

2008 SKLSPC 5

After representing both the debtors and a financial institution in a loan matter, it is a conflict of interest to later provide legal advice and services adverse to the interests of the financial institution. Further, the Lawyer cannot represent either debtor in an action where the financial institution is suing the debtors on the loan matter, as they are related. Still further, the Lawyer may have their own litigation issue, which would also put them in a conflict of interest.

2007 SKLSPC 9

See above *Lubs v Ahmad*, 2008 SKQB 62

2007 SKLSPC 7

When suing a former client, there is a conflict if the Lawyer has not rebutted the presumption of conflict.

2006 SKLSPC 8
There is a conflict of interest where two lawyers in the same firm act on opposing sides of related matters.
2006 SKLSPC 2
Enforcement of a settlement agreement against the party for whom the Lawyer previously acted constitutes a “related matter” and is a conflict of interest.
2005 SKLSPC 10
Enforcing an agreement prepared by the Lawyer against one of the joint clients to that agreement is a conflict of interest.
2005 SKLSPC 6
If a lawyer represents a couple for joint wills and later represents one member of that party in a divorce or division of matrimonial property, the matters are related and there is a conflict of interest.
Note: 2005 SKLSPC 7 provides an addendum to this decision and indicates that the Lawyer sought to have this decision reviewed by the Court, but the client retained new counsel in the interim to work toward settlement. The outcome of the court matter is not known. Compare 2015 SKLSPC 12 above.
2005 SKLSPC 1
In representing a client in a spousal assault matter where the Lawyer had previously acted for the spouse, there is a conflict of interest. However, as the matter was almost completed by consent, it was not in the client’s best interests to send the client to new defence counsel, and there was little risk to the former client, it was not unethical for this Lawyer to continue matters by consent.
2002 SKLSPC 7
A lawyer must turn down a new retainer from a former client, where the new retainer would have the lawyer acting against a current client.
2002 SKLSPC 3
It is a conflict of interest to represent a client in a matter where a former client would be a witness and where the subject matter of the present retainer (here, a piece of equipment) is related to the subject matter of the previous retainer.
2000 SKLSPC 21
Where a lawyer was in a conflict and could not act for a client in relation to a matter, that same lawyer should not act for the client to enforce costs that resulted from the earlier matter. They are related matters.
1998 SKLSPC 6
For the purpose of acting against a former client, if a lawyer acted as counsel for the children in one matter, that lawyer should not later act for the Department of Social Services in a matter related to those same children.
1995 SKLSPC 2
Despite difficulties in dealing with an uncooperative client, proceeding with the wishes of one joint client over the other is a conflict of interest.
1995 SKLSPC 1
After a lawyer provides advice to a vendor on the offer to purchase, it is improper for the lawyer or their firm to then act against the vendor for damages incurred by the purchasers regarding the same property.

1994 SKLSPC 22
There is no conflict of interest when one lawyer from a firm acts for one part of a couple in a matrimonial property action while another member of the firm had previously acted for both.
1994 SKLSPC 2
Sending a client to receive independent legal advice does not automatically cure a lawyer's subsequent conflict of interest from acting for both a vendor and purchaser in a real estate transaction.
1992 SKLSPC 10
It is not improper for a lawyer to act against a former client in a fresh and independent matter, wholly unrelated to any work previously done for that client.
1991 SKLSPC 7
Drafting documents for both parties creates a presumption of shared information and results in a conflict of interest.
1987 SKLSPC 6
A lawyer cannot refuse to turn over a file to a firm which had formerly represented the client's opposing party if the client requests to change representation. A claim of conflict belongs to the former client – if they waive their interest, there is no conflict.
1000 SKLSPC 5
It is improper for a firm to act for a client on an issue in which the firm had previously acted against the same client. A lawyer who has acted for a client in a matter should not act against them, or persons involved in or associated with them in any related matter. A lawyer should not place themselves in situations that may tempt them to breach their duty of confidentiality.

Other Sources

Kjartanson v Rutley, 104 Man R (2d) 268
A lawyer sued a former client in an unrelated matter several years later. The Court determined that there was no conflict of interest, as the knowledge allegedly possessed did not fall within the category of "confidential information" and was not demonstrated to be gained as a result of the earlier retainer. Further, with the time lapse, any information that may have been received would be out of date and irrelevant.

3.4-11 When a lawyer has acted for a former client and obtained confidential information relevant to a new matter, another lawyer ("the other lawyer") in the lawyer's firm may act in the new matter against the former client if:

(a) the former client consents to the other lawyer acting; or

(b) the law firm has:

(i) taken reasonable measures to ensure that there will be no disclosure of the former client's confidential information by the lawyer to any other lawyer, any other member or employee of the law firm, or any other person whose services the lawyer or the law firm has retained in the new matter; and

(ii) advised the lawyer's former client, if requested by the client, of the measures taken.

Commentary

[1] The Commentary to Rules 3.4-17 to 3.4-23 regarding conflicts from transfer between law firms provides valuable guidance for the protection of confidential information in the rare cases in which it is appropriate for another lawyer in the lawyer's firm to act against the former client.

Annotations

Law Society of Saskatchewan Ethics Rulings
1994 SKLSPC 22
There is no conflict of interest when one lawyer from a firm acts for one part of a couple in a matrimonial property action while another member of the firm had previously acted for both.

Acting for Borrower and Lender

3.4-12 Subject to Rule 3.4-14, a lawyer or two or more lawyers practising in partnership or association must not act for or otherwise represent both lender and borrower in a mortgage or loan transaction.

3.4-13 In Rules 3.4-14 to 3.4-16 **"lending client"** means a client that is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of its business.

3.4-14 Provided there is compliance with this rule, and in particular Rules 3.4-5 to 3.4-9, a lawyer may act for or otherwise represent both lender and borrower in a mortgage or loan transaction in any of the following situations:

(a) the lender is a lending client;

(b) the lender is selling real property to the borrower and the mortgage represents part of the purchase price;

(c) the lawyer practises in a remote location where there are no other lawyers that either party could conveniently retain for the mortgage or loan transaction; or

(d) the lender and borrower are not at "arm's length" as defined in the *Income Tax Act* (Canada).

3.4-15 When a lawyer acts for both the borrower and the lender in a mortgage or loan transaction, the lawyer must disclose to the borrower and the lender, in writing, before the

advance or release of the mortgage or loan funds, all material information that is relevant to the transaction.

Commentary

[1] What is material is to be determined objectively. Material information would be facts that would be perceived objectively as relevant by any reasonable lender or borrower. An example is a price escalation or "flip", where a property is re-transferred or re-sold on the same day or within a short time period for a significantly higher price. The duty to disclose arises even if the lender or the borrower does not ask for the specific information.

3.4-16 If a lawyer is jointly retained by a client and a lending client in respect of a mortgage or loan from the lending client to the other client, including any guarantee of that mortgage or loan, the lending client's consent is deemed to exist upon the lawyer's receipt of written instructions from the lending client to act and the lawyer is not required to:

(a) provide the advice described in Rule 3.4-5 to the lending client before accepting the retainer**,**

(b) provide the advice described in Rule 3.4-6, or

(c) obtain the consent of the lending client as required by Rule 3.4-7, including confirming the lending client's consent in writing, unless the lending client requires that its consent be reduced to writing.

Commentary

[1] Rules 3.4-15 and 3.4-16 are intended to simplify the advice and consent process between a lawyer and institutional lender clients. Such clients are generally sophisticated. Their acknowledgement of the terms of and consent to the joint retainer is usually confirmed in the documentation of the transaction (e.g., mortgage loan instructions) and the consent is generally acknowledged by such clients when the lawyer is requested to act.

[2] Rule 3.4-16 applies to all loans when a lawyer is acting jointly for both the lending client and another client regardless of the purpose of the loan, including, without restriction, mortgage loans, business loans and personal loans. It also applies where there is a guarantee of such a loan.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Mattison, 1998 SKLS 1

It is conduct unbecoming for a lawyer to not advise the other clients that one client (who was involved in approving loans from the financial institution) was not required to sign a personal guarantee, when the other clients were required to do so. This constitutes a failure to ensure clients are reasonably informed of all material information relevant to the transaction that they might wish to know.

Conflicts from Transfer Between Law Firms

Application of Rule

3.4-17 In Rules 3.4-17 to 3.4-23:

"matter" means a case, a transaction, or other client representation, but within such a representation, does not include offering general "know-how" and, in the case of a government lawyer, providing policy advice, unless the advice relates to a particular client representation.

3.4-18 Rules 3.4-17 to 3.4-23 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) it is reasonable to believe the transferring lawyer has confidential information relevant to the new law firm's matter for its client; or

(b) all of the following apply:

(i) the new law firm represents a client in a matter that is the same as or related to a matter in which a former law firm represents or represented its client ("former client");

(ii) the interests of those clients in that matter conflict; and

(iii) the transferring lawyer actually possesses relevant information respecting that matter.

Commentary

[1] The purpose of the rule is to deal with actual knowledge. Imputed knowledge does not give rise to disqualification. As stated by the Supreme Court of Canada in *Macdonald Estate v. Martin*, [1990] 3 SCR 1235, with respect to the partners or

associates of a lawyer who has relevant confidential information, the concept of imputed knowledge is unrealistic in the era of the mega-firm. Notwithstanding the foregoing, the inference to be drawn is that lawyers working together in the same firm will share confidences on the matters on which they are working, such that actual knowledge may be presumed. That presumption can be rebutted by clear and convincing evidence that shows that all reasonable measures, as discussed in Rule 3.4-20, have been taken to ensure that no disclosure will occur by the transferring lawyer to the member or members of the firm who are engaged against a former client.

[2] The duties imposed by this rule concerning confidential information 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.

[3] **Law firms with multiple offices —** This rule treats as one "law firm" such entities as the various legal services units of a government, a corporation with separate regional legal departments, and an interjurisdictional law firm.

3.4-19 Rules 3.4-20 to 3.4-22 do not apply to a lawyer employed by the federal, a provincial or a territorial government who, after transferring from one department, ministry or agency to another, continues to be employed by that government.

Commentary

[1] **Government employees and in-house counsel —** The definition of "law firm" includes one or more lawyers practising in a government, a Crown corporation, any other public body or a corporation. Thus, the rule applies to lawyers transferring to or from government service and into or out of an in-house counsel position, but does not extend to purely internal transfers in which, after transfer, the employer remains the same.

Law Firm Disqualification

3.4-20 If the transferring lawyer actually possesses confidential information relevant to a matter 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 has:

(i) 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; and

(ii) advised the lawyer's former client, if requested by the client, of the measures taken.

Commentary

[1] It is not possible to offer a set of "reasonable measures" that will be appropriate or adequate in every case. Instead, the new law firm that seeks to implement reasonable measures must exercise professional judgment in determining what steps must be taken "to ensure that no disclosure will occur to any member of the new law firm of the former client's confidential information." Such measures may include timely and properly constructed confidentiality screens.

[2] For example, the various legal services units of a government, a corporation with separate regional legal departments, an interjurisdictional law firm, or a legal aid program may be able to demonstrate 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. If it can be shown that, because of factors such as the above, lawyers in separate units, offices or departments do not "work together" with other lawyers in other units, offices or departments, this will be taken into account in the determination of what screening measures are "reasonable."

[3] The guidelines that follow are intended as a checklist of relevant factors to be considered. Adoption of only some of the guidelines may be adequate in some cases, while adoption of them all may not be sufficient in others.

Guidelines: How to Screen/Measures to be taken

a. The screened lawyer should have no involvement in the new law firm's representation of its client in the matter.

b. 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.

c. No member of the new law firm should discuss the current matter or the previous representation with the screened lawyer.

d. The firm should take steps to preclude the screened lawyer from having access to any part of the file.

e. The new law firm should document the measures taken to screen the transferring lawyer, the time when these measures were put in place (the sooner the better), and should advise all affected lawyers and support staff of the measures taken.

f. These Guidelines apply with necessary modifications to situations in which non-lawyer staff leave one law firm to work for another and a determination is made, before hiring the individual, on whether any conflicts of interest will be created and whether the potential new hire actually possesses relevant confidential information.

How to Determine If a Conflict Exists Before Hiring a Potential Transferee

[4] When a law firm ("new law firm") considers hiring a lawyer, or an articled law student ("transferring lawyer") from another law firm ("former law firm"), the transferring lawyer and the new law firm need to determine, before the transfer, whether any conflicts of interest will be created. Conflicts can arise with respect to clients of the law 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.

[5] After completing the interview process and before hiring the transferring lawyer, the new law firm should determine whether any conflicts exist. In determining whether the transferring lawyer actually possesses relevant confidential information, both the transferring lawyer and the new law firm must be very careful, during any interview of a potential transferring lawyer, or other recruitment process, to ensure that they do not disclose client confidences. See Rule 3.3-7 which provides that a lawyer may disclose confidential information to the extent the lawyer reasonably believes necessary to detect and resolve conflicts of interest where lawyers transfer between firms.

[6] A lawyer's duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

Annotations

Supreme Court of Canada

Canadian National Railway Co. v McKercher LLP, 2013 SCC 39

Disqualification may be required to avoid the risk of improper use of confidential information, to avoid the risk of impaired representation, or to maintain the repute of the administration of justice. In this case the only concern that would warrant disqualification is the protection of the repute of the administration of justice.

While a breach of the bright line rule normally attracts the remedy of disqualification, factors that may militate against it must be considered. These factors may include: (i) behaviour disentitling the complaining party from seeking the removal of counsel, such as delay in bringing the motion for disqualification; (ii) significant prejudice to the new client's interest in retaining its counsel of choice, and that party's ability to retain new counsel; and (iii) the fact that the law firm accepted the conflicting retainer in good faith, reasonably believing that the concurrent representation fell beyond the scope of the bright line rule or applicable law society rules. As the motion judge did not have the benefit of these reasons, the matter should be remitted to the Queen's Bench for redetermination of the appropriate remedy.

Macdonald Estate v Martin, [1990] 3 SCR 1235

Note: this case is sometimes referred to as *Martin v Gray*

A lawyer who had been extensively involved in the representation of a client in a litigation matter left their firm and ultimately became a member of the firm that represented the opposite party in the litigation. Though the new law firm and the lawyer assured the Court and the clients that nothing untoward had taken place – specifically, that no confidential information had been shared between the lawyer and her new firm, and that none would be shared – the Court did not regard this as a sufficient assurance.

The Court established a high standard for lawyers, based on the 'appearance of impropriety'. In the circumstances, there was a 'possibility' that confidential information could be shared between the lawyers and, accordingly, a presumption should exist that such information was shared. However, the majority of the court concluded that in appropriate circumstances, and provided that law societies had sanctioned 'appropriate institutional mechanisms', the presumption of shared information could be rebutted.

Saskatchewan Court of King's Bench

Swan v Schoeman, 2013 SKQB 103

A law firm is disqualified from acting for a client, where a lawyer has previous acted for an opposing party, even if the lawyer represented the opposing party while employed at another firm. This is a breach of the duty of loyalty and *Code* section 2.04(1) [now 3.4-1].

Commentary [3-5], Rule 3.4-20 contemplates measures being in place "before hiring a lawyer", which means that the measures need to be in place at the time of hiring the associate. It is insufficient to put the measures in place between when the associate is hired and when the associate starts their employment.

The location of the associate's office and use of support staff are important considerations. In this case, there was no evidence that

the associate's office or their support staff was located away from those working on the client's file.

D.B.P. v R.D.M., 2008 SKQB 455

The critical time is the date the transferring lawyer commences employment with the new firm and whether procedures are in place to ensure no possible misuse of confidential information. The Court was satisfied that the measures in place were sufficient to prevent any misuse of information.

Baltzan v Ahmad, 2008 SKQB 414

Same case as 2008 SKQB 62. Here, the other party sought to remove the opposing party, because a former member of the firm drafted the will that is the subject of the litigation. [Note: they were interpreting the old Code of Professional Conduct.] Where a former member of a firm that is representing one party may be called to testify in the matter, there is no breach of the rule or mischief sought to be prevented. The Code section dealing with a lawyer acting as a witness does not extend to former members of the firm.

Lubs v Ahmad, 2008 SKQB 62

The Court reviewed the same fact scenario as in LSS Ethics Ruling: 2007 SKLSPC 9. They disagreed with the majority in that ruling and disqualified the lawyer and law firm from acting. The fact that the firm did not represent the opposing party in a personal capacity is irrelevant. The present issues are neither new nor distinct from the work the firm did for the deceased previously. The agreement that was prepared is the very foundation of the claim in the present case.

The safeguards available under the Code are intended to prevent or minimize the negative impact of a conflict problem, not to bring a problem into existence when it can easily be avoided by the new client retaining other counsel.

Original decision: **2007 SKLSPC 9**: The significant passage of time between the initial representation of one client and the later representation of the second client on a related matter does not remove the potential for conflict by acting against a former party.

Two matters are related, unless the new matter can be considered a "fresh, independent, wholly unrelated matter".

The majority found that where the opposing party in the new matter was not involved in or associated with the initial matter (here, there were seen to have benefited from the former client's breach), there is no conflict of interest.

The minority found that where the issues at stake in the new litigation are sufficiently connected to the initial matter and that the opposing party is seen to have benefited from a breach of the agreement reached in the initial matter, the opposing party is a person sufficiently related to the former client and that there is a conflict of interest.

Further, there is confidential information related to the initial representation, even it is only in the first lawyer's knowledge, insights, and memory. There is a presumption that that knowledge has been shared with the current lawyer. The lawyer's word is insufficient to rebut the presumption.

Still further, where the two Lawyers (initial and current) have practiced in the same firm without institutional mechanisms in place,

they will not be able to rebut the presumption that confidential information was shared.

Law Society of Saskatchewan Ethics Decisions

2007 SKLSPC 9
See above *Lubs v Ahmad*, 2008 SKQB 62

Transferring Lawyer Disqualification

3.4-21 Unless the former client consents, a transferring lawyer referred to in Rule 3.4-20 must not:

(a) participate in any manner in the new law firm's representation of its client in the matter; or

(b) disclose any confidential information respecting the former client, except as permitted by Rule 3.3-7.

3.4-22 Unless the former client consents, members 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 referred to in Rule 3.4-20, except as permitted by Rule 3.3-7.

Annotations

Supreme Court of Canada

MacDonald Estate v Martin, [1990] 3 SCR 1235
Note: this case is sometimes referred to as *Martin v Gray*
When determining whether there is a conflict as a result of lawyer transfer, the Court must balance three competing values: (1) the maintenance of high standards for the legal profession and the integrity of the system of justice; (2) The principle that a litigant should not be deprived of their choice of legal counsel without good cause; (3) the desirability of permitting reasonable mobility within the legal profession.
Two questions must be answered: (1) did the transferring lawyer receive confidential information attributable to a solicitor/client relationship which is relevant to the current matter? (2) Is there a risk that such confidential information will be used to the prejudice of a client or former client?
There is a strong inference that lawyers who work together share confidences. Once it is shown that a previous relationship existed sufficiently related to the situation, the court should infer that confidential information was imparted unless there is clear and convincing evidence that satisfies the court that no information was imparted which could be relevant.

Saskatchewan Court of King's Bench

Kelln v Mryglod, 2020 SKQB 237
To have a law firm or lawyer disqualified from acting, the claimant must first demonstrate that there was confidential information in the

former lawyer's possession. Information that must be disclosed to an opposing party in a new matter (by virtue of the rules of disclosure) cannot be considered confidential information obtained through previous representation.

Swan v Schoeman, 2013 SKQB 103

A law firm is disqualified from acting for a client, where a lawyer has previous acted for an opposing party, even if the lawyer represented the opposing party while employed at another firm. This is a breach of the duty of loyalty and *Code* section 2.04(1) [now 3.4-1].

Commentary [3-5], Rule 3.4-20 contemplates measures being in place "before hiring a lawyer", which means that the measures need to be in place at the time of hiring the associate. It is insufficient to put the measures in place between when the associate is hired and when the associate starts their employment. (compare with decisions below.)

The location of the associate's office and use of support staff are important considerations. In this case, there was no evidence that the associate's office or their support staff was located away from those working on the client's file.

Aitken v Smith, 2010 SKQB 281

The transferring lawyer should be involved in identifying files which could result in conflicts, but not left to their own devices.

A firm/transferring lawyer should consider both the interests of their client and the opposing client. The firm/transferring should notify both clients of the potential conflict and seek their consent.

D.B.P. v R.D.M., 2008 SKQB 455

The critical time is the date the transferring lawyer commences employment with the new firm and whether procedures are in place to ensure no possible misuse of confidential information. The Court was satisfied that the measures in place were sufficient to prevent any misuse of information.

Berg v Bruton, 2005 SKQB 525

The Court rejected the suggestion that the screening measures needed to be in place before an offer of employment was made. The critical time is that date the transferring lawyer commences employment with the new firm. The Court was satisfied that the measures in place were sufficient.

Hill v Klynveld Peat Marwick Goerdeler, 1999 CanLII 12631, 181 Sask R 216

In a conflict of interest caused by the transfer of a lawyer from one firm to another, a "Chinese Wall" is only sufficient if erected for the benefit of a current client and not if used to accept a new client.

Law Society of Saskatchewan Ethics Rulings

2019 SKLSPC 1

A law firm must ensure that sufficient conflict screens are in place to deal with potential conflicts of interest and follow the proper procedures in contemplation of a merger of law firms. The profession should familiarize themselves with the above Code Sections, and the guidance in *Swan v Schoeman* (above).

2007 SKLSPC 1

When lawyers move between firms and there is a potential for conflict, the Law Society must be satisfied that the new firm has taken sufficient action to put up walls around the new lawyer to

remove the perception of conflict. In this circumstance the Committee was satisfied that the firm met the criteria.
2004 SKLSPC 8
When two lawyers representing opposing parties in a family dispute merge, the conflict is so fundamental that the lawyers should send these files out of the office when they begin to practice in association. The clients cannot properly waive the conflict.
1997 SKLSPC 8
If a former in-house lawyer was consulted by a corporation on an issue, neither the Lawyer nor the Lawyer's new law firm can represent the employees in that same or a related issue. See also 1997 SKLSPC 2.
1987 SKLSPC 1
A new lawyer at a firm previously involved in the prosecution of the firm's new client does not cause conflict if the client is advised and provides consent and if the Department of Justice consents to the firm continuing to act for the client.

Lawyer Due Diligence for Non-lawyer Staff

3.4-23 A lawyer or a law firm must exercise due diligence in ensuring that each member and employee of the law firm, and each other person whose services the lawyer or the law firm has retained:

a) complies with Rules 3.4-17 to 3.4-23, and

b) does not disclose confidential information of:

(i) clients of the firm; or

(ii) clients of any other law firm in which the person has worked.

Commentary

[1] This rule is intended to regulate lawyers and articled law students who transfer between law firms. It also imposes a general duty on lawyers and law firms to exercise due diligence in the supervision of non-lawyer staff to ensure that they comply with the rule and with the duty not to disclose confidences of clients of the lawyer's firm and confidences of clients of other law firms in which the person has worked.

[2] Certain non-lawyer staff in a law firm routinely have full access to and work extensively on client files. As such, they may possess confidential information about the client. If these staff move from one law firm to another and the new firm acts for a client opposed in interest to the client on whose files the staff worked, unless measures are taken to screen the staff, it is reasonable to conclude that confidential information

may be shared. It is the responsibility of the lawyer/law firm to ensure that staff who may have confidential information that if disclosed, may prejudice the interests of the client of the former firm, have no involvement with and no access to information relating to the relevant client of the new firm.

3.4-24 ***[deleted]***

3.4-25 ***[deleted]***

3.4-26 ***[deleted]***

Doing Business with a Client

Definitions

3.4-27 In Rules 3.4-27 to 3.4-41,

"independent legal advice" means a retainer in which:

(a) the retained lawyer, who may be a lawyer employed as in-house counsel for the client, has no conflicting interest with respect to the client's transaction,

(b) the client's transaction involves doing business with

(i) another lawyer, or

(ii) a corporation or other entity in which the other lawyer has an interest other than a corporation or other entity whose securities are publicly traded,

(c) the retained lawyer has advised the client that the client has the right to independent legal representation,

(d) the client has expressly waived the right to independent legal representation and has elected to receive no legal representation or legal representation from another lawyer,

(e) the retained lawyer has explained the legal aspects of the transaction to the client, who appeared to understand the advice given, and

(f) the retained lawyer informed the client of the availability of qualified advisers in other fields who would be in a position to give an opinion to the client as to the desirability or otherwise of a proposed investment from a business point of view;

"independent legal representation" means a retainer in which

(a) the retained lawyer, who may be a lawyer employed as in-house counsel for the client, has no conflicting interest with respect to the client's transaction, and

(b) the retained lawyer will act as the client's lawyer in relation to the matter;

Commentary
[1] If a client elects to waive independent legal representation and to rely on independent legal advice only, the retained lawyer has a responsibility that should not be lightly assumed or perfunctorily discharged.

"lawyer" includes an associate or partner of the lawyer, related persons as defined by the *Income Tax Act* (Canada), and a trust or estate in which the lawyer has a beneficial interest or for which the lawyer acts as a trustee or in a similar capacity.

"related persons" means related persons as defined in the *Income Tax Act* (Canada);

Transactions with Clients

3.4-28 A lawyer must not enter into a transaction with a client unless the transaction with the client is fair and reasonable to the client.

3.4-29 Subject to Rules 3.4-30 to 3.4-36, where a transaction involves: lending or borrowing money, buying or selling property or services having other than nominal value, giving or acquiring ownership, security or other pecuniary interest in a company or other entity, recommending an investment, or entering into a common business venture, a lawyer must, in sequence:

(a) disclose the nature of any conflicting interest or how a conflict might develop later;

(b) consider whether the circumstances reasonably require that the client receive independent legal advice with respect to the transaction; and

(c) obtain the client's consent to the transaction after the client receives such disclosure and legal advice.

3.4-30 Rule 3.4-29 does not apply where:

(a) a client intends to enter into a transaction with a corporation or other entity whose securities are publicly traded in which the lawyer has an interest; or

(b) a lawyer borrows money from a client that is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of business.

Commentary

[1] The relationship between lawyer and client is a fiduciary one. The lawyer has a duty to act in good faith. A lawyer should be able to demonstrate that the transaction with the client is fair and reasonable to the client.

[2] In some circumstances, the lawyer may also be retained to provide legal services for the transaction in which the lawyer and a client participate. A lawyer should not uncritically accept a client's decision to have the lawyer act. It should be borne in mind that if the lawyer accepts the retainer the lawyer's first duty will be to the client. If the lawyer has any misgivings about being able to place the client's interests first, the retainer should be declined. This is because the lawyer cannot act in a transaction with a client where there is a substantial risk that the lawyer's loyalty to or representation of the client would be materially and adversely affected by the lawyer's own interest, unless the client consents and the lawyer reasonably believes that he or she is able to act for the client without having a material adverse effect on loyalty or the representation.

[3] If the lawyer chooses not to disclose the conflicting interest or cannot disclose without breaching confidence, the lawyer must decline the retainer.

[4] Generally, in disciplinary proceedings under this rule, the burden will rest upon the lawyer to show good faith, that adequate disclosure was made in the matter, that independent legal advice was received by the client, where required, and that the client's consent was obtained.

Documenting Independent Legal Advice

[5] A lawyer retained to give independent legal advice relating to a transaction should document the independent legal advice by doing the following:

(a) provide the client with a written certificate that the client has received independent legal advice;

(b) obtain the client's signature on a copy of the certificate of independent legal advice; and

(c) send the signed copy to the lawyer with whom the client proposes to transact business.

Annotations

Saskatchewan Court of Appeal

Abrametz v The Law Society of Saskatchewan, 2018 SKCA 37

The Court upheld the two-month suspension for being reasonable but allowed in part the appeal relating to costs.

There is no fixed penalty or sanction for conflict of interest. The range of reasonable sentences in disciplinary matters is elastic. A two-month suspension fell within the range of reasonable sentences.

When making a costs order, a discipline committee, should consider the factors in *Hills v Nova Scotia (Provincial Dental Board)*, 2009 NSCA 13: (a) the balance between effect of the award on the member and the need to be able to effectively administer the disciplinary process; (b) the respective degrees of success of the parties; (c) that costs award are not to be punitive; (d) the other sanctions imposed and their associated expenses; (e) the relative time and expense of the investigation and hearing associated with each of the charges and in particular those on which guilt were entered and those where the member was found not guilty.

In addition, the court noted that this list of factors is not exhaustive and a discipline body needs to take into account the unique circumstances of each case.

The cost order was reduced because the Discipline Committee failed to give any weight to the mixed results of the hearing or the cost ruling on the judicial review application. In doing so, the Discipline Committee failed to take relevant factors into consideration.

Original Decision: 2017 SKLSS 4:

It is conduct unbecoming to enter into a business transaction with clients when the Lawyer's interests or the interests of the Lawyer's associates were in conflict with those of the client.

It is conduct unbecoming to acquire property from clients and fail to ensure that the transaction was fair and reasonable, that its terms were fully disclosed, that the clients had the opportunity to seek independent legal advice, and that the clients consented in writing.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Abrametz, 2017 SKLSS 4

See above for SKCA review decision

Law Society of Saskatchewan v Balon, 2016 SKLSS 8

It is conduct unbecoming to enter into a business transaction with a client when the lawyer's interest conflict with those of the client, to prepare and sign an offer to purchase on terms beneficial to the lawyer without ensuring the client receives independent legal advice, and to prefer one's own interests over those of the client by taking a payment of $40,000 payment to the detriment of the client.

Law Society of Saskatchewan v Lucke, 2014 SKLSS 10

It is conduct unbecoming to fail to define clear boundaries within their multiple roles as personal counsel, director of a business venture,

and counsel to the corporation, such that clients would have difficulty distinguishing the capacity in which a lawyer is acting.
Law Society of Saskatchewan v Halford, 2014 SKLSS 6
It is conduct unbecoming to enter into a business transaction with clients to purchase property through a corporation without ensuring they obtained independent legal advice and provided written consent.
Law Society of Saskatchewan v Ferraton, 2014 SKLSS 2
It is conduct unbecoming to enter into a business transaction with a client where that client may expect the Lawyer to be protecting their interests, and to acquire property from a client without ensuring the client received independent legal advice.
Law Society of Saskatchewan v Johnston, 2011 SKLSS 7
It is conduct unbecoming to enter into a business transaction with a client without disclosing the Lawyer's own financial interest in the company, obtaining the consent of the client, and without providing the client the opportunity to seek independent legal advice about the transaction.
Law Society of Saskatchewan v Anderson, 1998 SKLS 3
It is conduct unbecoming to use one's spouse to purchase property belonging to a client significantly below market price and attempt to avoid the appearance of a conflict of interest.

Borrowing from Clients

3.4-31 A lawyer must not borrow money from a client unless:

(a) the client is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public; or

(b) the client is a related person as defined by the *Income Tax Act* (Canada) and the lawyer:

(i) discloses to the client the nature of the conflicting interest; and

(ii) requires that the client receive independent legal advice or, where the circumstances reasonably require it, independent legal representation.

3.4-32 Subject to Rule 3.4-31, if a corporation, syndicate or partnership in which either or both of the lawyer and the lawyer's spouse has a direct or indirect substantial interest borrows money from a client, the lawyer must:

(a) disclose to the client the nature of the conflicting interest; and

(b) require that the client obtain independent legal representation.

Commentary

[1] Whether a person is considered a client within Rules 3.4-32 and 3.4-33 when lending money to a lawyer on that person's own account or investing money in a security in which the lawyer has an interest is determined having regard to all circumstances. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and advice about the loan or investment, the lawyer is bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

[2] Given the definition of "lawyer" applicable to these "Doing Business with a Client" rules, a lawyer's spouse or a corporation controlled by the lawyer would be prohibited from borrowing money from a lawyer's unrelated client. As such, in the transactions described in the rule, the lawyer must make disclosure and require that the unrelated client from whom the entity in which the lawyer or the lawyer's spouse has a direct or indirect substantial interest is borrowing has independent legal representation.

Annotations

Supreme Court of Canada

Perez v Galambos, 2009 SCC 48
The SCC restored the trial judge's decision finding that the plaintiff's rights were those of a creditor and nothing more.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Marwood, 2012 SKLSS 5
It is conduct unbecoming to misappropriate funds held in trust.
It is conduct unbecoming to enter into a debtor/creditor relationship with a client where there was a significant risk that the Lawyer's interests and those of the client differed, without advising in writing that the clients should obtain independent legal advice. Executing IOUs without any intention of repaying the clients is not appropriate.

Law Society of Saskatchewan v McCannell, 2006 SKLS 1
It is conduct unbecoming for a lawyer to borrow funds from their client and to sue trust accounts to accumulate personal funds.

Law Society of Saskatchewan v Kirk, 2005 SKLS 4
It is conduct unbecoming to borrow funds from a client's account and mislead the client as to the actual state of funds.

Law Society of Saskatchewan v Hampton, 1998 SKLS 6
It is conduct unbecoming to borrow from a client to get the Lawyer's business going and never repay the client even though the loan was secured by promissory notes.

Law Society of Saskatchewan v Bader, 1999 SKLS 5
It is conduct unbecoming to borrow money from clients to invest. One client was considered sophisticated in investing and the other vulnerable.

Other Sources
Weir v Law Society of New Brunswick, 2017 NBCA 18
Provides a good review of ethical standard not to borrow money from clients.

Lending to Clients

3.4-33 A lawyer must not lend money to a client unless, before making the loan, the lawyer:

(a) discloses to the client the nature of the conflicting interest;

(b) requires that the client:

(i) receive independent legal representation; or

(ii) if the client is a related person as defined by the *Income Tax Act* (Canada), receive independent legal advice; and

(c) obtains the client's consent.

Commentary

See also Rule 3.4-32, Commentary.

Annotations

Law Society of Saskatchewan Discipline Decisions
Law Society of Saskatchewan v Billesberger, 2017 SKLSS 1.
It is conduct unbecoming to enter into a debtor/creditor relationship with the client without ensuring the client obtained independent legal advice. Lending money to a client is prohibited unless the proper procedure is followed. The client's dire circumstances or limited options do not excuse the failure to follow the proper procedure.
Law Society of Saskatchewan v Howe, 2012 SKLSS 8
It is conduct unbecoming to enter into a debtor/creditor relationship with clients without ensuring that they obtained independent legal advice. The Lawyer's intentions and the clients' satisfaction do not excuse the failing to follow proper procedure.
Law Society of Saskatchewan v Simaluk, 2012 SKLSS 1
It is conduct unbecoming to lend money to a client in return for security of the loan. The fact that the agreement was not detrimental to the client did not excuse the behaviour.
Law Society of Saskatchewan v Braun, 2009 SKLS 1
It is conduct unbecoming to enter into a debtor-creditor relationship with a client, where the Lawyer prepares the documents and acts as witness to the agreement without obtaining the client's written consent or having the client obtain independent legal advice.

Law Society of Saskatchewan Conduct Review
2019 SKLSCR 1
Having good intentions does not permit a Lawyer to avoid the rules regarding lending money to clients.

Law Society of Saskatchewan Ethics Rulings
2004 SKLSPC 5
Loaning money to clients is simply bad practice. It is rife with problems and strongly discouraged.

Guarantees by a Lawyer

3.4-34 Except as provided by Rule 3.4-36, a lawyer retained to act with respect to a transaction in which a client is a borrower or a lender must not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is the borrower or lender.

3.4-35 A lawyer may give a personal guarantee in the following circumstances:

(a) the lender is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of business, and the lender is directly or indirectly providing funds solely for the lawyer, the lawyer's spouse, parent or child;

(b) the transaction is for the benefit of a non-profit or charitable institution, and the lawyer provides a guarantee as a member or supporter of such institution, either individually or together with other members or supporters of the institution; or

(c) the lawyer has entered into a business venture with a client and a lender requires personal guarantees from all participants in the venture as a matter of course and:

  (i) the lawyer has complied with Rules 3.4-28 to 3.4-36; and

  (ii) the lender and participants in the venture who are clients or former clients of the lawyer have independent legal representation.

Payment for Legal Services

3.4-36 When a client intends to pay for legal services by transferring to a lawyer a share, participation or other interest in property or in an enterprise, other than a nonmaterial interest in a publicly traded enterprise, the lawyer must recommend but need not require that the client receive independent legal advice before accepting a retainer.

Commentary

[1] The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client does not give rise to a conflicting interest.

Annotations

Law Society of Saskatchewan Conduct Reviews
2014 SKLSCR 7
Having a client execute a mortgage to secure payment for legal fees in the middle of a matter places the Lawyer and the client in a conflict of interest. Renegotiating fee arrangement midway through a file places the client in a position of bargaining under pressure. It must be done at the outset. Independent legal advice is essential and a lawyer should insist that the client get ILA prior to execution.

Gifts and Testamentary Instruments

3.4-37 A lawyer must not accept a gift that is more than nominal from a client unless the client has received independent legal advice.

3.4-38 A lawyer must not include in a client's will a clause directing the executor to retain the lawyer's services in the administration of the client's estate.

3.4-39 Unless the client is a family member of the lawyer, a lawyer must not prepare or cause to be prepared an instrument giving the lawyer a gift or benefit from the client, including a testamentary gift.

Commentary

[1] A conflict of interest between lawyer and client may exist in cases where the lawyer gives property to or acquires it from the client by way of purchase, gift, testamentary disposition or otherwise. In cases of inter vivos gifts or purchases, it **may** be sufficient to ensure that the client has independent legal advice before proceeding with the transaction. However, in cases of testamentary dispositions or where there is any indication that the client is in a weakened state or is not able for any reason to understand the consequences of a purchase or gift or there is a perception of undue influence, the lawyer must not prepare the instrument in question and the client must be independently represented. Independent representation and preparation of the instrument will not be required where the gift, purchase or testamentary disposition is insubstantial or of a minor nature having regard to all of the circumstances, including the size of the testator's estate.

Annotations

Saskatchewan Court of Appeal

Kapoor v Law Society of Saskatchewan, 1986 CanLII 3237, 52 Sask R 110

The Court upheld the Discipline Committee's decision. Lawyer acquired survivorship rights to a joint account with a client and took funds in satisfaction of fees owing.

Oledzki v The Law Society of Saskatchewan, 2010 SKCA 120

The Court upheld the disbarment on the basis that it was reasonable. Original decision: 2009 SKLS 4

It is conduct unbecoming to forge signatures, create forged wills, and mislead other lawyers. Forgery is an obvious breach of a lawyer's duty of integrity. Where the lawyer's conduct manifests a pattern of dishonesty, the character of the lawyer becomes incompatible with the standards required to practice. The lawyer also took advantage of vulnerable clients and did not establish clear boundaries. The drafted will provided a personal benefit to the Lawyer and their family.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Zawislak, 2016 SKLSS 2

Law Society of Saskatchewan v Zawislak, 2016 SKLSS 1

It is conduct unbecoming for a lawyer or their spouse to draft a client's will where the lawyer, their spouse and their child were all beneficiaries.

Law Society of Saskatchewan v Oledzki, 2009 SKLS 4

See above for SKCA review decision.

Law Society of Saskatchewan v Miller, 2000 SKLS 1

It is conduct unbecoming to draft a will for a close family friend who insists the Lawyer be a large beneficiary. The client refused to have another lawyer draft the will. The Lawyer was not frank and candid with the Court.

Law Society of Saskatchewan Ethics Rulings

2018 SKLSPC 4

Lawyers often receive instructions from third parties on wills (e.g. Accountants, estate planners, financial institutions, etc.) When a lawyer receives instructions for drafting a will from independent third parties, the lawyer needs to ensure due diligence to ensure that the client has capacity, an understanding of their property, potential beneficiaries, and that the instructions concord with their wishes.

Compare: 2003 SKLSPC 2

2003 SKLSPC 2

Taking will instructions from third parties without seeing the testator or confirming the testator's instructions is not appropriate. Of particular concern was that the Lawyer was not a witness to the will, so they did not see the testator at all.

Compare: 2018 SKLSPC 4

2000 SKLSPC 3

A $2000 testamentary gift to a lawyer is not substantial and therefore does not come within the meaning of the Rule.

Judicial Interim Release

3.4-40 A lawyer must not act as a surety for, deposit money or other valuable security for or act in a supervisory capacity to an accused person for whom the lawyer acts.

3.4-41 A lawyer may act as a surety for, deposit money or other valuable security for or act in a supervisory capacity to an accused who is in a family relationship with the lawyer when the accused is represented by the lawyer's partner or associate.

[Amendments too numerous to list for section 3.4 (Previously rule 2.04); please see blacklined version posted on the Law Society website at Lawyer Regulation/Code of Professional Conduct, Feb. 13, 2015]
[3.4-41, Commentary [1] and [2] relocated to Rule 3.4-5; 3.4-41, Commentary [3] relocated to Rule 3.4-39; 3.4-41 Commentary [4] deleted, April 17, 2015]
[3.4-2D, Commentary [2] amended, April 29, 2016]

3.5 PRESERVATION OF CLIENT'S PROPERTY

Preservation of Clients' Property

In this rule, **"property"** includes a client's money, securities as defined in *The Legal Profession Act, 1990*, original documents such as wills, title deeds, minute books, licences, certificates and the like, and all other papers such as client's correspondence, files, reports, invoices and other such documents, as well as personal property including precious and semi-precious metals, jewelry and the like.

3.5-1 A lawyer must:

(a) care for a client's property as a careful and prudent owner would when dealing with like property; and

(b) observe all relevant rules and law about the preservation of a client's property entrusted to a lawyer.

Commentary

[1] The duties concerning safekeeping, preserving, and accounting for clients' monies and other property are set out in the Rules of the Law Society of Saskatchewan.

[2] These duties are closely related to those regarding confidential information. A lawyer is responsible for maintaining the safety and confidentiality of the files of the client in the possession of the lawyer and should take all reasonable steps to ensure the privacy and safekeeping of a client's confidential information. A lawyer should keep the client's papers and other property out of sight as well as out of reach of those not entitled to see them.

[3] Subject to any rights of lien, the lawyer should promptly return a client's property to the client on request or at the conclusion of the lawyer's retainer.

[4] If the lawyer withdraws from representing a client, the lawyer is required to comply with Rule 3.7-1 (Withdrawal from Representation).

Annotations

Saskatchewan Court of Appeal

Rault v The Law Society of Saskatchewan, 2009 SKCA 81
The Court overturned the discipline committee decision, as they erred in failing to consider a joint submission.
Original decision: 2008 SKLS 2
It is conduct unbecoming to allow client documents to become intermixed with personal belongings and to fail to maintain proper records, and to fail to keep proper care of client property.
Wasylyshen v Law Society of Saskatchewan, 1985 CanLII 2480, 39 Sask R 187
It is conduct unbecoming to overdraw trust accounts and further aggravate the issue by lying to the Law Society.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v MacLeod, 2018 SKLSS 4
It is conduct unbecoming to fail to fulfill the terms of a client's will in a timely manner. Issues with selling the property and trying to preserve worth during an economic downturn did not excuse the delay.
Law Society of Saskatchewan v Rogers, 2011 SKLSS 9
Lawyer resigned in the face of discipline, equivalent to disbarment. Due to mental health issues, the Lawyer was paralyzed on several files and failed to provide complete, accurate, or prompt action with respect to several clients, including misplacing a client's savings bonds.
Law Society of Saskatchewan v Rault, 2008 SKLS 2
See above for SKCA review decision.
Law Society of Saskatchewan v Hagen, 2003 SKLS 4
It is conduct unbecoming to divert a client's money to other files in order to cover shortfalls.
Law Society of Saskatchewan v Parker, 2002 SKLS 8
It is conduct unbecoming for a lawyer to not forward funds to their client within 5 years of receipt.

Law Society of Saskatchewan Conduct Review

2011 SKLSCR 1
A lawyer should not "house monies" in their trust account until a client (or in this case a non-client) can use them.

Law Society of Saskatchewan Ethics Rulings

2012 SKLSPC 5
A lawyer does not have the right to register a miscellaneous interest against a client's property to secure payment of a legal bill. A solicitor's lien does not extend to real property.
2003 SKLSPC 2
Taking instructions from third parties for drafting a will without seeing the testator or confirming with the testator is not appropriate.
2002 SKLSPC 13
Where formerly joint clients now refuse the other access to the file, a file cannot be turned over or released in total or piecemeal to either party without consent of both formerly joint parties. It is appropriate, however, that both parties and their counsel have access to the file

and that the file remain under the control of the Lawyer who had acted for them jointly.

2001 SKLSPC 34

A Lawyer should contact clients who might be prejudiced if information from a stolen computer from the practice can be used against them.

2001 SKLSPC 23

If a client has disappeared, a lawyer should make all reasonable requests and then should continue to hold trust money as instructed until further instructions are forthcoming.

2001 SKLSPC 9

If the Lawyer can obtain an indemnity agreement from the person claiming fraud over a retainer cheque to release the Lawyer and their firm from liability, the money should be released to them. Otherwise, it is acceptable to hold the money until further proof is acquired.

1992 SKLSPC 15

When a lawyer acts simultaneously as a personal representative and the solicitor for an estate, all funds deriving from the estate must be treated as client trust funds and dealt with accordingly.

1991 SKLSPC 5

The testator is always the client no matter who pays the account. The Lawyer owes a duty to the client and must not allow their desire to generate business through referrals to cloud their view of duty.

1000 SKLSPC 40

There is no ruling for how long trust and general account cheques should be retained outside of the Canadian Revenue Agency requirements. It is advisable to inform the client before destroying the cheques.

1000 SKLSPC 22

As a rule, when a client changes representation, the file belongs to the client if they can show that they paid for the services completed. To retain documents, a Lawyer must show that the documents were not prepared under their duty to the client or that they were not for the benefit of the client.

1000 SKLSPC 20

It is proper behaviour for a lawyer to retain a client's files and documents until they have been paid in full. If a lawyer has a lien on a file, it is proper to turn the files over to the Local Registrar.

Notification of Receipt of Property

3.5-2 A lawyer must promptly notify a client of the receipt of any money or other property of the client, unless satisfied that the client is aware that they have come into the lawyer's custody.

Identifying Clients' Property

3.5-3 A lawyer must clearly label and identify clients' property and place it in safekeeping distinguishable from the lawyer's own property.

3.5-4 A lawyer must maintain such records as necessary to identify clients' property that is in the lawyer's custody.

Accounting and Delivery

3.5-5 A lawyer must account promptly for clients' property that is in the lawyer's custody and deliver it to the order of the client on request or, if appropriate, at the conclusion of the retainer.

3.5-6 If a lawyer is unsure of the proper person to receive a client's property, the lawyer must apply to a tribunal of competent jurisdiction for direction.

Commentary

[1] A lawyer should be alert to the duty to claim on behalf of a client any privilege in respect of property seized or attempted to be seized by an external authority or in respect of third party claims made against the property. In this regard, the lawyer should be familiar with the nature of the client's common law privilege and with such relevant constitutional and statutory provisions as those found in the *Income Tax Act* (Canada), the *Charter* and the *Criminal Code*.

Annotations

Saskatchewan Court of Appeal

Kapoor v Law Society of Saskatchewan, 1986 CanLII 3237, 52 Sask R 110

The Court allowed the appeal on both of the counts against the Lawyer relating to him depositing funds into a joint bank account with rights of survivorship, where the Lawyer was likely to survive the client.

To find the Lawyer guilty of conduct unbecoming, the Law Society would have to show that the Lawyer:

(1) failed to properly identify their client's property;
(2) failed to place the property in safekeeping; and
(3) failed to place the property in a place separate and apart from their own property.

The Lawyer followed their client's instructions. The client's property did not lose its identity when deposited, as the client's name continued to be attached to the funds. This constitutes properly identifying the client's property

There are fewer safer places for keeping money than in one of Canada's largest banks.

There was no co-mingling of the client's money with that of the Lawyer or their other clients.

One judge dissented and would have upheld the charges against the lawyer, finding:

(1) There are circumstances where a client can instruct a lawyer to deal with property in a manner other than that provided in a manner other than that provided for in the Rules of the Law

Society, but not where the lawyer will benefit personally and monetarily from the instructions.

(2) It is a conflict of interest to enter into a joint account with a client with rights of survivorship, when the lawyer is much younger and on the law of averages would likely survive the client.

The fact that the Lawyer never used the money does not excuse the behaviour. To accept that argument would be the equivalent of a person being found with money illegally obtained from another person being able to be cleared of the offence by making full restitution.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Tapp, 2011 SKLSS 1

Without a valid retainer agreement and without having earned sufficient fees or disbursements, it is conduct unbecoming to not deposit funds received from a client in a trust account.

Law Society of Saskatchewan v Buitenhuis, 2006 SKLS 7

It is conduct unbecoming to deposit funds that are not trust funds into a trust fund account.

Law Society of Saskatchewan v MacLowich, 2005 SKLS 1

It is conduct unbecoming to fail to respond to garnishee summons on a trust account.

Law Society of Saskatchewan v Parker, 2002 SKLS 8

It is conduct unbecoming to withdraw funds from a trust account without rendering an account.

Law Society of Saskatchewan Ethics Rulings

2018 SKLSPC 8

Whether money is properly provided to a lawyer is a legal issue between the person who gave the money and the client. Once a retainer is provided, the client controls the retainer, absent any agreement stating otherwise.

When a lawyer is aware that a third party is paying the retainer fee, there is an obligation on the Lawyer to have a conversation with both the client and the third party regarding the payment of the retainer, who directs the matter, what happens to the money if the Lawyer withdraws, who can apply for taxation of invoices, and what happens when the third party demands return of the retainer.

1987 SKLSPC 3

When a lawyer sells their practice, no contractual relationship exists between the new firm owner and the former clients with closed files of the former practice owner. A fee to turn over the files to the clients' new representation would be unreasonable. Such a fee would not be unreasonable in every instance.

[3.5-6, Commentary [2], [3], [4] removed; portions of 3.5-6, Commentary relocated to Rule 5.1-2A, Commentary, Feb. 13, 2015]

3.6 FEES AND DISBURSEMENTS

Reasonable Fees and Disbursements

3.6-1 A lawyer must not charge or accept a fee or disbursement, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion.

Commentary

[1] What is a fair and reasonable fee depends on such factors as:

(a) the time and effort required and spent;

(b) the difficulty of the matter and the importance of the matter to the client;

(c) whether special skill or service has been required and provided;

(d) the results obtained;

(e) fees authorized by statute or regulation;

(f) special circumstances, such as the postponement of payment, uncertainty of reward, or urgency;

(g) the likelihood, if made known to the client, that acceptance of the retainer will result in the lawyer's inability to accept other employment;

(h) any relevant agreement between the lawyer and the client;

(i) the experience and ability of the lawyer;

(j) whether aspects of the matter have been delegated to non-lawyer staff supervised by the lawyer, and should be billed accordingly;

(k) any estimate or range of fees given by the lawyer; and

(l) the client's prior consent to the fee.

[2] The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. No fee, extra fees, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to professional employment may

be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where the lawyer's fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such agency or other person.

[3] A lawyer should provide to the client in writing, before or within a reasonable time after commencing a representation, as much information regarding fees and disbursements, and interest, as is reasonable and practical in the circumstances, including the basis on which fees will be determined.

[4] A lawyer should be ready to explain the basis of the fees and disbursement charged to the client. This is particularly important concerning fee charges or disbursements that the client might not reasonably be expected to anticipate. When something unusual or unforeseen occurs that may substantially affect the amount of a fee or disbursement, the lawyer should give to the client an immediate explanation. A lawyer should confirm with the client in writing the substance of all fee discussions that occur as a matter progresses, and a lawyer may revise an initial estimate of fees and disbursements.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Merchant, 2020 SKLSS 6

It is conduct unbecoming to induce a client to provide an assignment of proceeds and to use that assignment, when such conduct was prohibited by the Indian Residential Schools Settlement Agreement. The conduct took place in the context of a process that had been carefully designed by superior courts to determine and protect the rights of vulnerable people. Given the lawyer's immersion in the litigation surrounding the legacy of residential schools, the hearing panel did not believe that they made a sincere mistake in interpreting the IRSSA. The letter under which the lawyer sent the assignment was intimidating.

Law Society of Saskatchewan v Buitenhuis, 2020 SKLSS 2

It is conduct unbecoming to charge for time spent responding to a Law Society complaint. Even though the Lawyer was not familiar with the Ethics Ruling directly on point, lawyers are required to be familiar with Ethics Rulings and to follow their guidance.

It is conduct unbecoming to enter into a contingency agreement for legal services related to a family law dispute. This is contrary to Law Society of Saskatchewan Rule 1903.

Law Society of Saskatchewan v Duncan-Bonneau, 2015 SKLSS 6

It is conduct unbecoming to bill a client for non-legal work at the Lawyer's hourly rate when the client could not have reasonably foreseen that cost. That is not fair and reasonable.

It is conduct unbecoming to take undue advantage of a client by entering into a fee arrangement while the client is in a vulnerable state.

Law Society of Saskatchewan v Tapp, 2011 SKLSS 1

It is not fair or reasonable to provide a client with an invoice that does not disclose any relevant information about the services that were performed, the hourly rate charged or who provided the services.

It is not fair and reasonable to charge the Lawyer's hourly rate for work performed by a legal assistant or accounting staff.

Law Society of Saskatchewan v Buitenhuis, 2006 SKLS 7

It is conduct unbecoming to charge fees greater than the fee provided for in the Tariff on estate matters without obtaining the approval of the beneficiaries.

Law Society of Saskatchewan v Robertson, 2006 SKLS 4

It is conduct unbecoming to charge fees greater than the fee provided for in the Tariff on estate matters without obtaining the approval of the beneficiaries

Law Society of Saskatchewan v Parker, 2002 SKLS 8

It is conduct unbecoming to charge fees that are unfair and unreasonable. In this case, the Law Society Extra-Judicial Tariff, which is a guide and not binding, was considered in the context of what is fair and reasonable. Note: This guide/tariff no longer exists.

Law Society of Saskatchewan v Baumgartner, 2000 SKLS 2

It is conduct unbecoming to agree to reduce legal fees in exchange for the client transferring an automobile to the Lawyer.

Law Society of Saskatchewan v Churchman, 1998 SKLS 2

It is conduct unbecoming to charge clients for services not performed.

Law Society of Saskatchewan Conduct Review

2014 SKLSCR 7

Having a client execute a mortgage to secure payment for legal fees in the middle of a matter, places the Lawyer and the client in a conflict of interest. Renegotiating fee arrangement midway through a file places the client in a position of bargaining under pressure. It must be done at the outset of the matter. Independent legal advice is essential and a lawyer should insist that the client get ILA prior to execution.

2012 SKLSCR 1

The fees charged by the Lawyer were not unjustified; however, it is unwise and unprofessional not to obtain a retainer agreement which clearly outlines a fee agreement.

Law Society of Saskatchewan Ethics Rulings

2022 SKLSPC 1

A firm may charge an "administration fee" that is set as a percentage of the billings on a client's file. However, prior to implementing the "administration fee", the lawyer/law firm should:

i. Describe to the client the costs that the fees are meant to cover;

ii. Clearly state that the "fee" is calculated based on a percentage of legal fees charged to the client; and

iii. Disclose the fee in writing to the client at the outset of the retainer, so that the client is able to make an informed decision

as to whether the client agrees to pay the “administration fee”, and whether to retain the lawyer/firm and incur that cost.

2016 SKLSPC 7

With respect to disbursements, a lawyer may only charge amounts that have been paid for or are required to pay a third party on a client’s behalf. Charging a percentage for fees offends this rule. A lawyer can, however, charge a general administration fee so long as it is disclosed to the client.

2012 SKLSPC 5

A lawyer does not have the right to register a miscellaneous interest against a client’s property to secure payment of a legal bill. A solicitor’s lien does not extend to real property.

2010 SKLSPC 10

The Committee determined that the third party was not a client of the Lawyer, as the client was the only person who provided instructions. However, it was not appropriate for the Lawyer to invoice the third party (and commence an action against the third party) without fully disclosing the fee to the third party.

The Committee clarified that there may be a duty of care owed to a third party, even though there is no solicitor-client relationship.

2007 SKLSPC 13

As long as accounts are paid or secured, the file is the property of the client, and if a lawyer wishes to maintain a copy for their own records, they must do so at their own cost.

2004 SKLSPC 19

It is not appropriate to have an office policy to get around the Tariff on estate matters. If items performed by lawyers are outside the Tariff items listed, it is acceptable to charge over and above; however, for those items listed, lawyers must obtain consent from the beneficiaries as to the fee up front.

2004 SKLSPC 10

A lawyer whose position with a company ended under disputed circumstances has no basis to justify taking money from a trust account which would be owed to them if they were terminated. The sum of money under the employment agreement cannot be characterized as solicitor’s fees. Such issues are for the courts to decide.

2003 SKLSPC 3

The process of transferring files to the executrix of an estate is more than just a simple transfer. Files must be combed for confidential and privileged information and work done on this matter can be charged accordingly.

2002 SKLSPC 14

If the client was not advised that there would be a Visa service charge, and the client did not have the choice to pay the cash to close in a way which would not incur such a service charge, such as obtaining a bank draft, the Lawyer cannot charge this service charge back to the client.

2000 SKLSPC 4

Billing a client for time spent responding to Law Society complaints is unethical. Billing for time spent rendering an account depends on the circumstances.

1995 SKLSPC 4
The fiduciary relationship between a lawyer and their client requires full disclosure in all financial matters. A lawyer may not take compensation from someone other than the client without full disclosure to and with the consent of the client.
1992 SKLSPC 18
There is nothing improper with a lawyer asking to be reimbursed for time spent in service to a client that is not their own.
1986 SKLSPC 7
A solicitor's lien is possessory and once the documents are no longer in a lawyer's possession, the right to a lien is lost.
1981 SKLSPC 2
In Saskatchewan, the law permits a lawyer to charge interest on their overdue accounts provided adequate notice is given to the client.
1979 SKLSPC 1
It is acceptable for lawyers to accept the use of credit cards for payment of legal fees.
1000 SKLSPC 18
Taxable costs in an action belong to the client.

Contingent Fees and Contingent Fee Agreements

3.6-2 Subject to Rule 3.6-1, a lawyer may enter into a written agreement in accordance with governing legislation that provides that the lawyer's fee is contingent, in whole or in part, on the outcome of the matter for which the lawyer's services are to be provided.

Commentary

[1] In determining the appropriate percentage or other basis of a contingency fee, a lawyer and client should consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. The lawyer and client may agree that, in addition to the fee payable under the agreement, any amount arising as a result of an award of costs or costs obtained as a part of a settlement is to be paid to the lawyer, which may require judicial approval under the governing legislation. In such circumstances, a smaller percentage of the award than would otherwise be agreed upon for the contingency fee, after considering all relevant factors, will generally be appropriate. The test is whether the fee, in all of the circumstances, is fair and reasonable.

[2] Although a lawyer is generally permitted to terminate the professional relationship with a client and withdraw services if there is justifiable cause as set out in Rule 3.7-1, special circumstances apply when the retainer is pursuant to a contingency agreement. In such circumstances, the lawyer has impliedly undertaken the risk of not being paid in the event the suit is unsuccessful. Accordingly, a lawyer

cannot withdraw from representation for reasons other than those set out in Rule 3.7-7 (Obligatory Withdrawal) unless the written contingency contract specifically states that the lawyer has a right to do so and sets out the circumstances under which this may occur.

Annotations

Saskatchewan Court of Appeal

Zipchen v Bainbridge, 2008 SKCA 87
The Court upheld the trial judge's decision that the agreement was unfair.
A contingency fee must be fair and reasonable. Fairness of a contingency agreement refers to the mode of obtaining said agreement with a client who fully understands. Where key terms are not explained to the client, a client may not fully understand the agreement.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Buitenhuis, 2020 SKLSS 2 and *Law Society of Saskatchewan v Siwak*, 2017 SKLSS 6
It is conduct unbecoming to enter into a contingency agreement for legal services related to a family law dispute. This is contrary to Law Society of Saskatchewan Rule 1903.
Law Society of Saskatchewan v Member A, 2011 SKLSS 5
A lawyer entered into a bonus contingency agreement with a client in a matrimonial dispute.
Law Society of Saskatchewan v Tapp, 2011 SKLSS 1
It is conduct unbecoming to use undue influence to negotiate a contingency arrangement, where the client may reasonably fear that if they do not agree to the terms proposed by the Lawyer, the Lawyer would withdraw, leaving them unrepresented in a pending trial.

Law Society of Saskatchewan Ethics Rulings

2016 SKLSPC 5
Contingency agreements which require immediate payment of fees should the client change lawyers, or the exercise of a lien on the file, breach Rule 1501 (now Rule 1902). There are several alternative approaches depending on the circumstances. A contingency agreement should specify the approach that will be taken should termination occur before judgment.
2007 SKLSPC 4
Even though the Lawyer acted in the client's best interests, a lawyer is prohibited from charging on a contingency fee basis in a matrimonial property matter.
2005 SKLSPC 12
A contingency fee is not to be charged on a matrimonial property matter except with permission of the Court.
2001 SKLSPC 17
In certain circumstances, contingency fee arrangements with experts may assist litigants who could not otherwise afford an expert witness.

1998 SKLSPC 2
The agreement between a lawyer and client to use potential proceeds from one issue to pay the fees in another issue is not inappropriate.
1991 SKLSPC 6
A standard contingency fee agreement which provides for payment on a *quantum meruit* basis and a lien on the file if the client withdraws is acceptable practice.

Other Sources
Harrington (Guardian ad litem of) v Royal Inland Hospital,
1994 CanLII 2395, 22 CPC (3d) 113
Contingency fees have the potential for abuse and in each case, what is reasonable depends on the circumstances peculiar to it.

Statement of Account

3.6-3 In a statement of an account delivered to a client, a lawyer must clearly and separately detail the amounts charged as fees and disbursements.

Commentary

[1] The two main categories of charges on a statement of account are fees and disbursements. A lawyer may charge as disbursements only those amounts that have been paid or are required to be paid to a third party by the lawyer on a client's behalf. However, a subcategory entitled "Other Charges" may be included under the fees heading if a lawyer wishes to separately itemize charges such as paralegal, word processing or computer costs that are not disbursements, provided that the client has agreed, in writing, to such costs.

[2] Party-and-party costs received by a lawyer are the property of the client and should therefore be accounted for to the client. While an agreement that the lawyer will be entitled to costs is not uncommon, it does not affect the lawyer's obligation to disclose the costs to the client.

Annotations

Law Society of Saskatchewan Conduct Review
2013 SKLSCR 3
A lawyer must be transparent in billing their client. Connecting payment of one client matter to another may not be appropriate as a corporate matter is an individual matter.

Law Society of Saskatchewan Ethics Rulings
2022 SKLSPC 1
A firm may charge an "administration fee" that is set as a percentage of the billings on a client's file. However, prior to implementing the "administration fee", the lawyer/law firm should:

i. Describe to the client the costs that the fees are meant to cover;
ii. Clearly state that the "fee" is calculated based on a percentage of legal fees charged to the client; and
iii. Disclose the fee in writing to the client at the outset of the retainer, so that the client is able to make an informed decision as to whether the client agrees to pay the "administration fee", and whether to retain the lawyer/firm and incur that cost.

Joint Retainer

3.6-4 If a lawyer acts for two or more clients in the same matter, the lawyer must divide the fees and disbursements equitably between them, unless there is an agreement by the clients otherwise.

Annotations

Law Society of Saskatchewan Ethics Rulings
1996 SKLSPC 10
If one joint retainer client dies bankrupt, it is not unethical for the entire account to be sent to the remaining client.

Division of Fees and Referral Fees

3.6-5 If there is consent from the client, fees for a matter may be divided between lawyers who are not in the same firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

3.6-6 If a lawyer refers a matter to another lawyer because of the expertise and ability of the other lawyer to handle the matter, and the referral was not made because of a conflict of interest, the referring lawyer may accept, and the other lawyer may pay, a referral fee, provided that:

(a) the fee is reasonable and does not increase the total amount of the fee charged to the client; and

(b) the client is informed and consents.

3.6-7 A lawyer must not:

(a) directly or indirectly share, split, or divide his or her fees with any person who is not a lawyer; or

(b) give any financial or other reward for the referral of clients or client matters to any person who is not a lawyer.

Commentary

[1] This rule prohibits lawyers from entering into arrangements to compensate or reward non-lawyers for the referral of clients. It does not prevent a lawyer from engaging in promotional activities involving reasonable expenditures on promotional items or activities that might result in the referral of clients generally by a non-lawyer. Accordingly, this rule does not prohibit a lawyer from:

(a) making an arrangement respecting the purchase and sale of a law practice when the consideration payable includes a percentage of revenues generated from the practice sold;

(b) entering into a lease under which a landlord directly or indirectly shares in the fees or revenues generated by the law practice;

(c) paying an employee for services, other than for referring clients, based on the revenue of the lawyer's firm or practice; or

(d) occasionally entertaining potential referral sources by purchasing meals providing tickets to, or attending at, sporting or other activities or sponsoring client functions.

Exception for Multi-discipline Practices and Interjurisdictional Law Firms

3.6-8 Rule 3.6-7 does not apply to:

(a) multi-discipline practices of lawyer and non-lawyer partners if the partnership agreement provides for the sharing of fees, cash flows or profits among the members of the firm; and

(b) sharing of fees, cash flows or profits by lawyers who are members of an interjurisdictional law firm.

Commentary

[1] An affiliation is different from a multi-disciplinary practice established in accordance with the rules/regulations/by-laws under the governing legislation and an interjurisdictional law firm, however structured. An affiliation is subject to Rule 3.6 -7.

In particular, an affiliated entity is not permitted to share in the lawyer's revenues, cash flows or profits, either directly or indirectly through excessive inter-firm charges, for example, by charging inter-firm expenses above their fair market value.

Annotations

Law Society of Saskatchewan Ethics Rulings

2006 SKLSPC 5

If a client is fully advised of the referral arrangement, a lawyer receiving a referral fee for referring clients to an outside business is acceptable. Not to be confused with lawyers paying out referral fees themselves.

2005 SKLSPC 9

A compensation agreement between a lawyer and their staff providing a staff member with a percentage of fees earned does not offend the principle on which the rule against fee splitting was founded.

2000 SKLSPC 15

The Committee reviewed a proposed arrangement where there would be a division of labour between a financial institution and a firm on wills and estate files, to prevent unauthorized practice. The primary concern was fee splitting, so they recommended that the invoice be clear as to what was a legal bill and what was estate planning. The proposal was accepted.

1000 SKLSPC 27

It is unprofessional for a lawyer to write a trust company and offer to work for a finder's fee or commission.

Payment and Appropriation of Funds

3.6-9 If a lawyer and client agree that the lawyer will act only if the lawyer's retainer is paid in advance, the lawyer must confirm that agreement in writing with the client and specify a payment date.

3.6-10 A lawyer must not appropriate any client funds held in trust or otherwise under the lawyer's control for or on account of fees, except as permitted by the governing legislation.

Commentary

[1] The rule is not intended to be an exhaustive statement of the considerations that apply to payment of a lawyer's account from trust. The handling of trust money is generally governed by the rules of the Law Society.

[2] Refusing to reimburse any portion of advance fees for work that has not been carried out when the contract of professional services with the client has terminated is a breach of the obligation to act with integrity.

3.6-11 If the amount of fees or disbursements charged by a lawyer is reduced on a review or assessment, the lawyer must repay the monies to the client as soon as is practicable.

Annotations

Saskatchewan Court of Appeal

Rault v The Law Society of Saskatchewan, 2009 SKCA 81
The Court overturned the discipline committee decision, as they erred in failing to consider a joint submission.
Original decision: 2008 SKLS 2
It is conduct unbecoming to fail to properly manage trust funds as required by the Rules of the Law Society of Saskatchewan.

Merchant v Law Society of Saskatchewan, 2009 SKCA 33
It is conduct unbecoming to withdraw trust funds contrary to a court order.

Kapoor v Law Society of Saskatchewan, 1986 CanLII 3237, 52 Sask R 110 The Lawyer acquired survivorship rights to a joint account with a client and used funds in satisfaction of fees owing.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Halford, 2019 SKLSS 6
It is conduct unbecoming to instruct office assistants to sign trust cheques on the Lawyer's behalf and to not be forthcoming with the Law Society.

Law Society of Saskatchewan v Dupont, 2019 SKLSS 3
The Lawyer paid out trust monies to third parties without consent and without taking due care to validate third-party claims.

Law Society of Saskatchewan v Winegarden, 2017 SKLSS 8
A lawyer failed to deposit trust funds from retainers into a mixed-trust account as required. The Lawyer also failed to maintain proper records. The legal profession is one of the few groups to which the public entrust their money. As such, the profession holds a unique and important role. Public confidence in the ability of the profession to handle client funds in a careful and proper manner is vital.

Law Society of Saskatchewan v Tilling, 2015 SKLSS 1
In the case of misappropriation, regardless of the amount involved and barring exceptional circumstances, the lawyer's conduct will result in disbarment.

Law Society of Saskatchewan v Marwood, 2012 SKLSS 5
It is conduct unbecoming to allow one's trust account to become and remain overdrawn.
It is conduct unbecoming to withdraw money from one's trust account without corresponding invoices or without using a cheque.
It is conduct unbecoming to misappropriate funds held in trust.

It is conduct unbecoming to make or attempt to make payments from trust or to provide legal services while suspended.
As a result of this, the Lawyer resigned in the face of discipline, equivalent to disbarment.

Law Society of Saskatchewan v McLean, 2013 SKLSS 6
It is conduct unbecoming to withdraw funds in trust on behalf of clients to settle an action contrary to their instructions.

Law Society of Saskatchewan v Olson, 2012 SKLSS 2
It is conduct unbecoming to inform the Law Society that the lawyer will not handle trust money, while in fact, handling trust money.

Law Society of Saskatchewan v Goby, 2011 SKLSS 10
It is conduct unbecoming to prepare and submit false affidavits of property value, to mislead ISC, and to misuse trust accounts of clients by withdrawing funds before completing work or accounts due.

Law Society of Saskatchewan v Angus, 2010 LSS 6
The Lawyer recklessly misappropriated client trust funds. The general starting point for deliberate misappropriation is disbarment.

Law Society of Saskatchewan v Price-Jones, 2009 SKLSS 2
It is conduct unbecoming to use one's conveyancer account as a trust account but without fulfilling any of the required regulation.

Law Society of Saskatchewan v Peet, 2008 SKLSS 5
It is conduct unbecoming to withdraw money from trust as fees without having earned the fees or before an estate was substantially complete.

Law Society of Saskatchewan v Nolin, 2008 SKLS 4
It is conduct unbecoming to misappropriate funds held in trust on behalf of clients, and to prepare documents, including accounting records, cheques, and trust statements that contained false information. The Lawyer falsified accounts, rerouted trust money into their own personal account and defrauded their employer.

Law Society of Saskatchewan v Rault, 2008 SKLS 2
See above for SKCA review decision.

Law Society of Saskatchewan v Kwok, 2007 SKLS 3
It is conduct unbecoming to fail to keep accurate records of non-trust and trust journals.

Law Society of Saskatchewan v Wilson, 2007 SKLS 4
It is conduct unbecoming to deposit client funds into a lawyer's general account without issuing a bill or receipt.

Law Society of Saskatchewan v Chetty, 2006 SKLS 11
It is conduct unbecoming to work on a fixed-fee basis and withdraw money without having completed the work.

Law Society of Saskatchewan v Buitenhuis, 2006 SKLS 7
It is conduct unbecoming to withdraw funds from a trust account without first preparing an invoice.

Law Society of Saskatchewan v Merchant, 2006 SKLS 6
See above for SKCA review decision.

Law Society of Saskatchewan v Mattison, 2006 SKLS 5
It is conduct unbecoming to misappropriate trust money.

Law Society of Saskatchewan v Zawislak, 2005 SKLS 6
It is conduct unbecoming to borrow money from a client pursuant to an agreement but leave the money in trust and fail to comply with rules.

Law Society of Saskatchewan v Kirk, 2005 SKLS 4
It is conduct unbecoming to misappropriate client funds for personal benefit.

Law Society of Saskatchewan v Dirk, 2005 SKLS 3
It is conduct unbecoming to misappropriate money in trust accounts as payment for incomplete work and as a personal loan without permission.

Law Society of Saskatchewan v Chetty, 2003 SKLS 10
Lawyer found guilty of six acts of misconduct mostly dealing with billing account and trust issues.

Law Society of Saskatchewan v Mah, 2004 SKLS 3
It is conduct unbecoming to continue to use a "suspense account" and withdraw fees without billing the client.

Law Society of Saskatchewan v Hanna, 2003 SKLS 2
It is conduct unbecoming for a lawyer to misappropriate trust monies to pay off their own expenses.

Law Society of Saskatchewan v MacLowich, 2003 SKLS 8
It is conduct unbecoming to apply monies received toward fees without rendering accounts.

Law Society of Saskatchewan v Wasylyshen, 2003 SKLS 5
It is conduct unbecoming to misappropriate trust money for personal use up to approximately $150,000.

Law Society of Saskatchewan v Parker, 2002 SKLS 8
It is conduct unbecoming for a lawyer to not forward funds to their client within 5 years of receipt.
It is conduct unbecoming to not withdraw funds from a trust account as soon as practicable. In one instance this was in an effort to avoid seizure by CRA.
It is conduct unbecoming to withdraw funds from a trust account without rendering an account.

Law Society of Saskatchewan v Robertson, 2002 SKLS 1
It is conduct unbecoming to not properly monitor trust accounts.

Law Society of Saskatchewan v Lannan, 2001 SKLS 4
It is conduct unbecoming for a lawyer to charge full Tariff fees without completing their work.

Law Society of Saskatchewan v Lamontagne, 2001 SKLS 2
It is conduct unbecoming to misappropriate money in excess of $700,000.

Law Society of Saskatchewan v Hampton, 1998 SKLS 6
It is conduct unbecoming to fail to keep proper records of accounts and misappropriate from these accounts.

Law Society of Saskatchewan v Simonot, 1997 SKLS 2
It is conduct unbecoming to lie to a client about the balance in trust and misappropriate other accounts to cover up the mistake.

Law Society of Saskatchewan v Blewett, 1996 SKLS 5
It is conduct unbecoming for a lawyer to remove funds from an investment corporation that they represented, place the funds into a trust account, and undertake several investments with the money without securities, share certificates, or proper accounting.

Law Society of Saskatchewan v Laurin, 1996 SKLS 8
It is conduct unbecoming to misappropriate $8000 from trust accounts for personal use.

Law Society of Saskatchewan v Nakonechny, 1996 SKLS 6
It is conduct unbecoming to use a client's trust funds to pay a false settlement to a different client.
Law Society of Saskatchewan v Dermody, 1996 SKLS 2
It is conduct unbecoming to borrow money from an estate account and repay when necessary from other trust accounts.

Law Society of Saskatchewan Conduct Review

2011 SKLSCR 2
It is best practice for a lawyer to place, in writing, the terms of their discussions with a client about fee agreements, in particular agreements such as an Irrevocable Assignment of Funds.

Law Society of Saskatchewan Ethics Rulings

2020 SKLSPC 4
An Assignment of Proceeds in not an instrument upon which a Miscellaneous Interest can be properly registered in order to secure payment for a legal bill.
2012 SKLSPC 5
A lawyer does not have the right to register a miscellaneous interest against a client's property to secure payment of a legal bill. A solicitor's lien does not extend to real property that is not subject to the matter for which the lawyer was retained.
2002 SKLSPC 22
Money tendered as conduct money in lieu of litigation is earmarked for a specific purpose, and therefore the money is subject to trust conditions. A lawyer holding conduct money is not free to convert it for any other purpose.
2002 SKLSPC 18
A lawyer should ask a client to endorse a cheque for payment of an outstanding account instead of depositing an unendorsed cheque into trust and then using it to pay their own account. If the client refused, the Lawyer could have maintained a lien on the file and the cheque.
2001 SKLSPC 33
If a client requires a lawyer not to allow any information to get back to the client's family, but the client dies before their account is paid, a lawyer may present their bill to the estate lawyer who may disclose the matter to the executor, if necessary.
1991 SKLSPC 11
The parties are bound by an agreement between the lawyer and client as to how excess proceeds are to be used. Otherwise, the rules of the Law Society allow for a lawyer to deduct outstanding accounts from monies held in trust.
1989 SKLSPC 13
There are four rules for payment out of a trust account:

> (i) it is improper to pay money out of trust without having the money in trust;
> (ii) it is improper to execute or sign a trust cheque without being satisfied that the money is in the account;
> (iii) the practice of a lawyer endorsing a trust cheque and turning it over to a third person is not disallowed under Rule 913 [now Rule 1507]; however, it is a dangerous one and should be avoided;

(iv) the degree of certainty a lawyer must have prior to paying money out of trust is that lawyers must be responsible to ensure by the best information available that money is in the trust account and must exercise good business judgment.

1989 SKLSPC 9

It is improper to pay money out of trust without having the money already in the account. It is improper for a lawyer to sign or execute a trust cheque without being satisfied the money is already in the account.

1000 SKLSPC 17

The client should be advised that is an acceptable standard of practice for lawyers to deduct fees from trust without the consent of the client provided the provision of the client with a bill or written notification in accordance with Rule 941 (now Rule 1513).

Law Society of Saskatchewan Admissions and Education Decisions

Law Society of Saskatchewan v Rogers, 2016 SKLSS 11

The Applicant applied for re-instatement after resigning in the face of discipline for misappropriating client funds. See Integrity section for further notes.

Prepaid Legal Services Plan

3.6-12 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.

[Rule 3.6-8(b) amended and (i) & (ii) deleted; 3.6-8, Commentary [1] amended, Feb. 13, 2015; 3.6-1, Commentary [1] amended, Sep. 23, 2022]

3.7 WITHDRAWAL FROM REPRESENTATION

Withdrawal from Representation

3.7-1 A lawyer must not withdraw from representation of a client except for good cause and on reasonable notice to the client.

Commentary

[1] Although the client has the right to terminate the lawyer-client relationship at will, a lawyer does not enjoy the same freedom of action. Having undertaken the representation of a client, the lawyer should complete the task as ably as possible unless there is justifiable cause for terminating the relationship. It is inappropriate for a lawyer to withdraw on capricious or arbitrary grounds.

[2] An essential element of reasonable notice is notification to the client, unless the client cannot be located after reasonable efforts. No hard and fast rules can be laid down as to what constitutes reasonable notice before withdrawal and how quickly a lawyer may cease acting after notification will depend on all relevant circumstances. When the matter is covered by statutory provisions or rules of court, these will govern. In other situations, the governing principle is that the lawyer should protect the client's interests to the best of the lawyer's ability and should not desert the client at a critical stage of a matter or at a time when withdrawal would put the client in a position of disadvantage or peril. As a general rule, the client should be given sufficient time to retain and instruct replacement counsel. Nor should withdrawal or an intention to withdraw be permitted to waste court time or prevent other counsel from reallocating time or resources scheduled for the matter in question. See Rule 3.7-8 – Manner of Withdrawal.

[3] Every effort should be made to ensure that withdrawal occurs at an appropriate time in the proceedings in keeping with the lawyer's obligations. The court, opposing parties and others directly affected should also be notified of the withdrawal.

[4] ***[deleted]***

Annotations

Supreme Court of Canada

Canadian National Railway Co. v McKercher LLP, 2013 SCC 39

A lawyer cannot terminate a client relationship purely to attempt to circumvent their duty of loyalty to that client.

R v Cunningham, 2010 SCC 10
The Court has the authority to control its process and may refuse a lawyer's attempt to withdraw for non-payment of fees in criminal matters. This jurisdiction should be used sparingly. If a withdrawal is sought for ethical reasons, the court must grant withdrawal.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Simaluk, 2007 SKLS 1
It is conduct unbecoming to withdraw from representation without notifying the client.
Law Society of Saskatchewan v Hagen, 2006 SKLS 3
It is conduct unbecoming not to respond promptly or provide required documentation to another lawyer when clients retained new counsel.

Law Society of Saskatchewan Conduct Reviews

2012 SKLSCR 1
A lawyer should be cautious to threaten to withdraw without actually following through, as this can serve to increase a client's stress and weaken the solicitor-client relationship.

Law Society of Saskatchewan Ethics Rulings

2020 SKLSPC 1
The extent to which plea agreements are binding on legal counsel has been addressed by the Court (*R. v Nixon*, 2011 SCC 34, [2011] 2 SCR 566). They are similar to an undertaking, while not enforceable in the same way. Honouring them is not only an "ethical imperative", but also a "practical necessity."
In almost every case where the client wishes to resile from a plea agreement and no further agreement can be reached, the lawyer should withdraw. Circumstances where a lawyer could continue are very limited and they should consider case law and the Code and consult with the Law Society before continuing.
1998 SKLSPC 18
A lawyer should treat the reasons for termination of the solicitor-client relationship as privileged unless they are disclosed to protect the lawyer's reputation or integrity against allegations of malpractice or misconduct, and only to the extent necessary.
1000 SKLSPC 21
It is not unethical for a new lawyer acting for the same firm as the previously withdrawn lawyer to represent a client.

Other Sources

Re A.L., 2003 ABQB 905
In Alberta: A client can always fire a lawyer. A lawyer cannot always fire a client. A lawyer who is on the record must obtain leave of the Court to withdraw. Leave may be withheld where the lawyer has not made reasonable attempts to give notice to the client that they intended to withdraw. There is no contractual right to apply *ex parte* to terminate the lawyer/client relationship. Where prejudice would be caused both to the client and to the administration of justice if the application to withdraw were granted, leave should be denied.

Brian Gover & Tiffany Davies, "Withdrawing as Counsel of Record—Not as Simple as It Sounds: Use of the Supreme Court of Canada's Decision in *R v Cunningham* by Administrative Tribunals in Requests to Withdraw as Counsel of Record" (2016) 29 Can J Admin L & Prac 307
A review of the principles in *R v Cunningham* and its application in administrative matters.

Optional Withdrawal

3.7-2 If there has been a serious loss of confidence between the lawyer and the client, the lawyer may withdraw.

Commentary

[1] A lawyer may have a justifiable cause for withdrawal in circumstances indicating a loss of confidence, for example, if a lawyer is deceived by his client, the client refuses to accept and act upon the lawyer's advice on a significant point, a client is persistently unreasonable or uncooperative in a material respect, or the lawyer is facing difficulty in obtaining adequate instructions from the client. However, the lawyer should not use the threat of withdrawal as a device to force a hasty decision by the client on a difficult question.

Annotations

Law Society of Saskatchewan Conduct Reviews
2014 SKLSCR 2
A Lawyer should consider whether to transfer the file to another lawyer once the relationship between lawyer and client has been strained.

Law Society of Saskatchewan Ethics Rulings
2018 SKLSPC 11
Where a client has instructed a lawyer to do something against the lawyer's advice, it does not mean that the client has terminated the solicitor-client relationship
2003 SKLSPC 18
If a client misleads their lawyer, the lawyer may withdraw, but it is not obligatory.
2001 SKLSPC 18
Acting without a client's instructions cannot be condoned behaviour. When the client is uncooperative and difficult, it is wiser for a lawyer to withdraw.

Other Sources

Gaskin v Gaskin, 2008 MBQB 93
A firm sought to withdraw because the previously acting lawyer was no longer with the firm and no one else at the firm was willing, or allegedly able, to act on the client's behalf. The Court ultimately granted the application, but required the law firm to provide all necessary documents in order for the client to retain and instruct alternate counsel and deal with the upcoming motions at the law firm's expense.

Nicolardi v Daley, 2003 CarswellOnt 1780, 34 CPC (5th) 394
The test is whether there has been such a loss of confidence between a client and a lawyer as to justify the lawyer's withdrawal *and* whether it is at a time that would put the client in a position of disadvantage or peril.

Non-payment of Fees

3.7-3 If, after reasonable notice, the client fails to provide a retainer or funds on account of disbursements or fees, a lawyer may withdraw unless serious prejudice to the client would result.

Commentary

[1] When the lawyer withdraws because the client has not paid the lawyer's fee, the lawyer should ensure that there is sufficient time for the client to obtain the services of another lawyer and for that other lawyer to prepare adequately for trial.

Annotations

Supreme Court of Canada

R v Cunningham, 2010 SCC 10
A court's inherent jurisdiction gives it the authority to require a lawyer to continue to represent an accused when counsel wishes to withdraw, but such discretion must be exercised sparingly.

Saskatchewan Court of King's Bench

R v Wilson (Piche), 2012 SKQB 339
The ability of the court to refuse withdrawal for non-payment of fees applies when a client seeks to discontinue their representation because they can no longer pay fees.

Law Society of Saskatchewan Ethics Rulings

1000 SKLSPC 20
A client should be advised that it is proper procedure for a lawyer to retain a client's files and documents until paid in full.

2003 SKLSPC 20
A lawyer may have an ethical obligation to tell their client that they should pay their former representation, but a lawyer does not have an obligation to act as a collection agent.

Withdrawal from Criminal Proceedings

3.7-4 If a lawyer has agreed to act in a criminal case and the interval between a withdrawal and the trial of the case is sufficient to enable the client to obtain another lawyer and to allow such other lawyer adequate time for preparation, the lawyer who has agreed to act may withdraw because the client has not paid the agreed fee or for other adequate cause provided that the lawyer:

(a) notifies the client, in writing, that the lawyer is withdrawing because the fees have not been paid or for other adequate cause;

(b) accounts to the client for any monies received on account of fees and disbursements;

(c) notifies Crown counsel in writing that the lawyer is no longer acting;

(d) in a case when the lawyer's name appears on the records of the court as acting for the accused, notifies the clerk or registrar of the appropriate court in writing that the lawyer is no longer acting; and

(e) complies with the applicable rules of court.

Commentary
[1] A lawyer who has withdrawn because of conflict with the client should not indicate in the notice addressed to the court or Crown counsel the cause of the conflict or make reference to any matter that would violate the privilege that exists between lawyer and client. The notice should merely state that the lawyer is no longer acting and has withdrawn.

3.7-5 If a lawyer has agreed to act in a criminal case and the date set for trial is not such as to enable the client to obtain another lawyer or to enable another lawyer to prepare adequately for trial and an adjournment of the trial date cannot be obtained without adversely affecting the client's interests, the lawyer who agreed to act must not withdraw because of non-payment of fees.

3.7-6 If a lawyer is justified in withdrawing from a criminal case for reasons other than non-payment of fees and there is not a sufficient interval between a notice to the client of the lawyer's intention to withdraw and the date on which the case is to be tried to enable the client to obtain another lawyer and to enable such lawyer to prepare adequately for trial,

the first lawyer, unless instructed otherwise by the client, should attempt to have the trial date adjourned and may withdraw from the case only with the permission of the court before which the case is to be tried.

Commentary

[1] If circumstances arise that, in the opinion of the lawyer, require an application to the court for leave to withdraw, the lawyer should promptly inform Crown counsel and the court of the intention to apply for leave in order to avoid or minimize any inconvenience to the court and witnesses.

Annotations

Supreme Court of Canada

R v Cunningham, 2010 SCC 10

The factors a court should consider in exercising its jurisdiction to permit or refuse counsel to withdraw include: (a) the impact on the accused awaiting trial, especially if the accused is in custody; b) the impact on the Crown, including the impact on witnesses; (c) society's interest in the expedient administration of justice; (d) the seriousness of charges; (e) whether an accused could represent themselves; and (f) the timing of the application itself.

Other Sources

R v Nguyen, 2015 ABQB 672

Defence counsel read confidential information that ought to have been redacted by prosecution regarding the identity and location of a key witness one week before a three-week trial. By applying the factors in *R. v Cunningham* (above) the Court determined that the sole factor supporting the Lawyer's withdrawal is that the Lawyer would have to be on guard not to reveal the name or location of a witness. The application was refused.

Obligatory Withdrawal

3.7-7 A lawyer must withdraw if:

(a) discharged by a client;

(b) a client persists in instructing the lawyer to act contrary to professional ethics; or

(c) the lawyer is not competent to continue to handle a matter.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Segal, 1999 SKLS 4

Where a client makes false testimony, the Lawyer should request an adjournment or bring the incorrectness to the attention of counsel

opposite. Failing to do so is conduct unbecoming. If the client refuses to cooperate, the Lawyer must withdraw.

Law Society of Saskatchewan Conduct Review

2012 SKLSCR 3

A lawyer has an absolute duty to be accurate, candid, and comprehensive and must not let a client's wishes interfere with that duty. When a client insists upon an action which may conflict with a lawyer's duty – for example, providing misleading information in a criminal matter – the lawyer must advise the client that the lawyer's professional obligations come first.

Law Society of Saskatchewan Ethics Rulings

2020 SKLSPC 1

The extent to which plea agreements are binding on legal counsel has been addressed by the Court (*R. v Nixon*, 2011 SCC 34, [2011] 2 SCR 566). They are similar to an undertaking, while not enforceable in the same way. Honouring them is not only an "ethical imperative", but also a "practical necessity."

In almost every case where the client wishes to resile from a plea agreement and no further agreement can be reached, the lawyer should withdraw. Circumstances where a lawyer could continue are very limited and they should consider case law and the Code and consult with the Law Society before continuing.

1993 SKLSPC 1

A lawyer must advise their client to be honest and cease to represent them if the client fails to do so.

1992 SKLSPC 5

If a client is dishonest, a lawyer must advise the client to report their error and point out the potential ramifications if the client fails to do so. If the client refuses, the lawyer must no longer act for the client.

1986 SKLSPC 9

If a client falsely informs a lawyer, the lawyer should advise the client that they have committed an offence. If the client will not correct their actions, the lawyer should cease to act for them and advise that any information obtained after withdrawal will be reported.

Leaving a Law Firm

3.7-7A When a lawyer leaves a law firm, the lawyer and the law firm must:

(a) ensure that clients who have current matters for which the departing lawyer has conduct or substantial involvement are given reasonable notice that the lawyer is departing and are advised of their options for retaining counsel; and

(b) take reasonable steps to obtain the instructions of each affected client as to who they will retain.

Commentary

[1] When a lawyer leaves a firm to practise elsewhere, it may result in the termination of the lawyer-client relationship between that lawyer and a client.

[2] The client's interests are paramount. Clients must be free to decide whom to retain as counsel without undue influence or pressure by the lawyer or the firm. The client should be provided with sufficient information to make an informed decision about whether to continue with the departing lawyer, remain with the firm where that is possible, or retain new counsel.

[3] The lawyer and the law firm should cooperate to ensure that the client receives the necessary information on the available options. While it is preferable to prepare a joint notification setting forth such information, factors to consider in determining who should provide it to the client include the extent of the lawyer's work for the client, the client's relationship with other lawyers in the law firm and access to client contact information. In the absence of agreement, both the departing lawyer and the law firm should provide the notification.

[4] If a client contacts a law firm to request a departed lawyer's contact information, the law firm should provide the professional contact information where reasonably possible.

[5] Where a client chooses to remain with the departing lawyer, the instructions referred to in the rule should include written authorizations for the transfer of files and client property. In all cases, the situation should be managed in a way that minimizes expense and avoids prejudice to the client.

[6] In advance of providing notice to clients of their intended departure the lawyer should provide such notice to the firm as is reasonable in the circumstances.

[7] When a client chooses to remain with the firm, the firm should consider whether it is reasonable in the circumstances to charge the client for time expended by another firm member to become familiar with the file.

[8] The principles outlined in this rule and commentary will apply to the dissolution of a law firm. When a law firm is dissolved the lawyer-client relationship may end with one or more of the lawyers involved in the retainer. The client should be notified of the dissolution and provided with sufficient information to decide who to retain as counsel.

The lawyers who are no longer retained by the client should try to minimize expense and avoid prejudice to the client.

[9] See also rules 3.7-8 to 3.7-10 and related commentary regarding enforcement of a solicitor's lien and the duties of former and successor counsel.

Rule 3.7-7A does not apply to a lawyer leaving (a) a government, a Crown corporation or any other public body or (b) a corporation or other organization for which the lawyer is employed as in house counsel.

Annotations

Law Society of Saskatchewan Ethics Rulings

2016 SKLSPC 3

When a lawyer leaves a firm, all affected clients must be given reasonable notice and advised of their options for retaining counsel. Reasonable steps must be taken to obtain instructions from each affected client and the client's interests must remain paramount. Clients must be free to decide on representation without undue influence.

2015 SKLSPC 10

It is not appropriate for a lawyer's former firm to continue to produce and send letters to the lawyer's client without that lawyer's new contact information once it has been received by the firm.
Offering a gift in association with letters offering services is in poor taste and should be avoided.

2015 SKLSPC 3

On a general basis, when a lawyer leaves a firm or a firm closes, the email specifically associated with that lawyer must be closed within a reasonable time from the lawyer's departure. The level of "closed" and the automatic response provided will be determined by the circumstances.

2008 SKLSPC 2

It is always the client's right to choose who will represent them when a lawyer leaves a firm. Letters sent out to a client in response to the lawyer leaving the firm should be joint and informational in nature so as not to be seen as solicitation.

Manner of Withdrawal

3.7-8 When a lawyer withdraws, the lawyer must try to minimize expense and avoid prejudice to the client and must do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor lawyer.

3.7-9 On discharge or withdrawal, a lawyer must:

(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) subject to the lawyer's right to a lien, deliver to or to the order of the client all papers and property to which the client is entitled;

(c) subject to any applicable trust conditions, give the client all relevant information in connection with the case or matter;

(d) account for all funds of the client then held or previously dealt with, including the refunding of any remuneration not earned during the representation;

(e) promptly render an account for outstanding fees and disbursements;

(f) co-operate with the successor lawyer in the transfer of the file so as to minimize expense and avoid prejudice to the client; and

(g) comply with the applicable rules of court.

Commentary

[1] If the lawyer who is discharged or withdraws is a member of a firm, the client should be notified that the lawyer and the firm are no longer acting for the client.

[2] If the question of a right of lien for unpaid fees and disbursements arises on the discharge or withdrawal of the lawyer, the lawyer should have due regard to the effect of its enforcement on the client's position. Generally speaking, a lawyer should not enforce a lien if to do so would prejudice materially a client's position in any uncompleted matter.

[3] The obligation to deliver papers and property is subject to a lawyer's right of lien. In the event of conflicting claims to such papers or property, the lawyer should make every effort to have the claimants settle the dispute.

[4] Co-operation with the successor lawyer will normally include providing any memoranda of fact and law that have been prepared by the lawyer in connection with

the matter, but confidential information not clearly related to the matter should not be divulged without the written consent of the client.

[5] A lawyer who ceases to act for one or more clients should co-operate with the successor lawyer or lawyers and should seek to avoid any unseemly rivalry, whether real or apparent.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Phillips, 2015 SKLSS 8
All charges were dismissed. Refusing to deliver a beneficiary of an estate's original birth certificate is not preferring the interests of a third party over than of the client (executor) or a breach of the duty of loyalty to the client (executor).
The third count was dismissed as the evidence showed that the file contents were transferred to the new counsel on a timely basis.
Law Society of Saskatchewan v Phillips, 2015 SKLSS 2
It is conduct unbecoming to impose inappropriate conditions on the release of a client's file after dismissal.

Law Society of Saskatchewan Conduct Review

2013 SKLSCR 3
A lawyer must be vigilant in ensuring that a client is not prejudiced in the transition of their file to new counsel.

Law Society of Saskatchewan Ethics Rulings

2020 SKLSPC 2
Insisting on a rapid transfer of a voluminous piece of litigation extending back over 25 years could be seen as unreasonable.
2019 SKLSPC 1
A lawyer owes a duty to their client to be accurate and give clear reasons when dissolving a solicitor-client relationship.
2018 SKLSPC 11
Where a client has instructed a lawyer to do something against the lawyer's advice, it does not mean that the client has terminated the solicitor-client relationship.
2009 SKLSPC 9
There is a breach of conditions when a former client's file is provided to a new lawyer on conditions to pay an interim and final account and both are not paid.
2007 SKLSPC 13
As long as accounts are paid or secured, the file is the property of the client and if a lawyer wishes to maintain a copy for their own records they must do so at their own cost.
2003 SKLSPC 20
A lawyer may have an ethical obligation to tell their client that they should pay their former representation, but a lawyer does not have an obligation to act as a collection agent.

2003 SKLSPC 3
The process of transferring files to the executrix of an estate is more than just a simple transfer. Files must be combed for confidential and privileged information and work done on this matter can be charged for accordingly.
2002 SKLSPC 16
Where a new lawyer is acting for a client, the former lawyer, if they have an outstanding account, should proceed as follows: (1) The former lawyer should contact the new lawyer and ask if the new lawyer will represent the client in respect of the debt owed; (2) If yes, the former lawyer may ask the new lawyer for consent to contact the client directly; (3) If the new lawyer does not consent, all communications must proceed only through the new lawyer; (4) If the new lawyer gives consent or is not representing the client with respect to the account owed, the former lawyer may contact the client directly solely with respect to collection of their account.
2001 SKLSPC 19
Where there is a legitimate legal question to be answered, a lawyer's refusal to transfer money to a successor lawyer without protection is not unethical.
2001 SKLSPC 11
It is unreasonable for a lawyer to continue to hold a client's files upon all the trust conditions imposed in this case. Unless there is clear evidence that the authorization for transfer was not provided by someone representative of the client, the files should be handed over on conditions that accounts will be paid.
1999 SKLSPC 5
It is all right to discuss the referral of a client file with the receiving lawyer, but a lawyer must be careful the conversation does not qualify as mere gossip. It is inexcusable to tell the other party about representation of the client, especially in a matrimonial matter.
1998 SKLSPC 18
A lawyer should treat the reasons for termination of the solicitor-client relationship as privileged unless they are disclosed to protect the lawyer's reputation or integrity against allegations of malpractice or misconduct, and only to the extent necessary.
1998 SKLSPC 13
A lawyer should retain copies of documents prepared for a client who has transferred representation in order to protect both the client and the lawyer.
1997 SKLSPC 12
A lawyer must consider what trust conditions are in place when transferring a file. Sloppy practice of trust conditions upon withdrawal is not appropriate.
1995 SKLSPC 25
If a file has been removed from a lawyer's possession before a lawyer has submitted an account, the file should be returned to allow the lawyer to prepare their account.
1994 SKLSPC 19
While it is long recognized that charging a fee to deliver a file to new counsel is inappropriate, where there is a long relationship and a multitude of files, it may not be unreasonable for a lawyer to charge a fee for locating and cleaning up all closed files and delivering them to new counsel.

1994 SKLSPC 15
If there is material prejudice to a client, files must be released regardless of a lawyer's lien.
1994 SKLSPC 7
A lawyer is obliged to act immediately upon the receipt of authorization for a client's transfer of files and make those files ready for transfer. It is inappropriate to do so contingent upon a request.
1992 SKLSPC 20
If a lawyer dies before rendering an account, no lien can exist on the client's file.
1992 SKLSPC 12
It is improper to maintain a lien on a client's file at the time of withdrawal if no account has been rendered.
1992 SKLSPC 9
It is not improper for a lawyer to maintain a lien over a client's files so long as there is no evidence of material prejudice to the client.
1991 SKLSPC 10
A lawyer has a duty to advise opposing counsel before withdrawing.
1991 SKLSPC 1
Where there is prejudice to the client, the client's former lawyer should not maintain their lien on the client's file.
1988 SKLSPC 6
A lawyer should render an account when a client transfers lawyers without paying for services rendered. There can be no lien unless the account was rendered. If the new lawyer is unwilling to accept the forwarded file along with trust conditions, the file must be returned.
1988 SKLSPC 5
Since the client had already received copies of all documents over the course of the matter, a lawyer newly representing the client should determine what documents are actually needed and will be responsible for any photocopying charges.
1984 SKLSPC 8
Having accepted employment, a lawyer should complete the task to the best of their abilities unless there is a justifiable cause for terminating the relationship. A client must receive sufficient notice of withdrawal.

Duty of Successor Lawyer

3.7-10 Before agreeing to represent a client, a successor lawyer must be satisfied that the former lawyer has withdrawn or has been discharged by the client.

Commentary

[1] It is quite proper for the successor lawyer to urge the client to settle or take reasonable steps towards settling or securing any outstanding account of the former lawyer, especially if the latter withdrew for good cause or was capriciously discharged. But, if a trial or hearing is in progress or imminent, or if the client would otherwise be

prejudiced, the existence of an outstanding account should not be allowed to interfere with the successor lawyer acting for the client.

Annotations

Law Society of Saskatchewan Ethics Rulings

2004 SKLSPC 20
A successor lawyer should advise their client, if applicable, of their obligations with respect to the prior lawyer's fees. A new lawyer must be satisfied that the former lawyer knows that they no longer represent the client and must otherwise request permission to contact their former client.

2003 SKLSPC 20
A lawyer may have an ethical obligation to tell their client that they should pay their former representation, but a lawyer does not have an obligation to act as a collection agent.

1999 SKLSPC 28
A successor lawyer may waive their right to exclusive legal communication with the client with respect to fees from the former lawyer.

1991 SKLSPC 1
A successor lawyer should not allow an outstanding account to interfere with acting for the client.

Other Sources

Thomas Gold Pettinghill LLP v Ani-Wall Concrete Forming Inc, 2012 ONSC 2182
There is no legal requirement that a lawyer give an undertaking to a predecessor to ensure that funds are payable.

[3.7-1, Commentary [4] deleted; 3.7-7A *Leaving a Law Firm* added with Commentary 1 – 9; 3.7-9 Commentary [5] amended, September 22, 2017]

CHAPTER 4 – MARKETING OF LEGAL SERVICES

4.1 MAKING LEGAL SERVICES AVAILABLE

Making Legal Services Available

4.1-1 A lawyer must make legal services available to the public efficiently and conveniently and, subject to Rule 4.1-2, may offer legal services to a prospective client by any means.

Commentary

[1] A lawyer may assist in making legal services available by participating in the Legal Aid Plan and lawyer referral services and by engaging in programs of public information, education or advice concerning legal matters.

[2] As a matter of access to justice, it is in keeping with the best traditions of the legal profession to provide services *pro bono* and to reduce or waive a fee when there is hardship or poverty or the client or prospective client would otherwise be deprived of adequate legal advice or representation. The Law Society encourages lawyers to provide public interest legal services and to support organizations that provide services to persons of limited means.

[3] A lawyer who knows or has reasonable grounds to believe that a client is entitled to Legal Aid should advise the client of the right to apply for Legal Aid, unless the circumstances indicate that the client has waived or does not need such assistance.

Right to Decline Representation:

[4] A lawyer has a general right to decline a particular representation (except when assigned as counsel by a tribunal), but it is a right to be exercised prudently, particularly if the probable result would be to make it difficult for a person to obtain legal advice or representation. Generally, a lawyer should not exercise the right merely because a person seeking legal services or that person's cause is unpopular or notorious, or because powerful interests or allegations of misconduct or malfeasance are involved, or because of the lawyer's private opinion about the guilt of the accused. A lawyer declining representation should assist in obtaining the services of another lawyer qualified in the particular field and able to act. When a lawyer offers assistance to a client or prospective client in finding another lawyer, the assistance should be given willingly and, except where a referral fee is permitted by Rule 3.6-6, without charge.

Annotations

Law Society of Saskatchewan Ethics Rulings

2017 SKLSPC 4

It is inappropriate for a lawyer to advise clients via video and then swear an affidavit of execution as if the lawyer had personally attended the meeting. It is permitted for a lawyer to provide legal advice and have the client meet with a third-party representative for execution of documents. The third party may be a bank representative or other agent acting on behalf of the lawyer.

2017 SKLSPC 3

As long as it is appropriate in the circumstances and sufficient for a client's needs, there is no issue with a lawyer providing legal advice via technology. Allowing signatures and witnessing signatures will depend on the document, what it says, and whether there is any governing legislation.

2015 SKLSPC 3

On a general basis, when a lawyer leaves a firm or a firm closes, the email account specifically associated with them must be closed within a reasonable period of time from the lawyer's departure. The level of "closed" and the automatic response generated should be determined by the circumstances.

1997 SKLSPC 6

It is inappropriate for a lawyer to receive a client's instructions regarding their will from a third-party institution, but it is not inappropriate for the third-party institution to refer clients to the lawyer.

1995 SKLSPC 13

The Ethics Committee reaffirmed the previous ruling prohibiting lawyers from donating wills to charity auctions. The lawyer is neither in a position to independently evaluate the needs of the client and charge them accordingly, nor to refuse to provide services to the successful bidder where there may be a conflict of interest.

1992 SKLSPC 2

It is unacceptable for lawyers to donate legal services to charity auctions as it demeans and trivializes the solicitor-client relationship.

1987 SKLSPC 8

All correspondence from a law firm must be over the signature of one of the lawyers at the firm. Students must sign with designation of their status and staff may sign "for" or "on behalf of" a lawyer. Purely administrative matters are exempt.

1986 SKLSPC 12

It is not appropriate for lawyers to donate wills to charity auctions.

Restrictions

4.1-2 In offering legal services, a lawyer must not use means that:

(a) are false or misleading;

(b) amount to coercion, duress, or harassment;

(c) take advantage of a person who is vulnerable or who has suffered a traumatic experience and has not yet recovered; or

(d) otherwise bring the profession or the administration of justice into disrepute.

Commentary

[1] A person who is vulnerable or who has suffered a traumatic experience and has not recovered may need the professional assistance of a lawyer, and this rule does not prevent a lawyer from offering assistance to such a person. A lawyer is permitted to provide assistance to a person if a close relative or personal friend of the person contacts the lawyer for this purpose, and to offer assistance to a person with whom the lawyer has a close family or professional relationship. The rule prohibits the lawyer from using unconscionable, exploitive or other means that bring the profession or the administration of justice into disrepute.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Bornek, 2003 SKLS 9
Lawyer plead guilty to sexual assault, obstruction of justice, and communication for purposes of prostitution.

Law Society of Saskatchewan Ethics Rulings

2015 SKLSPC 10
Offering a gift in association with letters offering services is in poor taste and should be avoided

2008 SKLSPC 3
It may be appropriate to use a lawyer or firm name and trust account for *purely* charitable fundraising. Such fundraising will not provide any direct benefits such as payment of legal fees. It is not appropriate for a lawyer or firm to permit the use of their name and trust account or otherwise be involved in soliciting funds which will then be used to pay their account.

1985 SKLSPC 2
Unless it can be shown that a lawyer is actively soliciting clients while transferring to a new firm, there is no breach of ethics in a lawyer discussing a client's possible transfer of their files to a new practice.

4.2 MARKETING

Marketing of Professional Services

4.2-1 A lawyer may market professional services, provided that the marketing is:

(a) demonstrably true, accurate and verifiable;

(b) neither misleading, confusing or deceptive, nor likely to mislead, confuse or deceive;

(c) in the best interests of the public and consistent with a high standard of professionalism.

Commentary

[1] Examples of marketing that may contravene this rule include:

(a) stating an amount of money that the lawyer has recovered for a client or referring to the lawyer's degree of success in past cases, unless such statement is accompanied by a further statement that past results are not necessarily indicative of future results and that the amount recovered and other litigation outcomes will vary according to the facts in individual cases;

(b) suggesting qualitative superiority to other lawyers;

(c) raising expectations unjustifiably;

(d) suggesting or implying the lawyer is aggressive;

(e) disparaging or demeaning other persons, groups, organizations or institutions;

(f) taking advantage of a vulnerable person or group; and

(g) using testimonials or endorsements that contain emotional appeals.

Annotations

Saskatchewan Court of Appeal

Merchant v Law Society of Saskatchewan, 2009 SKCA 33

The court upheld the LSS decision on misleading marketing, but referred to the issue of costs on a solicitor-client basis to the Registrar for determination. See original decision 2006 SKLSS 6.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Merchant, 2006 SKLSS 6
It is conduct unbecoming to send out marketing materials regarding a class action lawsuit containing misleading information.

Law Society of Saskatchewan v Merchant, 2000 SKLS 4
It is conduct unbecoming to run a marketing campaign that is reasonably likely to be misleading.

Law Society of Saskatchewan Ethics Rulings

2018 SKLSPC 1
Contacting former clients to leave a review and offering prizes is not inherently unethical, but carries a risk of being unprofessional. The Lawyer should only do so with caution.

2016 SKLSPC 8
The use of "leading" in marketing indicates superiority and should not be used.

2013 SKLSPC 3
Advertisements and marketing strategies are not authorized if they target "weakened state" individuals.

2006 SKLSPC 10
Although ads via radio do not technically contravene any rules, they are not particularly tasteful and do not promote respect for the profession.

2002 SKLSPC 34
Advertising years of cumulative experience may be misleading to the public and is not condoned.

2000 SKLSPC 18
So long as assertions made in advertisements such as "first in Canada" are true and the lawyers can defend them if challenged, the advertisements are not unethical.

1996 SKLSPC 12
It is not improper for a firm to retain a partner's name so long as the partner moving remains an associate of the firm and there is an appropriate mark beside the name indicating the lawyer's new location.

1996 SKLSPC 2
A proposed lawyer referral service, where lawyers accept 1-900 calls from potential clients in Canada and then refer them, does not breach the marketing rules, but the Ethics Committee was not prepared to endorse or approve the operation. Lawyers participating must be diligent not to provide legal advice to callers who are not from Saskatchewan.

1995 SKLSPC 17
1-900 numbers are not prohibited, but issues such as fee-splitting must be monitored.

1995 SKLSPC 16
Distributing a pamphlet by a funeral home providing helpful information with no-pressure tactics is not a direct solicitation and is not in bad taste.
Sending letters offering services to persons known to be facing foreclosure is both direct solicitation and is in bad taste.

1995 SKLSPC 9
Using the name of a lawyer temporarily working at another office on firm letterhead is misleading. The letterhead should state that they are on leave.

1995 SKLSPC 6
Coupons cannot be misleading and a requirement to present a coupon is similar to the prohibited concept of donating wills.

1994 SKLSPC 20
The advertised trade name “The Law Shop Saskatoon” is undignified.

1994 SKLSPC 13
Trade names may be used for legal practices. Names should be registered with the Corporations branch (now the Corporate Registry, ISC).

1994 SKLSPC 7
It is not appropriate for lawyers to continually advertise former employment, positions, and expertise. Lawyers may indicate a preference for certain areas of practice as “preferred” but the use of the phrase “registered with the Law Society in the area of _____” is inappropriate.

1993 SKLSPC 2
As long as the contents and form of an advertisement comply with the rules of marketing legal services, the practice of sending letters to owners of homes recently listed for sale is not prohibited regardless of whether or not the recipients have current legal representation.

1992 SKLSPC 17
Using letterhead in connection with a former prominent politician is too remote and indirect of a connection. Such a reference is inappropriate.

1992 SKLSPC 14
Marketing rules do not prohibit lawyers or their firms from sponsoring teams and having their names on team jerseys subject to good taste.

1992 SKLSPC 13
Advertisements and brochures associating a firm with a judge, attorney general, minister of justice, or other officer or official are inappropriate. Superlatives must be used with caution and may not compare one’s services to those of other lawyers.

1992 SKLSPC 3
Marketing distribution by third parties is not prohibited.

1991 SKLSPC 12
It is not improper for a firm to announce a new firm lawyer who was formerly in a political position, as long as it does not create an unjustified expectation about the results the lawyer might achieve.

1987 SKLSPC 4
It is not improper for a lawyer to retain the use of a former partner’s name as general counsel in the firm letterhead so long as the former partner maintains their practice certificate.

1000 SKLSPC 27
It is unprofessional for a lawyer to write a trust company and offer to work for a finder’s fee or commission.

1000 SKLSPC 26
Providing coupons for a free one-half hour consultation as opposed to coupons for specific services or price reductions is not a violation of the standards of marketing.
1000 SKLSPC 25
If lawyers wish to include “agent of the Attorney General” in their letterhead it must only be used when acting as such and not when conducting other legal business.
1000 SKLSPC 24
It is improper for a solicitor practicing alone to use “and company” or “& associates” and to hold out in their firm name that they practice with or in association with others.
1000 SKLSPC 23
The use of “and company” in a firm’s name is improper for a sole practitioner.

Advertising of Fees

4.2-2 A lawyer may advertise fees charged for their services provided that:

(a) the advertising is reasonably precise as to the services offered for each fee quoted;

(b) the advertising states whether other amounts, such as disbursements and taxes, will be charged in addition to the fee; and

(c) the lawyer strictly adheres to the advertised fee in every applicable case.

Annotations

Law Society of Saskatchewan Ethics Rulings
1994 SKLSPC 4
A firm was advertising a service package for a set annual fee including “free unlimited service” of various types. That is misleading, when the services are not truly free, as the client was paying for them.
1991 SKLSPC 13
Advertising a fee schedule is acceptable so long as it is not compared to the Law Society Tariff or others. (Note: the Law Society Tariff no longer exists.)

4.3 ADVERTISING NATURE OF PRACTICE

4.3-1 A lawyer must not advertise that the lawyer is a specialist in a specified field unless the lawyer has been so certified by the Society.

Commentary

[1] Lawyers' advertisements may be designed to provide information to assist a potential client to choose a lawyer who has the appropriate skills and knowledge for the client's particular legal matter.

[2] A lawyer who is not a certified specialist is not permitted to use any designation from which a person might reasonably conclude that the lawyer is a certified specialist. A claim that a lawyer is a specialist or expert, or specializes in an area of law, implies that the lawyer has met some objective standard or criteria of expertise, presumably established or recognized by a Law Society. In the absence of Law Society recognition or a certification process, an assertion by a lawyer that the lawyer is a specialist or expert is misleading and improper.

[3] If a firm practises in more than one jurisdiction, some of which certify or recognize specialization, an advertisement by such a firm that makes reference to the status of a firm member as a specialist or expert, in media circulated concurrently in Saskatchewan and the certifying jurisdiction, does not offend this rule if the certifying authority or organization is identified.

[4] A lawyer may advertise areas of practice, including preferred areas of practice or a restriction to a certain area of law. An advertisement may also include a description of the lawyer's or law firm's proficiency or experience in an area of law. In all cases, the representations made must be accurate (that is, demonstrably true) and must not be misleading.

[5] A lawyer shall not use the title "specialist", "expert", "leader" or any similar designation suggesting a recognized special status or accreditation in an advertisement, public communication or any other contact with a prospective client, unless authorized to do so in accordance with this rule.

Annotations

Law Society of Saskatchewan Ethics Rulings

2016 SKLSPC 6

The use of “expertise” and or “specialization” generally would not mislead a potential client. These terms suggest knowledge or experience and not a special status or accreditation and are therefore acceptable.

2002 SKLSPC 15

A lawyer must not: denigrate the skills and abilities of another lawyer; hold themselves out as a specialist; and refuse to act opposite another lawyer. The client has the freedom to choose who will represent them and a lawyer should not attempt to influence the opposing party’s choice of representation.

CHAPTER 5 – RELATIONSHIP TO THE ADMINISTRATION OF JUSTICE

5.1 THE LAWYER AS ADVOCATE

Advocacy

5.1-1 When acting as an advocate, a lawyer must represent the client resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy, and respect.

Commentary

Role in Adversarial Proceedings:

[1] In adversarial proceedings, the lawyer has a duty to the client to raise fearlessly every issue, advance every argument and ask every question, however distasteful, that the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law. The lawyer must discharge this duty by fair and honourable means, without illegality and in a manner that is consistent with the lawyer's duty to treat the tribunal with candour, fairness, courtesy and respect and in a way that promotes the parties' right to a fair hearing in which justice can be done. Maintaining dignity, decorum and courtesy in the courtroom is not an empty formality because, unless order is maintained, rights cannot be protected.

[2] This rule applies to the lawyer as advocate, and therefore extends not only to court proceedings but also to appearances and proceedings before boards, administrative tribunals, arbitrators, mediators and others who resolve disputes, regardless of their function or the informality of their procedures.

[3] The lawyer's function as advocate is openly and necessarily partisan. Accordingly, the lawyer is not obliged (except as required by law or under these rules and subject to the duties of a prosecutor set out below) to assist an adversary or advance matters harmful to the client's case.

[4] In adversarial proceedings that will likely affect the health, welfare or security of a child, a lawyer should advise the client to take into account the best interests of the child, if this can be done without prejudicing the legitimate interests of the client.

[5] A lawyer should refrain from expressing the lawyer's personal opinions on the merits of a client's case to a court or tribunal.

[6] When opposing interests are not represented, for example, in without notice or uncontested matters or in other situations in which the full proof and argument inherent in the adversarial system cannot be achieved, the lawyer must take particular care to be accurate, candid and comprehensive in presenting the client's case so as to ensure that the tribunal is not misled.

[7] The lawyer should never waive or abandon the client's legal rights, such as an available defence under a statute of limitations, without the client's informed consent.

[8] In civil proceedings, a lawyer should avoid and discourage the client from resorting to frivolous or vexatious objections, attempts to gain advantage from slips or oversights not going to the merits or tactics that will merely delay or harass the other side. Such practices can readily bring the administration of justice and the legal profession into disrepute.

Duty as Defence Counsel:

[9] When defending an accused person, a lawyer's duty is to protect the client as far as possible from being convicted, except by a tribunal of competent jurisdiction and upon legal evidence sufficient to support a conviction for the offence with which the client is charged. Accordingly, and notwithstanding the lawyer's private opinion on credibility or the merits, a lawyer may properly rely on any evidence or defences, including so-called technicalities, not known to be false or fraudulent.

[10] Admissions made by the accused to a lawyer may impose strict limitations on the conduct of the defence, and the accused should be made aware of this. For example, if the accused clearly admits to the lawyer the factual and mental elements necessary to constitute the offence, the lawyer, if convinced that the admissions are true and voluntary, may properly take objection to the jurisdiction of the court, the form of the indictment or the admissibility or sufficiency of the evidence, but must not suggest that some other person committed the offence or call any evidence that, by reason of the admissions, the lawyer believes to be false. Nor may the lawyer set up an affirmative case inconsistent with such admissions, for example, by calling evidence in support of an alibi intended to show that the accused could not have done or, in fact, has not done the act. Such admissions will also impose a limit on the extent to which the lawyer may attack the evidence for the prosecution. The lawyer is entitled to test the evidence given by each individual witness for the prosecution and argue that the evidence taken as a whole is insufficient to amount to proof that the accused is guilty of the offence charged, but the lawyer should go no further than that.

5.1-2 When acting as an advocate, a lawyer must not:

(a) abuse the process of the 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 the other party;

(b) knowingly assist or permit a client to do anything that the lawyer considers to be 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 give rise to or might reasonably appear to give rise to pressure, influence or inducement affecting the impartiality of the officer, unless all parties consent and it is in the interests of justice;

(d) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of a tribunal or any of its officials in any case or matter by any means other than open persuasion as an advocate;

(e) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed or otherwise assisting in any fraud, crime or illegal conduct;

(f) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument or the provisions of a statute or like authority;

(g) knowingly assert as true a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal;

(h) make suggestions to a witness recklessly or knowing them to be false;

(i) deliberately refrain from informing a tribunal of any binding authority that the lawyer considers to be directly on point and that has not been mentioned by another party;

(j) improperly dissuade a witness from giving evidence or advise a witness to be absent;

(k) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another;

(l) knowingly misrepresent the client's position in the litigation or the issues to be determined in the litigation;

(m) needlessly abuse, hector or harass a witness;

(n) when representing a complainant or potential complainant, attempt to gain a benefit for the complainant by threatening the laying of a criminal or quasi-criminal charge or complaint to a regulatory authority or by offering to seek or to procure the withdrawal of a criminal or quasi-criminal charge or complaint to a regulatory authority;

(o) needlessly inconvenience a witness; or

(p) appear before a court or tribunal while under the influence of alcohol or a drug.

Commentary

[1] In civil proceedings, a lawyer has a duty not to mislead the tribunal about the position of the client in the adversarial process. Thus, a lawyer representing a party to litigation who has made or is party to an agreement made before or during the trial by which a plaintiff is guaranteed recovery by one or more parties, notwithstanding the judgment of the court, should immediately reveal the existence and particulars of the agreement to the court and to all parties to the proceedings.

[2] A lawyer representing an accused or potential accused may communicate with a complainant or potential complainant, for example, to obtain factual information, to arrange for restitution or an apology from the accused, or to defend or settle any civil claims between the accused and the complainant. However, when the complainant or potential complaint is vulnerable, the lawyer must take care not to take unfair or improper advantage of the circumstances. If the complainant or potential complainant is unrepresented, the lawyer should be governed by the rules about unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused or potential accused. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

[3] It is an abuse of the court's process to threaten to bring an action or to offer to seek withdrawal of a criminal charge in order to gain a benefit. See also Rules 3.2-5 and 3.2-6 and accompanying commentary.

[4] When examining a witness, a lawyer may pursue any hypothesis that is honestly advanced on the strength of reasonable inference, experience or intuition.

Annotations

Saskatchewan Court of Appeal

Ajit Kapoor v The Law Society of Saskatchewan, 2019 SKCA 85

The Court upheld the discipline decision as being reasonable.

The Code, including its commentary, is a guide, rather than a prescriptive or exhaustive list of what might constitute conduct unbecoming.

Original Decision: 2016 SKLSS 13

It is conduct unbecoming to fail to bring adverse but non-binding case law to the attention of a Provincial Court judge.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Turner, 2020 SKLSS 1

Lawyers have a very privileged role when it comes to dealing with the Court and other bodies, such as ISC. With that privilege comes the responsibility to ensure documents that are submitted are accurate and executed appropriately. Any deviation from the high standard expected of lawyers threatens the protection of the public and the perception of the profession.

It is conduct unbecoming to fabricate a transfer authorization by cutting and pasting the client's signature from another document and then to cause it to be submitted to, and thereby mislead, ISC.

It is conduct unbecoming to have clients swear affidavits purporting to exhibit documents that were not yet in existence and which contained information that the lawyer knew to be false.

Law Society of Saskatchewan v Adsit, 2016 SKLSS 7

It is conduct unbecoming to attempt to imitate a signature and file an inappropriately commissioned affidavit.

Law Society of Saskatchewan v Gollan, 2016 SKLSS 3

It is conduct unbecoming to fail to act with utmost good faith to the Court by filing an application containing misleading information and to a fellow lawyer and a member of the public by submitting an Application for Probate on behalf of only one joint executor.

Law Society of Saskatchewan v Armitage, 2014 SKLSS 14

It is conduct unbecoming to appear in court on behalf of a client while inebriated.

Law Society of Saskatchewan v Peet, 1999 SKLS 10

It is conduct unbecoming for a lawyer to arrive late to court proceedings in which they were making submissions on multiple occasions.

Law Society of Saskatchewan v Segal, 1999 SKLS 4

Where a client makes false testimony, the Lawyer should request an adjournment or bring the incorrectness to the attention of counsel opposite. Failing to do so is conduct unbecoming. If the client refuses to cooperate, the Lawyer must withdraw.

Law Society of Saskatchewan v Zawislak, 1996 SKLS 3

It is conduct unbecoming to have a client sign and swear a blank page and then write the affidavit after, thereby misleading the Court.

Law Society of Saskatchewan Conduct Review

2014 SKLSCR 1

The lawyer failed to comply with a court order by inadvertently disclosing an opposing party's income to the client.

2012 SKLSCR 3

A lawyer has an absolute duty to be accurate, candid, and comprehensive and must not let a client's wishes interfere with that duty. When a client insists upon an action which may conflict with a lawyer's duty – for example, providing misleading information in a criminal matter – the lawyer must advise the client that the lawyer's professional obligations come first.

Law Society of Saskatchewan Ethics Rulings

2015 SKLSPC 1

A lawyer must be honest and forthcoming to Courts and Tribunals. It is not a defence that the Court did not directly request or address a particular area of information.

2012 SKLSPC 2

Although sanctioned by a Court for being reprehensible, the Lawyer did not act unethically towards opposing counsel, because they were zealously representing their client.

2011 SKLSPC 3

When a judge has a matter on reserve, no correspondence should be delivered to that judge from a counsel or litigant except when the correspondence does no more than provide a case citation or where the trial judge has requested further information and the request is endorsed on file.

2010 SKLSPC 7

In ensuring that all relevant material is before a court, a lawyer should (1) determine whether, if the contradictory evidence or information is proven, it would be directly material to the issue; (2) attempt to clarify with an unrepresented party the problems or issues that may exist with new information or evidence; and (3) advise the Court that new information or evidence, if verified, may be material and ask for an adjournment.

2005 SKLSPC 14

A lawyer is responsible for the contents of documents filed with the court. They have an obligation to read and know what was written, even if it was written by a client.

2005 SKLSPC 2

A lawyer's letter offering to settle the debt of opposing client's parents in exchange for the opposing client to stop pursuing arrears in child support is unacceptable.

2000 SKLSPC 12

Contacting former jury members who were dismissed and did not deliberate before a new trial is ordered is fraught with potential risks and has little utility. Former jurors should not be contacted to determine their perception of the evidence presented.

1998 SKLSPC 9

It is improper to instruct an expert witness not to speak to opposing counsel. It is up to the expert to make their own decision.

1994 SKLSPC 18

Naming another lawyer in an action solely for the purpose of requiring them to be removed from a file is inappropriate.

1994 SKLSPC 12
A lawyer should ensure that affidavits are clearly drafted to indicate that they represent the client's belief, opinion, or interpretation of a judgment and not as a statement of fact.
1987 SKLSPC 2
A lawyer may be represented by another lawyer at their own firm.
1000 SKLSPC 16
Obtaining a judgment through misleading and improper formulation of pleadings is an abuse of a lawyer's position and duty.
1000 SKLSPC 15
No lawyer shall, except in the most exceptional circumstances or with permission, discuss any related matter with a judge without notification to or the presence of opposing counsel.
1000 SKLSPC 14
Save in exceptional circumstances, the appropriate way to approach a judge, whether in writing, by telephone, or in person is through the registrar of the court, the clerk, or the judge's secretary.
1000 SKLSPC 13
A lawyer must not appear before a judicial officer when they, their associates, or their clients have a business or personal relationship with the decision-maker which might reasonably affect impartiality.

Other Sources

Fontaine v Canada (Attorney General), 2018 ONSC 357
Lawyers have a duty not only to their clients, but to the administration of justice and the rule of law. It is unprofessional to accept instructions to make attacks on the integrity of the Court, as it threatens to interfere with the administration of justice.
Law Society of Upper Canada v Kimberly Lynne Townley-Smith, 2010 ONLSHP 77
It is conduct unbecoming to make public and persistent assertion that there is widespread corruption in the Superior Courts and other institutions and individuals. Further, repetitive conduct of litigation poses a risk to the public interest in the administration of justice

Incriminating Physical Evidence

5.1-2A A lawyer must not counsel or participate in the concealment, destruction or alteration of incriminating physical evidence or otherwise act so as to obstruct or attempt to obstruct the course of justice.

Commentary

[1] In this rule, "evidence" does not depend upon admissibility before a tribunal or upon the existence of criminal charges. It includes documents, electronic information, objects or substances relevant to a crime, criminal investigation or a criminal prosecution. It does not include documents or communications that are solicitor-client

privileged or that the lawyer reasonably believes are otherwise available to the authorities.

[2] This rule does not apply where a lawyer is in possession of evidence tending to establish the innocence of a client, such as evidence relevant to an alibi. However, a lawyer must exercise prudent judgment in determining whether such evidence is wholly exculpatory, and therefore falls outside of the application of this rule. For example, if the evidence is both incriminating and exculpatory, improperly dealing with it may result in a breach of the rule and also expose a lawyer to criminal charges.

[3] A lawyer is never required to take or keep possession of incriminating physical evidence or to disclose its mere existence. Possession of illegal things could constitute an offense. A lawyer in possession of incriminating physical evidence should carefully consider his or her options. These options include, as soon as reasonably possible:

(a) delivering the evidence to law enforcement authorities or the prosecution, either directly or anonymously;

(b) delivering the evidence to the tribunal in the relevant proceeding, which may also include seeking the direction of the tribunal to facilitate access by the prosecution or defence for testing or examination; or

(c) disclosing the existence of the evidence to the prosecution and, if necessary, preparing to argue before a tribunal the appropriate uses, disposition or admissibility of it.

[4] A lawyer should balance the duty of loyalty and confidentiality owed to the client with the duties owed to the administration of justice. When a lawyer discloses or delivers incriminating physical evidence to law enforcement authorities or the prosecution, the lawyer has a duty to protect client confidentiality, including the client's identity, and to preserve solicitor-client privilege. This may be accomplished by the lawyer retaining independent counsel, who is not informed of the identity of the client and who is instructed not to disclose the identity of the instructing lawyer, to disclose or deliver the evidence. A lawyer cannot merely continue to keep possession of the incriminating physical evidence.

[5] A lawyer has no obligation to assist the authorities in gathering physical evidence of crime but cannot act or advise anyone to hinder an investigation or a prosecution. The lawyer's advice to a client that the client has the right to refuse to divulge the location of physical evidence does not constitute hindering an investigation. A lawyer who becomes aware of the existence of incriminating physical evidence or

declines to take possession of it must not counsel or participate in its concealment, destruction or alteration.

[6] A lawyer may determine that non-destructive testing, examination or copying of documentary or electronic information is needed. A lawyer should ensure that there is no concealment, destruction or any alteration of the evidence and should exercise caution in this area. For example, opening or copying an electronic document may alter it. A lawyer who has decided to copy, test or examine evidence before delivery or disclosure should do so without delay.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Hoffart, 2016 SKLSS 14.
It is conduct unbecoming for a lawyer to conceal evidence they knew their client had stolen from a police camera. It is sufficient that the lawyer know it could contain incriminating evidence without knowing the actual contents.

Other Sources

R v Martin, 2013 NBBR 322
It is conduct unbecoming to counsel the spouse of a client to dispose of physical evidence.

R v Murray, 2000 CanLII 22378, 186 DLR (4th) 125
It is conduct unbecoming to follow instructions from a client to discover hidden incriminating videotapes, even if instructed not to view or use them. A lawyer must not knowingly attempt to deceive a tribunal or suppress that which ought to be disclosed.

Duty as Prosecutor

5.1-3 When acting as a prosecutor, a lawyer must act for the public and the administration of justice resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy and respect.

Commentary

[1] When engaged as a prosecutor, the lawyer's primary duty is not to seek to convict but to see that justice is done through a fair trial on the merits. 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 directly to an unrepresented accused of all relevant and known facts and witnesses, whether tending to show guilt or innocence.

Annotations

Supreme Court of Canada

Krieger v Law Society of Alberta, 2002 SCC 65
Prosecutorial discretion includes decisions regarding the nature and extent of prosecution, but decisions that govern a prosecutor's tactics or conduct which result in an alleged breach of ethical standards can be regulated by the Law Society.

R v Stinchcombe, [1991] 3 SCR 326
The purpose of a criminal prosecution is not to obtain a conviction but to lay before a jury what the Crown considers to be credible evidence. The Crown has a duty to disclose all relevant information although determination is subject to the discretion of the prosecutor.

Saskatchewan Court of King's Bench

Tibbit v Law Society of Saskatchewan, 2004 SKQB 22
Prosecutors are legally, and ethically, required to disclose all relevant information subject to certain exceptions. A law society's investigation into this requirement does not interfere with prosecutorial independence.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Bliss, 2010 LSS 4
It is conduct unbecoming for a prosecutor to fail to promptly and fairly disclose new evidence directly prior to trial.

Law Society of Saskatchewan Ethics Rulings

2015 SKLSPC 4
It is an accepted practice for offers extended by the Crown early in court proceedings to be withdrawn or modified as the Crown deems necessary.

2022 SKLSPC 3
Lawyers acting as prosecutors for private clients, such as before a professional regulatory body, are not considered "prosecutors" for purposes of section 5.1-3.

Other Sources

Cunliffe v Law Society (British Columbia), 1984 CanLII 537, 13 CCC (3d) 560
Crown counsel has a duty to inform defence of the existence of material witnesses. The Crown has full discretion in calling witnesses unless it is shown they have been influenced by an oblique motive.

Disclosure of Error or Omission

5.1-4 A lawyer who has unknowingly done or failed to do something that, if done or omitted knowingly, would have been in breach of this rule and who discovers it, must, subject to section 3.3 (Confidentiality), disclose the error or omission and do all that can reasonably be done in the circumstances to rectify it.

Commentary

[1] If a client desires that a course be taken that would involve a breach of this rule, the lawyer must refuse and do everything reasonably possible to prevent it. If that cannot be done, the lawyer should, subject to Rule 3.7-1 (Withdrawal from Representation), withdraw or seek leave to do so.

Annotations

Law Society of Saskatchewan Ethics Rulings
1999 SKLSPC 19
Material errors coming to light in an affidavit after an order is granted are to be communicated to the Court, but it is not necessary to bring non-material errors to the Court's attention.

Courtesy

5.1-5 A lawyer must be courteous and civil and act in good faith to the tribunal and all persons with whom the lawyer has dealings.

Commentary

[1] Legal contempt of court and the professional obligation outlined here are not identical, and a consistent pattern of rude, provocative or disruptive conduct by a lawyer, even though unpunished as contempt, may constitute professional misconduct.

Annotations

Supreme Court of Canada
Groia v Law Society of Upper Canada, 2018 SCC 27
Civility cannot compromise a lawyer's duty of resolute advocacy, although it is essential that trials be conducted in a civilized manner. The duty to act with civility does not exist in a vacuum.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Cherkewich, 2014 SKLSS 3
It is conduct unbecoming to fail to treat an adjudicator with courtesy and respect, by presenting a retainer agreement written on a piece of toilet paper.

Law Society of Saskatchewan v Tapp, 2002 SKLS 5
It is conduct unbecoming to display consistently rude, provocative, and disruptive behaviour.

Law Society of Saskatchewan Ethics Rulings

2011 SKLSPC 2
Suggesting that the lawyer "will personally see to it that [the opposing parties] are charged with theft" is very close to the line, but not a breach of the Code (Note: the Committee interpreted the former Code).
A lawyer must remain objective and must not allow personal animosity or emotions to cloud their judgment and/or communications with an opposing party, particularly a self-represented individual.
A lawyer should guard against unprofessional letters or letters which could be construed as such.

2006 SKLSPC 4
Lawyers should be scrupulously accurate in drafting affidavits.

2002 SKLSPC 27
It is desirable for lawyers to ensure individuals and institutions are not misled by letters accompanying court orders.

2002 SKLSPC 21
While failure to pay an expert witness' account was not unethical in this circumstance, lawyers owe a duty of courtesy to a professional witness.

Undertakings

5.1-6 A lawyer must strictly and scrupulously fulfill any undertakings given and honour any trust conditions accepted in the course of litigation.

Commentary

[1] A lawyer should also be guided by the provisions of Rule 7.2-11 (Undertakings and Trust Conditions.)

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Mah, 2017 SKLSS 9
It is conduct unbecoming to return a forfeitable deposit paid into trust to the client instead of upholding the terms of the agreement and implied undertaking, when the client did not go forward with the purchase.

Law Society of Saskatchewan v Tilling, 2004 SKLS 1
It is conduct unbecoming for a lawyer to fail to appeal a criminal conviction and sentence after they had undertaken to their client that they would do so.
Law Society of Saskatchewan v MacLowich, 2003 SKLS 8
It is conduct unbecoming to not complete an undertaking made to a client to pay court costs.

Law Society of Saskatchewan Conduct Rulings

2020 SKLSCR 2
When receiving correspondence from other counsel, a lawyer must do their due diligence to ensure that there are not trust conditions imposed.
2020 SKLSCR 1
Lawyers should develop systems to track trust conditions and ensure they are met before a file is closed.

Law Society of Saskatchewan Ethics Rulings

2002 SKLSPC 22
Money tendered as conduct money in lieu of litigation is earmarked for a specific purpose, and therefore the money is subject to trust conditions. A lawyer holding conduct money is not free to convert it for any other purpose.
2002 SKLSPC 6
See also 2002 SKLSPC 2. Just as it is improper to require a complaint to be abandoned as part of a settlement, it is improper for a lawyer to impose a condition that correspondence not be disclosed to the Law Society. No matter what a lawyer says in a letter or by way of agreement, if the Law Society is investigating a matter, no provision will prevent the Society from carrying out its statutory duty.
2001 SKLSPC 5
A client's right to tax a lawyer's bill goes to the heart of the solicitor-client relationship and it would be highly inappropriate for an outside party to interfere with, inquire about, or attempt to impose conditions regarding this right.

Agreement on Guilty Plea

5.1-7 Before a charge is laid or at any time after a charge is laid, a lawyer for an accused or potential accused may discuss with the prosecutor the possible disposition of the case, unless the client instructs otherwise.

5.1-8 A lawyer for an accused or potential accused may enter into an agreement with the prosecutor about a guilty plea if, following investigation,

(a) the lawyer advises his or her client about the prospects for an acquittal or finding of guilt;

(b) the lawyer advises the client of the implications and possible consequences of a guilty plea and particularly of the sentencing authority and discretion of the court, including the fact that the court is not bound by any agreement about a guilty plea;

(c) the client voluntarily is prepared to admit the necessary factual and mental elements of the offence charged; and

(d) the client voluntarily instructs the lawyer to enter into an agreement as to a guilty plea.

Commentary

[1] The public interest in the proper administration of justice should not be sacrificed in the interest of expediency.

Annotations

Law Society of Saskatchewan Ethics Rulings
2015 SKLSPC 4
Where an offer letter does not explicitly state that the offer was contingent on acceptance of guilt from the accused, but the letter does not deviate from standard correspondence. the contingent nature should be reasonably assumed.

[Rule 5.1 -2(n) amended; Rule 5.1 -2A and Commentary added and 3.5-6, Commentary [3] and [4] relocated, Feb. 13, 2015]
[5.1-2A Commentary [4] and [5] amended, September 22, 2017]

5.2 THE LAWYERS AS WITNESS

Submission of Evidence

5.2-1 A lawyer who appears as advocate must not testify or submit his or her own affidavit evidence before the tribunal unless permitted to do so by law, the tribunal, the rules of court or the rules of procedure of the tribunal, or unless the matter is purely formal or uncontroverted.

Commentary

[1] A lawyer should not express personal opinions or beliefs or assert as a fact anything that is properly subject to legal proof, cross-examination or challenge. The lawyer should not, in effect, appear as an unsworn witness or put the lawyer's own credibility in issue. The lawyer who is a necessary witness should testify and entrust the conduct of the case to another lawyer. There are no restrictions on the advocate's right to cross-examine another lawyer, however, and the lawyer who does appear as a witness should not expect or receive special treatment because of professional status.

Annotations

Federal Court

Butterfield v Canada (Attorney General), 2005 FC 396
It is not incompetent for a lawyer to swear an affidavit and then speak to that affidavit, but rather it is a situation that should be avoided, in particular where the affidavit deals with substantive matters. However, where Rules of Court allow, leave may be granted to counsel to speak to their affidavit, if there is good reason to do so.
Lex Tex Canada Ltd. v Duratex Inc., [1979] 2 FC 722, 13 CPC 153
The right of a party to fully cross-examine a witness is one of the most fundamental principles of our justice system and may become difficult if a lawyer is cross-examining opposing counsel.

Saskatchewan Court of Appeal

Bazant, Re, Bilson, University of Saskatchewan Faculty Association and Bazant v University of Saskatchewan, [1984] 4 WWR 238
It offends this rule to appear as counsel when another member of the lawyer's firm has not only given impugned evidence, but also later appeared as a witness.

Saskatchewan Court of King's Bench

Gerow v Dobko, 2018 SKQB 128
A lawyer is not automatically disqualified from acting on behalf of their client if they may be called as a witness in the matter. Each case must be considered on its own merits. If there is some doubt or merely a potential that a lawyer will be called as a witness at trial, the courts should be more generous in allowing the lawyer to remain on the record.

Adams v Canadian Tobacco Manufacturers' Council, 2010 SKQB 308
An articling student is required to act in accordance with the provisions of *The Legal Profession Act, 1990* and the Rules of the Law Society at all times. A lawyer cannot circumvent the requirements of this rule by directly an articling student, office administrator, paralegal, secretary or other employee of the firm who answers to them to do indirectly what the lawyer cannot do directly themselves.

Baltzan v Ahmad, 2008 SKQB 414
Same case as 2008 SKQB 62. Here, the other party sought to remove the opposing party, because a former member of the firm drafted the will that is the subject of the litigation and would likely be called as a witness. [Note, they were interpreting the old *Code of Professional Conduct*]. Where a former member of a firm that is representing one party may be called to testify in the matter, there is no breach of the rule or mischief sought to be prevented. The Code section dealing with a lawyer acting as a witness does not extend to former members of the firm.

Saskatoon Credit Union Ltd v Creighton Holdings Ltd, [1987] 64 Sask R 297
A lawyer should not serve as both advocate and witness, nor should members of their firm testify in proceedings where the lawyer is acting as advocate.

Law Society of Saskatchewan Conduct Review

2014 SKLSCR 6
A lawyer providing testimony by swearing an affidavit as a statement of fact on behalf of their client is misleading and constitutes an abuse of process.

Law Society of Saskatchewan Ethics Rulings

2009 SKLSPC 4
Where a lawyer may be required to testify about representations made between counsel, the evidence would like be more than "purely formal or uncontroverted" and therefore the lawyer would be required to withdraw from representation in that matter.

2003 SKLSPC 11
Where an affidavit is on a narrow issue no longer relevant in the proceedings and there is no danger of the lawyer acting as a witness again, a lawyer is not disqualified from continuing to act.

1996 SKLSPC 5
A firm is not precluded from acting in a matter where it had previously provided legal advice. The mere possibility that an associate may testify is not sufficient to warrant removal of

representation. However, if an associate does testify, the firm will have to withdraw.
1995 SKLSPC 24
A lawyer who appears as advocate should not submit their own affidavit or testify. This also applies to the lawyer's partners and associates.
1995 SKLSPC 21
It is inappropriate for a lawyer, especially speaking to matters in chambers, to provide evidence to the chamber judge that is not before the Court in any material field.

Other Sources

Marton v Wood Gundy Inc, 2013 ONSC 1246
Calling counsel to testify against their client should be avoided wherever possible and should only be permitted in the most extraordinary circumstances showing high materiality and necessity.
Talisman Resort GP Inc v Kyser, Usling et al, 2013 ONSC 1901
There is no jurisprudence that a lawyer or advocate shall not tender evidence submitted by a partner or associate. It is discretionary and requires a flexible case by case approach.
Rice v Smith et al, 2013 ONSC 1200
A lawyer must not become an unsworn witness or put their credibility in issue but the lawyer who is a necessary witness should testify and entrust the conduct of the case to someone else.
James Lockyer, "An Agent Acting as an Expert Witness: "What Harm Can It Do?"" (2007) 20 Can J Admin L & Prac 141.
A discussion of why the roles of counsel and witness cannot be combined and the challenges that arise if they are.

Appeals

5.2-2 A lawyer who is a witness in proceedings must not appear as advocate in any appeal from the decision in those proceedings, unless the matter about which he or she testified is purely formal or uncontroverted.

Annotations

Law Society of Saskatchewan Ethics Rulings

2020 SKLSPC 5
Where an appeal is brought by the Crown to overturn a sentence imposed by the trial judge that is lower than the sentence put forward under a joint submission, circumstances in which trial/sentencing defence counsel could continue to represent the client on the appeal are extremely limited and would depend on the specific facts of the matter.

5.3 Interviewing Witnesses *[deleted and incorporated into section 5.4]*

5.4 COMMUNICATING WITH WITNESSES

5.4-1 A lawyer may seek information from any potential witness, provided that:

(a) before doing so, the lawyer discloses the lawyer's interest in the matter;

(b) the lawyer does not encourage the witness to suppress evidence or to refrain from providing information to other parties in the matter; and

(c) the lawyer observes Rules 7.2-6 to 7.2-8 on communicating with represented parties.

Commentary

[1] There is generally no property in a witness. To achieve the truth-seeking goal of the justice system, any person having information relevant to a proceeding should be free to impart it voluntarily and in the absence of improper influence. A lawyer should not advise a potential witness to refrain from speaking to other parties except as provided in this rule.

Expert Witnesses

[2] Special considerations may apply when communicating with expert witnesses. Depending on the area of practice and the jurisdiction, there may be legal or procedural limitations on the permissible scope of a lawyer's contact with an expert witness, including the application of litigation or solicitor-client privilege. This may include notifying an opposing party's counsel prior to communicating with that party's expert witness.

Annotations

Saskatchewan Court of King's Bench

S.M. v Canada (Attorney General), 2005 SKQB 351
Both sides of a case are equally entitled to obtain information and interview witnesses.

Saskatchewan Provincial Court

R v Hitchings, 2017 SKPC 56
Defence should have the same opportunity as the Crown to obtain information within the knowledge of a potential witness. There is no property in a witness.

Law Society of Saskatchewan Ethics Rulings

2007 SKLSPC 3

A lawyer may not dissuade a witness from speaking with opposing counsel.

2004 SKLSPC 14

Lawyers retaining an expert witness may wish to advise as to what is and is not privileged. See also 2004 SKLSPC 12.

2004 SLKSPC 12

There is no property in a witness. Lawyers retaining an expert may not dissuade them from speaking with opposing counsel. It is up to the expert to decide if they wish to speak. See also 2004 SKLSPC 14.

2001 SKLSPC 25

Contacting a witness represented by opposing counsel is not unethical as there is no property in a witness. It would be unethical to harass a witness who has refused to speak with that lawyer.

1997 SKLSPC 9

It is not proper for a lawyer to draft opinions for expert witnesses to simply sign. A checklist of important issues is preferable and acceptable.

Conduct During Witness Preparation and Testimony

5.4-2 A lawyer must not influence a witness or potential witness to give evidence that is false, misleading or evasive.

5.4-3 A lawyer involved in a proceeding must not obstruct an examination or cross-examination in any manner.

Commentary

General Principles

[1] The ethical duty against improperly influencing a witness or a potential witness applies at all stages of a proceeding, including while preparing a witness to give evidence or to make a statement, and during testimony under oath or affirmation. The role of an advocate is to assist the witness in bringing forth the evidence in a manner that ensures fair and accurate comprehension by the tribunal and opposing parties.

[2] A lawyer may prepare a witness, for discovery and for appearances before tribunals, by discussing courtroom and questioning procedures and the issues in the case, reviewing facts, refreshing memory, and by discussing admissions, choice of words and demeanour. It is, however, improper to direct or encourage a witness to misstate or misrepresent the facts or to give evidence that is intentionally evasive or vague.

Communicating with Witnesses under Oath or Affirmation

[3] During any witness testimony under oath or affirmation, a lawyer should not engage in conduct designed to improperly influence the witness' evidence.

[4] The ability of a lawyer to communicate with a witness at a specific stage of a proceeding will be influenced by the practice, procedures or directions of the relevant tribunal, and may be modified by agreement of counsel with the approval of the tribunal. Lawyers should become familiar with the rules and practices of the relevant tribunal governing communication with witnesses during examination-in-chief and cross-examination, and prior to or during re-examination.

[5] A lawyer may communicate with a witness during examination-in-chief. However, there may be local exceptions to this practice.

[6] It is generally accepted that a lawyer is not permitted to communicate with the witness during cross-examination except with leave of the tribunal or with the agreement of counsel. The opportunity to conduct a full-ranging and uninterrupted cross-examination is fundamental to the adversarial system. It is counterbalanced by an opposing advocate's ability to ensure clarity of testimony through initial briefing, direct examination and re-examination of that lawyer's witnesses. There is therefore no justification for obstruction of cross-examination by unreasonable interruptions, repeated objections to proper questions, attempts to have the witness change or tailor evidence, or other similar conduct while the examination is ongoing.

[7] A lawyer should seek approval from the tribunal before speaking with a witness after cross-examination and before re-examination.

Discoveries and Other Examinations

[8] Section 5.4 also applies to examinations under oath or affirmation that are not before a tribunal including examinations for discovery, examinations on affidavits and examinations in aid of execution. Lawyers should scrupulously avoid any attempts to influence witness testimony, particularly as the tribunal is unable to directly monitor compliance. This rule is not intended to prevent discussions or consultations that are necessary to fulfill undertakings given during such examinations.

Annotations

Law Society of Saskatchewan Ethics Rulings
2006 SKLSPC 3
A lawyer can pursue, in their next witness, a direct line of questioning in an attempt to minimize damage caused by an earlier cross-

examination without ever having a conversation with that witness. There is a prohibition, however, on a lawyer from discussing any evidence given in court, either impliedly or expressly, with an excluded witness.

1996 SKLSPC 3

It is not improper for an expert to edit or rewrite a report upon the request of a lawyer, but it is of utmost importance that the expert's independence, objectivity, and integrity are not compromised. A request to alter the opinion of an expert on a matter at issue is improper.

Other Sources

Seshia v Health Sciences Centre, 2000 CanLII 20884, 147 Man R (2d) 318

Once cross-examination of a witness has begun, a lawyer should not communicate with their witness until the examination has been concluded or leave is obtained.

R v Sweezey, 1987 CanLII 3937, 66 Nfld & PEIR 29 A lawyer who wilfully counsels a witness to be evasive in giving evidence attempts to obstruct justice.

[Rule 5.4 amended in its entirety, April 29, 2016]

5.5 RELATIONS WITH JURORS

Communications before Trial

5.5-1 When acting as an advocate before the trial of a case, a lawyer must not communicate with or cause another to communicate with anyone that the lawyer knows to be a member of the jury panel for that trial.

Commentary

[1] A lawyer may investigate a prospective juror to ascertain any basis for challenge, provided that the lawyer does not directly or indirectly communicate with the prospective juror or with any member of the prospective juror's family. But a lawyer should not conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of either a member of the jury panel or a juror.

Disclosure of Information

5.5-2 Unless the judge and opposing counsel have previously been made aware of the information, a lawyer acting as an advocate must disclose to them any information of which the lawyer is aware that a juror or prospective juror:

(a) has or may have an interest, direct or indirect, in the outcome of the case;

(b) is acquainted with or connected in any manner with the presiding judge, any counsel or any litigant; or

(c) is acquainted with or connected in any manner with any person who has appeared or who is expected to appear as a witness

5.5-3 A lawyer must promptly disclose to the court any information that the lawyer reasonably believes discloses improper conduct by a member of a jury panel or by a juror.

Communication During Trial

5.5-4 Except as permitted by law, a lawyer acting as an advocate must not communicate with or cause another to communicate with any member of the jury during a trial of a case.

5.5-5 A lawyer who is not connected with a case before the court must not communicate with or cause another to communicate with any member of the jury about the case.

5.5-6 A lawyer must not have any discussion after trial with a member of the jury about its deliberations.

Commentary

[1] The restrictions on communications with a juror or potential juror should also apply to communications with or investigations of members of his or her family.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Kirkham, 1999 SKLS 8
It is conduct unbecoming for a prosecutor to fail to inform the Court that the police had been in contact with prospective jurors. See: *R v Kirkham*, 1998 CanLII 13866, [1999] 1 WWR 605

Other Sources

R v Sipes, 2011 BCSC 1499
It is inappropriate for a lawyer to communicate with a jury member during a trial while at the gym.

R v Caldough, 1961 CanLII 464, 36 WWR (NS) 426
It was improper practice for a lawyer to direct a third party to survey acting jurors with respect to issues involved in the trial.

5.6 THE LAWYER AND THE ADMINISTRATION OF JUSTICE

Encouraging Respect for the Administration of Justice

5.6-1 A lawyer must encourage public respect for and try to improve the administration of justice.

Commentary

[1] The obligation outlined in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen. A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements. Yet, for the same reason, a lawyer should not hesitate to speak out against an injustice.

[2] Admission to and continuance in the practice of law implies, on the part of a lawyer, a basic commitment to the concept of equal justice for all within an open, ordered and impartial system. However, judicial institutions will not function effectively unless they command the respect of the public, and, because of changes in human affairs and imperfections in human institutions, constant efforts must be made to improve the administration of justice and thereby, to maintain public respect for it.

[3] Criticizing Tribunals- Proceedings and decisions of courts and tribunals are properly subject to scrutiny and criticism by all members of the public, including lawyers, but judges and members of tribunals are often prohibited by law or custom from defending themselves. Their inability to do so imposes special responsibilities upon lawyers. First, a lawyer should avoid criticism that is petty, intemperate or unsupported by a bona fide belief in its real merit, since, in the eyes of the public, professional knowledge lends weight to the lawyer's judgments or criticism. Second, if a lawyer has been involved in the proceedings, there is the risk that any criticism may be, or may appear to be, partisan rather than objective. Third, when a tribunal is the object of unjust criticism, a lawyer, as a participant in the administration of justice, is uniquely able to, and should, support the tribunal, both because its members cannot defend themselves and because, in doing so, the lawyer contributes to greater public understanding of, and therefore respect for, the legal system.

[4] A lawyer, by training, opportunity and experience, is in a position to observe the workings and discover the strengths and weaknesses of laws, legal institutions and public authorities. A lawyer should, therefore, lead in seeking improvements in the legal system, but any criticisms and proposals should be bona fide and reasoned.

Annotations

Saskatchewan Court of Appeal

Merchant v Law Society of Saskatchewan, 2014 SKCA 56
It is conduct unbecoming for a lawyer to breach a court order and to counsel their client to do so by attempting to circumvent the order.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Merchant, 2012 SKLSS 6
See above for SKCA review decision.

Law Society of Saskatchewan v Peet, 1999 SKLS 10
It is conduct unbecoming for a lawyer to arrive late to court proceedings in which they were making submissions on multiple occasions.

Law Society of Saskatchewan Ethics Rulings

2020 SKLSPC 2
There is a difference in being critical of a politician as opposed to another lawyer or judicial institution. The Code allows members to speak out against injustice. A government organization is not immune to legitimate criticism.

Other Sources

Fontaine v Canada (Attorney General), 2018 ONSC 357
Lawyers have a duty not only to their clients, but to the administration of justice and the rule of law. It is unprofessional to accept instructions to make attacks on the integrity of the Court, as it threatens to interfere with the administration of justice.

Law Society of Upper Canada v Kimberly Lynne Townley-Smith, 2010 ONLSHP 77
It is conduct unbecoming to make public and persistent assertion that there is widespread corruption in the Superior Courts and other institutions and individuals. Further, repetitive conduct of litigation poses a risk to the public interest in the administration of justice.

Seeking Legislative or Administrative Changes

5.6-2 A lawyer who seeks legislative or administrative changes must disclose the interest being advanced, whether the lawyer's interest, the client's interest or the public interest.

Commentary

[1] The lawyer may advocate legislative or administrative changes on behalf of a client although not personally agreeing with them, but the lawyer who purports to act in the public interest should espouse only those changes that the lawyer conscientiously believes to be in the public interest.

Security of Court Facilities

5.6-3 A lawyer who has reasonable grounds for believing that a dangerous situation is likely to develop at a court facility must inform the persons having responsibility for security at the facility and give particulars.

Commentary

[1] If possible, the lawyer should suggest solutions to the anticipated problem such as:

(a) further security; or

(b) reserving judgment.

[2] If possible, the lawyer should also notify other lawyers who are known to be involved in proceedings at the court facility where the dangerous situation is likely to develop. Beyond providing a warning of danger, this notice is desirable because it may allow them to suggest security measures that do not interfere with an accused's or a party's right to a fair trial.

[3] If client information is involved in those situations, the lawyer should be guided by the provisions of section 3.3 (Confidentiality).

5.7 LAWYERS AND MEDIATORS

Role of Mediator

5.7-1 A lawyer who acts as a mediator must, at the outset of the mediation, ensure that the parties to it understand fully that:

(a) the lawyer is not acting as a lawyer for either party but, as mediator, is acting to assist the parties to resolve the matters in issue; and

(b) although communications pertaining to and arising out of the mediation process may be covered by some other common law privilege, they will not be covered by solicitor-client privilege.

Commentary

[1] In acting as a mediator, generally a lawyer should not give legal advice, as opposed to legal information, to the parties during the mediation process. This does not preclude the mediator from giving direction on the consequences if the mediation fails.

[2] Generally, neither the lawyer-mediator nor a partner or associate of the lawyer-mediator should render legal representation or give legal advice to either party to the mediation, bearing in mind the provisions of section 3.4 (Conflicts) and its commentaries and the common law authorities.

[3] If the parties have not already done so, a lawyer-mediator generally should suggest that they seek the advice of separate counsel before and during the mediation process, and encourage them to do so.

[4] If, in the mediation process, the lawyer-mediator prepares a draft contract for the consideration of the parties, the lawyer-mediator should expressly advise and encourage them to seek separate independent legal representation concerning the draft contract.

CHAPTER 6 – RELATIONSHIP TO STUDENTS, EMPLOYEES, AND OTHERS

6.1 SUPERVISION

Direct Supervision Required

6.1-1 A lawyer has complete professional responsibility for all business entrusted to them and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

Commentary

[1] A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on:

(a) the type of legal matter, including: the degree of standardization and repetitiveness of the matter, the risk associated with the specific legal matter; and

(b) the capacity of the non-lawyer to complete the task, including: the education, experience, and training of the non-lawyer generally and with regard to the matter in question, the demonstrated ethics, trustworthiness, and reliability of the non-lawyer, and the workload of the non-lawyer.

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.

[2] A lawyer who practises alone or operates a branch or part-time office should ensure that

(a) all matters requiring a lawyer's professional skill and judgment are dealt with by a lawyer qualified to do the work; and

(b) no unauthorized persons give legal advice, whether in the lawyer's name or otherwise.

[3] 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.

[4] 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 an approved pro bono program or 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 pro bono program or legal aid plan and assumes full professional responsibility for the work.

[5] 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 must consider the Commentary in this section and 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.

Annotations

Saskatchewan Court of Appeal

Merchant v Law Society of Saskatchewan, 2009 SKCA 33
Court of Appeal upheld the conviction but referred the matter of costs to the Registrar to determine. It is conduct unbecoming correspond with various potential clients and attach a retainer agreement that were reasonably capable of misleading the intended recipients.

Saskatchewan Court of King's Bench

Adams v Canadian Tobacco Manufacturers' Council, 2010 SKQB 308
An articling student is required to act in accordance with the provisions of *The Legal Profession Act, 1990* and the Rules of the Law Society at al times. A lawyer cannot circumvent the requirements of this rule by directing an articling student, office administrator, paralegal, secretary or other employee of the firm who answers to them to do indirectly what the lawyer cannot do directly themselves.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Dupont, 2019 SKLSS 3
It is conduct unbecoming not to take responsibility for disclosure or not to account for fees and disbursements in a timely fashion. It is conduct unbecoming not to deliver a bill in a reasonable amount of time. The responsibility lies with the lawyer to either not delegate business to support staff or to refuse to sign and send any letter not properly vetted.
Law Society of Saskatchewan v Sirois, 2015 SKLSS 4
It is conduct unbecoming to sign blank trust cheques for use by support staff when away from the office, to fail to supervise staff adequately such that staff are conducting legal files with little to no involvement by a lawyer, to not comply with client identification rules, to rely on an invalid power of attorney, to allow a third party to execute mortgage documents on behalf of a client, and to not inform

a client that documents were executed by a third party. The Lawyer had demonstrated significantly improved practice management since the offenses were identified, which warranted a lesser penalty.
Law Society of Saskatchewan v Merchant, 2006 SKLS 6
See above for SKCA review decision.

Law Society of Saskatchewan Ethics Rulings

1993 SKLSPC 10
Regardless of the knowledge and ability of a legal assistant, it is the lawyer whom the client trusts, pays, and will ultimately hold responsible.

Other Sources

Farkas v The Law Society of Ontario, 2019 ONSC 2028
Competent lawyers must ensure that they properly manage their practices by providing adequate training to and by supervising and approving the work of staff. See also *Law Society of Upper Canada v Farkas*, 2017 ONLSTH 75
Law Society of Upper Canada v Marler, 2014 ONLSTH 203
It is conduct unbecoming for a lawyer not to assume complete responsibility for their firm and to allow a manager to operate with little to no supervision.

Application

6.1-2 In this rule, a non-lawyer does not include a student-at-law.

Delegation

6.1-3 A lawyer must not permit a non-lawyer to:

(a) give legal advice;

(b) give or accept undertakings or accept trust conditions, except at the direction of and under the supervision of a lawyer responsible for the legal matter, providing that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;

(c) act finally without reference to the lawyer in matters involving professional legal judgment;

(d) be held out as a lawyer;

(e) be remunerated on a sliding scale related to the earnings of the lawyer, unless the non-lawyer is an employee of the lawyer; or

(f) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do.

Commentary

[1] A lawyer is responsible for any undertaking given or accepted and any trust condition accepted by a non-lawyer acting under their supervision.

[2] A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers or public officials or with the public generally, whether within or outside the offices of the law firm of employment.

[3] In real estate transactions using a system for the electronic submission or registration of documents, a lawyer who approves the electronic registration of documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

Suspended or Disbarred Lawyers

6.1-4 Without the express approval of the lawyer's governing body, a lawyer must not retain, occupy office space with, use the services of, partner or associate with or employ in any capacity having to do with the practice of law any person who, in any jurisdiction, has been disbarred and struck off the Rolls, suspended, undertaken not to practise or who has been involved in disciplinary action and been permitted to resign and has not been reinstated or readmitted.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Marwood, 2012 SKLSS 5
It is conduct unbecoming to make or attempt to make payments from trust or to provide legal services while suspended.

Law Society of Saskatchewan v Angus, 2009 SKLS 06
It is conduct unbecoming to make trust payments while suspended from practice. The operation of a trust account by a suspended lawyer is a serious breach.

Law Society of Saskatchewan v Robertson, 2006 SKLS 4
It is conduct unbecoming to breach a specific order not to practice placed on the lawyer by the Law Society

Law Society of Saskatchewan v Leslie, 1999 SKLS 1
It is conduct unbecoming to continue to practice after becoming a non-practicing member.

Electronic Registration of Documents

6.1-5 A lawyer who has personalized encrypted electronic access to any system for the electronic submission or registration of documents must not

(a) permit others, including a non-lawyer employee, to use such access; or

(b) disclose his or her password or access phrase or number to others.

6.1-6 When a non-lawyer employed by a lawyer has a personalized encrypted electronic access to any system for the electronic submission or registration of documents, the lawyer must ensure that the non-lawyer does not

(a) permit others to use such access; or

(b) disclose his or her password or access phrase or number to others.

Commentary

[1] The implementation of systems for the electronic registration of documents imposes special responsibilities on lawyers and others using the system. The integrity and security of the system is achieved, in part, by its maintaining a record of those using the system for any transactions. Statements professing compliance with law without registration of supporting documents may be made only by lawyers in good standing. It is, therefore, important that lawyers should maintain and ensure the security and the exclusively personal use of the personalized access code, diskettes, etc., used to access the system and the personalized access pass phrase or number.

[2] In a real estate practice, when it is permissible for a lawyer to delegate responsibilities to a non-lawyer who has such access, the lawyer should ensure that the non-lawyer maintains and understands the importance of maintaining the security of the system.

Annotations

Other Sources

Law Society of Upper Canada v Dillon, 2016 ONLSTH 167

It is conduct unbecoming to fail to supervise one's law practice and to effectively delegate complete care and control to a legal assistant, including one's sign-in to the electronic real estate registration diskette, thereby enabling the misappropriation and misapplication of trust funds.

Law Society of Upper Canada v Puskas, 2014 ONLSTA 12
It is conduct unbecoming not to properly supervise non-lawyer staff, including providing this staff with the ability to use the lawyer's electronic signature without approval.

[Rule 6.1-1 amended; 6.1-1, Commentary [1], [4], [5] amended, Commentary [6] deleted; Rule 6.1-3 (a), (c), (g), (h), (j), (k), (l), (m), (n) and (p) deleted, Commentary [1] amended, Sep. 23, 2022]

6.2 STUDENTS

Recruitment and Engagement Procedures

6.2-1 A lawyer must observe any procedures of the Society about the recruitment and engagement of articling or other students.

Duties of Principal

6.2-2 A lawyer acting as a principal to a student must provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession.

Commentary

[1] A principal or supervising lawyer is responsible for the actions of students acting under his or her direction.

Annotations

Law Society of Saskatchewan Discipline Decisions
Law Society of Saskatchewan v Duncan, 1997 SKLS 5
It is conduct unbecoming to counsel a student-at-law to act dishonestly.

Duties of Articling Student

6.2-3 An articling student must act in good faith in fulfilling and discharging all the commitments and obligations arising from the articling experience.

Annotations

Saskatchewan Court of King's Bench
Adams v Canadian Tobacco Manufacturers' Council, 2010 SKQB 308
An articling student is required to act in accordance with the provisions of *The Legal Professional Act, 1990* and the Rules of the Law Society at all times. A lawyer cannot circumvent the requirements of this rule by directing an articling student, office administrator, paralegal, secretary or other employee of the firm who answers to them to do indirectly what the lawyer cannot do directly themselves.

Law Society of Saskatchewan Discipline Decisions
Law Society of Saskatchewan v Armitage, 1997 SKLS 1
It is conduct unbecoming for a student-at-law to alter their transcript grades in their application for an articling position.

Law Society of Saskatchewan Ethics Rulings
1987 SKLSPC 8
Students-at-law must sign documents with designation of their student status.

6.3 DISCRIMINATION AND HARASSMENT

6.3-1 A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.

Commentary

[1] Lawyers are uniquely placed to advance the administration of justice, requiring lawyers to commit to equal justice for all within an open and impartial system. Lawyers are expected to respect the dignity and worth of all persons and to treat all persons fairly and without discrimination. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in such laws.

[2] In order to reflect and be responsive to the public they serve, a lawyer must refrain from all forms of discrimination and harassment, which undermine confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful, accessible, and inclusive, and should strive to recognize their own internal biases and take particular care to avoid engaging in practices that would reinforce those biases, when offering services to the public and when organizing their workplace.

[3] Indigenous peoples may experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being willfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.

[4] Lawyers should be aware that discrimination includes adverse effect and systemic discrimination, which arise from organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal treatment of a person or persons. Lawyers should consider the distinct needs and circumstances of their colleagues, employees, and clients, and should be alert to unconscious biases that may inform these relationships and that serve to perpetuate systemic discrimination and harassment. Lawyers should guard against any express or implicit assumption that another person's views, skills, capabilities, and contributions are

necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.

[5] Discrimination is a distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, which has the effect of imposing burdens, obligations or disadvantages on the individual or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and advantages that are available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Intersecting grounds of discrimination require consideration of the unique oppressions that result from the interplay of two or more protected grounds in a given context.

[6] The principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this Rule and to Rules 6.3-2 to 6.3-4. A lawyer has a responsibility to stay apprised of developments in the law pertaining to discrimination and harassment, as what constitutes discrimination, harassment, and protected grounds continue to evolve over time and may vary by jurisdiction.

[7] Examples of behaviour that constitute discrimination include, but are not limited to:

(a) harassment (as described in more detail in the Commentary to Rules 6.3-2 and 6.3-3);

(b) refusing to employ or to continue to employ any person on the basis of any personal characteristic protected by applicable law;

(c) refusing to provide legal services to any person on the basis of any personal characteristic protected by applicable law;

(d) charging higher fees on the basis of any personal characteristic protected by applicable law;

(e) assigning lesser work or paying an employee or staff member less on the basis of any personal characteristic protected by applicable law;

(f) using derogatory racial, gendered, or religious language to describe a person or group of persons;

(g) failing to provide reasonable accommodation to the point of undue hardship;

(h) applying policies regarding leave that are facially neutral (i.e. that apply to all employees equally), but which have the effect of penalizing individuals who take parental leave, in terms of seniority, promotion or partnership;

(i) providing training or mentoring opportunities in a manner which has the effect of excluding any person from such opportunities on the basis of any personal characteristic protected by applicable law;

(j) providing unequal opportunity for advancement by evaluating employees on facially neutral criteria that fail to take into account differential needs and needs requiring accommodation;

(k) comments, jokes or innuendos that cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive;

(l) instances when any of the above behaviour is directed toward someone because of their association with a group or individual with certain personal characteristics; or

(m) any other conduct which constitutes discrimination according to any applicable law.

[8] It is not discrimination to establish or provide special programs, services or activities which have the object of ameliorating conditions of disadvantage for individuals or groups who are disadvantaged for reasons related to any characteristic protected by applicable laws.

[9] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Harassment

6.3-2 A lawyer must not harass a colleague, employee, client or any other person.

Commentary

[1] Harassment includes an incident or a series of incidents involving physical, verbal or non-verbal conduct (including electronic communications) that might reasonably be expected to cause humiliation, offence or intimidation to the person who is subjected to the conduct. The intent of the lawyer engaging in the conduct is not

determinative. It is harassment if the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation. Harassment may constitute or be linked to discrimination.

[2] Examples of behaviour that constitute harassment include, but are not limited to:

(a) objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments and displays that demean, belittle, intimidate or cause humiliation or embarrassment;

(b) behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;

(c) bullying;

(d) verbal abuse;

(e) abuse of authority where a lawyer uses the power inherent in their position to endanger, undermine, intimidate, or threaten a person, or otherwise interfere with another person's career;

(f) comments, jokes or innuendos that are known or ought reasonably to be known to cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive; or

(g) assigning work inequitably.

[3] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or non-verbal conduct. It is characterized by conduct that might reasonably be expected to harm or damage the physical or psychological integrity of another person, their reputation or their property. Bullying includes, but is not limited to:

(a) unfair or excessive criticism;

(b) ridicule;

(c) humiliation;

(d) exclusion or isolation;

(e) constantly changing or setting unrealistic work targets; or

(f) threats or intimidation.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Sexual Harassment

6.3-3 A lawyer must not sexually harass a colleague, employee, client or any other person.

Commentary

[1] Sexual harassment is an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. It is sexual harassment if the lawyer knew or ought to have known that the conduct would be unwelcome. Sexual harassment may occur:

(a) when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the person who is subjected to the conduct;

(b) when submission to such conduct is implicitly or explicitly made a condition for the provision of professional services;

(c) when submission to such conduct is implicitly or explicitly made a condition of employment;

(d) when submission to or rejection of such conduct is used as a basis for any employment decision, including;

(i) Loss of opportunity;

(ii) The allocation of work;

(iii) Promotion or demotion;

(iv) Remuneration or loss of remuneration;

(v) Job security; or

(vi) Benefits affecting the employee;

(e) when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;

(f) when a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees or colleagues; or

(g) when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[2] Examples of behaviour that constitute harassment include, but are not limited to:

(a) displaying sexualized or other demeaning or derogatory images;

(b) sexually suggestive or intimidating comments, gestures or threats;

(c) comments, jokes that cause humiliation, embarrassment or offence, or which by their nature, and in their context, are clearly embarrassing, humiliating or offensive;

(d) innuendoes, leering or comments about a person’s dress or appearance;

(e) gender-based insults or sexist remarks;

(f) communications with sexual overtones;

(g) inquiries or comments about a person’s sex life;

(h) sexual flirtations, advances, propositions, invitations or requests;

(i) unsolicited or unwelcome physical contact or touching;

(j) sexual violence; or

(k) unwanted contact or attention, including after the end of a consensual relationship.

[3] Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes sexual harassment.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

Reprisal

6.3-4 A lawyer must not engage or participate in reprisals against a colleague, employee, client or any other person because that person has:

(a) inquired about their rights or the rights of others;

(b) made or contemplated making a complaint of discrimination, harassment or sexual harassment;

(c) witnessed discrimination, harassment or sexual harassment; or;

(d) assisted or contemplated assisting in any investigation or proceeding related to a complaint of discrimination, harassment or sexual harassment.

Commentary

[1] The purpose of this Rule is to enable people to exercise their rights without fear of reprisal. Conduct which is intended to retaliate against a person, or discourage a person from exploring their rights, can constitute reprisal. Examples of such behaviour include, but are not limited to:

(a) refusing to employ or to continue to employ any person;

(b) penalizing any person with respect to that person's employment or changing, in a punitive way, any term, condition or privilege of that person's employment;

(c) intimidating, retaliating against or coercing any person;

(d) imposing a pecuniary or any other penalty, loss or disadvantage on any person;

(e) changing a person's workload in a disadvantageous manner, or withdrawing opportunities from them; or

(f) threatening to do any of the foregoing.

6.3-5 A lawyer must not discriminate against any person.

Commentary

[1] A lawyer has a special responsibility to respect the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Laporte, 2006 SKLS 12.
Sexual harassment is the practice of using a position of power for inappropriate sexual purposes.
It is conduct unbecoming to suggest to a work colleague that you would like to have sexual relations with them. These acts constitute sexual harassment. This is also a breach of integrity.
It is sexual harassment to meet with a client at the Lawyer's home and attempt to engage in sexual relations with them.
Law Society of Saskatchewan v Zunti, 1996 SKLS 9.
It is conduct unbecoming to plead guilty to harassment under the *Criminal Code* but not report it to the Law Society.

Law Society of Saskatchewan Conduct Review

2018 SKLSCR 2
Unwelcome, vulgar, explicit, or demeaning comments in the workplace by a lawyer in an employer/employee relationship or in a solicitor/client relationship constitute harassment.

Other Sources

Butterfield, Re, 2017 LSBC 2
An overview of what a discipline panel may consider when determining a harassment complaint.

CHAPTER 7 – RELATIONSHIP TO THE SOCIETY AND OTHER LAWYERS

7.1 RESPONSIBILITY TO THE SOCIETY AND THE PROFESSION GENERALLY

Annotations

Saskatchewan Court of Appeal

Kumar v The Law Society of Saskatchewan, 2015 SKCA 132
The Court upheld the sentence on the basis that it was reasonable.
Original decision: 2013 SKLSS 4.
It is conduct unbecoming to provide false and misleading information in an application for admission to the Law Society. Misleading information included failing to disclose their former membership, name changes, and disbarment.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Ottenbreit, 2012 SKLSS 4
It is conduct unbecoming to sign as a witness without having actually witnessed the client sign the document and to mislead a Law Society practice advisor.

Communications from the Society

7.1-1 A lawyer must reply promptly and completely to any communication from the Society.

Annotations

Saskatchewan Court of Appeal

Peet v The Law Society of Saskatchewan, 2014 SKCA 109
The Court upheld the Hearing Committee's decision for being reasonable. Discipline proceedings of this sort do not engage s.11(b) of the *Charter*, nor did the delay result in a breach of administrative law principles.
Original Decision: 2013 SKLSS 5.
Responding promptly to the Law Society is at the heart of professional regulation and a cornerstone of the right to self-govern. The guideline of three requests from the Law Society for response is not an unreasonable guideline. Responses to the Law Society require a stricter standard, because failing to respond jeopardizes the Law Society's ability to carry out its legislated mandate.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Webb, 2019 SKLSS 4
It is conduct unbecoming to consistently avoid the Law Society and not to respond to reasonable communications and demands without explanation.
Law Society of Saskatchewan v Peet, 2017 SKLSS 2
It is conduct unbecoming not to communicate with the Law Society promptly. The panel accepted that a six-month delay to a request from the Society is unreasonable and unprofessional.

Law Society of Saskatchewan v Adsit, 2016 SKLSS 7
It is conduct unbecoming to deceive the Law Society in an investigation of a complaint. The Lawyer aggravated the situation once confronted with an infraction, which was especially troubling and deserved its own additional sanction. A profession invested with the authority to govern itself must demonstrate that its members conduct themselves to the highest standards. Misleading the regulator is a hallmark of ungovernability.

Law Society of Saskatchewan v Stonechild, 2013 SKLSS 8
It is conduct unbecoming not to respond repeatedly to letters from the Law Society.

Law Society of Saskatchewan v Tilling, 2013 SKLSS 12
It is conduct unbecoming to recklessly provide assurances to the Law Society without knowing whether or not the assurances were true or false.

Law Society of Saskatchewan v LeClair-Harding, 2013 SKLSS 7
It is conduct unbecoming not to respond to communications from the Law Society or the Court.

Law Society of Saskatchewan v Peet, 2013 SKLSS 5
See above for SKCA review decision.

Law Society of Saskatchewan v Kumar, 2013 SKLSS 4
See above for SKCA review decision.

Law Society of Saskatchewan v Hardy, 2012 SKLSS 3
It is conduct unbecoming to fail to respond promptly to the Law Society.

Law Society of Saskatchewan v Rogers, 2011 SKLSS 9
Lawyer resigned in the face of discipline, equivalent to disbarment. Due to mental health issues, the Lawyer was paralyzed on several files and failed to provide complete, accurate, or prompt action with respect to several clients.
In addition, the Lawyer failed to respond to the Law Society.

Law Society of Saskatchewan v McCullough, 2011 SKLSS 2
The Law Society initiated two complaints against the Lawyer for failing to satisfy reporting obligations. The Lawyer eventually met their obligations but failed to respond promptly to the Law Society with respect to the complaints.

Law Society of Saskatchewan v Baumgartner, 2010 SKLSS 1
It is conduct unbecoming to not remedy an issue relating to trust funds identified by the Law Society Auditor within a year, without any reasonable reason for the delay.

Law Society of Saskatchewan v Braun, 2009 SKLS 1
It is conduct unbecoming to fail to respond to correspondence from the Law Society for several months.

The Law Society of Saskatchewan v Elliott-Erickson, 2008 SKLSS 03
It is conduct unbecoming not to comply with the annual requirement for a practice declaration form on time.

Law Society of Saskatchewan v Hardy, 2007 SKLS 5
It is conduct unbecoming to form a pattern of failure to promptly respond to communications from the Law Society.

Law Society of Saskatchewan v Welsh, 2006 SKLS 9
It is conduct unbecoming not to comply to with Law Society Rules about closing a practice and not to respond to communications regarding such.

Law Society of Saskatchewan v McLean, 2006 SKLS 8
It is conduct unbecoming not to be prompt in replying to communications from the Law Society.

Law Society of Saskatchewan v Mattison, 2006 SKLS 5
It is conduct unbecoming not to properly reply to communications from the Law Society.

Law Society of Saskatchewan v Robertson, 2006 SKLS 4
It is conduct unbecoming not to reply to Law Society communications.

Law Society of Saskatchewan v Hagen, 2006 SKLS 3
It is conduct unbecoming not to respond to complaints correspondence from the Law Society on two occasions.

Law Society of Saskatchewan v Angus, 2005 SKLS 5
It is conduct unbecoming not to comply with Law Society rules about closing a practice and not to respond to communications regarding such.

Law Society of Saskatchewan v Dirk, 2005 SKLS 3
It is conduct unbecoming not to respond reasonably and promptly to the Law Society auditor.

Law Society of Saskatchewan v Tilling, 2005 SKLS 2
It is conduct unbecoming to refuse to speak with the Law Society investigator or to cooperate with an investigation.

Law Society of Saskatchewan v Peet, 2004 SKLS 8
It is conduct unbecoming not to respond to the Law Society at all.

Law Society of Saskatchewan v Hardy, 2004 SKLS 4
It is conduct unbecoming never to respond to the complaints officer.

Law Society of Saskatchewan v Caron, 2004 SKLS 2
It is conduct unbecoming not to return correspondence and phone calls to the Law Society and other lawyers over an extended period of time.

Law Society of Saskatchewan v MacLowich, 2003 SKLS 8
It is conduct unbecoming to not respond to the Law Society (discipline and audit) within a reasonable amount of time.

Law Society of Saskatchewan v Parker, 2002 SKLS 8
It is conduct unbecoming to mislead the Law Society by stating that the Lawyer had not contracted with the client, when the Lawyer had.
It is conduct unbecoming to not withdraw funds from a trust account as soon as practicable. In one instance this was in an effort to avoid seizure by CRA.

Law Society of Saskatchewan v Nugent, 2002 SKLS 7
It is conduct unbecoming to provide the Law Society with false correspondence and a false trial brief.

Law Society of Saskatchewan v Peet, 1999 SKLS 10
It is conduct unbecoming not to respond to the Law Society with respect to three complaints.

Law Society of Saskatchewan Conduct Review

2020 SKLSCR 3
A lawyer should seek an extension to respond to the Law Society rather than simply not respond.

2017 SKLSCR 1
Lawyer represented to opposing counsel that an appraisal that had been rushed specifically for the pre-trial had not been received, when it had. The Lawyer denied having received the emailed copy prior to pre-trial, as it went to their junk mail. The fact that the appraisal had been rushed raised doubts as to the knowledge of the Lawyer or their diligence in preparation. A Lawyer must have diligence in preparing for matters and in all dealings with the Law Society. A busy practice or life is no excuse for failing to immediately and fully cooperate with the Law Society.

2012 SKLSCR 7
A lawyer should communicate with the Law Society in a timely manner.

Law Society of Saskatchewan Ethics Rulings

2005 SKLSPC 7
Rulings of the Law Society may be overridden by the courts, but the Law Society cautions that its rulings should not be ignored.

2002 SKLSPC 2
"Without Prejudice" communications are kept from the courts in order to protect negotiations and encourage settlements. They do not prevent the Law Society from viewing these communications. See also 2002 SKLSPC 6.

1000 SKLSPC 28
It is professional misconduct to fail to answer promptly any letter received from the secretary of the Law Society of Saskatchewan.

Law Society of Saskatchewan Admissions and Education Decisions

Law Society of Saskatchewan v Rogers, 2016 SKLSS 11
The Applicant applied for re-instatement after resigning in the face of discipline for repeated unbecoming conduct including failing to respond to the Law Society. See Integrity section for further notes.

Law Society of Saskatchewan v Burns, 2013 SKLSS 3
Application to be a student-at-law denied due to a potential risk posed to the public and profession given the candidate's past criminal issues and former unprofessional conduct in pursuing a legal profession in Ontario and the Northwest Territories. Applicant was not initially up-front with other law societies about previous professional discipline.

Meeting Financial Obligations

7.1-2 A lawyer must promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a professional liability insurance policy, when called upon to do so.

Commentary

[1] In order to maintain the honour of the Bar, lawyers have a professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed or undertaken on behalf of clients, unless, before incurring such an obligation, the lawyer clearly indicates in writing that the obligation is not to be a personal one.

[2] When a lawyer retains a consultant, expert or other professional, the lawyer should clarify the terms of the retainer in writing, including specifying the fees, the nature of the services to be provided and the person responsible for payment. If the lawyer is not responsible for the payment of the fees, the lawyer should help in making satisfactory arrangements for payment if it is reasonably possible to do so.

[3] If there is a change of lawyer, the lawyer who originally retained a consultant, expert or other professional should advise him or her about the change and provide the name, address, telephone number, fax number and email address of the new lawyer.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Zawislak, 2016 SKLSS 1/2016 SKLSS 2
It is conduct unbecoming to put the security of client information at risk by failing to keep up with payments of a storage locker containing files and by failing to notify the Law Society of the situation.

Law Society of Saskatchewan v Stevenson, 2013 SKLSS 9
It is conduct unbecoming not to meet financial obligations with respect to payment of PST on client accounts.

Law Society of Saskatchewan v LeClair-Harding, 2013 SKLSS 7
It is conduct unbecoming to abandon practice without making appropriate arrangements for client documents and information.

Law Society of Saskatchewan v Chornoby, 2010 SKLSS 8
It is conduct unbecoming to misappropriate funds, not to remit PST and GST collected to the government as required by law, and to evade taxes by understating one's income.

Law Society of Saskatchewan v Zawislak, 2005 SKLS 6
It is conduct unbecoming not to pay an account due for fees incurred through legal practice within a reasonable amount of time.

Law Society of Saskatchewan v Robertson, 2002 SKLS 1
It is conduct unbecoming not to keep up with practice payments or payment of a lawyer's employees.

Law Society of Saskatchewan v Wasylyshen, 1999 SKLS 6
It is conduct unbecoming not to discharge debts incurred in the course of practice.

Law Society of Saskatchewan v Hampton, 1998 SKLS 6
It is conduct unbecoming not to discharge debts incurred in the course of practice.
Law Society of Saskatchewan v Angus, 1998 SKLS 5
It is conduct unbecoming not to meet the financial obligations incurred in leasing office space for a lawyer's legal practice.
Law Society of Saskatchewan v Robertson, 1998 SKLS 4
It is conduct unbecoming not to pay fees for work done in the course of practice for a lengthy period of time.
Law Society of Saskatchewan v Wallace, 1996 SKLS 7
It is conduct unbecoming not to file required trust account forms as required when the Lawyer closed their practice.

Law Society of Saskatchewan Ethics Rulings

2006 SKLSPC 12
If a lawyer personally undertook to be responsible for an expert's fees, they must uphold their undertaking and pay the fees.
2004 SKLSPC 2
A lawyer should be careful when accepting, paying and dealing with bills from another lawyer on behalf of a client. The lawyer may be seen to be responsible for the bill as "incurred in the course of practice" if they continue to accept bills and forward same to the client rather than directing the lawyer or third party to deal directly with the client.
2002 SKLSPC 5
A lawyer may be obligated to pay an expert's account incurred in the course of practice; however, it is beyond the jurisdiction of the Law Society to determine whether the amount of the expert's invoice is reasonable. If the quantum is at issue, this is a matter for the Court and not the Law Society.
Related to: 2001 SKLSPC 32
2001 SKLSPC 32
A lawyer has an obligation to pay an account incurred in the course of practice when due. Unless there is an agreement that the third party will wait until judgment to pay the invoice, it should be considered due upon receipt.
Related to: 2002 SKLSPC 5
2001 SKLSPC 13
If set out in an agreement, an expert's account should be paid up front.
1999 SKLSPC 16
The appropriate procedure when there are agency accounts is for a lawyer to send a letter and copy the client clearly outlining the referral, the services, and the payment.
1989 SKLSPC 11
If a lawyer is not prepared to be personally responsible for the payment of expert witness fees, they should make their position clear *in writing* at the time the obligation is incurred.
1988 SKLSPC 11
All agency agreements need to be reduced to writing with the terms for payment and responsibility for payment of parties like medical experts explicitly set out. Lawyers have a duty to pay agency accounts.

1984 SKLSPC 3
A Lawyer requesting a medical report is responsible for paying the physician when billed. The Lawyer expects a fairly prompt and adequate report and in turn the physician expects prompt payment, regardless of the outcome of the legal proceedings.
1000 SKLSPC 39
A lawyer is obligated to promptly attend to payment of accounts accrued through legal practice whether or not the lawyer is able to collect from their clients.

Duty to Report

7.1-3 Unless to do so would be unlawful or would involve a breach of solicitor-client privilege, a lawyer must report to the Society:

(a) the misappropriation or misapplication of trust monies;

(b) the abandonment of a law practice;

(c) participation in criminal activity related to a lawyer's practice;

(d) conduct that raises a substantial question as to another lawyer's honesty, trustworthiness, or competency as a lawyer;

(e) conduct that raises a substantial question about the lawyer's capacity to provide professional services; and

(f) any situation in which a lawyer's clients are likely to be materially prejudiced.

Commentary

[1] Unless a lawyer who departs from proper professional conduct or competence is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer). In all cases, the report must be made without malice or ulterior motive.

[2] Nothing in this rule is meant to interfere with the lawyer-client relationship.

[3] Instances of conduct described in this rule can arise from a variety of stressors, physical, mental or emotional conditions, disorders or addictions. Lawyers who face such challenges should be encouraged by other lawyers to seek assistance as early as possible.

[4] The Society supports professional support groups, such as Lawyers Concerned for Lawyers, in their commitment to the provision of confidential counselling. Therefore, lawyers providing peer support for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in serious misconduct or in criminal activity related to the lawyer's practice or there is a substantial risk that the lawyer may in the future engage in such conduct or activity. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Robertson, 2002 SKLS 1
It is conduct unbecoming for a lawyer knowingly not to report a shortage in their trust account resulting from charging clients without billing.

Law Society of Saskatchewan v Zunti, 1996 SKLS 9
It is conduct unbecoming to plead guilty to harassment under the *Criminal Code* but not to report it to the Law Society.

Law Society of Saskatchewan Ethics Decisions

1999 SKLSPC 15
The preservation of client confidentiality overrides the duty to report a client believed to be practicing without proper Saskatchewan Law Society accreditation.

1995 SKLSPC 12
Threatening civil action is improper if used as an intimidation tactic, but if a Lawyer has a genuine belief that another lawyer is acting improperly, it is improper for the Lawyer not to say so.

Encouraging Client to Report Dishonest Conduct

7.1-4 A lawyer must encourage a client who has a claim or complaint against an apparently dishonest lawyer to report the facts to the Society as soon as reasonably practicable.

Commentary

[1] A lawyer must not act on a client's instructions to recover from another lawyer funds allegedly misappropriated by that other lawyer unless the client authorizes disclosure to the Law Society and the lawyer makes such disclosure. The lawyer has an obligation to advise the client in writing that failure to report the facts to the Law Society may negatively affect the amount recoverable by the client pursuant to a claim which the client may have against the Special Fund. The lawyer has an obligation to inform the client of the provision of The Criminal Code of Canada dealing with the concealment of an indictable offence in return for an agreement to obtain valuable consideration.

[Rule 7.1-3 heading and (d), (e) & (f) amended; 7.1-3, Commentary [1], [2], [3] & [4] amended, April 29, 2016]

7.2 RESPONSIBILITY TO LAWYERS AND OTHERS

Courtesy and Good Faith

7.2-1 A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

Commentary

[1] The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their functions properly.

[2] Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.

[3] A lawyer should 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.

[4] A lawyer should agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities and similar matters that do not prejudice the rights of the client.

Annotations

Note: For decisions dealing with **inappropriate or abusive communication**, see Rule 7.2-4, and for decisions dealing with **failure to promptly respond to opposing parties**, see Rule 7.2-5

Supreme Court of Canada

Groia v Law Society of Upper Canada, 2018 SCC 27
A lawyer's duty to act with civility does not exist in a vacuum: it exists in concert with a series of professional obligations. Free expression,

resolute advocacy, and the right to make a full defence must not be sacrificed at the altar of civility.

Doré v Barreau du Québec, 2012 SCC 12

Lawyers not only have a right to speak their minds freely, they arguably have a duty to do so, but they are constrained by their profession to do so with dignified restraint.

Saskatchewan Court of Appeal

Oledzki v The Law Society of Saskatchewan, 2010 SKCA 120

The Court upheld the disbarment on the basis that it was reasonable. Original decision: 2009 SKLS 4

It is conduct unbecoming to mislead other lawyers. Where the Lawyer's conduct manifests a pattern of dishonesty, the character of the lawyer becomes incompatible with the standards required to practice.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v de Whytell, 2020 SKLSS 7

It is conduct unbecoming to send correspondence to a client that contains abusive, offensive, or language otherwise inconsistent with the proper tone of a lawyer. Here, the Lawyer sent an email with a satirical poem with vulgar language and references to death, suicide and killing, and violent metaphors. The email was sent in the context of preparing for a criminal proceeding for sexual assault. Although the intent may have been to reinforce the client's confidence and candour, this went beyond the boundaries of appropriate conduct.

Law Society of Saskatchewan v Turner, 2020 SKLSS 1

Lawyers have a very privileged role when it comes to dealing with the Court and other bodies, such as ISC. With that privilege comes the responsibility to ensure documents that are submitted are accurate and executed appropriately. Any deviation from the high standard expected of lawyers threatens the protection of the public and the perception of the profession.

It is conduct unbecoming to fabricate a transfer authorization by cutting and pasting the client's signature from another document and then to cause it to be submitted to, and thereby mislead, ISC.

It is conduct unbecoming to have clients swear affidavits purporting to exhibit documents that were not yet in existence and which contained information that the Lawyer knew to be false.

Law Society of Saskatchewan v Dupont, 2019 SKLSS 3

It is conduct unbecoming to mislead opposing counsel recklessly by stating the Lawyer had sent requested information without regard for whether their statements were true.

Law Society of Saskatchewan v Blenner-Hassett, 2018 SKLSS 6

It is conduct unbecoming not to act with courtesy, civility, and in good faith in a series of communications towards another lawyer. Comments were dishonest and amounted to abuse.

Law Society of Saskatchewan v Bachynski, 2018 SKLSS 5

It is conduct unbecoming to repeatedly mislead a client and another lawyer at firm about the unfavourable results of a court decision.

Law Society of Saskatchewan v Martens, 2016 SKLSS 12
It is conduct unbecoming to mislead other lawyers and to create and use false documents with the intent or belief that others would act on them.
Law Society of Saskatchewan v Pradzynski, 2016 SKLSS 6
It is conduct unbecoming to knowingly mislead opposing counsel.
Law Society of Saskatchewan v Gollan, 2016 SKLSS 3
It is conduct unbecoming to submit an Application for Probate on behalf of only one of two joint executors without notifying the lawyer who was actively representing the other joint executor.
Law Society of Saskatchewan v Cherkewich, 2014 SKLSS 3
It is conduct unbecoming to fail to treat an adjudicator, who is also a lawyer, with courtesy and respect, by presenting a retainer agreement written on a piece of toilet paper.
Law Society of Saskatchewan v Ferraton, 2014 SKLSS 2
It is conduct unbecoming to fabricate a signature by cutting and pasting previous client signatures and to mislead ISC by submitting the fabricated document.
Law Society of Saskatchewan v Goby, 2011 SKLSS 10
It is conduct unbecoming to prepare and submit false affidavits of property value, to mislead ISC, and to misuse trust accounts of clients by withdrawing funds before completing work or accounts due.
Law Society of Saskatchewan v Baumgartner, 2010 SKLSS 1
It is conduct unbecoming to mislead a Law Society practice advisor by misrepresenting the status of files.
Law Society of Saskatchewan v Armitage, 2009 SKLSS 4
It is conduct unbecoming to file a false registration on behalf of their client and to provide inaccurate information to the Law Society.
Law Society of Saskatchewan v Oledzki, 2009 SKLS 4
See above for SKCA review decision.
Law Society of Saskatchewan v Peet, 2008 SKLSS 5
It is conduct unbecoming to attempt to mislead a fellow member of the Law Society by misrepresenting the status of a real estate transaction to that lawyer's legal assistant.
Law Society of Saskatchewan v Peet, 2004 SKLS 8
It is conduct unbecoming not to conclude matters within a reasonable amount of time. This is not acting in good faith
Law Society of Saskatchewan v Tilling, 2004 SKLS 1
It is conduct unbecoming for a lawyer to lie to their client and to a fellow lawyer about steps they had not taken regarding an appeal.
Law Society of Saskatchewan v Dynna, 2003 SKLS 11
It is conduct unbecoming for a lawyer to swear and submit an affidavit without having the client swear it before them.
Law Society of Saskatchewan v Segal, 2002 SKLS 4
It is conduct unbecoming to mislead fellow lawyers and clients with respect to past actions.
Law Society of Saskatchewan v Mahon, 2001 SKLS 3
It is conduct unbecoming to forge a witness signature on a mortgage document.
Law Society of Saskatchewan v Kemp, 2001 SKLS 1
It is conduct unbecoming to establish a pattern of misleading behaviour towards clients and other lawyers.

Law Society of Saskatchewan v Peet, 1999 SKLS 10
It is conduct unbecoming to mislead fellow lawyers, thereby treating them with a lack of courtesy and respect.
Law Society of Saskatchewan v Segal, 1999 SKLS 4
Where a client makes false testimony, the Lawyer should request an adjournment or bring the incorrectness to the attention of counsel opposite. Failing to do so is conduct unbecoming. If the client refuses to cooperate, the Lawyer must withdraw.
Law Society of Saskatchewan v Churchman, 1998 SKLS 2
It is conduct unbecoming to mislead and not communicate with another lawyer and not to comply with undertakings.
Law Society of Saskatchewan v Welsh, 1997 SKLS 4
It is conduct unbecoming to refuse to confirm or deny the existence of a potentially relevant document and not to respond to a fellow lawyer.
Law Society of Saskatchewan v Zawislak, 1996 SKLS 3/ 1996 SKLS 4
It is conduct unbecoming to swear and submit a false affidavit.

Law Society of Saskatchewan Conduct Review

2017 SKLSCR 1
Lawyer represented to opposing counsel that an appraisal that had been rushed specifically for the pre-trial had not been received, when it had. The Lawyer denied having received the emailed copy prior to pre-trial, as it went to their junk mail. The fact that the appraisal had been rushed raised doubts as to the knowledge of the Lawyer or his diligence in preparation. A Lawyer must have diligence in preparing for matters.
2014 SKLSCR 6
A lawyer providing testimony via an affidavit as a statement of fact on behalf of their client is misleading and constitutes an abuse of process.
2014 SKLSCR 3
A lawyer repeatedly contacted third parties and divulged personal matters of the opposing party. While it is recognized that a lawyer may make reasonable inquiry of third parties, a lawyer must take care not to cross the boundaries of professional and ethical obligations.
2013 SKLSCR 2
The Lawyer erred in not providing notice for passing accounts to the Public Guardian and Trustee. It is important to give notice of applications to potentially opposing parties, to provide full and frank disclosure to the Court when an application without notice (previously: *ex parte* application) is made, and to separate one's duties as a lawyer and an executor.

Law Society of Saskatchewan Ethics Rulings

2010 SKLSPC 6
It is a breach of the Code of Professional Conduct to question the validity and nature of another lawyer's work without foundation, as the Rule requires that a lawyer's conduct toward other lawyers should be characterized by courtesy and good faith.

2010 SKLSPC 4
When dealing with a self-represented litigant, it is preferable that a lawyer's dealings be reduced to writing to avoid misunderstandings.
2010 SKLSPC 3
Although lawyers may not have a positive duty to respond as requested by a self-represented litigant (Acknowledgements of Service), civility at a minimum requires a response of some form. Even in the face of repeated requests of a self-represented litigant, lawyers have a responsibility to respond at a minimum, and on one occasion to advise them where they could locate the proper procedure.
2009 SKLSPC 8
Where a lawyer is retained for a narrow purpose and is contacted by counsel opposite that falls outside that retainer, the lawyer should inform counsel opposite that they are no longer retained and did not have instructions.
2006 SKLSPC 7
Petty haranguing, particularly about money or billing between lawyers, brings the profession into disrepute and should be avoided.
2005 SKLSPC 13
Lawyers cannot change a previously signed document without further consent even if the change is immaterial. Once consent is obtained, a lawyer has a positive duty to advise opposing counsel of what changes were made.
2004 SKLSPC 13
If a lawyer plans to criticize another lawyer on appeal, it would be appropriate to provide them with a copy of the factum. However, in these circumstances, service on the Crown was sufficient, as presumably, the Crown handling the appeal would provide a copy to the trial Crown.
2003 SKLSPC 26
Correspondence will not be characterized as misleading in negotiations if statements were asserted as the belief of the client and not as fact.
2003 SKLSPC 25
Lawyers should err on the side of caution in disclosing letters that may be characterized as letters without prejudice and not append them to affidavits. In this situation, it would have been sufficient for the lawyer to describe the germane contents of the letter without appending it.
2003 SKLSPC 21
A lawyer may retain a lien on money in trust. However, that lawyer should inform opposing counsel of the intention to maintain a lien, so that the opposing party would have the opportunity to challenge, if needed.
2003 SKLSPC 20
A lawyer may have an ethical obligation to tell their client that they should pay their former representation, but a lawyer does not have an obligation to act as a collection agent.
2002 SKLSPC 29
A lawyer is under no obligation to tell (new) opposing counsel about prior court decisions on the matter. There is no obligation at the disclosure stage to perform the other lawyer's research. Although they may feel some discomfort in such a situation, a lawyer cannot

disadvantage their own client by telling the other side what they know.

2002 SKLSPC 24

It is not unethical for a lawyer to direct opposing counsel to obtain a copy of a transcript from their previous lawyer, rather than the opposing party, as there is possibility that there is a solicitor's lien.

2002 SKLSPC 15

A lawyer must not: denigrate the skills and abilities of another lawyer; hold themselves out as a specialist; and refuse to act opposite another lawyer. The client has the freedom to choose who will represent them and a lawyer should not attempt to influence the opposing party's choice of representation.

2002 SKLSPC 11

Absent undertakings or accepted trust conditions or any illegality, a lawyer is bound to follow the instructions of their client. If the required actions breach a document or agreement, the lawyer should advise their clients of the potential consequences.

2000 SKLSPC 16

A lawyer sending to an unrepresented debtor's employer a copy of documents to garnishee is not unethical, because they were public documents and there was no indication this was done for any purpose other than to enforce the valid judgment against the unrepresented party.

1996 SKLSPC 8

It is not proper to disclose correspondence that includes proposals or other negotiations unless the correspondence discloses an agreement to do so. Correspondence need not be marked with "without prejudice" to invoke this privilege. Further, letters marked "without privilege" are not necessarily privileged. One must look to the contents to determine if correspondence may or may not be disclosed.

1994 SKLSPC 16

"Without Prejudice" offers of settlement should not be disclosed at pre-trial conferences without consent; however, imposing an obligation on a lawyer not to disclose the existence of a letter places that lawyer in an untenable position.

1994 SKLSPC 10

While lawyers should accede to reasonable requests for adjournments, there is also an obligation on the requesting party to provide as much notice as possible. The Committee did not impugn the conduct of the lawyer denying the request for an adjournment of trial six days prior to it commencing.

1986 SKLSPC 13

Personal service of legal documents does not constitute improper communication with another lawyer's client. Such conduct, however, is lacking in courtesy and good faith to opposing counsel.

Other Sources

Michael Code, "Counsel's Duty of Civility: An Essential Component of Fair Trials and an Effective Justice System" (2007) 11 Can Crim L Rev 97

Civility is a requirement of professional conduct and the enforcement of this standard is the responsibility of the profession.

7.2-2 A lawyer must avoid sharp practice and must not take advantage of or act without fair warning upon slips, irregularities or mistakes on the part of other lawyers not going to the merits or involving the sacrifice of a client's rights.

Annotations

Law Society of Saskatchewan Ethics Rulings

2020 SKLSPC 3

It is highly unlikely that one colleague can engage in sharp practice against another colleague in the same office.

2014 SKLSPC 4

Although a lawyer did not intend to be unfair in negotiations, the manner in which they proceeded raises the spectre of sharp practice.

2014 SKLSPC 2

While it may be advisable in certain cases to allow greater latitude to opposing counsel regarding deadlines, where a lawyer provides clear warning on two occasions to opposing counsel that if the Statement of Defence was not received by a certain date, they would be noted for default, it is not sharp practice to follow through on those terms.

2014 SKLSPC 1

It is sharp practice not to advise new opposing counsel of noting the opposing party in default after receiving the Notice of Change of Solicitor. See also 1993 SKLSPC 3.

2012 SKLSPC 8

In a real estate transaction, it is implicit that trust conditions/undertakings will be imposed when documents are exchanged. It is sharp practice for a lawyer to take advantage of an opposing counsel's error in not imposing conditions. At the very least, the Lawyer receiving the documents should have followed up with opposing counsel as to whether they meant to include trust conditions.

2012 SKLSPC 3

It is a breach of common courtesy and therefore sharp practice to note opposing counsel without notice, notwithstanding correspondence between the parties indicating that one party would note the other in default without notice.

2007 SKLSPC 6

Where opposing lawyers know that there are potential amendments to a contract, it is inappropriate for one lawyer to unilaterally proceed based on the contract in its current written form without notifying the opposing lawyer.

2001 SKLSPC 36

A lawyer's obligation to a client is foremost. Without any undertaking or trust condition, a lawyer is not under an obligation to inform an opposing lawyer that a writ had not attached. The lawyer followed their client's instructions.

1999 SKLSPC 24

Despite a lack of trust conditions, it is improper for a lawyer not to return documents on request, as custom dictates that trust conditions should not always be absolutely necessary and there is a higher professional obligation not to take advantage of such a situation.

1999 SKLSPC 4
Service is effected immediately upon delivery of documents. The recipient lawyer is required to answer with reasonable promptness. If the lawyer has the ability to refuse service, withholding an answer takes advantage of the practice of courtesy.
1995 SKLSPC 26
Demand letters should not be misleading. Here, the letter suggested that *The Small Claims Act* gave the store a right to collect debt from the parents of shoplifters, rather than making the Court the arbiter of such a claim.
1994 SKLSPC 24
It is not unreasonable or sharp practice for a lawyer to protect the interests of their own client over and above the interests of the opposing party.
1993 SKLSPC 9
It is improper to disclose letters or other communications marked "without prejudice" without the consent of the opposing lawyer.
1993 SKLSPC 3
Noting the opposing party in default and proceeding to Chambers without notification is sharp practice.

7.2-3 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.

Annotations

Law Society of Saskatchewan Ethics Rulings
2007 SKLSPC 10
It is inappropriate for a lawyer to be involved at all in tape-recording a telephone call with the opposing party or to be seen to be party to it by allowing the recording to take place at the lawyer's legal office without notifying the opposing party.
1995 SKLSPC 15
If a lawyer wishes to record even just part of a conversation (their part), the lawyer should advise the other side of the recording.

Communications

7.2-4 A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

Annotations

Supreme Court of Canada
Groia v Law Society of Upper Canada, 2018 SCC 27
A lawyer's duty to act with civility does not exist in a vacuum: it exists in concert with a series of professional obligations. Free expression,

resolute advocacy, and the right to make a full defence must not be sacrificed at the altar of civility.

Doré v Barreau du Québec, 2012 SCC 12

Lawyers not only have a right to speak their minds freely, they arguably have a duty to do so, but they are constrained by their profession to do so with dignified restraint.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v de Whytell, 2020 SKLSS 7

It is conduct unbecoming to send correspondence to a client that contains abusive, offensive, or language otherwise inconsistent with the proper tone of a lawyer. Here, the lawyer sent an email with a satirical poem with vulgar language and references to death, suicide and killing, and violent metaphors. The email was sent in the context of preparing for a criminal proceeding for sexual assault. Although the intent may have been to reinforce the client's confidence and candour, this went beyond the boundaries of appropriate conduct.

Law Society of Saskatchewan v Blenner-Hassett, 2018 SKLSS 6

It is conduct unbecoming not to act with courtesy, civility, and in good faith in a series of communications towards another lawyer. Comments were dishonest and amounted to abuse.

Law Society of Saskatchewan v Blenner-Hassett, 2014 SKLSS 4

It is conduct unbecoming to send offensive and abusive letters to a fellow Lawyer and opposing party.

Law Society of Saskatchewan v Zawislak, 1996 SKLS 3/ 1996 SKLS 4

The Lawyer wrote a letter in poor taste. Such letters have an adverse effect on the profession as a whole.

Law Society of Saskatchewan Conduct Reviews

2019 SKLSCR 3

Being nearly email and text illiterate does not excuse muddled and angry emails. There are CPD programs to help educate lawyers to achieve more professional electronic communication.

Law Society of Saskatchewan Ethics Rulings

2013 SKLSPC 1

A lawyer's actions may be aggressive and not qualify as abusive so long as they are in accordance with the client's instructions, qualify as a statement of fact, and are not outside a lawyer's professional obligations.

2011 SKLSPC 2

Suggesting that the Lawyer "will personally see to it that [the opposing parties] are charged with theft" is very close to the line, but not a breach of the Code (Note: the Committee interpreted the former Code). A Lawyer must remain objective and must not allow personal animosity or emotions to cloud their judgment and/or communications with an opposing party, particularly a self-represented individual. A Lawyer should guard against unprofessional letters or letters which could be construed as such.

2010 SKLSPC 2
Lawyers have a responsibility not to attempt to influence a decision of a tribunal by use of threat, whether intended or not. Inappropriate conduct is inappropriate whether or not the lawyer is acting on the instruction of their client and it does not alleviate a lawyer's responsibility.
2008 SKLSPC 8
A letter attempting to intimidate and strongarm the opposing party is inappropriate.
2007 SKLSPC 5
If the parties had a more generous *de facto* child access agreement than the previous written version, it would be inappropriate for the Lawyer to threaten to reduce access. Acrimonious family matters require lawyers to be neutral and objective.
2007 SKLSPC 2
Lawyers are not to write professional correspondence which could be construed as threatening or intimidating.
2005 SKLSPC 3
Lawyers must be careful not to lose perspective and become adversarial with each other. Such behaviour is not in the best interests of the clients.
2004 SKLSPC 6
A lawyer should not make intemperate comments in professional correspondence.
2001 SKLSPC 12
Using language that exacerbates the situation rather than attempting to resolve it is not appropriate. Lawyers should not blur the distinction between their position as advocate, their personal opinion, and that of their client.
2000 SKLSPC 19
Proper professional tone takes into account the seriousness of a matter. Casual approaches to communication should be avoided.
1996 SKLSPC 7
It is in poor taste to imply in a demand letter that the Lawyer and creditor could simply walk in and seize the debtor's goods and lands without a court process. When including potential consequences, a lawyer should clearly outline the rights of creditors and specify that further court process is required.
1995 SKLSPC 26
Demand letters should not be misleading. Here, the letter suggested that *The Small Claims Act* gave the store a right to collect debt from the parents of shoplifters, rather than making the Court the arbiter of such a claim.
1990 SKLSPC 4
A lawyer has a duty to respond to professional communications even if it is in the negative.

7.2-5 A lawyer must answer with reasonable promptness all professional letters and communications from other lawyers that require an answer, and a lawyer must be punctual in fulfilling all commitments.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v MacLeod, 2018 SKLSS 4
It is conduct unbecoming not to respond with reasonable promptness to an opposing party and not to carry out the requirements of a court order

Law Society of Saskatchewan v Scott, 2016 SKLSS 5
It is conduct unbecoming not to respond within a reasonable time to another lawyer. A delay of ten months was considered unreasonable.

Law Society of Saskatchewan v Gollan, 2016 SKLSS 3
It is conduct unbecoming not to reply to a fellow lawyer within a reasonable amount of time (two months, where an immediate reply was required.)

Law Society of Saskatchewan v Trunks, 2013 SKLSS 11
It is conduct unbecoming not to reply repeatedly to emails from a fellow lawyer for almost two years.

Law Society of Saskatchewan v Stonechild, 2013 SKLSS 8
It is conduct unbecoming not to reply to communications from a fellow lawyer on matters related to litigation for several years.

Law Society of Saskatchewan v Kloppenburg, 2011 SKLSS 3
It is conduct unbecoming to fail to reply to other members of the Law Society for approximately six months.

Law Society of Saskatchewan v Werry, 2010 LSS 3
Three requests from a client, another lawyer, or the Law Society, with a reasonable deadline given to respond, should be sufficient to justify a complaint to the Society. (Sometimes referred to as the "Three Strike Rule".)

Law Society of Saskatchewan v Filyk, 2008 SKLS 1
It is conduct unbecoming to fail to respond to opposing counsel for several months.

Law Society of Saskatchewan v Hardy, 2006 SKLS 10
It is conduct unbecoming not to reply promptly to correspondence received.

Law Society of Saskatchewan v McLean, 2006 SKLS 8
It is conduct unbecoming not to be prompt in replying to communications from other lawyers regarding open files.

Law Society of Saskatchewan v Mattison, 2006 SKLS 5
It is conduct unbecoming not to reply to communication received.

Law Society of Saskatchewan v Hagen, 2006 SKLS 3
It is conduct unbecoming not to respond promptly or provide required documentation to another lawyer when clients retained new counsel.

Law Society of Saskatchewan v MacLowich, 2005 SKLS 1
It is conduct unbecoming to fail to respond to garnishee summons on a trust account.

Law Society of Saskatchewan v Nugent, 2002 SKLS 7
It is conduct unbecoming not to respond to communications from a fellow lawyer, on approximately 12 occasions.

Law Society of Saskatchewan v Borden, 2002 SKLS 3
It is conduct unbecoming to fail to respond to requests from another lawyer on a timely basis.

Law Society of Saskatchewan v Lannan, 2001 SKLS 4
Failure to respond to communications promptly is a failure to treat fellow lawyers with courtesy and good faith.

Law Society of Saskatchewan v Hansen, 1999 SKLS 2
It is conduct unbecoming not to reply to a series of correspondence from a fellow lawyer for over a year.
Law Society of Saskatchewan v Churchman, 1998 SKLS 2
It is conduct unbecoming to mislead and not communicate with another lawyer and not to comply with undertakings.

Law Society of Saskatchewan Conduct Rulings

2012 SKLSCR 7
A lawyer should take time to communicate in a timely manner.

Law Society of Saskatchewan Ethics Rulings

2020 SKLSPC 2
Where a lawyer is not prepared to provide an immediate response to questions that are not frivolous or vexatious, the lawyer should acknowledge the questions and advise that a response is forthcoming or object to the question rather than not responding at all.
2010 SKLSPC 3
Although lawyers may not have a positive duty to respond as requested by a self-represented litigant (Acknowledgements of Service), civility at a minimum requires a response of some form. Even in the face of repeated requests of a self-represented litigant, lawyers have a responsibility to respond at a minimum, and on one occasion to advise them where they could locate the proper procedure.
2009 SKLSPC 8
Where a lawyer is retained for a narrow purpose and is contacted by counsel opposite that falls outside that retainer, the lawyer should inform counsel opposite that they are no longer retained and did not have instructions.
2001 SKLSPC 29
There is a professional obligation to respond to another lawyer. If a lawyer requests opposing counsel to send a draft order for review, counsel should either provide the draft for review or respond with reasons for refusal.
1999 SKLSPC 29
A lawyer owes a professional duty to opposing counsel to provide notice for intention to note for default when such is requested and to promptly respond to communications, even after the matter is noted for default.
1994 SKLSPC 6
Where a lawyer of record has agreed to accept service via mail, the recipient lawyer is obliged to accept service and return documents as soon as reasonably possible.

7.2-6 Subject to Rules 7.2-6A and 7.2-7, if a person is represented by a lawyer in respect of a matter, another lawyer must not, except through or with the consent of the person's lawyer:

(a) approach, communicate or deal with the person on the matter; or

(b) attempt to negotiate or compromise the matter directly with the person.

7.2-6A Where a person is represented by a lawyer under a limited scope retainer on a matter, another lawyer may, without the consent of the lawyer providing the limited scope legal services, approach, communicate or deal with the person directly on the matter unless the lawyer has been given written notice of the nature of the legal services being provided under the limited scope retainer and the approach, communication or dealing falls within the scope of that retainer.

Commentary

[1] Where notice as described in Rule 7.2-6A has been provided to a lawyer for an opposing party, the opposing lawyer is required to communicate with the person's lawyer, but only to the extent of the limited representation as identified by the lawyer. The opposing lawyer may communicate with the person on matters outside of the limited scope retainer.

Annotations

Law Society of Saskatchewan Conduct Rulings

2016 SKLSCR 1

When acting for a client involving the sale of an estate asset, once the Lawyer is advised that at least one of the estate beneficiaries had retained a lawyer, the Lawyer should direct all communication for that beneficiary to that lawyer. Directions from a client do not override the duty to not communicate directly with represented parties.

A lawyer should maintain complete and clear notes about communications with an opposing lawyer. In particular, where the opposing lawyer is providing consent to contact their client directly. Such authorization for direct contact is best confirmed in writing. This matter is an example of where poor communication can lead to an acrimonious parting and a complaint.

Law Society of Saskatchewan Ethics Rulings

2015 SKLSPC 5

A Lawyer should make reasonable effort to contact the last lawyer on record before directly corresponding with the opposing party.

2011 SKLSPC 5

The duty to respond in a timely manner applies to opposing self-represented litigants as much as opposing counsel. When a self-represented litigant is also on a limited scope retainer, the opposing lawyer should take proactive steps to clarify the extent of the retainer so as to know what issues should be communicated with the client directly.

2006 SKLSPC 13
Contacting an opposing client or opposing client's office directly is a breach of ethics despite the frustrations of a lawyer not being able to contact opposing counsel.
2003 SKLSPC 15
There is no ethical obligation for a lawyer to attend mediation. In such circumstances, the opposing lawyer may deal with the clients directly.
2002 SKLSPC 16
Where a new lawyer is acting for a client, the former lawyer, if they have an outstanding account, should: contact the new lawyer and ask if they will represent the client with respect to the debt owed. If yes, the former lawyer may ask the new lawyer for consent to contact the client directly. If the new lawyer does not consent, all communications must proceed only through the new lawyer. If the new lawyer gives consent or is not representing the client with respect to the account owed, the former lawyer may contact the client directly solely with respect to collection of their account.
2002 SKLSPC 9
Once an authorization to transfer a file is received, the former lawyer should not contact the client except through or with the consent of the successor lawyer. Sending a copy of the correspondence to the client is considered direct contact.
2000 SKLSPC 22
It is inappropriate to attend a meeting with one's client and the opposing party without the knowledge or consent of the opposing lawyer.
1999 SKLSPC 23
Lawyers should be diligent in maintaining work at their practice so that a lawyer who has a time sensitive matter is not placed in a position where they try to contact the opposing client directly.
1999 SKLSPC 28
The requirement not to contact former clients may be waived by the successor lawyer with respect to fees.
1999 SKLSPC 20
Once an authorization for transfer is received, a former firm may only contact the former client through their new representation, including communications regarding their bill.
1992 SKLSPC 19
Upon the receipt of a direction to transfer the file of a client, the solicitor-client relationship must be treated as being effectively at an end. Further contact with that client is improper.
1991 SKLSPC 7
A demand letter should not be sent directly to an opposing party even if the opposing lawyer is not responding to communications.
1991 SKLSPC 3
It is improper to contact another lawyer's client to discuss matters related to, but not directly the subject of, a matter.
1990 SKLSPC 3
A lawyer should not meet with another lawyer's client without their knowledge or consent.
1989 SKLSPC 6
It is improper for a lawyer to contact another lawyer's client by providing that client with copies of correspondence.

1986 SKLSPC 13
Personal service of legal documents does not constitute improper communication with another lawyer's client. Such conduct, however, is lacking in courtesy and good faith to opposing counsel.
1984 SKLSPC 6
A lawyer should not communicate with or attempt to negotiate or compromise directly with any party who is represented by a lawyer except by the consent of that lawyer.
1983 SKLSPC 1
Communicating to an opposing party through the lawyer's own client regarding settlement is not improper if the parties can settle between themselves. However, this procedure should not be actively encouraged.
1000 SKLSPC 31
It is improper for a lawyer retained by a mortgage company to approach another lawyer's client and attempt to coerce a purchaser to use their services for the purchase as well.
1000 SKLSPC 30
When a matter is in litigation, a lawyer who is contacted by a client of opposing counsel should not discuss the case with that client until the lawyer confirms that the other lawyer is no longer representing or acting for the client.
1000 SKLSPC 29
When a lawyer has knowledge that a client was formerly represented, the lawyer should, as a matter of practice, check with the other lawyer to ensure that the client's retainer is at an end prior to attending on the client.

7.2-7 A lawyer who is not otherwise interested in a matter may give a second opinion to a person who is represented by a lawyer with respect to that matter.

Commentary

[1] Rule 7.2-6 applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract or negotiation, who is represented by a lawyer concerning the matter to which the communication relates. A lawyer may communicate with a represented person concerning matters outside the representation. This rule does not prevent parties to a matter from communicating directly with each other.

[2] The prohibition on communications with a represented person applies only where the lawyer knows that the person is represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but actual knowledge may be inferred from the circumstances. This inference may arise when there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade

the requirement of obtaining the consent of the other lawyer by closing his or her eyes to the obvious.

[3] Rule 7.2-7 deals with circumstances in which a client may wish to obtain a second opinion from another lawyer. While a lawyer should not hesitate to provide a second opinion, the obligation to be competent and to render competent services requires that the opinion be based on sufficient information. In the case of a second opinion, such information may include facts that can be obtained only through consultation with the first lawyer involved. The lawyer should advise the client accordingly and, if necessary, consult the first lawyer unless the client instructs otherwise.

7.2-8 A lawyer retained to act on a matter involving a corporate or other organization represented by a lawyer must not approach an officer or employee of the organization:

(a) who has the authority to bind the organization;

(b) who supervises, directs or regularly consults with the organization's lawyer; or

(c) whose own interests are directly at stake in the representation;

in respect of that matter, unless the lawyer representing the organization consents or the contact is otherwise authorized or required by law.

Commentary

[1] This rule applies to corporations and other organizations. "Other organizations" include partnerships, limited partnerships, associations, unions, unincorporated groups, government departments and agencies, tribunals, regulatory bodies and sole proprietorships. This rule prohibits a lawyer representing another person or entity from communicating about the matter in question with persons likely involved in the decision-making process for a corporation or other organization. If an agent or employee of the organization is represented in the matter by a lawyer, the consent of that lawyer to the communication will be sufficient for purposes of this rule. A lawyer may communicate with employees or agents concerning matters outside the representation.

[2] A lawyer representing a corporation or other organization may also be retained to represent employees of the corporation or organization. In such circumstances, the

lawyer must comply with the requirements of section 3.4 (Conflicts), and particularly Rules 3.4-5 through 3.4-9. A lawyer must not represent that he or she acts for an employee of a client, unless the requirements of section 3.4 have been complied with, and must not be retained by an employee solely for the purpose of sheltering factual information from another party.

Annotations

Law Society of Saskatchewan Ethics Rulings

2003 SKLSPC 7

When providing payout to a financially institution directly, a lawyer should at least copy the financial institution's representation. Any changes to payment constitute negotiation and should be directly dealt with between lawyers.

2001 SKLSPC 27

Where a lawyer is acting in the capacity of an officer of a corporation, it is permissible for the lawyer to have direct contact with the opposing organization. However, the lawyer should be very cautious, be clear to the opposing party that while they are a lawyer, they are not acting in that capacity, and advise them of whom their counsel is.

1995 SKLSPC 3

It is not reasonable to prohibit all communications between a lawyer and shareholders if the lawyer is also a shareholder, but there must be no communication on any point of law or fact at issue.

1993 SKLSPC 8

Communication rules regarding represented parties apply to individuals, corporations, Ministers, Agencies, etc. This does not preclude a lawyer from appearing before a board as an administrative tribunal.

7.2-9 When a lawyer deals on a client's behalf with an unrepresented person, the lawyer must:

(a) urge the unrepresented person to obtain independent legal representation;

(b) take care to see that the unrepresented person is not proceeding under the impression that his or her interests will be protected by the lawyer; and

(c) make it clear to the unrepresented person that the lawyer is acting exclusively in the interests of the client.

Commentary

[1] If an unrepresented person requests the lawyer to advise or act in the matter, the lawyer should be governed by the considerations outlined in this rule about joint retainers.

Annotations

Law Society of Saskatchewan Conduct Review

2019 SKLSCR 2

The Lawyer should have made more of an effort to negotiate and communicate with an opposing unrepresented party.

Law Society of Saskatchewan Ethics Rulings

2015 SKLSPC 6

There is no increased obligation on a lawyer because the purchasers in an agreement are unrepresented. Since the agreement was unclear, however, the lawyer should have taken steps to clarify the terms.

2006 SKLSPC 6

In dealing with an unrepresented person, a lawyer must be very careful not to be seen as less than forthcoming or to be bullying.

2005 SKLSPC 5

Threatening criminal action in a letter is unacceptable and could be viewed as an abuse of a lawyer's position of power against a self-represented party.

1984 SKLSPC 4

In every case where there is any doubt as to whether the opposing party is capable of protecting themselves, it is the duty of the lawyer to see, if possible, that the other party is adequately represented.

Inadvertent Communications

7.2-10 A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent must promptly notify the sender.

Commentary

[1] Lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this rule requires the lawyer to notify the sender promptly in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these rules, as is the question of

whether the privileged status of a document has been lost. Similarly, this rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this rule, "document" includes email or other electronic modes of transmission subject to being read or put into readable form.

[2] Some lawyers may choose to return a document unread, for example, when the lawyer learns before receiving the document that it was inadvertently sent to the wrong address. Unless a lawyer is required by applicable law to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer.

Annotations

Law Society of Saskatchewan Ethics Rulings

2008 SKLSPC 7

Where a lawyer receives correspondence which, on a reasonable consideration of the circumstances, appears to have been sent in error, the lawyer has an obligation to determine whether the correspondence was sent in error and to act accordingly.

1000 SKLSPC 37

If a lawyer receives a letter not intended for them, good faith requires the lawyer to return the inadvertent letter to the intended recipient and to give fair warning if they intend to use any of the information contained in the letter.

Other Sources

Martin & Profile Legal Services v Ontario, 2011 ONSC 5724

The mere loss of physical possession of privileged communications as a result of inadvertent disclosure does not automatically waive or terminate the privilege.

Undertakings and Trust Conditions

7.2-11 A lawyer must not give an undertaking that cannot be fulfilled and must fulfill every undertaking given and honour every trust condition once accepted.

Commentary

[1] Undertakings should be written or confirmed in writing and should be absolutely unambiguous in their terms. If a lawyer giving an undertaking does not intend to accept personal responsibility, this should be stated clearly in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given is entitled to expect that the lawyer giving it will honour it personally. The use of such words as

"on behalf of my client" or "on behalf of the vendor" does not relieve the lawyer giving the undertaking of personal responsibility.

[2] Trust conditions should be clear, unambiguous and explicit and should state the time within which the conditions must be met. Trust conditions should be imposed in writing and communicated to the other party at the time the property is delivered. Trust conditions should be accepted in writing and, once accepted, constitute an obligation on the accepting lawyer that the lawyer must honour personally. The lawyer who delivers property without any trust condition cannot retroactively impose trust conditions on the use of that property by the other party.

[3] The lawyer should not impose or accept trust conditions that are unreasonable, nor accept trust conditions that cannot be fulfilled personally. When a lawyer accepts property subject to trust conditions, the lawyer must fully comply with such conditions, even if the conditions subsequently appear unreasonable. It is improper for a lawyer to ignore or breach a trust condition he or she has accepted on the basis that the condition is not in accordance with the contractual obligations of the clients. It is also improper to unilaterally impose cross conditions respecting one's compliance with the original trust conditions.

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

[5] Trust conditions can be varied with the consent of the person imposing them. Any variation should be confirmed in writing. Clients or others are not entitled to require a variation of trust conditions without the consent of the lawyer who has imposed the conditions and the lawyer who has accepted them.

[6] Any trust condition that is accepted is binding upon a lawyer, whether imposed by another lawyer or by a lay person. A lawyer may seek to impose trust conditions upon a non-lawyer, whether an individual or a corporation or other organization, but great caution should be exercised in so doing since such conditions would be enforceable only through the courts as a matter of contract law and not by reason of the ethical obligations that exist between lawyers.

[7] A lawyer should treat money or property that, on a reasonable construction, is subject to trust conditions or an undertaking in accordance with these Rules.

[8] A lawyer should not impose on other lawyers impossible, impractical or manifestly unfair conditions of trust, including those with respect to time restraints and the payment of penalty interest. In addition, the lawyer shall not impose trust conditions which have the effect of altering the terms of the transaction.

[9] A lawyer shall not, when acting for the purchaser in a real estate transaction, undertake personal responsibility for a transaction by guaranteeing payment. Conversely the lawyer, when acting for the vendor in a real estate transaction, shall not impose upon the lawyer acting for the purchaser a trust condition which requires the lawyer for the purchaser to guarantee closure of the transaction by personally guaranteeing payment of the entire purchaser price.

[10] Nothing in this paragraph shall prevent a lawyer for the purchaser from accepting a trust condition nor a lawyer for the vendor from imposing a trust condition which imposes a guarantee of closure where the purchaser's lawyer has the full purchase price in his or her possession at the time of acceptance of the trust condition and the funds are fully releaseable upon closing.

Annotations

Saskatchewan Court of Appeal

McLean v The Law Society of Saskatchewan, 2012 SKCA 7
The Court reduced the penalty, because the Hearing Committee erred when it refused to consider and weigh the explanations for the Lawyer's actions and the Committee mischaracterized the Lawyer's conduct, turning mitigating factors into aggravating ones.
Original decision: 2009 SKLSS 3
It is conduct unbecoming to hold funds subject to trust conditions/undertakings and in breach of those trust conditions/undertakings to secure a client's position, or to follow client's instructions.
Robertson v Law Society of Saskatchewan, 1983 CanLII 2077, 22 Sask R 57
It is conduct unbecoming for a lawyer to use funds under trust conditions knowing that they could not comply with the conditions. Intention to defraud is not required.

Saskatchewan Court of King's Bench

darWall Consultants Inc. v Power, 2000 SKQB 420
Where a lawyer personally guarantees the payment of an expert's account regardless of the outcome of legal action, the Court will uphold the guarantee.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v MacKay, 2019 SKLSS 1
It is conduct unbecoming not to comply with an agreed upon condition (even if it is was not an explicit trust condition) in a real estate agreement and release funds prior to fulfillment of obligations.

Law Society of Saskatchewan v Mah, 2017 SKLSS 9
Where the lawyer has forfeitable deposit paid into trust on behalf of their client for real estate purchase, it is conduct unbecoming to return the money to the client instead of upholding the terms of the implied undertaking.

Law Society of Saskatchewan v Scott, 2016 SKLSS 5
It is conduct unbecoming not to comply with a trust condition in a timely manner. Here failing to comply within 2 and 4 years was not acceptable.

Law Society of Saskatchewan v Mahon, 2014 SKLSS 12
It is careless to release funds held in trust with only verbal assurance from a client that trust conditions had been complied with.

Law Society of Saskatchewan v Galey, 2014 SKLSS 7
It is conduct unbecoming to release funds subject to a trust condition when it had not been satisfied. Closing a file does not vacate trust conditions.

Law Society of Saskatchewan v Baumgartner, 2010 SKLSS 1
It is conduct unbecoming to breach an undertaking to the Law Society to cease taking new files and matters.

Law Society of Saskatchewan v Angus, 2010 LSS 6
It is conduct unbecoming to breach their undertaking with the Law Society. Here the lawyer was consistently late in relation to his monthly trust filings.

Law Society of Saskatchewan v McLean, 2009 SKLSS 3
See above for SKCA review decision.

Law Society of Saskatchewan v Stinson, 2008 SKLSS 7
The breach of an undertaking recklessly given is a matter of misconduct requiring serious censure.

Law Society of Saskatchewan v Brown, 2008 SKLS 6
It is conduct unbecoming for a lawyer to breach an undertaking that they would only disburse mortgage funds on the satisfaction of certain conditions, when the conditions were not satisfied, or to provide a report within a certain amount of time and then failing to do so.

Law Society of Saskatchewan v Hardy, 2004 SKLS 4
It is conduct unbecoming not to honour an imposed trust condition, even it the reason for not being able to honour the trust condition is due to the Lawyer's own actions.

Law Society of Saskatchewan v Bader, 1996 SKLS 1
The Lawyer withdrew the full amount in trust against agreement with their clients.

Law Society of Saskatchewan v Werry, 1995 SKLS 1
It is conduct unbecoming to undertake to discharge a *lis pendens* but then be unable to do so and mislead others as to their success in completing the undertaking.

Other examples:
Law Society of Saskatchewan v Katzman, 2014 SKLSS 1
Law Society of Saskatchewan v Mattison, 2006 SKLS 5
Law Society of Saskatchewan v Dirk, 2005 SKLS 9
Law Society of Saskatchewan v Chow, 2004 SKLS 9
Law Society of Saskatchewan v Peet, 2004 SKLS 8
Law Society of Saskatchewan v Peet, 2002 SKLS 6
Law Society of Saskatchewan v Borden, 2002 SKLS 3
Law Society of Saskatchewan v Peet, 1999 SKLS 10
Law Society of Saskatchewan v Churchman, 1998 SKLS 2
Law Society of Saskatchewan v Wyonzek, 1997 SKLS 6

Law Society of Saskatchewan Conduct Rulings

2020 SKLSCR 2
When receiving correspondence from other counsel, lawyers must do their due diligence to ensure that there are not trust conditions imposed.
2020 SKLSCR 1
Lawyers should develop systems to track trust conditions and ensure they are met before a file is closed.
2018 SKLSCR 1
It is necessary for a lawyer to be able to rely on other lawyers for compliance with trust conditions and/or undertakings imposed in the transfer of a client to another lawyer.
2015 SKLSCR 1
An associate lawyer is responsible for their compliance to undertakings and practice conditions. The supervising lawyer is also technically in breach if the associate lawyer fails to properly comply.
2014 SKLSCR 4
Trust conditions with respect to holdbacks must be clear and explicit with specified time frames for action.

Law Society of Saskatchewan Ethics Rulings

2018 SKLSPC 10
It is inappropriate for a lawyer to impose trust conditions on any documents provided in the past. However, trust conditions on future documents are regularly used in criminal and family services proceedings, as they allow for timely disclosure. Lawyers may exchange disclosure when they have it, not just when they have access to a cover letter.
2016 SKLSPC 9
It is important for lawyers to be absolutely diligent in both drafting and accepting conditions. When dealing with the transfer of property (even when dealing with non-real estate matters, such as division of property), lawyers may benefit form reviewing the Law Society of Saskatchewan Uniform Trust Letter and conditions to ensure that the appropriate trust conditions are imposed.
2016 SKLSPC 2
A limitation period, valid or not, does not relieve a lawyer from their obligations of undertakings or trust conditions.
2015 SKLSPC 8
(1) A trust condition that prevents opposing counsel from using the documents unless and until they are in a position to forward

settlement funds will be unreasonable and impossible, where the opposing lawyer needs to use the documents in order to secure the funds.

(2) Lawyer should be specific in their trust conditions including as much detail (amounts, timelines, etc.) as possible

(3) It is improper to impose a trust condition on a trust condition and where it is attempted, the receiving lawyer is not bound. However, best practice is for the receiving lawyer to notify the other lawyer that they do not view themselves as bound.

(4) Lawyers must educate their staff to flag issues where funds are being received, as there may be trust conditions attached to them. It is dangerous to leave blanket instructions to release funds as soon as they come in.

2012 SKLSPC 8

In a real estate transaction, it is implicit that trust conditions/undertakings will be imposed when documents are exchanged. It is sharp practice for a lawyer to take advantage of an opposing counsel's error in not imposing conditions. At the very least, the Lawyer receiving the documents should have followed up with opposing counsel as to whether they meant to include trust conditions.

2012 SKLSPC 7

When transferring an executed agreement between parties with imposed conditions, it is important for lawyers to be absolutely diligent in drafting and choosing to accept those conditions.

2009 SKLSPC 9

There is a breach of conditions when a former client's file is provided to a new lawyer on conditions to pay an interim and final account and both are not paid.

2009 SKLSPC 6

Regardless of whether the Lawyer believes that any particular trust condition they accepted was necessary to give effect to the relevant transactions, if it is accepted, that lawyer is bound to it. Lawyers should not accept conditions they cannot fulfill.

2008 SKLSPC 6

Lawyers cannot impose conditions on conditions.
Conditions cannot be unilaterally modified.

2008 SKLSPC 1

Despite potentially adverse consequences for a client, if a lawyer is personally bound, they must fulfill an adverse undertaking.

2007 SKLSPC 16

When trust conditions with respect to time are imposed, a lawyer is to either accept and comply with the conditions or refuse them and return the documents if they cannot comply.

2007 SKLSPC 15

A lawyer cannot impose conditions on top of conditions.
A lawyer also cannot attempt to enforce an agreement via conditions. The proper remedy for enforcing an agreement is through the courts.

2007 SKLSPC 14

A lawyer cannot impose trust conditions which have the effect of altering, adding to, or enforcing contractual provisions. Trust conditions that are impossible to comply with are unreasonable and prohibited.

2006 SKLSPC 16
Uniform trust conditions are to be relied upon. Amendments may be made but must be clearly drawn to the attention of the lawyer opposite.
2006 SKLSPC 15
Trust conditions are black and white. If a lawyer does not like the trust conditions or thinks that they are inappropriate, they must refuse to accept the trust conditions and return the documents to the lawyer attempting to impose them. A lawyer cannot simply fail to respond to trust conditions and keep the documents provided, even if they feel they are unreasonable.
2006 SKLSPC 14
It is part of a lawyer's role to attempt to reach an equitable agreement between parties. On the narrow issue of trust conditions, having accepted the conditions, a lawyer is specifically bound despite what may appear to be an inequitable result.
2006 SKLSPC 12
If a lawyer undertakes to be personally responsible for an expert's fees, they must uphold that undertaking, even if the result is against the client.
2006 SKLSPC 11
Lawyers should be very cautious when accepting trust conditions which may mirror or alter contracts between parties such that the Lawyer becomes the guarantor.
2005 SKLSPC 4
A lawyer is obligated to pay for any undertaking provided, even where the circumstances that led to the undertaking (here, questioning) are cancelled.
2003 SKLSPC 24
In the face of an order to turn over a file once fees are paid, a lawyer cannot send the file on trust conditions.
2003 SKLSPC 16
If no time frame is specified for the completion of undertaking, there is no implicit understanding of timeliness.
2002 SKLSPC 22
Money tendered as conduct money in lieu of litigation is earmarked for a specific purpose, and therefore the money is subject to trust conditions. A lawyer holding conduct money is not free to convert it for any other purpose.
2002 SKLSPC 17
Both clients and lawyers may impose trust conditions. A lawyer is ethically bound by any conditions accepted.
Where a cheque is sent on trust conditions, the Lawyer is deemed to accept the conditions imposed by negotiating the cheque.
2002 SKLSPC 11
Absent undertakings or accepted trust conditions or any illegality, a lawyer is bound to follow the instructions of their client. If the required actions breach a document or agreement, the lawyer should advise their clients of the potential consequences.
2002 SKLSPC 10
There is no tacit acceptance of conditions or amendments by virtue of the passage of time. Trust conditions must be clearly imposed and clearly amended in writing.

2002 SKLSPC 6
See also 2002 SKLSPC 2. Just as it is improper to require a complaint to be abandoned as part of a settlement, it is improper for a lawyer to impose a condition that correspondence not be disclosed to the Law Society. No matter what a lawyer says in a letter or by way of agreement, if the Law Society is investigating a matter, no provision will prevent the Society from carrying out its statutory duty.
2001 SKLSPC 35
In the Uniform Trust Conditions letter, “forward to the office” means that the money will be “in hand” or received by that date, not simply sent.
2001 SKLSPC 31
Clients cannot alter trust conditions of lawyers.
2001 SKLSPC 30
One lawyer cannot rely on or piggyback on a different lawyer’s trust conditions imposed another lawyer.
2001 SKLSPC 5
A client’s right to tax a lawyer’s bill goes to the heart of the solicitor-client relationship and it would be highly inappropriate for an outside party to interfere with, inquire about, or attempt to impose conditions regarding this right.
2000 SKLSPC 13
An undertaking is that of a lawyer and not their firm, but all lawyers in a firm are to honour an undertaking given by one of their colleagues.
2000 SKLSPC 6
Failure to respond to or acknowledge an imposed trust condition, where a response is not specifically requested, is not encouraged, but is not a breach of the Code.
2000 SKLSPC 5
An attempt to impose trust conditions even if the documents are rejected fetters the lawyer receiving them and is manifestly unfair.
1999 SKLSPC 8
Lawyers must take extreme care when accepting trust conditions to avoid accepting trust conditions that are ambiguous.
1998 SKLSPC 14
Lack of communication resulting in trust funds being returned to the client after conditions were unknowingly fulfilled is not a breach of ethics.
1998 SKLSPC 10
A trust cheque from part of a withdrawn settlement offer should be returned immediately after it becomes apparent that the settlement has not been accepted.
1997 SKLSPC 14
It is inappropriate for a lawyer to impose conditions on top of existing conditions. Where further details must be worked out, the appropriate course of action is to set out what return undertaking the maker of the trust conditions will abide by.
1995 SKLSPC 18
Trust conditions cannot be changed unilaterally.
1995 SKLSPC 8
The imposition of trust conditions to alter a badly drafted agreement is objectionable. The attempt to “reverse onus” compliance by requiring a lawyer imposing the conditions to confirm is also objectionable.

1994 SKLSPC 9
Amended trust conditions allowing a lawyer to deposit money into an account do not replace the other requirements of the original conditions.
1993 SKLSPC 6
Acknowledgement of trust conditions is equal to acceptance.
1991 SKLSPC 9
It is improper for a lawyer to impose trust conditions that vary a contract or court order and the lawyer receiving such conditions should not accept them. A lawyer should only accept conditions within their control and conditions must be clear and unambiguous. Trust conditions must be imposed and amended in writing.
1991 SKLSPC 4
A misinterpretation of clear and unequivocal trust conditions is a breach of ethics.
1991 SKLSPC 2
In order to ensure the protection of their commission, a real estate agent must obtain a written undertaking from the lawyer. Otherwise, the lawyer's only obligation is to their client.
1989 SKLSPC 7
If a document is forwarded to a lawyer on certain trust conditions, the lawyer cannot subsequently attempt to impose further conditions upon return of the document.
1988 SKLSPC 10
An undertaking is not affected by a client who changes their mind after terms are agreed upon. The lawyer is responsible for fulfilling any undertaking made.
1988 SKLSPC 9
Acknowledging a letter from a subcontractor setting out the method for payment is equivocal to a lawyer giving an undertaking, and as such, the lawyer is personally responsible.
1988 SKLSPC 8
If trust conditions are deficient or ambiguous, the receiving lawyer is obligated to obtain clarification from the lawyer requiring the conditions to be met. A lawyer should not unreasonably interpret conditions so as to take advantage of another lawyer.
1988 SKLSPC 7
If a realtor wishes a lawyer to protect the realtor's commissions the realtor must obtain a written undertaking. Otherwise, the lawyer has no legal or ethical obligation.
1988 SKLSPC 6
If a lawyer acting as a client's new counsel does not accept the trust conditions already attached to a file, the lawyer must return the file.
1987 SKLSPC 15
If trust conditions are silent regarding interest, then no interest is owed.
1987 SKLSPC 14
Once accepted, trust conditions are binding. A lawyer must be extremely cautious in accepting trust conditions from non-lawyers.
1987 SKLSPC 13
Where a trust condition is sent but the enclosures are not included, it is sharp practice to draft one's own document to get around complying with the trust condition.

1987 SKLSPC 12
If money in trust is to be divided between parties but must also be used for other purposes, the lawyer is responsible to obtain clarification as to the proper division of funds prior to transfer.
1987 SKLSPC 11
If a lawyer accepts trust conditions, they are bound, even if it means they must bear personal financial responsibility.
1987 SKLSPC 10
If the lawyer who imposed the conditions does not insist on compliance it is not appropriate for a third party to become involved in enforcement.
1987 SKLSPC 9
If the payment of commission is made early out of trust it is a breach of trust rules. If it is paid early out of a lawyer's general account, the lawyer gains a pecuniary interest in the outcome of the transaction. Such behaviour may result in a breach of ethics.
1987 SKLSPC 5
A lawyer must not use documents subject to trust conditions unless said conditions are acceptable or suitably amended and confirmed in writing. Partial payment for purchase under trust conditions is not forfeited if the sale does not continue.
1986 SKLSPC 5
A lawyer is responsible for undertakings entered into even if the lawyer agrees to do something outside of their control. The onus is on the lawyer accepting the conditions to seek clarification if necessary.
1986 SKLSPC 4
Undertakings and amendments must not be oral and must be written or confirmed and amended in writing and be unambiguous.
1985 SKLSPC 7
Lawyers are bound by original trust conditions unless both agree to change them. There is no rule that requires a lawyer to deposit funds received into an interest-bearing account.
1985 SKLSPC 5
Unless a lawyer explicitly states in their undertaking that they do not intend to accept personal responsibility, the lawyer is expected to honour the undertaking personally.
1985 SKLSPC 4
Although conditions may not specify a time limit, if the conditions are not met in a timely manner, the funds should be returned.
1985 SKLSPC 3
If trust conditions are negotiated and never settled it would be improper not to return the documents provided.
1984 SKLSPC 7
A condition requiring the release of defendants from any claims is not properly fulfilled by a discontinuance of actions.
1982 SKLSPC 1
Although lawyers may be in breach of trust conditions as a result of the action of another party, lawyers should take steps to ensure that trust conditions are carried out by getting acknowledgements in writing or obtaining letters of confirmation. Lawyers should also take steps to protect themselves from failure to meet trust obligations and potential subsequent disciplinary proceedings.

1000 SKLSPC 36
Although trust conditions may be drafted with more clarity, a lawyer must interpret the conditions in good faith.
1000 SKLSPC 35
A lawyer receiving documents in trust with unacceptable conditions must either amend the conditions or return the documents. Otherwise, the lawyer is bound to the conditions as written.
1000 SKLSPC 34
If a mistake is made and an amendment to a trust condition is not sought afterwards, the parties are bound by the conditions originally agreed upon. If the ruling were otherwise, it could lead to lawyers ignoring trust conditions in the belief that they were patently unacceptable and did not have to be followed.
1000 SKLSPC 33
There is an onus to ensure that trust conditions are clearly defined with clear intentions.
1000 SKLSPC 32
If trust conditions are not acceptable or clear, the documents must be returned and new conditions obtained.

Other Sources

Thomas Gold Pettinghill LLP v Ani-Wall Concrete Forming Inc, 2012 ONSC 2182
Having undertaken to enforce payment of a predecessor, a lawyer must refrain from actions that would frustrate the performance of said undertaking.

[Rule 7.2-6 amended to refer to new Rule 7.2-6A; Rule 7.2-6A added with Commentary, Feb. 14, 2014]
[7.2-6A, Commentary [1] amended, Feb. 13, 2015]

7.3 OUTSIDE INTERESTS AND THE PRACTICE OF LAW

Maintaining Professional Integrity and Judgment

7.3-1 A lawyer who engages in another profession, business or occupation concurrently with the practice of law must not allow such outside interest to jeopardize the lawyer's professional integrity, independence or competence.

Commentary

[1] A lawyer must not carry on, manage or be involved in any outside interest in such a way that makes it difficult to distinguish in which capacity the lawyer is acting in a particular transaction, or that would give rise to a conflict of interest or duty to a client.

[2] When acting or dealing in respect of a transaction involving an outside interest, the lawyer should be mindful of potential conflicts and the applicable standards referred to in the conflicts rule and disclose any personal interest.

7.3-2 A lawyer must not allow involvement in an outside interest to impair the exercise of the lawyer's independent judgment on behalf of a client.

Commentary

[1] The term "outside interest" covers the widest possible range of activities and includes activities that may overlap or be connected with the practice of law such as engaging in the mortgage business, acting as a director of a client corporation or writing on legal subjects, as well as activities not so connected, such as a career in business, politics, broadcasting or the performing arts. In each case, the question of whether and to what extent the lawyer may be permitted to engage in the outside interest will be subject to any applicable law or rule of the Society.

[2] When the outside interest is not related to the legal services being performed for clients, ethical considerations will usually not arise unless the lawyer's conduct might bring the lawyer or the profession into disrepute or impair the lawyer's competence, such as if the outside interest might occupy so much time that clients' interests would suffer because of inattention or lack of preparation.

[3] When acting or dealing in respect of a transaction involving an outside interest in a business, investment, property or occupation, the lawyer must disclose any personal interest, must declare to all parties in the transaction or to their solicitors whether the lawyer is acting on the lawyer's own behalf or in a professional capacity or otherwise, and should adhere throughout the transaction to standards of conduct as high as those that this Code requires of a lawyer engaged in the practice of law.

[4] A lawyer who has an outside interest in a business, investment, property or occupation:

(a) must not be identified as a lawyer when carrying on, managing or being involved in such outside interest; and

(b) must ensure that monies received in respect of the day-to-day carrying on, operation and management of such outside interest are deposited in an account other than the lawyer's trust account, unless such monies are received by the lawyer when acting in a professional capacity as a lawyer on behalf of the outside interest.

[5] In order to be compatible with the practice of law the other profession, business or occupation:

(a) must be an honourable one that does not detract from the status of the lawyer or the legal profession generally; and

(b) must not be such as would likely result in a conflict of interest between the lawyer and a client.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v de Whytell, 2017 SKLSS 5

Conduct unbecoming is conduct that is inimical to the best interests of the public or lawyers or tends to harm the standing of the legal profession generally. The Lawyer was not acting in a legal capacity and the Law Society is not generally concerned with the purely private or extra-professional activities of a lawyer, unless it calls into question the lawyer's integrity. Lawyer was acquitted.

Law Society of Saskatchewan Ethics Rulings

2009 SKLSPC 1

By identifying themselves as a lawyer, a lawyer who makes intemperate comments online invites scrutiny on themselves personally and also on the profession more generally.

2001 SKLSPC 4
Divulging confidential information received in the course of legal practice while working in another position is a breach of ethics.
1998 SKLSPC 21
A lawyer must not carry on the occupation of property manager in such a way that a person might find it reasonably difficult to determine if the lawyer is acting as a lawyer or a manager.
1994 SKLSPC 5
Collection of a legal defence fund for a former client is not part of the practice of law and should not be carried out through the firm. Involvement in a personal capacity does not contravene a lawyer's professional standards.
1984 SKLSPC 2
There is no impropriety in a lawyer conducting a Family Mediation Clinic so long as they do not provide legal advice or draft legal documents while maintaining their status as a non-practicing lawyer.
1000 SKLSPC 12
A practicing lawyer shall not be directly or indirectly involved or interested in the management or control of a collection agency.

Other Sources

Stewart v Canadian Broadcasting Corp, 1997 CanLII 12318, 150 DLR (4th) 24
A Lawyer involved themselves in a public broadcast of a case in which they acted as counsel with the primary purpose of self-promotion.

7.4 THE LAWYER IN PUBLIC OFFICE

Standard of Conduct

7.4-1 A lawyer who holds public office must, in the discharge of official duties, adhere to standards of conduct as high as those required of a lawyer engaged in the practice of law.

Commentary

[1] The rule applies to a lawyer who is elected or appointed to a legislative or administrative office at any level of government, regardless of whether the lawyer attained the office because of professional qualifications. Because such a lawyer is in the public eye, the legal profession can more readily be brought into disrepute by a failure to observe its ethical standards.

[2] Generally, the Society is not concerned with the way in which a lawyer holding public office carries out official responsibilities, but conduct in office that reflects adversely upon the lawyer's integrity or professional competence may be the subject of disciplinary action.

[3] Lawyers holding public office are also subject to the provisions of section 3.4 (Conflicts) when they apply.

[4] A lawyer who holds public office must not allow personal or other interests to conflict with the proper discharge of official duties. A lawyer holding part-time public office must not accept any private legal business where duty to the client will or may conflict with official duties. If some unforeseen conflict arises, the lawyer should terminate the professional relationship, explaining to the client that official duties must prevail. The lawyer who holds a full-time public office will not be faced with this sort of conflict, but must nevertheless guard against allowing the lawyer's independent judgment in the discharge of official duties to be influenced by the lawyer's own interest, or by the interests of persons closely related to or associated with the lawyer, or of former or prospective clients, or of former or prospective partners or associates.

[5] In the context of the preceding paragraph, persons closely related to or associated with the lawyer include a spouse, child, or any relative of the lawyer (or of the lawyer's spouse) living under the same roof, a trust or estate in which the lawyer has a substantial beneficial interest or for which the lawyer acts as a trustee or in a similar capacity, and a corporation of which the lawyer is a director or in which the

lawyer or some closely related or associated person holds or controls, directly or indirectly, a significant number of shares.

[6] Subject to any special rules applicable to a particular public office, a lawyer holding such office who sees the possibility of a conflict of interest should declare such interest at the earliest opportunity and take no part in any consideration, discussion or vote with respect to the matter in question.

[7] When a lawyer or any of the lawyer's partners or associates is a member of an official body such as, for example, a school board, municipal council or governing body, the lawyer should not appear professionally before that body. However, subject to the rules of the official body it would not be improper for the lawyer to appear professionally before a committee of such body if such partner or associate is not a member of that committee.

[8] A lawyer should not represent in the same or any related matter any persons or interests that the lawyer has been concerned with in an official capacity. Similarly, the lawyer should avoid advising upon a ruling of an official body of which the lawyer either is a member or was a member at the time the ruling was made.

[9] By way of corollary to section 3.3, relating to confidential information, a lawyer who has acquired confidential information by virtue of holding public office should keep such information confidential and not divulge or use it even though the lawyer has ceased to hold such office. (As to the taking of employment in connection with any matter in respect of which the lawyer had substantial responsibility or confidential information, see the Commentary for the rule relating to avoiding questionable conduct.)

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Mattison, 2006 SKLS 5

As a member of the Workers' Compensation Board, the lawyer failed to uphold their duty to the public to act with integrity in upholding trust conditions.

Law Society of Saskatchewan Ethics Rulings

2001 SKLSPC 4

It is not appropriate for a lawyer to use information at their disposal from the practice of law in their role as a city councillor in order to advance their own personal interest.

Other Sources

Stonechild, Re, 2003 CanLII 74512, 239 Sask R 1
After serving in public office, a Lawyer became part of a case in which they had been involved while in office. This raises the strongest possible inference that conflict exists.

John Keyes, “Professional Responsibilities of Legislative Counsel” (2011) 5 J Parliamentary & Pol L 11
A consideration of the professional standards that apply to lawyers who work in public office.

7.5 PUBLIC APPEARANCES AND PUBLIC STATEMENTS

Communication with the Public

7.5-1 Provided that there is no infringement of the lawyer's obligations to the client, the profession, the courts, or the administration of justice, a lawyer may communicate information to the media and may make public appearances and statements.

Commentary

[1] Lawyers in their public appearances and public statements should conduct themselves in the same manner as they do with their clients, their fellow practitioners, the courts, and tribunals. Dealings with the media are simply an extension of the lawyer's conduct in a professional capacity. The mere fact that a lawyer's appearance is outside of a courtroom, a tribunal or the lawyer's office does not excuse conduct that would otherwise be considered improper.

[2] A lawyer's duty to the client demands that, before making a public statement concerning the client's affairs, the lawyer must first be satisfied that any communication is in the best interests of the client and within the scope of the retainer.

[3] Public communications about a client's affairs should not be used for the purpose of publicizing the lawyer and should be free from any suggestion that a lawyer's real purpose is self-promotion or self-aggrandizement.

[4] Given the variety of cases that can arise in the legal system, particularly in civil, criminal and administrative proceedings, it is impossible to set down guidelines that would anticipate every possible circumstance. Circumstances arise in which the lawyer should have no contact with the media, but there are other cases in which the lawyer should contact the media to properly serve the client.

[5] Lawyers are often involved in non-legal activities involving contact with the media to publicize such matters as fund-raising, expansion of hospitals or universities, programs of public institutions or political organizations. They sometimes act as spokespersons for organizations that, in turn, represent particular racial, religious or other special interest groups. This is a well-established and completely proper role for lawyers to play in view of the obvious contribution that it makes to the community.

[6] Lawyers are often called upon to comment publicly on the effectiveness of existing statutory or legal remedies or the effect of particular legislation or decided

cases, or to offer an opinion about cases that have been instituted or are about to be instituted. This, too, is an important role the lawyer can play to assist the public in understanding legal issues.

[7] Lawyers should be aware that, when they make a public appearance or give a statement, they ordinarily have no control over any editing that may follow or the context in which the appearance or statement may be used or under what headline it may appear.

[8] Lawyers should, where possible, encourage public respect for and try to improve the administration of justice. In particular, lawyers should treat fellow practitioners, the courts and tribunals with respect, integrity and courtesy. Lawyers are subject to a separate and higher standard of conduct than that which might incur the sanction of the court.

[9] This rule should not be construed in such a way as to discourage constructive comment or criticism.

Annotations

Saskatchewan Court of Appeal

Merchant v Benchers of Law Society of Saskatchewan et al, 1972 CanLII 866, 32 DLR (3d) 178

There is nothing to suggest that broadcasting *per se* is unethical but a lawyer, in broadcasting, must not do or say anything that can be construed as advertising, or as solicitation of business, or as a means to gain publicity.

Law Society of Saskatchewan Ethics Rulings

1998 SKLSPC 16

Notification to the media of charges against another lawyer is not improper in and of itself but the motivation behind the notification can result in improper conduct. Notification must be *bona fide* and without malice or ulterior motive.

1998 SKLSPC 15

A lawyer should always have a client's specific authorization to speak on their client's behalf and should not assume it is part of their authority. The lawyer must be satisfied that any communication is in the best interests of the client and within the scope of the retainer agreement.

1992 SKLSPC 4

Dealings with the media are an extension of a lawyer's conduct in a professional capacity. It is essential that a lawyer refrain from intemperate language, unnecessarily provocative statements, petty criticism, unsubstantiated allegations, or gratuitous speculation. The best interests of the client, public, and legal profession must be balanced.

1991 SKLSPC 8
When advertising judicial sale, the style of cause should be shortened to avoid embarrassment to the nominal defendants.
1986 SKLSPC 6
Some of the statements made in a media interview were not in good taste and brought the administration of justice into disrepute.

Other Sources

Roach v Long, [2000] OTC 693
A lawyer who engages in public statements should do so in conformity with the Code of Conduct.

Interference with Right to Fair Trial or Hearing

7.5-2 A lawyer must not communicate information to the media or make public statements about a matter before a tribunal if the lawyer knows or ought to know that the information or statement will have a substantial likelihood of materially prejudicing a party's right to a fair trial or hearing.

Commentary

[1] Fair trials and hearings are fundamental to a free and democratic society. It is important that the public, including the media, be informed about cases before courts and tribunals. The administration of justice benefits from public scrutiny. It is also important that a person's, particularly an accused person's, right to a fair trial or hearing not be impaired by inappropriate public statements made before the case has concluded.

7.6 PREVENTING UNAUTHORIZED PRACTICE

Preventing Unauthorized Practice

7.6-1 A lawyer must assist in preventing the unauthorized practice of law.

Commentary

[1] Statutory provisions against the practice of law by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal ability, but they are immune from control, from regulation and, in the case of misconduct, from discipline by the Society. Moreover, the client of a lawyer who is authorized to practise has the protection and benefit of the lawyer-client privilege, the lawyer's duty of confidentiality, the professional standard of care that the law requires of lawyers, and the authority that the courts exercise over them. Other safeguards include mandatory professional liability insurance, the assessment of lawyers' bills, regulation of the handling of trust monies and the maintenance of compensation funds.

[2] See also the Commentary following Rule 6.1-1 for a list of tasks a lawyer may delegate to a non-lawyer. See Rule 6.1-3 for a list of tasks that a lawyer is not permitted to delegate to a non-lawyer.

Annotations

Saskatchewan Court of King's Bench

Law Society of Saskatchewan v Siekawitch, 2015 SKQB 345
The respondent held themselves out as a lawyer, led people to believe they were a lawyer and acted as such without authorization.

Law Society of Saskatchewan v Mattison, 2015 SKQB 323
An inactive lawyer continuing to practice is unauthorized practice.

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Chetty, 2010 SKLS 2
It is unauthorized practice for a lawyer to practice law in Alberta without authorization and to continue to do so after being advised to stop.

Law Society of Saskatchewan Ethics Rulings

2000 SKLSPC 15
The Committee reviewed a proposed arrangement where there would be a division of labour between a financial institution and a firm on wills and estate files to prevent unauthorized practice. The primary concern was fee splitting, so they recommended that the invoice be clear as to what was a legal bill and what was for estate planning. The proposal was accepted.

2000 SKLSPC 7
Providing a signed standard form demand letter for the use of a non-lawyer to use at their discretion is very close to assisting in unauthorized practice.
1988 SKLSPC 1
Getting wills instructions from a non-lawyer third party (here, a financial consultant), who would then execute the will with the client would mean a non-lawyer would provide legal advice to clients and the involvement of a firm would amount to assisting unauthorized practice.
1000 SKLSPC 38
A non-lawyer (here, a financial planner) receiving instructions and providing information to a law firm to prepare documents which are then returned to the non-lawyer to provide to the client creates several problems including indirect touting, breach of confidentiality and the possibility of abetting unauthorized practice.

Other Sources

The Law Society of British Columbia v Sprague, 2017 BCSC 2025
An experienced paralegal advertised their services to provide guidance on legal issues. Acknowledgement that a practitioner is not qualified does not negate that the practitioner may be practicing law.
Law Society of Upper Canada v Coulson, 2013 ONSC 2448
A person placed advertisements online offering unauthorized legal services.
Law Society of Upper Canada v Augier, 2013 ONSC 451
A person who was not a licensed paralegal or a lawyer held themselves out to be a lawyer by providing legal services in estate settlements, family matters and immigration proceedings.
Law Society of Manitoba v Pollock, 2008 MBCA 61
Offering and advertising services as an agent to act as an advocate in legal matters is tantamount to carrying on the practice of law.
R v A1 Legal Services & Training, 2005 ONCJ 534
A business provided legal services beyond the scope of an unsupervised paralegal by offering legal advice and preparing legal documents.

7.7 RETIRED JUDGES RETURNING TO PRACTICE

7.7-1 A judge who returns to practice after retiring, resigning or being removed from the bench must not**,** for a period of three years, unless the governing body approves on the basis of exceptional circumstances, appear as a lawyer before the court of which the former judge was a member or before any courts of inferior jurisdiction to that court or before any administrative board or tribunal over which that court exercised an appellate or judicial review jurisdiction in any province in which the judge exercised judicial functions.

Annotations

Other Sources

Farmer v Hirtle, 2015 NSSM 11

Notwithstanding the fact that the Lawyer was recently a former adjudicator, the code of conduct does not apply to small claims court where adjudicators are appointed on a part-time basis.

Pichette v Barristers' Society (New Brunswick), 1977 CanLII 1771, 85 DLR (3d) 30

The restriction of retired judges from practicing in the courts in which they worked or in any lower court is necessary to preserve public confidence in the administration of justice.

7.8 ERRORS AND OMISSIONS

Informing Client of Errors or Omission

7.8-1 When, in connection with a matter for which a lawyer is responsible, a lawyer discovers an error or omission that is or may be damaging to the client and that cannot be rectified readily, the lawyer must:

(a) promptly inform the client of the error or omission without admitting legal liability;

(b) recommend that the client obtain independent legal advice concerning the matter, including any rights the client may have arising from the error or omission; and

(c) advise the client of the possibility that, in the circumstances, the lawyer may no longer be able to act for the client.

Commentary

[1] In addition to the obligations imposed by Rule 7.8-1, the lawyer has the contractual obligation to report to the lawyer's insurer. Rule 7.8-2 also imposes an ethical duty to report to the insurer(s). Rule 7.8-1 does not relieve a lawyer from the duty to report to the insurer or other indemnitor even if the lawyer attempts to rectify.

Annotations

Law Society of Saskatchewan Discipline Decisions

Law Society of Saskatchewan v Wolfe, 2015 SKLSS 5.
It is conduct unbecoming to mislead clients about the status of their files after the Lawyer failed to properly perform their duties.

Law Society of Saskatchewan v Megaw, 2004 SKLS 5
It is conduct unbecoming for a lawyer not to fulfill their duty to their client and to lie to the client about what they had (not) done.

Law Society of Saskatchewan v Tilling, 2004 SKLS 1
It is conduct unbecoming for a lawyer to lie to their client and to a fellow lawyer about steps they had not taken regarding an appeal.

Law Society of Saskatchewan v MacLowich, 2003 SKLS 8
It is conduct unbecoming to not perform legal services, draft documents, and act for the client in a competent manner. The Lawyer failed to follow instructions to obtain an appraisal of the family home, repeatedly withheld critical information regarding the status of a client's appeal, and failed to inform the client that Notice of Appeal had been improperly completed, then failed to correct previous errors. The Lawyer failed to seek instructions from a client, failed to appear, and failed to report the result of the application.

Law Society of Saskatchewan v Churchman, 1998 SKLS 2
It is conduct unbecoming to mislead a client about the status of proceedings and about the work that had been done on the client's behalf.

Notice of Claim

7.8-2 A lawyer must give prompt notice of any circumstance that may give rise to a claim to an insurer or other indemnitor so that the client's protection from that source will not be prejudiced.

Commentary

[1] Under the lawyer's compulsory professional liability insurance policy, 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 that could give rise to a claim. The duty to report is also an ethical duty which is imposed on the lawyer to protect clients. The duty to report arises whether or not the lawyer considers the claim to have merit.

[2] The introduction of compulsory insurance has imposed additional obligations upon a lawyer, but these obligations must not impair the relationship and duties of the lawyer to the client. A lawyer has an obligation to comply with the provisions of the policy of insurance. The insurer's rights must be preserved, and the lawyer, in informing the client of an error or omission, should be careful not to prejudice any rights of indemnity that either of them may have under an insurance, client's protection or indemnity plan, or otherwise. There may well be occasions when a lawyer believes that certain actions or a failure to take action have made the lawyer liable for damages to the client when, in reality, no liability exists. Further, in every case, a careful assessment will have to be made of the client's damages arising from a lawyer's negligence.

[3] The Law Society's insurance policy requires that a lawyer must notify the insurer as soon as practicable after learning of a claim or becoming aware of circumstances that might give rise to a claim, however unmeritorious.

Co-operation

7.8-3 When a claim of professional negligence is made against a lawyer, he or she must assist and co-operate with the insurer or other indemnitor to the extent necessary to enable the claim to be dealt with promptly.

Responding to Client's Claim

7.8-4 If a lawyer is not indemnified for a client's errors and omissions claim or to the extent that the indemnity may not fully cover the claim, the lawyer must expeditiously deal with the claim and must not take unfair advantage that would defeat or impair the client's claim.

7.8-5 If liability is clear and the insurer or other indemnitor is prepared to pay its portion of the claim, a lawyer has a duty to pay the balance. [See also Rule 7.1-2]

[7.8-1, Commentary [1] added; Rule 7.8-2 amended and 7.8-2, Commentary [1] added, April 29, 2016]