



# CODE OF PROFESSIONAL CONDUCT FOR LIMITED LICENSEES

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The Law Society of Saskatchewan

Adopted by the Board (Benchers) of the Law Society of Saskatchewan on  
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## PREFACE

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This Code of Professional Conduct sets out the main principles and obligations of limited licensees. The practice of law and provision of legal services to clients is an honourable undertaking. But with that undertaking comes important responsibilities to clients and to the administration of justice more generally. These responsibilities are based upon the fiduciary obligations of a legal service provider; a principle deeply embedded in Canadian law and concepts of professionalism.

The responsibility and authority to regulate limited licensees 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 members. The *Act* specifically directs the Law Society to establish rules governing professional conduct. This *Code of Professional Conduct for Limited Licensees* creates the rules and their interpretation intended to provide a framework within which a limited licensee will fulfill their core duties of integrity, competency and loyalty. In some respects, this *Code* articulates aspirations consistent with the importance of the limited licensee's role serving clients and the administration of justice. This *Code* also articulates standards of conduct for which limited licensees are held strictly accountable.

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

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 Board (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 limited licensee's professional relationship with clients, the legal 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 a limited licensee may fulfill their core duties.

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

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

**“associate”** includes:

- (a) a member who practises law in a firm through an employment or other contractual relationship with a limited licensee; and
- (b) a non-member employee of a firm or multi-discipline practice providing services that support or supplement the practice of law;

**“client”** means a person who:

- (a) consults a limited licensee and on whose behalf the limited licensee renders or agrees to render legal services; or
- (b) having consulted the limited licensee, reasonably concludes that the limited licensee has agreed to render legal services on their behalf;

and includes a client of the firm of the limited licensee, whether or not the limited licensee handles the client’s work.

Commentary
<p><b>[1]</b> A client relationship may be established without formality.</p> <p><b>[2]</b> When an individual consults a limited licensee in a representative capacity, the client is the corporation, partnership, organization, or other legal entity that the individual is representing;</p> <p><b>[3]</b> 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 client relationship would be established.</p>

**“conflict of interest”** means the existence of a substantial risk that a limited licensee’s loyalty to or representation of a client would be materially and adversely affected by the limited licensee’s own interest or the limited licensee’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;

**“firm”** includes one or more members 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;
- (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 or any other business entity;

**“lawyer”** means a lawyer member of the Society and includes a law student registered in the Society’s pre-call training program;

**“limited licensee”** means a limited licensee recognized as a member of the Society who has been issued a limited licence to engage in the limited practice of law in Saskatchewan;

<b>Commentary</b>
<p><b>[1]</b> In applying the provisions of this Code, a limited licensee must consider the applicability of the Rules within the limited licensee’s scope of permitted services. This may mean that certain provisions of this Code do not apply in the same manner to all limited licensees depending on the relevance of the provisions to their approved areas of practice. For example, certain Code provisions relate to specific areas of practice such as wills and estates, criminal law, or real estate and such provisions would not be applicable to limited licensees who are not authorized to practice in those areas within their scope of permitted services.</p>

**“limited scope services”** means the provision of legal services for part, but not all, of a client’s legal matter by agreement with the client;

**“member”** means a lawyer and a limited licensee;

**“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.

## CHAPTER 2 – STANDARDS OF THE LEGAL PROFESSION

## 2.1 INTEGRITY

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**2.1-1** A limited licensee has a duty to carry on the practice of law pursuant to their limited license and discharge all responsibilities to clients, tribunals, the public and other members of the legal 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 their limited licensee's trustworthiness, the essential element in the licensee-client relationship will be missing. If integrity is lacking, the limited licensee's usefulness to the client and reputation within the legal profession will be destroyed, regardless of how competent the limited licensee 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 limited licensee's irresponsible conduct. Accordingly, a limited licensee'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 limited licensee in either private life or professional practice will reflect adversely upon the integrity of the legal 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 limited licensee, 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 limited licensee that do not bring into question the limited licensee's professional integrity.

**2.1-2** A limited licensee 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, limited licensees are encouraged to enhance the legal profession through activities such as:

- (a) sharing knowledge and experience with colleagues 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

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### Definitions

#### 3.1-1 In this section

“**competent limited licensee**” means a limited licensee who delivers legal services within their scope of permitted services in a manner that applies relevant knowledge, skills and attributes as appropriate to each matter undertaken on behalf of a client and the nature and terms of the limited licensee’s engagement, including:

- (a) knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the limited licensee 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 limited licensees;
- (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 limited licensee must perform all legal services undertaken on a client's behalf to the standard of a competent limited licensee.

### Commentary

**[1]** As a member of the legal profession, a limited licensee is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the limited licensee 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 limited licensee should keep abreast of developments in all areas of law in which the limited licensee practises within their scope of permitted services.

**[3]** In deciding whether the limited licensee 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 limited licensee's general experience;
- (c) the limited licensee's training and experience in the field;
- (d) the preparation and study the limited licensee 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 member of established competence in the field in question.

**[4]** In some circumstances, expertise in a particular field of law may be required.

**[4A]** To maintain the required level of competence, a limited licensee should develop an understanding of, and ability to use, technology relevant to the nature and area of the limited licensee's practice and responsibilities. A limited licensee should understand the

benefits and risks associated with relevant technology, recognizing the limited licensee'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 limited licensee's practice and responsibilities and whether the relevant technology is reasonably available to the limited licensee. In determining whether technology is reasonably available, consideration should be given to factors including:

- (a) The limited licensee's or firm's practice areas;
- (b) The geographic locations of the limited licensee's or firm's practice; and
- (c) The requirements of clients.

**[5]** A limited licensee should not undertake a matter without honestly feeling competent to handle it or being able to become competent within their scope of permitted services without undue delay, risk or expense to the client. The limited licensee 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 limited licensee must recognize a task for which the limited licensee lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the limited licensee should:

- (a) decline to act;
- (b) obtain the client's instructions to retain, consult or collaborate with a member who is competent for that task; or
- (c) obtain the client's consent for the limited licensee to become competent without undue delay, risk or expense to the client provided the matter falls within the limited licensee's scope of permitted services.

**[7]** The limited licensee 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 limited licensee should not hesitate to seek the client's instructions to consult experts.

**[7A]** When a limited licensee considers whether to provide limited scope services the limited licensee 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 limited licensee from the duty to provide competent representation. The limited licensee should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The limited

licensee 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 limited licensee 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 limited licensee 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 limited licensee should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications. A limited licensee should only express their legal opinion when it is genuinely held and is provided to the standard of a competent limited licensee.

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

**[10]** In addition to opinions on legal questions, a limited licensee 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. The limited licensee's experience may be such that the limited licensee's views on non-legal matters will be of real benefit to the client. The limited licensee 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 limited licensee must ensure that the client is made aware that the legal advice from the limited licensee may be supplemented by advice or services from a non-member. Advice or services from non-members unrelated to the engagement for legal services must be provided independently of and outside the scope of the legal services. The provision of non-legal advice or services unrelated to the legal services 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 limited licensee should make every effort to provide timely service to the client. If the limited licensee can reasonably foresee undue delay in providing advice or services, the client should be so informed.

**[13]** The limited licensee should refrain from conduct that may interfere with or compromise their 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 limited licensee who is incompetent does the client a disservice, brings discredit to the legal profession and may bring the administration of justice into disrepute. In addition to damaging the limited licensee's own reputation and practice, incompetence may also injure the limited licensee's 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.

**3.1-3** A limited licensee must not undertake or provide advice with respect to a matter that is outside of the limited licensee's scope of permitted services.

## 3.2 QUALITY OF SERVICE

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### Quality of Service

**3.2-1** A limited licensee has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a limited licensee 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 limited licensee has a duty to provide a quality of service at least equal to that which members generally expect of a competent limited licensee in a like situation. An ordinarily or otherwise competent limited licensee may still occasionally fail to provide an adequate quality of service.

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

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

**[5] Examples of expected practices**

The quality of service to a client may be measured by the extent to which a limited licensee 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 limited licensee'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 limited licensee's services to the client;
- (n) being civil.

**[6]** A limited licensee should meet deadlines, unless the limited licensee 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 limited licensee 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.

### Limited Scope Services

**3.2-1A** Before undertaking limited scope services, the limited licensee must advise the client about the nature, extent and scope of the services that the limited licensee 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 services assists the limited licensee and client in understanding the limitations of the service to be provided and any risks of the engagement.

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

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

**[4]** A limited licensee who is providing limited scope services should consider how communications from opposing parties in a matter should be managed (See Rule 7.2-6A).

**[5]** This rule does not apply to situations in which a limited licensee is providing summary advice, for example over a telephone hotline or to initial consultations that may result in the client engaging the limited licensee.

### **Honesty and Candour**

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

### **Commentary**

**[1]** A limited licensee should disclose to the client all the circumstances of the limited licensee'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 limited licensee.

**[2]** A limited licensee'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 limited licensee's own experience and expertise. The advice must be open and undisguised and must clearly disclose what the limited licensee honestly thinks about the merits and probable results.

**[3]** Occasionally, a limited licensee must be firm with a client. Firmness, without rudeness, is not a violation of the rule. In communicating with the client, the limited licensee 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.

## Language Rights

**3.2-2A** A limited licensee 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 limited licensee for representation in the official language of the client's choice, the limited licensee must not undertake the matter unless the limited licensee is competent to provide the required services in that language.

### Commentary

**[1]** The limited licensee 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 limited licensee. The limited licensee 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 limited licensee should also be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages.

**[3]** When a limited licensee considers whether to provide the required services in the official language chosen by the client, the limited licensee 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 limited licensee may receive instructions from an officer, employee, agent or representative, when a limited licensee is employed or retained by an organization, including a corporation, the limited licensee must act for the organization in exercising their duties and in providing professional services.

### **Commentary**

**[1]** A limited licensee 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 limited licensee 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 limited licensee 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 limited licensee may also accept to act jointly for a person associated with the organization. In such cases the limited licensee 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).

### **Encouraging Compromise or Settlement**

**3.2-4** A limited licensee 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 limited licensee 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.

### **Threatening Criminal or Regulatory Proceedings**

**3.2-5** A limited licensee 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 limited licensee to request that another member 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.

### Inducement for Withdrawal of Criminal or Regulatory Proceedings

**3.2-6** A limited licensee 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 limited licensee 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 limited licensee 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 limited licensee 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 limited licensee 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 limited licensee 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, limited licensees 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 limited licensee 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 limited licensee should have regard to the rules respecting unrepresented persons and make it clear that the limited licensee is acting exclusively in the interests of the accused. If the complainant or potential complainant is vulnerable, the limited licensee 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.

### **Dishonesty, Fraud by Client or Others**

**3.2-7** A limited licensee must never:

- (a) knowingly assist in or encourage any dishonesty, fraud, crime or illegal conduct;
- (b) do or omit to do anything that the limited licensee 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 limited licensee 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 limited licensee 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 limited licensees provide services.

**[3]** If a limited licensee has suspicions or doubts about whether they might be assisting a client or others in dishonesty, fraud, crime or illegal conduct, the limited licensee 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 engagement. 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 limited licensee 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 limited licensee 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 limited licensee should ensure that the client appreciates the consequences of bringing a test case.

### **Dishonesty, Fraud when Client an Organization**

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

- (a) advise the person from whom the limited licensee 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 limited licensee 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 limited licensee'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 limited licensee acting for an organization, including a corporation, when they learn 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 limited licensee 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 their responsibilities under this section, a limited licensee should consider whether it is feasible and appropriate to give any advice in writing.

**[4]** A limited licensee 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 limited licensee must report the matter "up the ladder" of responsibility within the organization until the matter is dealt with appropriately. If the organization, despite the limited licensee's advice, continues with the wrongful conduct, the limited licensee 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 their position or relationship with the organization and not simply withdrawing from acting in the particular matter.

**[5]** This rule recognizes that limited licensees 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. Limited licensees acting for organizations may be 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, limited licensees for organizations, 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 limited licensee must, as far as reasonably possible, maintain a normal limited licensee and client relationship.

#### **Commentary**

**[1]** A limited licensee and client relationship presupposes that the client has the requisite mental ability to make decisions about their legal affairs and to give the limited licensee 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 their ability to make decisions, the limited licensee 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 limited licensee who believes a person to be incapable of giving instructions should decline to act. However, if a limited licensee reasonably believes that the person has no other agent or representative and a failure to act could result in imminent and irreparable harm, the limited licensee may take action on behalf of the person lacking capacity only to the extent possible within their scope of permitted services and necessary to protect the person until a legal representative can be appointed. A limited licensee undertaking to so act has the same duties under these rules to the person lacking capacity as the limited licensee would with any client.

**[3]** If a client's incapacity is discovered or arises after the client relationship is established, the limited licensee 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 Guardian and 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 limited licensee has an ethical obligation to ensure that the client's interests are not abandoned. Until the appointment of a legal representative occurs, the limited licensee should act to preserve and protect the client's interests.

**[4]** In some circumstances when there is a legal representative, the limited licensee 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 limited licensee 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 limited licensee 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 Guardian and Trustee.

**[5]** When a limited licensee 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 another member becomes involved, the limited licensee should inform them of the nature of the limited licensee's relationship with the person lacking capacity.

### 3.3 CONFIDENTIALITY

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#### Confidential Information

**3.3-1** A limited licensee 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 limited licensee 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 limited licensee will be held in strict confidence.

**[2]** This rule must be distinguished from the evidentiary rule of lawyer or solicitor and client privilege, which is also a constitutionally protected right, concerning oral or documentary communications passing between a client and their 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. A limited licensee is bound by confidentiality, and information they obtain in confidence by a client cannot be shared unless the law, or duties under this Code require or permit disclosure. Unlike lawyers, there is not yet established law that supports an independent right to privilege for limited licensees. Solicitor-client privilege protects from disclosure communications between lawyers and their clients regarding legal advice, and limited licensees should also act to protect client privilege until the law is clarified.

**[3]** A limited licensee 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 limited licensee has ceased to act for the client, whether or not differences have arisen between them.

**[4]** A limited licensee also owes a duty of confidentiality to anyone seeking advice or assistance on a matter invoking a limited licensee's professional knowledge, although

the limited licensee may not render an account or agree to represent that person. A client relationship is often established without formality. A limited licensee should be cautious in accepting confidential information on an informal or preliminary basis, since possession of the information may prevent the limited licensee 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 limited licensee 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 a client relationship has been established between them.

**[6]** A limited licensee 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]** Limited licensees who practise in association with other members in cost-sharing, space-sharing or other arrangements should be mindful of the risk of advertent or inadvertent disclosure of confidential information, even if systems and procedures are instituted that are designed to insulate their respective practices. The issue may be heightened if a member in the association represents a client on the other side of a dispute with the client of another member 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 practices are integrated, physically and administratively, in the association.

**[8]** A limited licensee should avoid indiscreet conversations and other communications, even with the limited licensee'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 limited licensee should not repeat any gossip or information about the client's business or affairs that is overheard or recounted to the limited licensee. Apart altogether from ethical considerations or questions of good taste, indiscreet shoptalk among members, 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 members and the legal profession will probably be lessened. Although the rule may not apply to facts that are public knowledge, a limited licensee 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 limited licensee may, unless the client directs

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

**[10]** The client's authority for the limited licensee to disclose confidential information to the extent necessary to protect the client's interest may also be inferred in some situations where the limited licensee 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 limited licensee may disclose such information, the limited licensee should consider all circumstances, including the reasonableness of the limited licensee'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 limited licensee when capable of giving instructions about the authority to disclose information. Similar considerations apply to confidential information given to the limited licensee by a person who lacks the capacity to become a client but nevertheless requires protection.

**[11]** A limited licensee may have an obligation to disclose information under Rule 5.6-3. If client information is involved in this situation, the limited licensee should be guided by the provisions of this rule.

### **Use of Confidential Information**

**3.3-2** A limited licensee 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 limited licensee or a third person without the consent of the client or former client.

#### **Commentary**

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

### 3.3-3 [Intentionally left blank]

#### Mandatory Disclosure – Future Harm/Public Safety Exception

**3.3-3A** A limited licensee must disclose confidential information, but only to the extent necessary if the limited licensee 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 limited licensee is generally justified in obeying a court order to disclose confidential information, this may not be the case where a limited licensee believes in good faith that the order is in error. In these circumstances, provided that an appeal from the order is taken, the limited licensee 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 limited licensee 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 limited licensee short of disclosure.

**[3]** Disclosure of information necessary to prevent a crime will be justified if the limited licensee 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 limited licensee 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 limited licensee reasonably believes that disclosure will bring harm upon the limited licensee or the limited licensee's family or colleagues. This might occur where the limited licensee 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.

## Permitted Disclosure

**3.3-3B** A limited licensee 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 limited licensee's proposed conduct;
- (d) if the limited licensee has reasonable grounds for believing that a crime is likely to be committed and believes disclosure could prevent the crime; or
- (e) if the limited licensee has reasonable grounds for believing that a dangerous situation is likely to develop at a court facility.

### Commentary

**[1]** When a client undermines the limited licensee and client relationship by impugning the limited licensee's conduct or refusing to pay the limited licensee's account, fairness dictates that there is a waiver of confidentiality to such an extent so as to allow a limited licensee 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 and may be applicable to limited licensees, 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 limited licensee in the events relating to the crime? Is the limited licensee 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 limited licensee 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 limited licensee's practice?
- (j) What is the impact on the limited licensee? Are there concerns about the personal safety of either the limited licensee or the limited licensee's family?
- (k) What will disclosure mean to the administration of justice and our legal system?
- (l) What does the limited licensee's conscience say?

**[4]** Once a decision to disclose is made, the limited licensee 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 limited licensee 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.

**3.3-4** If it is alleged that a limited licensee or the limited licensee'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 member,

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

**3.3-5** [Intentionally left blank]

**3.3-6** [Intentionally left blank]

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

#### **Commentary**

**[1]** As a matter related to clients' interests in maintaining a relationship with representation of choice and protecting client confidences, members in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a member is considering an association with another firm, two or more firms are considering a merger, or a member 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 Firms), Rule 3.3-7 permits members and 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 member's and new firm's obligations to protect client confidentiality and what may be 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 members at the new firm as possible, ideally to one member of the new firm, such as a designated conflicts member. 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 members are transferring between firms and for establishing screens, the disclosure should be coupled with an undertaking by the new firm to the former 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 an agreement between the member and client. In some circumstances, however, because of the nature of the agreement, the transferring member and the new 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 what may be 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 member about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a member about a criminal investigation that has not led to a public charge).

## 3.4 CONFLICTS

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### Duty to Avoid Conflicts of Interest

**3.4-1** A limited licensee 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]** Limited licensees have an ethical duty to avoid conflicts of interest. A limited licensee is prohibited 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. This 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 limited licensee or 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]** A limited licensee or firm will still be prevented from acting if representation of the client would create a substantial risk that the limited licensee's representation of the client would be materially and adversely affected by the limited licensee's own interests or by the limited licensee'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 engagement.

**[3]** This rule applies to a limited licensee's representation of a client in all circumstances in which the limited licensee acts for, provides advice to, or exercises judgment on behalf of, a client. Effective representation may be threatened where a limited licensee is tempted to prefer other interests over those of their own client: the limited licensee'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 limited licensee-client relationship is based on trust. It is a fiduciary relationship and as such, the limited licensee 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 members play a key role, it is essential that limited licensees 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 limited licensee's undivided loyalty, free from any material impairment of the limited licensee and client relationship. The relationship may be irreparably damaged where the limited licensee's representation of one client is directly adverse to another client's immediate legal interests. One client may legitimately fear that the limited licensee will not pursue the representation out of deference to the other client.

#### **Other Duties Arising from the Duty of Loyalty**

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

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

**[8]** The duty of candour requires a limited licensee or firm to advise an existing client of all matters relevant to the engagement.

#### **Identifying Conflicts**

**[9]** A limited licensee should examine whether a conflict of interest exists not only from the outset but throughout the duration of an engagement because new circumstances or information may establish or reveal a conflict of interest. Factors for the limited licensee'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 limited licensee 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 limited licensee acts as an advocate in one matter against a person when the limited licensee represents that person on some other matter.
2. A limited licensee 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 limited licensee, an associate, or a family member has a personal financial interest in a client's affairs or in a matter in which the limited licensee is requested to act for a client, such as a partnership interest in some joint business venture with a client.
  - A limited licensee 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 limited licensee's judgment or loyalty to the client.
4. A limited licensee has a sexual or close personal relationship with a client.
  - Such a relationship may conflict with the limited licensee'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 professional relationship and may jeopardize the client's right to have all information concerning their affairs held in strict confidence. The relationship may in some circumstances permit exploitation of the client by the limited licensee. If the limited licensee is a member of a firm and concludes that a conflict exists, the conflict is not imputed to the limited licensee's firm, but would be cured if another member in the firm who is not involved in such a relationship with the client handled the client's work.
5. A limited licensee or their firm acts for a public or private corporation and the limited licensee 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 limited licensee'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 what may be lawyer and client privilege, and
  - (d) disqualify the limited licensee or the firm from acting for the organization.
6. Limited licensees who practise with other members 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 members' 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 legal 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 members' 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.

### **Consent**

**3.4-2** A limited licensee 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 limited licensee reasonably believes that they are 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 limited licensee has no relevant confidential information from one client that might reasonably affect the other; and
  - (iv) the client has commonly consented to members 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 limited licensee 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 limited licensee 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 limited licensee's relations to the parties and any interest in or connection with the matter.

**[2A]** While this rule does not require that a limited licensee advise a client to obtain independent legal advice about the conflict of interest, in some cases the limited licensee 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 limited licensee'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 member of comparable expertise and experience, the stage that the matter or proceeding has reached, the extra cost, delay and inconvenience involved in engaging another member, and the latter's unfamiliarity with the client and the client's affairs.

### **Consent in Advance**

**[4]** A limited licensee 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 another member 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 an engagement 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 limited licensee or firm would be undivided and that the limited licensee or 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 limited licensee and client, the terms of the engagement and the matters involved must be considered. Governments, chartered banks and entities that might be considered sophisticated consumers of legal services may accept that limited licensees 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 limited licensee 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 limited licensees may act against it in such circumstances.

## **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 limited licensee and the client that the limited licensee will not provide continuing legal services in the matter.

**3.4-2B** A limited licensee may provide short-term summary legal services within their permitted 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 limited licensee must not provide, or must cease providing short-term summary legal services to a client where the limited licensee knows or becomes aware that there is a conflict of interest.

**3.4-2D** A limited licensee 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 member in the limited licensee's firm.

#### **Commentary**

**[1]** Short-term summary legal services 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 limited licensees and firms who provide these services. Performing a full conflicts 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 limited licensee's firm. Accordingly, the limited licensee is disqualified from acting for a client receiving short-term summary legal services only if the limited licensee has actual knowledge of a conflict of interest between the client receiving short-term summary legal services and an existing client of the limited licensee or an existing client of the *pro bono* or not-for-profit legal services provider or between the limited licensee and the client receiving short-term summary legal services.

**[3]** Confidential information obtained by a limited licensee providing the services described in Rules 3.4-2A to 3.4-2D will not be imputed to the members in the limited licensee's firm or to non-member 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 limited licensee's knowledge about possible conflicts of interest is based on the limited licensee'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.

## Dispute

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

### Commentary

**[1]** A limited licensee 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 limited licensee were permitted to act for opposing parties in such circumstances even with consent, the limited licensee'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 limited licensee would find it impossible to act without offending these rules.

## 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 members in a 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 members so acting has been made to each client;
- (b) the limited licensee 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 members so act and consent to the concurrent representation;
- (d) each client is represented by a different member in the firm;
- (e) appropriate screening mechanisms are in place to protect confidential information; and
- (f) all members in the 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 members may have to withdraw, resulting in potential additional costs.

**[2]** An example is a firm acting for a number of sophisticated clients in a matter 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 member 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 engagement 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 members 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 members 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 members 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 firms (see Rule 3.4-20).

## Joint Engagements

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

- (a) the limited licensee 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 limited licensee 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 limited licensee advise clients to obtain independent legal advice before the limited licensee may accept a joint engagement, in some cases, the limited licensee should recommend such advice to ensure that the clients' consent to the joint engagement 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 engage the limited licensee 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 for Limited Licensees, a limited licensee 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 limited licensee 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 engagement and comply with Rule 3.4-5. Further, at the outset of this joint engagement, the limited licensee 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 engagement and not as part of the joint engagement;
- (b) in accordance with Rule 3.3-1, the limited licensee would be obliged to hold the subsequent communication in strict confidence and not disclose it to the other spouse or partner; and
- (c) the limited licensee would have a duty to decline the new engagement, 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 limited licensee acting on the new instructions.

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

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

**3.4-7** When a limited licensee has advised the clients as provided under Rules 3.4-5 and 3.4-6 and the parties are content that the limited licensee act, the limited licensee 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 limited licensee 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 engagement,

- (a) the limited licensee must not advise them on the contentious issue and must:
  - (i) refer the clients to other members; or
  - (ii) advise the clients of their option to settle the contentious issue by direct negotiation in which the limited licensee 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 limited licensee must withdraw from the joint representation.

#### **Commentary**

**[1]** This rule does not prevent a limited licensee from settling, or attempting to 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 limited licensee.

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

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

#### **Commentary**

**[1]** This rule does not relieve the limited licensee 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 limited licensee to act against one of the clients.

**[2]** When entering into a joint engagement, the limited licensee should stipulate that, if a contentious issue develops, the limited licensee will be compelled to cease acting altogether unless, at the time the contentious issue develops, all parties consent to the limited licensee'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 for Limited Licensees, a limited licensee 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 limited licensee to act on a mortgage foreclosure if the limited licensee or their 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 member 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 member 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.

## Acting Against Former Clients

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

- (a) the same matter,
- (b) any related matter, or
- (c) any other matter if the limited licensee 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 engagement and ensures that a limited licensee does not attack the legal work done during a previous engagement, or undermine the client's position on a matter that was central to the engagement. It is not improper for a limited licensee to act against a former client in a fresh and independent matter wholly unrelated to any work the limited licensee has previously done for that client if previously obtained confidential information is irrelevant to that matter.

**3.4-11** When a limited licensee has acted for a former client and obtained confidential information relevant to a new matter, another member in the firm may act in the new matter against the former client if:

- (a) the former client consents to the other member acting; or
- (b) the firm has:
  - (i) taken reasonable measures to ensure that there will be no disclosure of the former client's confidential information to any other member or employee of the firm, or any other person whose services the member or firm has retained in the new matter; and
  - (ii) advised the limited licensee'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 firms provides valuable guidance for the protection of confidential information in the rare cases in which it is appropriate for another member in the limited licensee's firm to act against the former client.

## Acting for Borrower and Lender

**3.4-12** Subject to Rule 3.4-14, a limited licensee or two or more members practising in 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 limited licensee 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 limited licensee practises in a remote location where there are no other members 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 limited licensee acts for both the borrower and the lender in a mortgage or loan transaction, the limited licensee 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 limited licensee is jointly engaged 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 limited

licensee's receipt of written instructions from the lending client to act and the limited licensee is not required to:

- (a) provide the advice described in Rule 3.4-5 to the lending client before accepting the engagement,
- (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 member and institutional lender clients. Such clients are generally sophisticated. Their acknowledgement of the terms of and consent to the joint engagement 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 limited licensee is requested to act.

**[2]** Rule 3.4-16 applies to all loans when a limited licensee 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.

## **Conflicts from Transfer Between 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 limited licensee, 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 member transfers from one firm (“former firm”) to another (“new firm”), and either the transferring member or the new firm is aware at the time of the transfer or later discovers that:

- (a) it is reasonable to believe the transferring member has confidential information relevant to the new firm's matter for its client; or

- (b) all of the following apply:
- (i) the new firm represents a client in a matter that is the same as or related to a matter in which a former firm represents or represented its client (“former client”);
  - (ii) the interests of those clients in that matter conflict; and
  - (iii) the transferring member 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 members 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 member 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] Firms with multiple offices** — This rule treats as one “firm” such entities as the various legal services units of a government, a corporation with separate regional legal departments, and an interjurisdictional firm.

**3.4-19** Rules 3.4-20 to 3.4-22 do not apply to a limited licensee 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.

<b>Commentary</b>
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[1] [Intentionally left blank]
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### Firm Disqualification

**3.4-20** If the transferring member 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 firm, the new firm must cease its representation of its client in that matter unless:

- (a) the former client consents to the new firm's continued representation of its client;  
or
- (b) the new firm has:
  - (i) taken reasonable measures to ensure that there will be no disclosure of the former client's confidential information by the transferring member to any member of the new firm; and
  - (ii) advised the member's former client, if requested by the client, of the measures taken.

<b>Commentary</b>
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<p><b>[1]</b> It is not possible to offer a set of "reasonable measures" that will be appropriate or adequate in every case. Instead, the new 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 firm of the former client's confidential information." Such measures may include timely and properly constructed confidentiality screens.</p>
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<p><b>[2]</b> 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, limited licensees in separate units, offices or departments do not "work together" with other members in other units, offices or departments, this will be taken into account in the determination of what screening measures are "reasonable."</p>
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<p><b>[3]</b> 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,</p>
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while adoption of them all may not be sufficient in others.

**Guidelines: How to Screen/Measures to be taken**

- (a) The screened member should have no involvement in the new firm's representation of its client in the matter.
- (b) The screened member 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 firm.
- (c) No member of the new firm should discuss the current matter or the previous representation with the screened member.
- (d) The firm should take steps to preclude the screened member from having access to any part of the file.
- (e) The new firm should document the measures taken to screen the transferring member, the time when these measures were put in place (the sooner the better), and should advise all affected members and support staff of the measures taken.
- (f) These Guidelines apply with necessary modifications to situations in which non-member staff leave one 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 firm ("new firm") considers hiring a member ("transferring member") from another firm ("former firm"), the transferring member and the new firm need to determine, before the transfer, whether any conflicts of interest will be created. Conflicts can arise with respect to clients of the firm that the transferring member is leaving and with respect to clients of a firm in which the transferring member worked at some earlier time.

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

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

### Transferring Limited Licensee Disqualification

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

- (a) participate in any manner in the new 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 firm must not discuss the new firm's representation of its client or the former firm's representation of the former client in that matter with a transferring limited licensee referred to in Rule 3.4-20, except as permitted by Rule 3.3-7.

### Limited Licensee Due Diligence for Non-member Staff

**3.4-23** A limited licensee or a firm must exercise due diligence in ensuring that each member and employee of the firm, and each other person whose services the limited licensee or the 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 firm in which the person has worked.

### Commentary

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

**[2]** Certain non-member staff in a 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 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 limited licensee/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** [Intentionally left blank]

**3.4-25** [Intentionally left blank]

**3.4-26** [Intentionally left blank]

## Doing Business with a Client

### Definitions

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

**“independent legal advice”** means an engagement in which:

- (a) the engaged limited licensee, has no conflicting interest with respect to the client’s transaction,
- (b) the client’s transaction involves doing business with
  - (i) another member, or
  - (ii) a corporation or other entity in which the other member has an interest other than a corporation or other entity whose securities are publicly traded,
- (c) the engaged limited licensee 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 member,
- (e) the engaged limited licensee has explained the legal aspects of the transaction to the client, who appeared to understand the advice given, and
- (f) the engaged limited licensee 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 an engagement in which

- (a) the engaged limited licensee has no conflicting interest with respect to the client's transaction, and
- (b) the engaged limited licensee will act for the client 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 engaged limited licensee has a responsibility that should not be lightly assumed or perfunctorily discharged.

**“limited licensee”** includes an associate of the limited licensee, related persons as defined by the *Income Tax Act* (Canada), and a trust or estate in which the limited licensee has a beneficial interest or for which the limited licensee 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 limited licensee 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 limited licensee 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 limited licensee has an interest; or
- (b) a limited licensee 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 limited licensee and client is a fiduciary one. The limited licensee has a duty to act in good faith. A limited licensee should be able to demonstrate that the transaction with the client is fair and reasonable to the client.

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

**[3]** If the limited licensee chooses not to disclose the conflicting interest or cannot disclose without breaching confidence, the limited licensee must decline the engagement.

**[4]** Generally, in disciplinary proceedings under this rule, the burden will rest upon the limited licensee 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 limited licensee 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 member with whom the client proposes to transact business.

## **Borrowing from Clients**

**3.4-31** A limited licensee 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 limited licensee:
  - (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 limited licensee and the limited licensee’s spouse has a direct or indirect substantial interest borrows money from a client, the limited licensee 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 3.4-31 and 3.4-32 when lending money to a limited licensee on that person’s own account or investing money in a security in which the limited licensee 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 limited licensee for guidance and advice about the loan or investment, the limited licensee is bound by the same fiduciary obligation that attaches to a limited licensee in dealings with a client.

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

### **Lending to Clients**

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

- (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.

<b>Commentary</b>
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See also Rule 3.4-32, Commentary.
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### Guarantees by a Limited Licensee

**3.4-34** Except as provided by Rule 3.4-35, a limited licensee 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 limited licensee 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 limited licensee, the limited licensee's spouse, parent or child;
- (b) the transaction is for the benefit of a non-profit or charitable institution, and the limited licensee 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 limited licensee 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 limited licensee 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 limited licensee have independent legal representation.

### Payment for Legal Services

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

### Commentary

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

### Gifts and Testamentary Instruments

**3.4-37** A limited licensee 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 limited licensee must not include in a client's will a clause directing the executor to retain the limited licensee's services in the administration of the client's estate.

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

### Commentary

**[1]** A conflict of interest between limited licensee and client may exist in cases where the limited licensee 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 limited licensee 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.

### Judicial Interim Release

**3.4-40** A limited licensee 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 limited licensee acts.

**3.4-41** A limited licensee 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 limited licensee when the accused is represented by the limited licensee's associate.

## 3.5 PRESERVATION OF CLIENTS' PROPERTY

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### 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.

**3.5-1A** A limited licensee must, subject to 3.5-1B:

- (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 limited licensee.

**3.5-1B** A limited licensee is not permitted to hold in trust any client funds or any clients’ trust property as defined in the *Law Society of Saskatchewan Rules*, but this does not extend to original documents and papers.

#### 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 limited licensee is responsible for maintaining the safety and confidentiality of the files of the client in the possession of the limited licensee and should take all reasonable steps to ensure the privacy and safekeeping of a client’s confidential information. A limited licensee 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 limited licensee should promptly return a client’s property to the client on request or at the conclusion of the limited licensee’s engagement.

**[4]** If the limited licensee withdraws from representing a client, the limited licensee is required to comply with Rule 3.7-1 (Withdrawal from Representation).

### Notification of Receipt of Property

**3.5-2** A limited licensee 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 limited licensee's custody.

### Identifying Clients' Property

**3.5-3** A limited licensee must clearly label and identify clients' property and place it in safekeeping distinguishable from the limited licensee's own property.

**3.5-4** A limited licensee must maintain such records as necessary to identify clients' property that is in the limited licensee's custody.

### Accounting and Delivery

**3.5-5** A limited licensee must account promptly for clients' property that is in the limited licensee's custody and deliver it to the order of the client on request or, if appropriate, at the conclusion of the engagement.

**3.5-6** If a limited licensee is unsure of the proper person to receive a client's property, the limited licensee must obtain direction from a tribunal of competent jurisdiction.

#### Commentary

**[1]** A limited licensee 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 licensee 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*.

## 3.6 FEES AND DISBURSEMENTS

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### Reasonable Fees and Disbursements

**3.6-1** A limited licensee 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 engagement will result in the limited licensee's inability to accept other employment;
  - (h) any relevant agreement between the limited licensee and the client;
  - (i) the experience and ability of the limited licensee;
  - (j) whether aspects of the matter have been delegated to non-member staff supervised by the limited licensee, and should be billed accordingly;
  - (k) any estimate or range of fees given by the limited licensee; and
  - (l) the client's prior consent to the fee.
- [2]** The fiduciary relationship between limited licensee and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the limited licensee 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 limited licensee from anyone other than the client without full disclosure to and the consent of the client or, where the limited licensee'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 limited licensee 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 limited licensee 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 limited licensee should give to the client an immediate explanation. A limited licensee should confirm with the client in writing the substance of all fee discussions that occur as a matter progresses, and a limited licensee may revise an initial estimate of fees and disbursements.

### Contingent Fees and Contingent Fee Agreements

**3.6-2** Subject to Rule 3.6-1, a limited licensee may enter into a written agreement in accordance with governing legislation that provides that the limited licensee's fee is contingent, in whole or in part, on the outcome of the matter for which the limited licensee's services are to be provided.

#### Commentary

**[1]** In determining the appropriate percentage or other basis of a contingency fee, a limited licensee 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 limited licensee 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 limited licensee, 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 limited licensee 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 engagement is pursuant to a

contingency agreement. In such circumstances, the limited licensee has impliedly undertaken the risk of not being paid in the event the suit is unsuccessful. Accordingly, a limited licensee 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 limited licensee has a right to do so and sets out the circumstances under which this may occur.

### Statement of Account

**3.6-3** In a statement of an account delivered to a client, a limited licensee 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 limited licensee may charge as disbursements only those amounts that have been paid or are required to be paid to a third party by the limited licensee on a client's behalf. However, a subcategory entitled "Other Charges" may be included under the fees heading if a limited licensee 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 are the property of the client and should therefore be accounted for to the client. While an agreement that the member will be entitled to costs is not uncommon, it does not affect the limited licensee's obligation to disclose the costs to the client.

### Joint Engagement

**3.6-4** If a limited licensee acts for two or more clients in the same matter, the limited licensee must divide the fees and disbursements equitably between them, unless there is an agreement by the clients otherwise.

### Division of Fees and Referral Fees

**3.6-5** If there is consent from the client, fees for a matter may be divided between members who are not in the same firm or associated with the limited licensee, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

**3.6-6** If a limited licensee refers a matter to another member because of the expertise and ability of the other member to handle the matter, and the referral was not made because of a conflict of interest, the referring limited licensee may accept, and the other member 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 limited licensee must not:

- (a) directly or indirectly share, split, or divide their fees with any person who is not a member; or
- (b) give any financial or other reward for the referral of clients or client matters to any person who is not a member.

#### **Commentary**

**[1]** This rule prohibits limited licensees from entering into arrangements to compensate or reward non-members for the referral of clients. It does not prevent a limited licensee 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-member. Accordingly, this rule does not prohibit a limited licensee 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 limited licensee'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 Firms

**3.6-8** Rule 3.6-7 does not apply to:

- (a) multi-discipline practices if the practice agreement provides for the sharing of fees, cash flows or profits among the members of the practice or firm; and
- (b) sharing of fees, cash flows or profits by limited licensees who are members of an interjurisdictional 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 firm, however structured. An affiliation is subject to Rule 3.6 -7. In particular, an affiliated entity is not permitted to share in the limited licensee'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.

## Payment and Appropriation of Funds

**3.6-9** [Intentionally left blank]

**3.6-10** A limited licensee must not appropriate any client funds under the limited licensee's control for or on account of fees, except as permitted by the governing legislation.

### Commentary

**[1]** [Intentionally left blank]

**[2]** [Intentionally left blank]

**3.6-11** If the amount of fees or disbursements charged by a limited licensee is reduced on a review or assessment, the limited licensee must repay the monies to the client as soon as is practicable.

**3.6-12** [Intentionally left blank]

## 3.7 WITHDRAWAL FROM REPRESENTATION

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### Withdrawal from Representation

**3.7-1** A limited licensee 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 relationship at will, a limited licensee does not enjoy the same freedom of action. Having undertaken the representation of a client, the limited licensee should complete the task as ably as possible unless there is justifiable cause for terminating the relationship. It is inappropriate for a limited licensee 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 limited licensee 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 limited licensee should protect the client's interests to the best of the limited licensee'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 representation. Nor should withdrawal or an intention to withdraw be permitted to waste court time or prevent another member 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 limited licensee's obligations. The court, opposing parties and others directly affected should also be notified of the withdrawal.

**[4]** [Intentionally left blank]

### Optional Withdrawal

**3.7-2** If there has been a serious loss of confidence between the limited licensee and the client, the limited licensee may withdraw.

## Commentary

[1] A limited licensee may have a justifiable cause for withdrawal in circumstances indicating a loss of confidence, for example, if a limited licensee is deceived by their client, the client refuses to accept and act upon the limited licensee's advice on a significant point, a client is persistently unreasonable or uncooperative in a material respect, or the limited licensee is facing difficulty in obtaining adequate instructions from the client. However, the limited licensee should not use the threat of withdrawal as a device to force a hasty decision by the client on a difficult question.

## Non-payment of Fees

**3.7-3** If, after reasonable notice, the client fails to provide funds on account of disbursements or fees, a limited licensee may withdraw unless serious prejudice to the client would result.

## Commentary

[1] When the limited licensee withdraws because the client has not paid the limited licensee's fee, the limited licensee should ensure that there is sufficient time for the client to obtain the services of another member and for that other member to prepare adequately.

## Withdrawal from Criminal Proceedings

**3.7-4** If a limited licensee 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 other representation and to allow such other member adequate time for preparation, the limited licensee who has agreed to act may withdraw because the client has not paid the agreed fee or for other adequate cause provided that the limited licensee:

- (a) notifies the client, in writing, that the limited licensee 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 limited licensee is no longer acting;
- (d) in a case when the limited licensee'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 limited licensee is no longer acting; and

- (e) complies with the applicable rules of court.

#### **Commentary**

**[1]** A limited licensee 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 may exist between limited licensee and client. The notice should merely state that the limited licensee is no longer acting and has withdrawn.

**3.7-5** If a limited licensee has agreed to act in a criminal case and the date set for trial is not such as to enable the client to obtain other representation or to enable another member to prepare adequately for trial and an adjournment of the trial date cannot be obtained without adversely affecting the client's interests, the limited licensee who agreed to act must not withdraw because of non-payment of fees.

**3.7-6** If a limited licensee 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 limited licensee's intention to withdraw and the date on which the case is to be tried to enable the client to obtain other representation and to enable such other member to prepare adequately for trial, the first limited licensee, 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 limited licensee, require an application to the court for leave to withdraw, the limited licensee 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.

### **Obligatory Withdrawal**

**3.7-7** A limited licensee must withdraw if:

- (a) discharged by a client;
- (b) a client persists in instructing the limited licensee to act contrary to professional ethics; or
- (c) the limited licensee is not competent to continue to handle a matter.

## Leaving a Firm

**3.7-7A** When a limited licensee leaves a firm, the limited licensee and the firm must:

- (a) ensure that clients who have current matters for which the departing limited licensee has conduct or substantial involvement are given reasonable notice that the limited licensee is departing and are advised of their options for obtaining representation; and
- (b) take reasonable steps to obtain the instructions of each affected client as to who they will retain.

### Commentary

**[1]** When a limited licensee leaves a firm to practice elsewhere, it may result in the termination of the relationship between that limited licensee and a client.

**[2]** The client's interests are paramount. Clients must be free to decide whom to engage without undue influence or pressure by the limited licensee or the firm. The client should be provided with sufficient information to make an informed decision about whether to continue with the departing limited licensee, remain with the firm where that is possible, or obtain new representation.

**[3]** The limited licensee and the 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 limited licensee's work for the client, the client's relationship with other members in the law firm and access to client contact information. In the absence of agreement, both the departing limited licensee and the firm should provide the notification.

**[4]** If a client contacts a firm to request a departed limited licensee's contact information, the firm should provide the professional contact information where reasonably possible.

**[5]** Where a client chooses to remain with the departing limited licensee, the instructions referred to in the rule should include written authorizations for the transfer of files and client property as may be permitted. 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 limited licensee 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 firm. When a firm is dissolved the client relationship may end with one or more of the members involved in the engagement. The client should be notified of the dissolution and provided with sufficient information to decide who to engage for representation. The members who are no longer engaged 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 lien and the duties of former and successor members.

**3.7-7B** Rule 3.7-7A does not apply to a limited licensee leaving (a) a government, a Crown corporation or any other public body or (b) a corporation or other organization for which the limited licensee is employed.

#### **Manner of Withdrawal**

**3.7-8** When a limited licensee withdraws, the limited licensee 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 member.

**3.7-9** On discharge or withdrawal, a limited licensee must:

- (a) notify the client in writing, stating:
  - (i) the fact that the limited licensee 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 representation promptly;
- (b) subject to the limited licensee'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;
- (e) promptly render an account for outstanding fees and disbursements;
- (f) co-operate with the successor member 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 limited licensee who is discharged or withdraws is a member of a firm, the client should be notified that the limited licensee 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 limited licensee, the limited licensee should have due regard to the effect of its enforcement on the client's position. Generally speaking, a limited licensee 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 limited licensee's right of lien. In the event of conflicting claims to such papers or property, the limited licensee should make every effort to have the claimants settle the dispute.

**[4]** Co-operation with the successor member will normally include providing any memoranda of fact and law that have been prepared by the limited licensee 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 limited licensee who ceases to act for one or more clients should co-operate with the successor member or members and should seek to avoid any unseemly rivalry, whether real or apparent.

#### **Duty of Successor Limited Licensee**

**3.7-10** Before agreeing to represent a client, a successor limited licensee must be satisfied that the former member has withdrawn or has been discharged by the client.

#### **Commentary**

**[1]** It is quite proper for the successor limited licensee to urge the client to settle or take reasonable steps towards settling or securing any outstanding account of the former member, 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 limited licensee acting for the client.

## CHAPTER 4 – MARKETING OF LEGAL SERVICES

## 4.1 MAKING LEGAL SERVICES AVAILABLE

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### Making Legal Services Available

**4.1-1** A limited licensee 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 limited licensee may assist in making legal services available by participating in the Legal Aid Plan and 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 limited licensees to provide public interest legal services and to support organizations that provide services to persons of limited means.

**[3]** A limited licensee 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 limited licensee has a general right to decline a particular representation (except when assigned 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 limited licensee 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 limited licensee's private opinion about the guilt of the accused. A limited licensee declining representation should assist in obtaining the services of another member qualified in the particular field and able to act. When a limited licensee offers assistance to a client or prospective client in finding another member, the assistance should be given willingly and, except where a referral fee is permitted by Rule 3.6-6, without charge.

## Restrictions

**4.1-2** In offering legal services, a limited licensee 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 legal 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 member, and this rule does not prevent a limited licensee from offering assistance to such a person. A limited licensee is permitted to provide assistance to a person if a close relative or personal friend of the person contacts the limited licensee for this purpose, and to offer assistance to a person with whom the limited licensee has a close family or professional relationship. The rule prohibits the limited licensee from using unconscionable, exploitive or other means that bring the legal profession or the administration of justice into disrepute.

## 4.2 MARKETING

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### Marketing of Professional Services

**4.2-1** A limited licensee 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
<p><b>[1]</b> Examples of marketing that may contravene this rule include:</p> <ul style="list-style-type: none"><li>(a) stating an amount of money that the limited licensee has recovered for a client or referring to the limited licensee'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;</li><li>(b) suggesting qualitative superiority to other members;</li><li>(c) raising expectations unjustifiably;</li><li>(d) suggesting or implying the limited licensee is aggressive;</li><li>(e) disparaging or demeaning other persons, groups, organizations or institutions;</li><li>(f) taking advantage of a vulnerable person or group; and</li><li>(g) using testimonials or endorsements that contain emotional appeals.</li></ul>



### Advertising of Fees

**4.2-2** A limited licensee 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 limited licensee strictly adheres to the advertised fee in every applicable case.

## 4.3 ADVERTISING NATURE OF PRACTICE

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**4.3-1** A limited licensee must not advertise that the limited licensee is a specialist in a specified legal field.

### **Commentary**

**[1]** Limited licensees' advertisements may be designed to provide information to assist a potential client to choose a limited licensee who has the appropriate skills and knowledge for the client's particular legal matter.

**[2]** A limited licensee who is not a certified specialist is not permitted to use any designation from which a person might reasonably conclude that the limited licensee is a certified specialist. A claim that a limited licensee is a specialist or expert, or specializes in an area of law, implies that the limited licensee 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 limited licensee that the limited licensee 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 limited licensee 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 limited licensee's or 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 limited licensee 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.

## CHAPTER 5 - RELATIONSHIP TO THE ADMINISTRATION OF JUSTICE

## 5.1 THE LIMITED LICENSEE AS ADVOCATE

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### Advocacy

**5.1-1** When acting as an advocate, a limited licensee 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 limited licensee has a duty to the client to raise fearlessly every issue, advance every argument and ask every question, however distasteful, that the limited licensee 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 limited licensee must discharge this duty by fair and honourable means, without illegality and in a manner that is consistent with the limited licensee'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 limited licensee 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 limited licensee's function as advocate is openly and necessarily partisan. Accordingly, the limited licensee is not obliged (except as required by law or under these rules) 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 limited licensee 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 limited licensee should refrain from expressing the limited licensee'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 limited licensee 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 limited licensee 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 limited licensee 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:**

**[9]** When defending an accused person, a limited licensee'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 limited licensee's private opinion on credibility or the merits, a limited licensee 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 limited licensee 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 limited licensee the factual and mental elements necessary to constitute the offence, the limited licensee, 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 limited licensee believes to be false. Nor may the limited licensee 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 limited licensee may attack the evidence for the prosecution. The limited licensee 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 limited licensee should go no further than that.

**5.1-2** When acting as an advocate, a limited licensee 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 limited licensee considers to be dishonest or dishonourable;
- (c) appear before a judicial officer when the limited licensee, the limited licensee'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 limited licensee 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 limited licensee has a duty not to mislead the tribunal about the position of the client in the adversarial process. Thus, a limited licensee 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 limited licensee 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 limited licensee must take care not to take unfair or improper advantage of the circumstances. If the complainant or potential complainant is unrepresented, the limited licensee should be governed by the rules about unrepresented persons and make it clear that the limited licensee 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 limited licensee may pursue any hypothesis that is honestly advanced on the strength of reasonable inference, experience or intuition.

### **Incriminating Physical Evidence**

**5.1-2A** A limited licensee 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 or may be solicitor-client privileged or that a limited licensee reasonably believes are otherwise available to the authorities.

**[2]** This rule does not apply where a limited licensee is in possession of evidence tending to establish the innocence of a client, such as evidence relevant to an alibi. However, a limited licensee 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 limited licensee to criminal charges.

**[3]** A limited licensee 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 limited licensee in possession of incriminating physical evidence should carefully consider their 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 limited licensee should balance the duty of loyalty and confidentiality owed to the client with the duties owed to the administration of justice. When a limited licensee discloses or delivers incriminating physical evidence to law enforcement authorities or the prosecution, the limited licensee has a duty to protect client confidentiality, including the client's identity, and to preserve what may be solicitor-client privilege. This may be accomplished by the limited licensee retaining independent representation not informed of the identity of the client and who is instructed not to disclose the identity of the instructing limited licensee, to disclose or deliver the evidence. A limited licensee cannot merely continue to keep possession of the incriminating physical evidence.

**[5]** A limited licensee 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 limited licensee'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 limited licensee 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 limited licensee may determine that non-destructive testing, examination or copying of documentary or electronic information is needed. A licensee 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 limited licensee who has decided to copy, test or examine evidence before delivery or disclosure should do so without delay.

### Ex Parte Proceedings

**5.1-2B** In an ex parte proceeding, a limited licensee must act with utmost good faith and inform the tribunal of all material facts, including adverse facts, known to the limited licensee that will enable the tribunal to make an informed decision.

#### Commentary

**[1]** Ex parte proceedings are exceptional. The obligation to inform the tribunal of all material facts includes an obligation of full, fair and candid disclosure to the tribunal (see also Rules 5.1-1, 5.1-2).

**[2]** The obligation to disclose all relevant information and evidence is subject to a limited licensee's duty to maintain confidentiality and privilege (see section 3.3).

**[3]** Before initiating ex parte proceedings, a limited licensee should ensure that the proceedings are permitted by law and are justified in the circumstances. Where no prejudice would occur, a limited licensee should consider giving notice to the opposing party or their representative (when they are represented), notwithstanding the ability to proceed ex parte.

## Single-Party Communications with a Tribunal

**5.1-2C** Except where authorized by law, and subject to Rule 5.1-2B, a limited licensee must not communicate with a tribunal in the absence of the opposing party or their representative (when they are represented) concerning any matter of substance, unless the opposing party or their representative has been made aware of the content of the communication or has appropriate notice of the communication.

### Commentary

**[1]** It is improper for a limited licensee to attempt to influence, discuss a matter with, or make submissions to, a tribunal without the knowledge of the other party or the representative for the other party (when they are represented). A limited licensee should be particularly diligent to avoid improper single-party communications when engaging with a tribunal by electronic means, such as email correspondence.

**[2]** When a tribunal invites or requests a communication from a limited licensee, the limited licensee should inform the other party or their representative. As a general rule, the other party or their representative should be copied on communications to the tribunal or given advance notice of the communication.

**[3]** This rule does not apply in the context of mediation or prohibit single-party communication with a tribunal on routine administrative or procedural matters, such as scheduling hearing dates or appearances. A limited licensee should consider notifying the other party or their representative of administrative communications with the tribunal. Routine administrative communications should not include any submissions dealing with the substance of the matter or its merits.

**[4]** When considering whether single-party communication with a tribunal is authorized by law, a limited licensee should review local rules, practice directives, and other relevant authorities that may regulate such a communication.

**5.1-3** [Intentionally left blank]

## Disclosure of Error or Omission

**5.1-4** A limited licensee 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 limited licensee must refuse and do everything reasonably possible to prevent it. If that cannot be done, the limited licensee should, subject to Rule 3.7-1 (Withdrawal from Representation), withdraw or seek leave to do so.

## Courtesy

**5.1-5** A limited licensee must be courteous and civil and act in good faith to the tribunal and all persons with whom the limited licensee 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 limited licensee, even though unpunished as contempt, may constitute professional misconduct.

## Undertakings

**5.1-6** A limited licensee must strictly and scrupulously fulfill any undertakings given and honour any trust conditions accepted in the course of litigation.

### Commentary

**[1]** A limited licensee should also be guided by the provisions of Rule 7.2-11 (Undertakings and Trust Conditions.)

## Agreement on Guilty Plea

**5.1-7** Before a charge is laid or at any time after a charge is laid, a limited licensee 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 limited licensee for an accused or potential accused may enter into an agreement with the prosecutor about a guilty plea if, following investigation,

- (a) the limited licensee advises their client about the prospects for an acquittal or finding of guilt;
- (b) the limited licensee 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 limited licensee to enter into an agreement as to a guilty plea.

<b>Commentary</b>
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<b>[1]</b> The public interest in the proper administration of justice should not be sacrificed in the interest of expediency.
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## 5.2 THE LIMITED LICENSEE AS WITNESS

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### Submission of Evidence

**5.2-1** A limited licensee who appears as advocate must not testify or submit their 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 limited licensee 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 limited licensee should not, in effect, appear as an unsworn witness or put the limited licensee's own credibility in issue. The limited licensee who is a necessary witness should testify and entrust the conduct of the case to another member. There are no restrictions on the advocate's right to cross-examine another member, however, and the licensee who does appear as a witness should not expect or receive special treatment because of professional status.

### Appeals

**5.2-2** A limited licensee 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 they testified is purely formal or uncontroverted.

### 5.3 [INTENTIONALLY LEFT BLANK]

## 5.4 COMMUNICATING WITH WITNESSES

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**5.4-1** A limited licensee may seek information from any potential witness, provided that:

- (a) before doing so, the limited licensee discloses the limited licensee's interest in the matter;
- (b) the limited licensee does not encourage the witness to suppress evidence or to refrain from providing information to other parties in the matter; and
- (c) the limited licensee 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 limited licensee 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 limited licensee's contact with an expert witness, including the application of litigation or what may be solicitor-client privilege. This may include notifying an opposing party prior to communicating with that party's expert witness.

### **Conduct During Witness Preparation and Testimony**

**5.4-2** A limited licensee must not influence a witness or potential witness to give evidence that is false, misleading or evasive.

**5.4-3** A limited licensee 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 limited licensee 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 limited licensee should not engage in conduct designed to improperly influence the witness' evidence.

**[4]** The ability of a limited licensee 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 representatives with the approval of the tribunal. Limited licensees 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 limited licensee 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 limited licensee is not permitted to communicate with the witness during cross-examination except with leave of the tribunal or with the agreement of representatives. 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 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 limited licensee 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. Limited licensees 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.

## 5.5 [INTENTIONALLY LEFT BLANK]

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**5.5-1** [Intentionally left blank]

**5.5-2** [Intentionally left blank]

**5.5-3** [Intentionally left blank]

**5.5-4** [Intentionally left blank]

**5.5-5** [Intentionally left blank]

**5.5-6** [Intentionally left blank]

## 5.6 THE LIMITED LICENSEE AND THE ADMINISTRATION OF JUSTICE

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### Encouraging Respect for the Administration of Justice

**5.6-1** A limited licensee 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 limited licensee's professional activities but is a general responsibility resulting from the limited licensee's position in the community. A limited licensee's responsibilities are greater than those of a private citizen. A limited licensee should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The limited licensee in public life should be particularly careful in this regard because the mere fact of being a limited licensee will lend weight and credibility to public statements. Yet, for the same reason, a limited licensee should not hesitate to speak out against an injustice.

**[2]** Admission to and continuance in the limited practice of law implies, on the part of a limited licensee, 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 limited licensees, 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 limited licensees. First, a limited licensee 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 limited licensee's judgments or criticism. Second, if a limited licensee 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 limited licensee, 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 limited licensee contributes to greater public understanding of, and therefore respect for, the legal system.

**[4]** A limited licensee, 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 limited licensee should, therefore, lead in seeking improvements in the legal system, but any criticisms and proposals should be bona fide and reasoned.

### Seeking Legislative or Administrative Changes

**5.6-2** A limited licensee who seeks legislative or administrative changes must disclose the interest being advanced, whether the limited licensee's interest, the client's interest or the public interest.

#### Commentary

**[1]** The limited licensee may advocate legislative or administrative changes on behalf of a client although not personally agreeing with them, but the limited licensee who purports to act in the public interest should espouse only those changes that the limited licensee conscientiously believes to be in the public interest.

### Security of Court Facilities

**5.6-3** A limited licensee 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 limited licensee should suggest solutions to the anticipated problem such as:

- (a) further security; or
- (b) reserving judgment.

**[2]** If possible, the limited licensee should also notify other members 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 limited licensee should be guided by the provisions of section 3.3 (Confidentiality).

## 5.7 LIMITED LICENSEES AND MEDIATORS AND FAMILY DISPUTE RESOLUTION

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### Role of Mediator

**5.7-1** A limited licensee who acts as a mediator must, at the outset of the mediation, ensure that the parties to it understand fully that:

- (a) the limited licensee is not acting as an advocate or legal advisor 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 limited licensee 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 limited licensee-mediator nor an associate of the limited licensee-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 limited licensee-mediator generally should suggest that they seek the advice of separate representatives before and during the mediation process, and encourage them to do so.

**[4]** If, in the mediation process, the limited licensee-mediator prepares a draft contract for the consideration of the parties, the limited licensee-mediator should expressly advise and encourage them to seek separate independent legal representation concerning the draft contract.

**[5]** A limited licensee who has acted as a mediator in a family law matter may act for both spouses in a divorce action provided that all relief is sought by consent and both parties have received independent legal advice in relation to the matter

## Family Dispute Resolution

**5.7-2** In this section:

**“family dispute resolution process”** means the process of family law mediation, family law arbitration or parenting coordination;

**“family law mediation”** means a process by which participants attempt, with the assistance of an impartial person (the family law mediator), to reach a consensual settlement of issues relating to their marriage, cohabitation, separation, divorce, children, or finances, including division of assets;

**“parenting coordination”** means a process by which an impartial person (the parenting coordinator), by agreement of participants or by court order, mediates a dispute with respect to the implementation of an agreement or a court order respecting the allocation of parenting time or parenting responsibilities, or contact with a child or makes a determination respecting that dispute that is binding on the participants;

**“participant”** means a person with issues relating to marriage, cohabitation, separation, or divorce who has agreed to the intervention of an impartial person as family law mediator or arbitrator or parenting coordinator or is subject to a court order appointing such a person to assist in the resolution of such issues.

### Commentary

#### Disqualifications

**[1]** A limited licensee is disqualified from acting for any participant in the following circumstance:

- (a) If a limited licensee, associate or employee of that limited licensee has previously acted or is currently acting for any of the participants to a family dispute resolution process in a solicitor-client relationship with respect to any matter that may reasonably be expected to become an issue during the family dispute resolution process, that limited licensee may not act as a family law mediator or parenting coordinator for any of the participants;
- (b) If a limited licensee has acted in a family dispute resolution process for the participants, neither that limited licensee nor any associate or employee of that limited licensee may act in a solicitor-client relationship for either participant against the other participant;
- (c) If a limited licensee or associate or employee of that limited licensee has acted in a family dispute resolution process for the participants, neither that limited licensee nor an associate or employee of that limited licensee may act for or against any person if to do so might require the limited licensee to disclose or

make use of confidential information given in the course of the family dispute resolution process.

**Obligations of family law mediator or parenting coordinator when participants unrepresented**

**[2]** A limited licensee who acts as a family law mediator or parenting coordinator for participants who are unrepresented must:

- (a) urge as may be appropriate each unrepresented adult participant to obtain independent legal advice or representation, both before the commencement of the family dispute resolution process and at any stage before an agreement between the participants is executed;
- (b) take care to see that the unrepresented participant is not proceeding under the impression that the limited licensee will protect their interests;
- (c) make it clear to the unrepresented participant that the limited licensee is acting exclusively in a neutral capacity, and not as counsel for either participant; and
- (d) explain the limited licensee's role in the family dispute resolution process, including the scope and duration of the limited licensee's powers.

**Obligations of family law mediator or parenting coordinator**

**[3]** Unless otherwise ordered by the court or through legislation, a limited licensee who acts as a family law mediator or parenting coordinator must enter into a written agreement with the participants that includes at least the following provisions:

- (a) an agreement that the limited licensee, throughout the family law mediation or parenting coordination, is not acting as legal counsel for any participant;
- (b) an agreement that the limited licensee may disclose fully to each participant all information provided by the other participant that is relevant to the issues;
- (c) with respect to family law mediation, an agreement that, subject to rule 3.3-3A, the family law mediation is part of an attempt to settle the differences between the participants and that all communications between participants or between any participant and the family law mediator will be "without prejudice" so that no participant will attempt:
  - (i) to introduce evidence of the communications in any legal proceedings, or
  - (ii) to call the family law mediator as a witness in any legal proceedings;
- (d) with respect to parenting coordination, an agreement that no communications between the parenting coordinator and a participant, the child of a participant or a third party are confidential, except that subject to rule 3.3-3A the parenting coordinator may withhold any such information if, in the opinion of the parenting coordinator, the disclosure of the information may be harmful to a child's

relationship with a participant, or compromise the child's relationship with a third party;

- (e) an acknowledgment that the limited licensee must report to a Ministry of Social Services office or First Nations Child and Family Services agency any instance arising from the family law mediation or parenting coordination in which the limited licensee has reasonable grounds to believe that a child is in need of protection;
- (f) an agreement as to the limited licensee's rate of remuneration and terms of payment;
- (g) an agreement as to the circumstances in which family law mediation or parenting coordination will terminate.

**[4]** [Intentionally left blank]

**[5]** [Intentionally left blank]

Limited Licensee with dual role

**[6]** A parenting coordinator who may act as a family law mediator as well as determine issues in a dispute resolution process must explain the dual role to the participants in writing and must advise the participants in writing when the limited licensee's role changes from one to the other.

## CHAPTER 6 - RELATIONSHIP TO STUDENTS, EMPLOYEES, AND OTHERS

## 6.1 SUPERVISION

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### Direct Supervision Required

**6.1-1** A limited licensee has complete professional responsibility for all business entrusted to them and must directly supervise staff and assistants to whom the limited licensee delegates particular tasks and functions.

#### Commentary

**[1]** A limited licensee may permit a non-member to act only under the supervision of a member. 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-member to complete the task, including: the education, experience, and training of the non-member generally and with regard to the matter in question, the demonstrated ethics, trustworthiness, and reliability of the non-member, and the workload of the non-member.

The burden rests on the limited licensee to educate a non-member concerning the duties that the limited licensee assigns to the non-member and then to supervise the manner in which such duties are carried out. A limited licensee should review the non-member's work at sufficiently frequent intervals to enable the limited licensee to ensure its proper and timely completion.

**[2]** A limited licensee who practises alone or operates a branch or part-time office should ensure that

- (a) all matters requiring a limited licensee's professional skill and judgment are dealt with by a member qualified to do the work; and
- (b) no unauthorized persons give legal advice, whether in the limited licensee's name or otherwise.

**[3]** If a non-member has received specialized training or education and is competent to do independent work under the general supervision of a member, a limited licensee may delegate work to the non-member.

**[4]** A limited licensee may permit a non-member to perform tasks delegated and supervised by a member, so long as the limited licensee maintains a direct relationship with the client. A limited licensee in an approved *pro bono* program or community legal clinic funded by a provincial legal aid plan may do so, so long as the limited licensee 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 limited licensee may delegate to a non-member generally must consider the Commentary in this section and turns on the distinction between any special knowledge of the non-member and the professional and legal judgment of the limited licensee, which, in the public interest, must be exercised by the limited licensee whenever it is required.

**6.1-2** [Intentionally left blank]

### Delegation

**6.1-3** A limited licensee must not permit a non-member 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 limited licensee 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-member is disclosed, the capacity of the person is indicated and the limited licensee who is responsible for the legal matter is identified;
- (c) act finally without reference to the limited licensee in matters involving professional legal judgment;
- (d) be held out as a member;
- (e) be remunerated on a sliding scale related to the earnings of the limited licensee, unless the non-member is an employee of the limited licensee; or
- (f) perform any of the duties that only members may perform or do things that members themselves may not do.

### Commentary

**[1]** A limited licensee is responsible for any undertaking given or accepted and any trust condition accepted by a non-member acting under their supervision.

**[2]** A limited licensee should ensure that the non-member is identified as such when communicating orally or in writing with clients, members or public officials or with the public generally, whether within or outside the offices of the firm of employment.

**[3]** In real estate transactions using a system for the electronic submission or registration of documents, a limited licensee who approves the electronic registration of documents by a non-member is responsible for the content of any document that contains the electronic signature of the non-member.

### **Suspended or Disbarred Members**

**6.1-4** Without the express approval of the limited licensee's governing body, a limited licensee 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.

### **Electronic Registration of Documents**

**6.1-5** A limited licensee 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-member employee, to use such access; or
- (b) disclose their password or access phrase or number to others.

**6.1-6** When a non-member employed by a limited licensee has a personalized encrypted electronic access to any system for the electronic submission or registration of documents, the limited licensee must ensure that the non-member does not:

- (a) permit others to use such access; or
- (b) disclose their password or access phrase or number to others.

### **Commentary**

**[1]** The implementation of systems for the electronic registration of documents imposes special responsibilities on limited licensees and others using the system. The integrity and security of the system is achieved, in part, by it 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 members in good standing. It is, therefore, important that limited licensees 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 limited licensee to delegate responsibilities to a non-member who has such access, the limited licensee should ensure that the non-member maintains and understands the importance of maintaining the security of the system.

## 6.2 [INTENTIONALLY LEFT BLANK]

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**6.2-1** [Intentionally left blank]

**6.2-2** [Intentionally left blank]

**6.2-3** [Intentionally left blank]

## 6.3 DISCRIMINATION AND HARASSMENT

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### Discrimination

**6.3-1** A limited licensee must not directly or indirectly discriminate against a colleague, employee, client or any other person.

#### Commentary

**[1]** Limited licensees are uniquely placed to advance the administration of justice, requiring limited licensees to commit to equal justice for all within an open and impartial system. Limited licensees are expected to respect the dignity and worth of all persons and to treat all persons fairly and without discrimination. A limited licensee 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 limited licensee must refrain from all forms of discrimination and harassment, which undermine confidence in the legal profession and our legal system. A limited licensee 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. Limited licensees 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]** Limited licensees 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. Limited licensees 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. Limited licensees 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 limited licensee 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]** Limited licensees are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the limited licensee's office or in legal practice.

## Harassment

**6.3-2** A limited licensee 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 limited licensee engaging in the conduct is not determinative. It is harassment if the limited licensee 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 limited licensee 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]** Limited licensees are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the limited licensee's office or in legal practice.

## Sexual Harassment

**6.3-3** A limited licensee 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 limited licensee engaging in the conduct is not determinative. It is sexual harassment if the limited licensee 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 limited licensee who is in a position to confer any benefit on, or deny any benefit to, the recipient of the

solicitation or advance, if the limited licensee 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]** Limited licensees should avoid condoning or being willfully blind to conduct in their workplaces that constitutes sexual harassment.

**[4]** Limited licensees are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the limited licensee's office or in legal practice.

## Reprisal

**6.3-4** A limited licensee 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.

## CHAPTER 7 - RELATIONSHIP TO THE SOCIETY AND OTHER MEMBERS

## 7.1 RESPONSIBILITY TO THE SOCIETY AND THE LEGAL PROFESSION GENERALLY

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### Communications from the Society

**7.1-1** A limited licensee must reply promptly and completely to any communication from the Society.

### Meeting Financial Obligations

**7.1-2** A limited licensee must promptly meet financial obligations in relation to their 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 legal profession, limited licensees 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 limited licensee clearly indicates in writing that the obligation is not to be a personal one.

**[2]** When a limited licensee retains a consultant, expert or other professional, the limited licensee 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 limited licensee is not responsible for the payment of the fees, the limited licensee should help in making satisfactory arrangements for payment if it is reasonably possible to do so.

**[3]** If there is a change of member, the limited licensee who originally retained a consultant, expert or other professional should advise them about the change and provide the name, address, telephone number, fax number and email address of the new member.

### Duty to Report

**7.1-3** Unless to do so would be unlawful or would involve a breach of solicitor-client privilege as may apply, a limited licensee must report to the Society:

- (a) the misappropriation or misapplication of trust monies by a lawyer;
- (b) the abandonment of a law practice;

- (c) participation in criminal activity related to a member's practice;
- (d) conduct that raises a substantial question as to another member's honesty, trustworthiness, or competency as a member;
- (e) conduct that raises a substantial question about the member's capacity to provide professional services; and
- (f) any situation in which a member's clients are likely to be materially prejudiced.

### **Commentary**

**[1]** Unless a member 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 limited licensee to report to the Society any instance involving a breach of these rules. If a limited licensee is in any doubt whether a report should be made, the limited licensee should consider seeking the advice of the Society directly or indirectly (e.g., through another member). In all cases, the report must be made without malice or ulterior motive.

**[2]** Nothing in this rule is meant to interfere with the 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. Members who face such challenges should be encouraged by other members to seek assistance as early as possible.

**[4]** The Society supports professional support groups in their commitment to the provision of confidential counselling. Therefore, members 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 member from whom the information was received. Notwithstanding the above, a member counselling another member has an ethical obligation to report to the Society upon learning that the member being assisted is engaging in serious misconduct or in criminal activity related to the member's practice or there is a substantial risk that the member may in the future engage in such conduct or activity. The Society cannot countenance such conduct regardless of a member's attempts at rehabilitation.

## Encouraging Client to Report Dishonest Conduct

**7.1-4** A limited licensee must encourage a client who has a claim or complaint against an apparently dishonest member to report the facts to the Society as soon as reasonably practicable.

### Commentary

**[1]** A limited licensee must not act on a client's instructions to recover from another member funds allegedly misappropriated by that other member unless the client authorizes disclosure to the Society and the member makes such disclosure. The limited licensee has an obligation to advise the client in writing that failure to report the facts to the Society may negatively affect the amount recoverable by the client pursuant to a claim which the client may have against the Special Fund. The limited licensee 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.

## 7.2 RESPONSIBILITY TO MEMBERS AND OTHERS

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### Courtesy and Good Faith

**7.2-1** A limited licensee must be courteous and civil and act in good faith with all persons with whom the limited licensee has dealings in the course of their practice.

#### Commentary

**[1]** The public interest demands that matters entrusted to a limited licensee be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each member engaged in a matter will contribute materially to this end. The member who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of members 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 members in their conduct and demeanour toward each other or the parties. The presence of personal animosity between members 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 limited licensee should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other members, but should be prepared, when requested, to advise and represent a client in a complaint involving another member.

**[4]** A limited licensee 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.

**7.2-2** A limited licensee 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 members not going to the merits or involving the sacrifice of a client's rights.

**7.2-3** A limited licensee must not use any device to record a conversation between the limited licensee and a client or another member, even if lawful, without first informing the other person of the intention to do so.

## Communications

**7.2-4** A limited licensee must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another member or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a limited licensee.

**7.2-5** A limited licensee must answer with reasonable promptness all professional letters and communications from other members that require an answer, and a limited licensee must be punctual in fulfilling all commitments.

**7.2-6** Subject to Rules 7.2-6A and 7.2-7, if a person is represented by a member in respect of a matter, another member must not, except through or with the consent of the person's representative:

- (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 member under a limited scope retainer or limited scope services on a matter, another member may, without the consent of the member providing the limited scope services, approach, communicate or deal with the person directly on the matter unless the member has been given written notice of the nature of the legal services being provided under the limited scope retainer or limited scope services and the approach, communication or dealing falls within the scope of that retainer or engagement.

### Commentary

**[1]** Where notice as described in Rule 7.2-6A has been provided to a limited licensee for an opposing party, the opposing member is required to communicate with the person's representative, but only to the extent of the limited representation as identified by the member. The opposing representative may communicate with the person on matters outside of the limited scope retainer or limited scope services.

**7.2-7** A limited licensee who is not otherwise interested in a matter may give a second opinion to a person who is represented by a member 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 member concerning the matter to which the communication relates. A limited licensee

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 limited licensee knows that the person is represented in the matter to be discussed. This means that the limited licensee 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 limited licensee cannot evade the requirement of obtaining the consent of the other member by closing their 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 member. While a limited licensee 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 member involved. The limited licensee should advise the client accordingly and, if necessary, consult the first member unless the client instructs otherwise

**7.2-8** A limited licensee retained to act on a matter involving a corporate or other organization represented by a member 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 representative; or
- (c) whose own interests are directly at stake in the representation;

in respect of that matter, unless the member 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 limited licensee 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 member, the consent of that member to the communication will be sufficient for purposes of this rule. A limited licensee may communicate with employees or agents concerning matters outside the representation.

**[2]** A limited licensee representing a corporation or other organization may also be retained to represent employees of the corporation or organization. In such circumstances, the limited licensee must comply with the requirements of section 3.4 (Conflicts), and particularly Rules 3.4-5 through 3.4-9. A limited licensee must not represent that they act 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.

**7.2-9** When a limited licensee deals on a client's behalf with an unrepresented person, the limited licensee 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 their interests will be protected by the limited licensee; and
- (c) make it clear to the unrepresented person that the limited licensee is acting exclusively in the interests of the client.

#### **Commentary**

**[1]** If an unrepresented person requests the limited licensee to advise or act in the matter, the limited licensee should be governed by the considerations outlined in this rule about joint engagements.

### **Inadvertent Communications**

**7.2-10** A limited licensee who receives a document relating to the representation of the limited licensee's client and knows or reasonably should know that the document was inadvertently sent must promptly notify the sender.

#### **Commentary**

**[1]** Limited licensees sometimes receive documents that were mistakenly sent or produced by opposing parties or their representatives. If a limited licensee knows or reasonably should know that such a document was sent inadvertently, then this rule

requires the limited licensee to notify the sender promptly in order to permit that person to take protective measures. Whether the limited licensee 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 may have been lost. Similarly, this rule does not address the legal duties of a limited licensee who receives a document that the limited licensee 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 limited licensees may choose to return a document unread, for example, when the limited licensee learns before receiving the document that it was inadvertently sent to the wrong address. Unless a limited licensee 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 limited licensee.

## Undertakings and Trust Conditions

**7.2-11** A limited licensee 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 limited licensee 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 limited licensee 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 limited licensee 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 limited licensee that the limited licensee must honour personally. The limited licensee who delivers property without any trust condition cannot retroactively impose trust conditions on the use of that property by the other party.

**[3]** The limited licensee should not impose or accept trust conditions that are unreasonable, nor accept trust conditions that cannot be fulfilled personally. When a limited licensee accepts property subject to trust conditions, the limited licensee must

fully comply with such conditions, even if the conditions subsequently appear unreasonable. It is improper for a limited licensee to ignore or breach a trust condition they have 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 limited licensee 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 member who has imposed the conditions and the member who has accepted them.

**[6]** Any trust condition that is accepted is binding upon a limited licensee, whether imposed by another member or by a lay person. A licensee may seek to impose trust conditions upon a non-member, 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 members.

**[7]** A limited licensee should treat property that, on a reasonable construction, is subject to trust conditions or an undertaking in accordance with these Rules.

**[8]** A limited licensee should not impose on other members impossible, impractical or manifestly unfair conditions of trust, including those with respect to time restraints and the payment of penalty interest. In addition, the limited licensee shall not impose trust conditions which have the effect of altering the terms of the transaction.

**[9]** A limited licensee shall not, when acting for the purchaser in a real estate transaction, undertake personal responsibility for a transaction by guaranteeing payment. Conversely the limited licensee, when acting for the vendor in a real estate transaction, shall not impose upon the member acting for the purchaser a trust condition which requires the member for the purchaser to guarantee closure of the transaction by personally guaranteeing payment of the entire purchaser price.

**[10]** [Intentionally left blank]

## 7.3 OUTSIDE INTERESTS AND THE PRACTICE OF LAW

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### Maintaining Professional Integrity and Judgment

**7.3-1** A limited licensee who engages in another profession, business or occupation concurrently with the practice of law must not allow such outside interest to jeopardize the limited licensee's professional integrity, independence or competence.

#### Commentary

**[1]** A limited licensee 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 limited licensee 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 limited licensee 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 limited licensee must not allow involvement in an outside interest to impair the exercise of the limited licensee'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 limited licensee 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 limited licensee's conduct might bring the limited licensee or the legal profession into disrepute or impair the limited licensee'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 limited licensee must disclose any

personal interest, must declare to all parties in the transaction or to their representatives whether the limited licensee is acting on the limited licensee'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 limited licensee engaged in the practice of law.

**[4]** A limited licensee who has an outside interest in a business, investment, property or occupation:

- (a) must not be identified as a limited licensee when carrying on, managing or being involved in such outside interest.
- (b) [Intentionally left blank]

**[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 limited licensee or the legal profession generally; and
- (b) must not be such as would likely result in a conflict of interest between the limited licensee and a client.

## 7.4 THE LIMITED LICENSEE IN PUBLIC OFFICE

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### Standard of Conduct

**7.4-1** A limited licensee who holds public office must, in the discharge of official duties, adhere to standards of conduct as high as those required of a limited licensee engaged in the practice of law.

#### Commentary

**[1]** The rule applies to a limited licensee who is elected or appointed to a legislative or administrative office at any level of government, regardless of whether the limited licensee attained the office because of professional qualifications. Because such a limited licensee 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 limited licensee holding public office carries out official responsibilities, but conduct in office that reflects adversely upon the limited licensee's integrity or professional competence may be the subject of disciplinary action.

**[3]** Limited licensees holding public office are also subject to the provisions of section 3.4 (Conflicts) when they apply.

**[4]** A limited licensee who holds public office must not allow personal or other interests to conflict with the proper discharge of official duties. A limited licensee 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 limited licensee should terminate the professional relationship, explaining to the client that official duties must prevail. The limited licensee who holds a full-time public office will not be faced with this sort of conflict, but must nevertheless guard against allowing the limited licensee's independent judgment in the discharge of official duties to be influenced by the limited licensee's own interest, or by the interests of persons closely related to or associated with the limited licensee, or of former or prospective clients, or of former or prospective associates.

**[5]** In the context of the preceding paragraph, persons closely related to or associated with the limited licensee include a spouse, child, or any relative of the limited licensee (or of the limited licensee's spouse) living under the same roof, a trust or estate in which the limited licensee has a substantial beneficial interest or for which the limited licensee acts as a trustee or in a similar capacity, and a corporation of which the limited

licensee is a director or in which the limited licensee 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 limited licensee 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 limited licensee or any of the limited licensee's associates is a member of an official body such as, for example, a school board, municipal council or governing body, the limited licensee should not appear professionally before that body. However, subject to the rules of the official body it would not be improper for the limited licensee to appear professionally before a committee of such body if such associate is not a member of that committee.

**[8]** A limited licensee should not represent in the same or any related matter any persons or interests that the limited licensee has been concerned with in an official capacity. Similarly, the limited licensee should avoid advising upon a ruling of an official body of which the limited licensee 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 limited licensee 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 limited licensee has ceased to hold such office. (As to the taking of employment in connection with any matter in respect of which the limited licensee had substantial responsibility or confidential information, see the Commentary for the rule relating to avoiding questionable conduct.)

## 7.5 PUBLIC APPEARANCES AND PUBLIC STATEMENTS

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### Communication with the Public

**7.5-1** Provided that there is no infringement of the limited licensee's obligations to the client, the profession, the courts, or the administration of justice, a limited licensee may communicate information to the media and may make public appearances and statements.

#### Commentary

**[1]** Limited licensees in their public appearances and public statements should conduct themselves in the same manner as they do with their clients, their fellow members, the courts, and tribunals. Dealings with the media are simply an extension of the limited licensee's conduct in a professional capacity. The mere fact that a limited licensee's appearance is outside of a courtroom, a tribunal or the limited licensee's office does not excuse conduct that would otherwise be considered improper.

**[2]** A limited licensee's duty to the client demands that, before making a public statement concerning the client's affairs, the limited licensee 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 limited licensee and should be free from any suggestion that a limited licensee'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 limited licensee should have no contact with the media, but there are other cases in which the limited licensee should contact the media to properly serve the client.

**[5]** Members 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 members to play in view of the obvious contribution that it makes to the community.

**[6]** Limited licensees may be 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 limited licensee can play to assist the public in understanding legal issues.

**[7]** Limited licensees 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]** Limited licensees should, where possible, encourage public respect for and try to improve the administration of justice. In particular, limited licensees should treat fellow members, the courts and tribunals with respect, integrity and courtesy. Limited licensees 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.

### **Interference with Right to Fair Trial or Hearing**

**7.5-2** A limited licensee must not communicate information to the media or make public statements about a matter before a tribunal if the limited licensee 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

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### Preventing Unauthorized Practice

**7.6-1** A limited licensee 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 limited licensee who is authorized to practise may have the protection and benefit of the lawyer-client privilege, the member's duty of confidentiality, the professional standard of care that the law requires of members, and the authority that the courts exercise over them. Other safeguards include mandatory professional liability insurance, the assessment of members' bills, regulation of the handling of trust monies for lawyers and the maintenance of compensation funds.

**[2]** See also the Commentary following Rule 6.1-1 for a list of tasks a limited licensee may delegate to a non-member. See Rule 6.1-3 for a list of tasks that a limited licensee is not permitted to delegate to a non-member.

7.7 [INTENTIONALLY LEFT BLANK]

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7.7-1 [Intentionally left blank]

## 7.8 ERRORS AND OMISSIONS

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### Informing Client of Errors or Omission

**7.8-1** When, in connection with a matter for which a limited licensee is responsible, a limited licensee discovers an error or omission that is or may be damaging to the client and that cannot be rectified readily, the limited licensee 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 limited licensee may no longer be able to act for the client.

#### Commentary

**[1]** In addition to the obligations imposed by Rule 7.8-1, the limited licensee has the contractual obligation to report to the limited licensee'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 limited licensee from the duty to report to the insurer or other indemnitor even if the limited licensee attempts to rectify.

### Notice of Claim

**7.8-2** A limited licensee 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 limited licensee's compulsory professional liability insurance policy, a limited licensee is contractually required to give written notice to the insurer immediately after the limited licensee 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 limited licensee to protect clients. The duty to report arises whether or not the limited licensee considers the claim to have merit.

**[2]** The introduction of compulsory insurance has imposed additional obligations upon a limited licensee, but these obligations must not impair the relationship and duties of the limited licensee to the client. A limited licensee has an obligation to comply with the provisions of the policy of insurance. The insurer's rights must be preserved, and the limited licensee, 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 limited licensee believes that certain actions or a failure to take action have made the limited licensee 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 limited licensee's negligence.

**[3]** The Society's insurance policy requires that a limited licensee 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 limited licensee, they 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 limited licensee 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 limited licensee 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 limited licensee has a duty to pay the balance. [See also Rule 7.1-2]