

# **RULES OF PROFESSIONAL CONDUCT**

**[HTTPS://WWW.LSUC.ON.CA/LAWYER-CONDUCT-RULES/](https://www.lsuc.on.ca/lawyer-conduct-rules/)**

**JANUARY 29, 2016**

# 7 CHAPTERS

Chapter 1: Citation and Interpretation

Chapter 2: Integrity

Chapter 3: Relationship to Clients

Chapter 4: The Practice of Law

Chapter 5: Relationship to the Administration of Justice

Chapter 6: Relationship to Students, Employees, and Others

Chapter 7: Relationship to the Law Society and Other Lawyers

# **CHAPTER 1: CITATION AND INTERPRETATION (6 PP.)**

**“Affiliated Entity”**

**“Affiliation”**

**“Associate”**

**“Client”**

**“Conduct Unbecoming a Barrister or Solicitor”**

**“Conflict of Interest”**

**“Consent”**

**“Independent Legal Advice”**

**“Independent Legal Representation”**

**“Interprovincial Law Firm”**

**“Law Firm”**

**“Law Society”**

**“Lawyer”**

**“Legal Practitioner”**

**“Licensee”**

**“Limited Scope Retainer”**

**“Paralegal”**

**“Professional Misconduct”**

**“Tribunal”**

**“conflict of interest” means the existence of a substantial risk that a lawyer’s loyalty to or representation of a client would be materially and adversely affected by the lawyer’s own interest or the lawyer’s duties to another client, a former client, or a third person. The risk must be more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation arising from the retainer;**

## **Commentary**

**[1] In this context, “substantial risk” means that the risk is significant and plausible, even if it is not certain or even probable that the material adverse effect will occur.**

# **COMMENTARY**

# CHAPTER 2

## SECTION 2.1 INTEGRITY

### 2.1-1

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

**CHAPTER 2: INTEGRITY— A LAWYER'S  
PROFESSIONAL DUTY TO ACT HONOURABLY  
AND WITH INTEGRITY (2 PP.)**

# CHAPTER 2

## 2.1-2

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

**CHAPTER 2: INTEGRITY— A LAWYER'S  
PROFESSIONAL DUTY TO ACT HONORABLY  
AND WITH INTEGRITY**

**CHAPTER 3: RELATIONSHIP TO CLIENTS — CLIENT-RELATED  
ISSUES SUCH AS LAWYER COMPETENCE, QUALITY OF SERVICE,  
CONFIDENTIALITY, CONFLICTS OF INTEREST AND FEES (57 PP.)**

|                    |  |
|--------------------|--|
| <b>SECTION 3.1</b> | <b>COMPETENCE</b>                            |
| <b>SECTION 3.2</b> | <b>QUALITY OF SERVICE</b>                    |
| <b>SECTION 3.3</b> | <b>CONFIDENTIALITY</b>                       |
| <b>SECTION 3.4</b> | <b>CONFLICTS</b>                             |
| <b>SECTION 3.5</b> | <b>PRESERVATION OF<br/>CLIENT'S PROPERTY</b> |
| <b>SECTION 3.6</b> | <b>FEES AND DISBURSEMENT</b>                 |
| <b>SECTION 3.7</b> | <b>WITHDRAWAL FROM<br/>REPRESENTATION</b>    |

## **CHAPTER 3: RELATIONSHIP TO CLIENTS ;**

### **HONESTY AND CANDOUR. COMMENTARY:[1.1]**

**A lawyer has a duty of candor with the client on matters relevant to the retainer. This arises out of the rules and the lawyer's fiduciary obligations to the client. The duty of candor requires a lawyer to inform the client of information known to the lawyer that may affect the interests of the client in the matter.**

#### **[1.2]**

**In some limited circumstances, it may be appropriate to withhold information from a client. For example, with client consent, a lawyer may act where the lawyer receives information on a “for counsel's eyes only” basis. However, it would not be appropriate to act for a client where the lawyer has relevant material information about that client received through a different retainer. In those circumstances the lawyer cannot be honest and candid with the client and should not act.**



## **CHAPTER 3: RELATIONSHIP TO CLIENTS ; HONESTY AND CANDOUR. COMMENTARY:**

**[2]**

**THE LAWYER'S DUTY TO THE CLIENT WHO SEEKS LEGAL ADVICE IS TO GIVE THE CLIENT A COMPETENT OPINION BASED ON A SUFFICIENT KNOWLEDGE OF THE RELEVANT FACTS, AN ADEQUATE CONSIDERATION OF THE APPLICABLE LAW, AND THE LAWYER'S OWN EXPERIENCE AND EXPERTISE. THE ADVICE MUST BE OPEN AND UNDISGUISED AND MUST CLEARLY DISCLOSE WHAT THE LAWYER HONESTLY THINKS ABOUT THE MERITS AND PROBABLE RESULTS.**

**[2.1]**

**A LAWYER WHO IS ACTING FOR BOTH THE BORROWER AND THE LENDER IN A MORTGAGE OR LOAN TRANSACTION SHOULD ALSO REFER TO RULE 3.4-15 REGARDING THE LAWYER'S DUTY OF DISCLOSURE TO THEIR CLIENTS.**

## **CLIENT WITH DIMINISHED CAPACITY**

### **3.2-9**

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

# **CHAPTER 3**

Chapter 4: The Practice of Law — issues related to marketing and advertising of law practices and professional services (4 pp.)

Section 4.1 Making Legal Services Available

Section 4.2 Marketing

Section 4.3 Advertising Nature of Practice

**4.3-1**

A lawyer shall not advertise that the lawyer is a specialist in a specified field unless the lawyer has been so certified by the Law Society.

# CHAPTER 4

# CHAPTER 5

Chapter 5: Relationship to the Administration of Justice—  
a lawyer's responsibilities to the courts, participants in the  
legal system and to the overall administration of  
justice (14 pp.)

Section 5.1: The Lawyer as Advocate

Advocacy

Duty as Prosecutor

Discovery Obligations

Disclosure of Error or Omission

Courtesy

Undertakings

Agreement on Guilty Plea

# CHAPTER 5

Chapter 5: Relationship to the Administration of Justice—  
a lawyer's responsibilities to the courts, participants in the legal system and to the overall administration of justice (14 pp.)

## **Disclosure of Error or Omission**

### **5.1-4**

A lawyer who has unknowingly done or failed to do something that if done or omitted knowingly would have been in breach of the rules in Section 5.1 and who discovers it, shall, subject to the rules in Section 3.3 (Confidentiality), disclose the error or omission and do all that can reasonably be done in the circumstances to rectify it.

## Chapter 5: Relationship to the Administration of Justice

### **Courtesy**

#### **5.1-5**

A lawyer shall be courteous, civil, and act in good faith to the tribunal and with all persons with whom the lawyer has dealings.

### **Commentary:**

**[1]** Legal contempt of court and the professional obligation outlined here are not identical, and a consistent pattern of rude, provocative, or disruptive conduct by the lawyer, even though unpunished as contempt, may constitute professional misconduct.

# **CHAPTER 5**

## Chapter 5: Relationship to the Administration of Justice

Section 5.1 Advocacy

Section 5.2 The Lawyer as Witness

Section 5.3 Interviewing Witnesses

Section 5.4 Communication With Witnesses  
Giving Evidence

Section 5.5 Relations with Jurors

Section 5.6 The Lawyer and the Administration  
of Justice

Section 5.7 Lawyers as Mediators

# CHAPTER 5

## Section 5.6 The Lawyer and the Administration of Justice

**5.6-1** A lawyer shall encourage public respect for and try to improve the administration of justice.

### **Commentary**

**[1]** The obligation set out in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen. A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements.



# CHAPTER 6

Chapter 6: Relationship to Students, Employees, and Others — a lawyer's conduct toward students, employees and others, including areas such as supervision, sexual harassment and discrimination (9 pages)

|               |                      |
|---------------|----------------------|
| Section 6.1   | Supervision          |
| Section 6.2   | Students             |
| Section 6.3   | Sexual<br>Harassment |
| Section 6.3.1 | Discrimination       |

## Chapter 6: Relationship to Students, Employees, and Others

### **SECTION 6.3.1 DISCRIMINATION Special Responsibility** **6.3.1-1**

A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honor the obligation not to discriminate on the grounds of race, ancestry, place of origin, color, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the Ontario *Human Rights Code*), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

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## **CHAPTER 6**

Chapter 7: Relationship to the Law Society and Other Lawyers— a lawyer's responsibilities toward the Law Society and members of the profession, involvement in multi-discipline practices and public office (22 pp.)

|               |  |
|---------------|--|
| Section 7.1   | Responsibility to the Profession of Law      |
| Section 7.2   | Responsibility to Lawyers and Others         |
| Section 7.3   | Outside Interests and the Practice of Law    |
| Section 7.4   | The Lawyer in Public Office                  |
| Section 7.5   | Public Appearances and Public Statements     |
| Section 7.6   | Preventing Unauthorized Practice             |
| Section 7.7   | Retired Judges                               |
| Section 7.8   | Errors and Omissions                         |
| Section 7.8.1 | Responsibility in Multi-Discipline Practices |
| Section 7.8.2 | Discipline                                   |

# CHAPTER 7

## Chapter 7: Relationship to the Law Society and Other Lawyers

### **SECTION 7.8.2 DISCIPLINE Disciplinary Authority**

#### **7.8.2-1**

A lawyer is subject to the disciplinary authority of the Law Society regardless of where the lawyer's conduct occurs.

#### **Professional Misconduct**

#### **7.8.2-2**

The Law Society may discipline a lawyer for professional misconduct.

#### **Conduct Unbecoming a Lawyer**

#### **7.8.2-3**

The Law Society may discipline a lawyer for conduct unbecoming a lawyer.

# **CHAPTER 7**

# **BRANDON DASSEY INTERVIEW WITH INVESTIGATOR:**

<https://www.youtube.com/watch?v=p4BJB3nHCdY>

- 1. Discuss the lawyer's investigator's interview using vocabulary of Rules of Professional Conduct.**
- 2. If Len Kachinsky (Michael O'Kelly's employer and Brendan Dassey's defense lawyer) asked you to defend him against charges of unprofessional conduct, what would you argue?**
- 3. Describe the power balance between Brendan Dassey and Michael O'Kelly.**

# **DISCUSSION**