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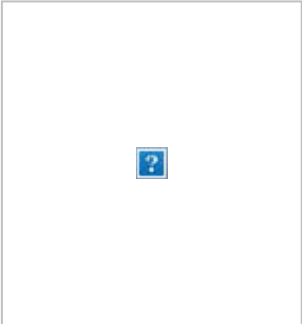
(See [Highlights of amendments](#) for a summary of changes to the Handbook.)

[Table of Contents](#)

[Introduction to the annotated Handbook](#)

Chapter 1 – [Canons of Legal Ethics](#)

1. [To the state](#)
2. [To courts and tribunals](#)
3. [To the client](#)
4. [To other lawyers](#)
5. [To oneself](#)



Need to replace pages in your *Members' Manual*? See the [Member's Manual](#) page.

Chapter 2 – [Integrity](#)

1. [Dishonourable conduct](#)
2. [Duty to meet financial obligations](#)
3. [Discrimination](#)

Chapter 3 – [Competence, Quality of Service and Relationship to Clients](#)

1. [Knowledge and skill](#)
- 2.1 [Client capacity](#)
- 2.4 [Lack of capacity](#)
3. [Quality of service](#)
4. [Seeking assistance](#)
5. [Promptness](#)
6. [Duty of lawyer and law firm when a change affects clients](#)
13. [Pro bono](#)

Chapter 4 – [Avoiding Questionable Conduct, Including Improper Communications](#)

1. [Dealing with unrepresented persons](#)
- 1.1 [Communication with clients of other lawyers](#)

- 
- 
- 
- 
- 
- 
- 

2. [Threatening criminal or disciplinary proceedings](#)
3. [Coercion, improper influence or offering compensation to avoid prosecution](#)
5. [Errors and omissions](#)
6. [Dishonesty, crime or fraud of client](#)
7. [Restricting future representation](#)
8. [Public representations](#)

#### Chapter 5 – [Confidential Information](#)

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

#### Chapter 6 – [Conflicts of Interest Between Clients](#)

1. [General principles](#)
4. [Acting for two or more clients](#)
- 6.1 [Space-sharing arrangements](#)
- 6.3 [Acting against a current client](#)
7. [Acting against a former client](#)
- 7.01 [Limited representation](#)
- 7.1 [Conflicts arising as a result of transfer between law firms](#)
- 7.2 [Application of Rules](#)
- 7.4 [Firm disqualification](#)
- 7.5 [Continued representation not to involve transferring lawyer](#)
- 7.8 [Determination of compliance](#)
- 7.9 [Due diligence](#)
8. [Finders' fees](#)
9. [Acting as a family law mediator](#)
10. [Real property conveyancing transactions](#)

#### Chapter 7 – [Conflicts of Interest Between Lawyer and Client](#)

1. [Direct or indirect financial interest](#)
2. [Financial or membership interest in the client](#)
3. [Transaction with a client](#)
4. [Client loan, credit or guarantee](#)
5. [Financial interest in a client](#)
6. [Ancillary business or occupation](#)
7. [Investing a client's funds](#)

#### Chapter 7.1 – [Preservation of Client Valuables](#)

1. [Definitions](#)
2. [Application of chapter](#)
3. [Duty of safekeeping](#)
4. [Notice to client](#)
5. [Adequate measures](#)
6. [Return of valuables](#)

## Chapter 8 – [The Lawyer as Advocate](#)

1. [Prohibited conduct](#)
2. [Offering to give false testimony](#)
6. [Inconsistent statements or testimony](#)
7. [Duty to withdraw](#)
9. [The lawyer as witness](#)
12. [Interviewing witnesses](#)
14. [Contacting an opponent's expert](#)
18. [Duties of prosecutor](#)
19. [Judicial interim release](#)
20. [Representation of an accused on guilty plea](#)
21. [Role in without notice proceedings](#)
22. [Former judge or master](#)
23. [Public representations](#)

## Chapter 9 – [Fees](#)

- 0.1 [Definition](#)
  1. [Excessive fees](#)
  2. [Referral fees](#)
  4. [Prepaid legal services plan](#)
  5. [Apportionment of fees](#)
  6. [Sharing fees](#)
  7. [Hidden fees](#)

## Chapter 10 – [Withdrawal](#)

- 0.1 [Definition](#)
  1. [Obligatory withdrawal](#)
  2. [Optional withdrawal](#)
  3. [Residual right to withdraw](#)
  6. [Withdrawal for non-payment of fee](#)
  8. [Procedure for withdrawal](#)
  9. [Confidentiality](#)
  10. [Limited retainer](#)

## Chapter 11 – [Responsibility to Other Lawyers](#)

5. [Fulfilling professional commitments](#)
6. [Responding to correspondence from other lawyers](#)
7. [Undertakings and trust conditions](#)
8. [Trust cheques](#)
- 8.1 [Real estate transactions](#)
9. [Conditional undertakings](#)
10. [Imposed undertakings](#)
12. [Proceeding in default](#)
13. [Acting against another lawyer](#)
14. [Tape recording and monitoring conversations](#)
15. [Threatening to report another lawyer](#)
22. [Restrictive covenants](#)

## Chapter 12 – [Supervision of Employees](#)

1. [Responsibility for all business entrusted to lawyer](#)

2. [Matters requiring professional skill and judgement](#)
3. [Signing correspondence](#)
4. [Legal services performed by non-lawyers](#)
10. [Real estate assistants](#)

#### Chapter 13 – [Responsibility to the Law Society](#)

1. [Reporting another lawyer to the Law Society](#)
3. [Regulatory compliance](#)
4. [The Law Society's disciplinary and competence procedures](#)
5. [Associating with a person whose character and fitness are in question](#)
6. [Apparent partnerships and associations](#)

#### Chapter 14 – [Marketing of Legal Services](#)

1. [Application of Chapter](#)
2. [Definitions](#)
4. [Content and format of marketing activities](#)
5. [Examples](#)
- 7.2 [Former firm of current judge or master](#)
8. [Notary Public](#)
10. [Designation](#)
16. [Preferred areas of practice](#)
18. [Specialization](#)
22. [Real estate sales](#)
23. [Multi-disciplinary practice](#)

#### Appendix 1 – [Affidavits and Solemn Declarations](#)

1. [Affidavits and solemn declarations](#)
2. [Witnessing the execution of an instrument](#)

#### Appendix 2 – [Family Law Mediation](#)

1. [Definitions](#)
3. [Disqualifications](#)
4. [Mediator's duties](#)
5. [Written agreement](#)

#### Appendix 3 – [Real Property Transactions](#)

1. [Application](#)
2. [Acting for parties with different interests](#)
3. [Simple conveyance](#)
6. [Advice and consent](#)
7. [Foreclosure proceedings](#)
8. [Unrepresented parties in a real property transaction](#)

#### Appendix 4 – [Duty of Lawyer on Termination of Employment](#)

1. [Letter from departing lawyer](#)
2. [Letter from law firm](#)

#### Appendix 5 – [Conflicts Arising as a Result of Transfer Between Law Firms](#)

1. [Matters to consider when interviewing a potential transferee](#)

2. [Matters to consider before hiring a potential transferee](#)
  - (a) [If a conflict does exist](#)
  - (b) [If no conflict exists](#)
  - (c) [If the new law firm is not sure whether a conflict exists](#)
3. [Reasonable measures to ensure non-disclosure of confidential information Guidelines](#)  
[Guidelines](#)

Appendix 6 – [Acting for Two or More Clients](#)

1. [Sample letter where lawyer acts jointly for two or more clients](#)
2. [Sample letter where lawyer acts jointly for more than two clients](#)

[Contact Us](#) | [Site Map](#) | [Links](#) | [Feedback](#) | [Terms of Use](#)

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[\[Table of Contents\]](#) [\[next chapter\]](#)

Chapter 1 out of 14 chapters in the annotated Professional Conduct Handbook

## CHAPTER 1 CANONS OF LEGAL ETHICS [In force January 1, 1992]

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

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

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

### 1. To the state

(1) A lawyer owes a duty to the state, to maintain its integrity and its law. A lawyer should not aid, counsel, or assist any person to act in any way contrary to the law.

(2) When engaged as a Crown prosecutor, a lawyer's primary duty is not to seek a conviction but to see that justice is done; to that end the lawyer should make timely disclosure to the defence of all facts and known witnesses whether tending to show guilt or innocence, or that would affect the punishment of the accused.

(3) A lawyer should accept without hesitation, and if need be without fee or reward, the cause of any person assigned to the lawyer by the court, and exert every effort on behalf of that person.

### 2. To courts and tribunals

(1) A lawyer's conduct should at all times be characterized by candour and

fairness. The lawyer should maintain toward a court or tribunal a courteous and respectful attitude and insist on similar conduct on the part of clients, at the same time discharging professional duties to clients resolutely and with self-respecting independence.

(2) Judges, not being free to defend themselves, are entitled to receive the support of the legal profession against unjust criticism and complaint. Whenever there is proper ground for serious complaint against a judicial officer, it is proper for a lawyer to submit the grievance to the appropriate authorities.

(3) A lawyer should not attempt to deceive a court or tribunal by offering false evidence or by misstating facts or law and should not, either in argument to the judge or in address to the jury, assert a personal belief in an accused's guilt or innocence, in the justice or merits of the client's cause or in the evidence tendered before the court.

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

### [Annotations](#)

#### 3. To the client

(1) A lawyer should obtain sufficient knowledge of the relevant facts and give adequate consideration to the applicable law before advising a client, and give an open and undisguised opinion of the merits and probable results of the client's cause. The lawyer should be wary of bold and confident assurances to the client, especially where the lawyer's employment may depend on such assurances. The lawyer should bear in mind that seldom are all the law and facts on the client's side, and that *audi alteram partem* is a safe rule to follow.

(2) A lawyer should disclose to the client all the circumstances of the lawyer's relations to the parties and interest in or connection with the controversy, if any, which might influence whether the client selects or continues to retain the lawyer. A lawyer shall not act where there is a conflict of interests between the lawyer and a client or between clients.

(3) Whenever the dispute will admit of fair settlement the client should be advised to avoid or to end the litigation.

(4) A lawyer should treat adverse witnesses, litigants, and counsel with fairness and courtesy, refraining from all offensive personalities. The lawyer must not allow a client's personal feelings and prejudices to detract from the lawyer's professional duties. At the same time the lawyer should represent the client's interests resolutely and without fear of judicial disfavour or public unpopularity.

(5) A lawyer should endeavour by all fair and honourable means to obtain for a client the benefit of any and every remedy and defence which is authorized by law. The lawyer must, however, steadfastly bear in mind that this great

trust is to be performed within and not without the bounds of the law. The office of the lawyer does not permit, much less demand, for any client, violation of law or any manner of fraud or chicanery. No client has a right to demand that the lawyer be illiberal or do anything repugnant to the lawyer's own sense of honour and propriety.

(6) It is a lawyer's right to undertake the defence of a person accused of crime, regardless of the lawyer's own personal opinion as to the guilt of the accused. Having undertaken such defence, the lawyer is bound to present, by all fair and honourable means and in a manner consistent with the client's instructions, every defence that the law of the land permits, to the end that no person will be convicted but by due process of law.

(7) A lawyer should not, except as by law expressly sanctioned, acquire by purchase or otherwise any interest in the subject-matter of the litigation being conducted by the lawyer. A lawyer should scrupulously guard, and not divulge or use for personal benefit, a client's secrets or confidences. Having once acted for a client in a matter, a lawyer must not act against the client in the same or any related matter.

(8) A lawyer must record, and should report promptly to a client the receipt of any moneys or other trust property. The lawyer must use the client's moneys and trust property only as authorized by the client, and not co-mingle it with that of the lawyer.

(9) A lawyer is entitled to reasonable compensation for services rendered, but should avoid charges which are unreasonably high or low. The client's ability to pay cannot justify a charge in excess of the value of the service, though it may require a reduction or waiver of the fee.

(10) A lawyer should try to avoid controversies with clients regarding compensation so far as is compatible with self-respect and with the right to receive reasonable recompense for services. A lawyer should always bear in mind that the profession is a branch of the administration of justice and not a mere money-making business.

(11) A lawyer who appears as an advocate should not submit the lawyer's own affidavit to or testify before a court or tribunal except as to purely formal or uncontroverted matters, such as the attestation or custody of a document, unless it is necessary in the interests of justice. If the lawyer is a necessary witness with respect to other matters, the conduct of the case should be entrusted to other counsel.

#### [Annotations](#)

#### 4. To other lawyers

(1) A lawyer's conduct toward other lawyers should be characterized by courtesy and good faith. Any ill feeling that may exist between clients or lawyers, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. Personal remarks or references between lawyers should be scrupulously avoided, as should quarrels between lawyers which cause delay and promote unseemly wrangling.



(2) A lawyer should neither give nor request an undertaking that cannot be fulfilled and should fulfil every undertaking given. A lawyer should never communicate upon or attempt to negotiate or compromise a matter directly with any party who the lawyer knows is represented therein by another lawyer, except through or with the consent of that other lawyer.

(3) A lawyer should avoid all sharp practice and should take no paltry advantage when an opponent has made a slip or overlooked some technical matter. A lawyer should accede to reasonable requests which do not prejudice the rights of the client or the interests of justice.

#### Annotations

#### 5. To oneself

(1) A lawyer should assist in maintaining the honour and integrity of the legal profession, should expose without fear or favour before the proper tribunals, unprofessional or dishonest conduct by any other lawyer and should accept without hesitation a retainer against any lawyer who is alleged to have wronged the client.

(2) It is the duty of every lawyer to guard the Bar against the admission to the profession of any candidate whose moral character or education renders that person unfit for admission.

(3) A lawyer should make legal services available to the public in an efficient and convenient manner that will command respect and confidence. A lawyer's best advertisement is the establishment of a well-merited reputation for competence and trustworthiness.

(4) No client is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the state, or disrespect for the judicial office, or the corruption of any persons exercising a public or private trust, or deception or betrayal of the public.

(5) A lawyer should recognize that the oaths taken upon admission to the Bar are solemn undertakings to be strictly observed.

(6) All lawyers should bear in mind that they can maintain the high traditions of the profession by steadfastly adhering to the time-honoured virtues of probity, integrity, honesty and dignity.

\* \* \*

#### ANNOTATIONS:

#### Canon 2 - To courts and tribunals

Where the issue of liability has been settled and where the issue of quantum is to be argued, and where the plaintiff in the matter dies, a lawyer acting for the plaintiff has a duty to inform both the clerk of the court and opposing counsel of the plaintiff's death.

[EC March 1993, item 7](#)

Where a plaintiff in a personal injury litigation dies intestate shortly after [judgment](#) is pronounced, where the order reflecting the judgment has not yet been entered and there are outstanding matters to be resolved, and where no administrator has been appointed, plaintiffs counsel is under an ethical obligation to notify forthwith both the court and opposing counsel of the death of his client.

[EC April 1994, item 5](#)

In the absence of official court approval or a Law Society rule that stipulates how a lawyer should dress for court, it is inappropriate for a lawyer to depart from customary dress when required to be gowned.

[EC May 1997, item 9](#)

A lawyer who is negligent and reckless and displays a casual disregard for the truth in making misrepresentations to the court and to the Law Society, is guilty of professional misconduct.

[DCD 01-16](#)

Letters to the Law Society, with copies to the client and another lawyer, which criticize the judiciary and another lawyer are inappropriate. It is not in the best interests of the justice system, clients, or the profession for lawyers to express themselves in a fashion that promotes acrimony or intensifies the stress and difficulty that people are under.

[2003 LSBC 30](#)

Lawyers robe should not bear the words duty counsel or any other markings.

[EC June 2003, item 5](#)

A lawyers intemperate and disrespectful behaviour in court can amount to professional misconduct and conduct unbecoming a member.

[DD 04/02](#)

## **Canon 3 - To the client**

A lawyer billed his client for fees based on a percentage of funds held in trust, even though his retainer agreement required that he bill on an hourly rate. He did so because he realized his neglect in accurately recording his time meant he would otherwise not be remunerated for that time. The bill was far in excess of the value of the services provided when calculated on an hourly basis. His conduct constituted professional misconduct.

[DCD 01-27](#)

A lawyer charged and billed to clients approximately \$75 in personal disbursements, which he believed represented a fair set-off for disbursements that he paid personally on their behalf while working at home. Although it was done for administrative convenience, it constituted professional misconduct.

[2004 LSBC 38](#)

A lawyer was found guilty of professional misconduct for abandoning a criminal client in mid-trial (to attend to a new, unrepresented client in another courtroom) and in treating the judge with disrespect.

[2005 LSBC 10](#)

Subject to the caveat that a lawyer must not represent a client who is acting out of malice, a lawyer is entitled to take account of a client's ability to pay in setting a reduced fee, or in acting without fee, and the lawyer is under no obligation to consider an opposing party's circumstances in determining the fee.

[EC December 2007, item 6](#)

Canon 4 -To other lawyers

When a caveat has been filed in one Supreme Court registry but not in others through inadvertence, it is sharp practice for a lawyer to apply for letters of administration without notifying the lawyer who filed the caveat of the proposed application.

[EC March 1996, item 7](#)

A lawyer representing plaintiffs learned from the trial coordinator that the trial had been removed from the trial list and agreed to inform opposing counsel of the adjournment. However, he delayed informing opposing counsel of the adjournment for fear of jeopardizing a settlement opportunity. The lawyers failure to inform opposing counsel constituted professional misconduct.

[DCD 97-01](#)

Failure to advise opposing counsel that you are not the lawyer for one of the parties, knowing they believe that to be the case, constitutes professional misconduct.

[DCD 99-04](#)

A lawyer who assisted his client to carry out certain corporate procedures using the proxy of an unrepresented shareholder, without the knowledge of or notice to the shareholder, is sharp practice amounting to professional misconduct.

[DCD 00-10](#)

Failure to immediately send material to the other party as required by a court order does not constitute professional misconduct if it is due to inadvertence, not impropriety. Failing to provide information to the other party because of limitations of the retainer does not amount to professional misconduct.

[DCD 00-16](#)

A lawyer who had an inappropriate verbal exchange with another lawyer during a trial adjournment and pressed his chest against hers was guilty of professional misconduct, even though his actions were unplanned and were not intended to intimidate. Whenever physical contact occurs between lawyers in a confrontational situation, it will be treated as aggravated and unjustified conduct.

[DCD 01-09](#) and [DCD 01-15](#)

A lawyer who was representing the vendor in a real estate transaction gave his undertaking to the purchasers solicitor that he would pay all property tax arrears, penalties, and outstanding utility charges from the sale proceeds. He advised the purchasers lawyer that he had completed his undertakings, but the vendor himself had paid the charges with a cheque that was returned for insufficient funds. It was professional misconduct to rely on his client to pay the charges.

[DCD 02-09](#)

It is professional misconduct to make statements, at a social gathering, about another lawyers alleged professional negligence, and to make allegations that the lawyer will be disbarred.

[DCD 03-10](#)

Purporting to serve a writ by fax, knowing it is not proper service, is professional misconduct.

[2003 LSBC 44](#)

[\[Table of Contents\]](#) [\[next chapter\]](#)

Chapter 1 out of 14 chapters in the annotated Professional Conduct Handbook

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[\[Table of Contents\]](#) [\[previous chapter\]](#) [\[next chapter\]](#)

Chapter 10 out of 14 chapters in the annotated Professional Conduct Handbook

## CHAPTER 10 WITHDRAWAL

### Definition

0.1 In this Chapter, to "withdraw" includes to

- (a) sever the solicitor-client relationship, or
- (b) withdraw as counsel.

[added 03/2005]

### Obligatory withdrawal

1. A lawyer is required to sever the solicitor-client relationship or withdraw as counsel if:

- (a) discharged by the client,
- (b) instructed by the client to do something inconsistent with the lawyer's professional responsibility, including the duty to the court,
- (c) the client takes a position solely to harass or maliciously injure another,
- (d) the lawyer's continued involvement will place the lawyer in a conflict of interest, or
- (e) the lawyer is not competent to handle the matter.

[amended 03/2005]

### Optional withdrawal

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

[amended 03/2005]

#### [Annotations](#)

Residual right to withdraw

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

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

[amended 03/2005]

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

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

[amended 03/2005]

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

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

[amended 03/2005]

#### [Annotations](#)

Withdrawal for non-payment of fee

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

[amended 03/2005]

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

[amended 03/2005; 09/2010]

## Annotations

### Procedure for withdrawal

8. Upon withdrawal, the lawyer must immediately:

(a) notify the client in writing, stating:

(i) the fact that the lawyer has withdrawn,

(ii) the reasons, if any, for the withdrawal, and

(iii) in the case of litigation, that the client should expect that the hearing or trial will proceed on the date scheduled and that the client should retain new counsel promptly,

(b) notify in writing the court registry where the lawyer's name appears as counsel for the client that the lawyer has withdrawn and, where applicable, comply with any other requirements of the tribunal,<sup>2</sup>

(c) notify in writing all other parties, including the Crown where appropriate, of the severance or withdrawal,

(d) account to the client for:

(i) any money received for fees or disbursements, and

(ii) any valuable property held on behalf of the client, and

(e) take all reasonable steps to assist in the transfer of the client's file.

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

## Annotations

### Confidentiality

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

[amended 03/2005; 09/2010]

### Limited retainer

10. A lawyer who acts for a client only in a limited capacity must promptly disclose the limited retainer to the court and to any other interested person in

the proceeding, if failure to disclose would mislead the court or that other person.

[amended 03/2005]

[Annotations](#)

\* \* \*

FOOTNOTES:

1. Examples of circumstances to which this rule may apply include circumstances in which a client has:

- (a) deceived the lawyer,
- (b) refused to give adequate instructions to the lawyer, or
- (c) refused to accept and act upon the lawyer's advice on a significant point.

[added 03/2005]

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

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

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

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

Disclosure of non-payment of fees in cases where it is unrelated to the merits and will not cause prejudice to the accused is not an



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

[added 09/2010]

\* \* \*

#### ANNOTATIONS:

##### Rule 2 - Optional withdrawal

It is not proper for a lawyer to use the threat of withdrawal from a case to induce a client to accept a settlement.

[\*EC July 1995, item 8\*](#)

##### Rule 3 - Residual right to withdraw

It is not improper for a lawyer to withdraw from acting for a client at the request of another client if the withdrawal is in accordance with the Rules.

[\*EC July 1996, item 10\*](#)

##### Rules 6 and 7 - Withdrawal for non-payment of fees

When a Legal Services Society funding reduction prevents it from paying lawyers who have agreed to act as duty counsel in the future, lawyers may withdraw from that commitment by giving reasonable notice to the court of their intention to withdraw. Reasonable notice for duty counsel work may be as little as one day, with no distinction between accused who are in custody and those who are not.

[\*EC March 2002, item 6\*](#)

A lawyer acted for a client on an extradition matter for a period of time. The proceeding involved a fitness hearing, during which the government agreed to pay for legal fees. The client was not successful in securing legal aid for the balance of the extradition hearing, nor could he afford the lawyer's legal fees. The lawyer, a sole practitioner, could not take on the burden of a long hearing, in another city, without compensation. However difficult it may be, the lawyer had to allow sufficient time before withdrawing to enable the client to obtain the services of another lawyer and to enable the other lawyer to prepare adequately for trial.

[\*EC March 25, 2003\*](#)

A lawyer acted for a legal aid client in an immigration matter and was refused extra fees by the Legal Aid Society (and upheld by the Registrar) when the case was completed. He queried the propriety of accepting legal aid retainers he did not expect to be able to complete and the circumstances under which he may withdraw from legal aid cases. The Committee found that the lawyer had an obligation to deal with both the client and the Legal Services Society

in good faith. He should not accept an immigration retainer that he does not expect to be able to complete for the fee offered, unless the Society and the client agree to such an agreement. Once the lawyer has accepted the case, Rules 1 and 2 of Chapter 10 govern withdrawal. If they do not apply, the lawyer can withdraw under Rule 3 if it is not unfair to the client and is not done for an improper purpose. This will depend on the particular circumstances of the case.

[EC June 2006, item 3](#)

#### Rule 8 - Procedure for withdrawal

A lawyer has an ethical duty, on the request of the client, to provide a client with documents in the possession of the lawyer that the client is entitled to have at law. Where a client requests a lawyer to provide documents in electronic form, a lawyer has an obligation to provide copies of the documents in the same electronic form in which the lawyer holds them at the time of the client's request.

[EC December 2008, item 2](#)

A lawyer who withheld client files after he and the client settled a fee dispute in relation to those files was found guilty of professional misconduct.

[DCD 92-5](#)

#### Case Law

Counsel applied to withdraw and the client opposed the application. The lawyer was in the awkward position of asserting that there had been a total breakdown of their relationship without being able to divulge the background to the dispute. The court has no power to order counsel to continue to act if counsel has decided he can no longer represent the client. Issues that lie properly within the domain of counsel and client circumscribe the court's scope of inquiry. Counsel could not be ordered to continue to act. If the client felt that the lawyer was acting improperly, the proper recourse was for him to complain to the Law Society. Proper regulation of the integrity of lawyers will require, occasionally, access to confidential or privileged information. The lawyer is able to disclose such information to the Law Society during the investigation. This protects the independence of lawyers from state interference, while protecting the public interest in ensuring there is a method to regulate the conduct of lawyers.

[Lau v. Rai](#) 2007 BCSC 917

#### Rule 10 - Limited retainer

There is no necessary conflict between Rule 10 and the Criminal CaseFlow Management Rules, which seem to require the presence of counsel at certain procedural stages of criminal proceedings. It is proper for counsel to enter into an agreement with an accused person to act at trial only, and not to act for the accused in any procedural matters leading up to the trial. Of course, counsel would have an obligation to explain to the client any risks that a limited retainer of this nature might carry for the client.

[EC November 30, 2000 item 9](#)

It is not inconsistent with Rule 10 for a lawyer to provide anonymous drafting assistance to a client.

*Recommendation 8 of [Report of Unbundling of Legal Services Task Force](#) p.*

22; *approved by Benchers April 2008*

Failing to provide information to an unrepresented party about the limitations of the retainer does not amount to professional misconduct.

[DCD 00-16](#)

[\[Table of Contents\]](#) [\[previous chapter\]](#) [\[next chapter\]](#)

Chapter 10 out of 14 chapters in the annotated Professional Conduct Handbook

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