

## Entry-Level Barrister Competencies by Category

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### A. Ethical and Professional Responsibilities

**The barrister acts ethically and professionally at all times in dealing with clients, colleagues, courts, tribunals and the public in order to effectively represent clients, maintain the standards of the profession, and ensure public confidence in the legal system.**

#### Ethics and Professionalism

- 1) declines to act or seeks appropriate assistance when the matter is beyond own abilities.
- 2) accepts only retainers that are reasonable and capable of performance under law.
- 3) avoids or manages conflicts of interest (e.g., clarifies joint retainers, acting against a client, dealing with self-represented persons, doing business with a client [e.g., borrowing from a client], acting for family members).
- 4) charges fair and reasonable fees and disbursements (e.g., division of fees and referral fees, full disclosure of fees, appropriation of funds).
- 5) recognizes and fulfils duties relating to confidentiality and disclosure (e.g., solicitor-client privilege).
- 6) obtains all necessary consents at the time of the retainer, respecting reasonable disclosure to third parties (e.g., pursuant to relevant privacy legislation).
- 7) ensures staff understands and adheres to relevant *Rules of Professional Conduct* (e.g., confidentiality, privilege, justified disclosure, integrity, honesty).
- 8) delegates and supervises appropriately (e.g., provides opportunities for others to learn, enhances cost efficiencies for the client, does not delegate where inappropriate).
- 9) withdraws from representation in compliance with the *Rules of Professional Conduct*, the court or tribunal (e.g., optional withdrawal, mandatory withdrawal, client request for withdrawal).
- 10) understands the obligation to keep the client informed.
- 11) fulfils all undertakings and does not give an undertaking that cannot be fulfilled.
- 12) avoids engaging in sharp practice.
- 13) recognizes duties to the administration of justice (e.g., encourages respect for the administration of justice, dealing with the media, public statements, lawyer as a witness).
- 14) recognizes issues involving the Law Society books and records bylaws (e.g., manages trust funds, preserves the clients' property).
- 15) recognizes all obligations to the court under the *Rules of Professional Conduct* and as an officer of the court.
- 16) avoids becoming the tool or dupe of an unscrupulous client (e.g., proceeds of crime, money laundering, evidence, fraud).
- 17) recognizes any other issues involving the *Rules of Professional Conduct* (e.g., dishonesty or fraud by the client, administration of justice, reporting other lawyers' conduct where appropriate).
- 18) demonstrates integrity (e.g., honesty, meeting financial obligations, duty to report misconduct, responsibility to the Law Society, responsibility to other lawyers).
- 19) demonstrates an understanding of the obligation to represent the client within the limits of the law (e.g., takes appropriate steps to ensure that the lawyer maintains professional distance from the client).
- 20) markets and advertises ethically as per the *Rules of Professional Conduct* (e.g., making services available, marketing legal services).
- 21) approaches ethical issues in accordance with the Law Society model (e.g., follow the law, look to the rules, seek guidance from senior barristers or practice advisory, exercise caution when in "grey areas", complies in spirit with the *Rules*).
- 22) maintains appropriate professional relationships with lawyers, candidates, employees and others (e.g., treats others with courtesy and respect, avoids sexual harassment and human rights violations, respects

multi-cultural issues, respects the relationship of opposing counsel and their client).

## **B. Knowledge of the Law: Ontario and Federal Legislation and Case Law**

**The barrister knows and applies general and case-specific legal principles when acting as an advocate in order to effectively represent the client.**

### **Jurisdiction and Fundamentals**

- 1) identifies the appropriate jurisdiction (e.g., federal/provincial, statutory/regulatory).
- 2) identifies the appropriate forum.
- 3) identifies issues related to the *Canadian Charter of Rights and Freedoms*.
- 4) identifies issues related to the *Constitution Act, 1867* (e.g., division of powers) and the *Constitution Act, 1982* (e.g., Aboriginal rights).

### **Limitation Periods**

- 1) demonstrates an understanding of the *Limitations Act, 2002*.
- 2) recognizes current and applicable limitation periods at the commencement of and during the course of the proceedings.

### **Evidence**

- 1) applies the appropriate statutory rules of evidence (e.g., federal and provincial legislation).
- 2) applies the appropriate common law rules of evidence (e.g., hearsay).
- 3) demonstrates an understanding of different rules of evidence for various tribunals.

### **Principles of Statutory Interpretation**

- 1) applies the principles of statutory interpretation (e.g., federal and provincial Interpretation Acts, subordinate legislation, and common law, *Charter*).

### **Public Law**

- 1) demonstrates an understanding of aspects of the *Canadian Charter of Rights and Freedoms* and the related case law.
- 2) demonstrates knowledge of primary public law including the following statutes and related case law:
  - a) *Crown Liability and Proceedings Act*, *Proceedings Against the Crown Act*, & *Public Authorities Protection Act*.

- b) *Federal Court Act*.
- c) *Human Rights Legislation*.
- d) *Judicial Review Procedure Act*.
- e) *Statutory Powers Procedure Act*.

- 3) demonstrates knowledge of secondary public law including the statutes and related case law (e.g., *Access to Information Act*; *Competition Act*; *Employment Standards Act, 2000*; *Freedom of Information and Protection of Privacy Act*; *Immigration and Refugee Protection Act*; *Ombudsman Act*; *Personal Information Protection and Electronic Documents Act (PIPEDA)*).
- 4) demonstrates an understanding of the basic principles of administrative law (e.g., procedure: natural justice and fairness, substantive review of public decision making).
- 5) demonstrates an understanding of practice before administrative tribunals (e.g., advocacy before administrative tribunals).
- 6) demonstrates an understanding of the review of federal and provincial administrative action (e.g., jurisdiction, practice and procedure).
- 7) demonstrates an understanding of standing to sue or to apply for judicial review.
- 8) demonstrates an understanding of appeals, judicial review and standard of review.
- 9) demonstrates an understanding of civil procedure in *Charter* litigation, including appropriate notices to the Attorneys General.
- 10) demonstrates an understanding of litigating *Charter* claims (i.e., legal, factual, evidentiary and procedural foundations).
- 11) demonstrates an understanding of *Charter* remedies (e.g., available remedies, tactical considerations).

### **Criminal Procedure**

- 1) demonstrates knowledge of primary criminal procedure including the following statutes and related case law:
  - a) *Charter of Rights and Freedoms*.
  - b) *Controlled Drugs and Substances Act* and Regulations.
  - c) *Criminal Code*.
  - d) *Youth Criminal Justice Act*.
- 2) demonstrates knowledge of secondary criminal procedure and provincial regulatory law including the statutes and related case law (e.g., *Highway Traffic*

*Act; Criminal Records Act; Provincial Offences Act, Safe Schools Act, 2000).*

- 3) demonstrates an understanding of the interrelationship between criminal law consequences and other rights and privileges (e.g., family and immigration).
- 4) demonstrates an understanding of professional responsibilities in criminal practice (e.g., duty to the client, duty to the court, duty to society).
- 5) demonstrates an understanding of the role of the police and crown in the judicial system.
- 6) demonstrates an understanding of the classification of offences and trial jurisdiction.
- 7) demonstrates an understanding of investigative powers (e.g., search and seizure, investigation and questioning of suspects).
- 8) demonstrates an understanding of judicial interim release and bail review procedures.
- 9) demonstrates an understanding of Crown disclosure and third party production (e.g., the Crown has an ongoing obligation to disclose all relevant information, Crown briefs are the property of the Crown).
- 10) considers disclosure obligations of defence counsel (e.g., expert reports, alibi defences).
- 11) demonstrates an understanding of pre-trial conferences.
- 12) demonstrates an understanding of the various rules of court.
- 13) demonstrates an understanding of diversion options.
- 14) demonstrates an understanding of pleas (e.g., voluntary, informed, secondary consequences).
- 15) demonstrates an understanding of the preliminary inquiry.
- 16) demonstrates an understanding of compelling witnesses.
- 17) demonstrates an understanding of pre-trial applications in criminal proceedings.
- 18) demonstrates an understanding of representing clients with psychiatric issues.
- 19) demonstrates an understanding of the criminal trial (e.g., modes of trial, pre-hearing conference, trial procedure, jury selection).
- 20) demonstrates an understanding of sentencing (e.g., purpose and objectives, principles of sentencing, sentencing powers and restrictions, distinction

between reformatory and penitentiary sentences, availability of conditional sentences, DNA orders, weapons prohibitions).

- 21) demonstrates an understanding of appeals and bail pending appeals (e.g., indictable appeals, the sentence hearing, summary conviction appeals).
- 22) demonstrates an understanding of aboriginal peoples and the criminal justice system (e.g., jurisdiction - on reserve and off reserve).

### **Family Law**

- 1) demonstrates knowledge of primary family law including the following legislation and related case law:
  - a) *Children's Law Reform Act.*
  - b) *Family Law Act.*
- 2) demonstrates knowledge of secondary family law including the statutes and related regulations and case law (e.g., *Change of Name Act; Family Responsibility and Support Arrears Enforcement Act; Income Tax Act; Indian Act; Marriage Act; Pension Benefits Act; Pension Benefits Division Act; Succession Law Reform Act; Partition Act*).
- 3) demonstrates an understanding of the conduct of an action in family law proceedings.
- 4) demonstrates an understanding of the *Family Law Rules* (e.g., motions, conferences, offers to settle, costs, case management, timelines).
- 5) demonstrates an understanding of divorce law and procedure (e.g., *Divorce Act*).
- 6) demonstrates an understanding of custody and access and the enforcement of a custody order (e.g., mobility rights).
- 7) demonstrates an understanding of law relating to matrimonial property.
- 8) demonstrates an understanding of the law relating to spousal support.
- 9) demonstrates an understanding of the law relating to child support (e.g., Child Support Guideline Regulations).
- 10) demonstrates an understanding of the law relating to cohabitation.
- 11) demonstrates an understanding of the law relating to same-sex relationships and marriages.
- 12) demonstrates an understanding of financial disclosure in family law matters.

- 13) demonstrates an understanding of enforcement of support orders.
- 14) demonstrates an understanding of tax principles of family law.
- 15) demonstrates an understanding of domestic contracts.
- 16) demonstrates an understanding of representing clients who have been exposed to violence or are accused of perpetrating violence.
- 17) demonstrates an understanding of child protection law (e.g., *Child and Family Services Act*).
- 18) demonstrates an understanding of aboriginal law in a family context.
- 19) demonstrates an understanding of all options available for the resolution of family law disputes.
- 20) demonstrates an understanding of the role of The Children's Lawyer.
- 21) demonstrates knowledge of the interrelationship of family law consequences and other areas of the law (e.g., criminal, real estate).
- 22) demonstrates an understanding of appeals under the *Family Law Rules*.
- 23) demonstrates an understanding of the valuation of specific assets (e.g., pension, share options).

### **Civil Litigation**

- 1) demonstrates an understanding of the rules of civil procedure (e.g., *Ontario Rules of Civil Procedure*, *Federal Rules of Court*, 1998).
- 2) applies the appropriate rules of civil procedure (e.g., *Ontario Rules of Civil Procedure*, *Federal Rules of Court*, 1998).
- 3) demonstrates an understanding of the jurisdiction and organization of the courts of Ontario.
- 4) demonstrates an understanding of capacity and parties under disability.
- 5) demonstrates an understanding of the procedural issues relevant to estate and trust law litigation (e.g., capacity).
- 6) demonstrates an understanding of parties (persons or entities who can sue and be sued) and joinder.
- 7) demonstrates an understanding of the commencement of proceedings (e.g., statement of claim, notice of action, application).
- 8) demonstrates an understanding of service of process.
- 9) demonstrates an understanding of the law of remedies.

- 10) demonstrates an understanding of pleadings (e.g., content, time for delivery, form of pleadings, purpose of pleadings).
- 11) demonstrates an understanding of disposition without trial (e.g., summary judgment, determination of an issue before trial).
- 12) demonstrates an understanding of subsidiary claims (e.g., counterclaims, cross claims, third party claims).
- 13) demonstrates an understanding of court-directed mediation.
- 14) demonstrates an understanding of interlocutory proceedings and their purposes.
- 15) demonstrates an understanding of discovery and its purposes.
- 16) demonstrates an understanding of offers to settle and costs.
- 17) demonstrates an understanding of pre-trial conferences and case management.
- 18) demonstrates an understanding of simplified procedure under Rule 76.
- 19) demonstrates an understanding of the enforcement of judgments (e.g., examination in aid of execution, writs of seizure and sale, garnishment).
- 20) demonstrates an understanding of the appeal process.

### **C. Establishing and Maintaining the Barrister-Client Relationship**

**The barrister determines the ability to act for a prospective client, negotiates a retainer agreement, obtains instructions and communicates effectively in order to define and achieve the client's objectives.**

#### **Identifying the Client**

- 1) takes appropriate steps to determine the client and the client's role (e.g., multiple parties, spouses/family members, business partners, trustee vs. beneficiary, officers/directors/ shareholders vs. corporation, authority to bind).
- 2) takes appropriate steps to avoid problems associated with phantom clients.
- 3) obtains identification from the client where appropriate (e.g., follows the *Proceeds of Crime [Money Laundering] and Terrorist Financing Act*, verifies identity where appropriate, takes steps to identify fraudulent transactions).

**Conflicts of Interest**

- 1) uses a conflict of interest checking system.
- 2) identifies potential conflicts of interest before acquiring confidential information (e.g., multiple parties).
- 3) takes appropriate action in situations where an actual or potential conflict of interest is identified (e.g., referral for independent legal advice, decline to act, disclose the conflict to the client and obtain consent, establish firewall procedures where appropriate, advises the client of the consequences in the event the potential conflict materializes, documents the steps taken when a potential conflict of interest has been identified).

**Interviewing Principles**

- 1) determines the client's goals, objectives and expectations.
- 2) makes an initial assessment of whether or not the client's goals, objectives, and expectations can be met through legal processes and ethical solutions.
- 3) asks questions to determine whether or not the client is capable of giving instructions (e.g., mental capacity, authority, duress, undue influence).

**The Retainer**

- 1) establishes the scope of the retainer (e.g., confirms the identity of the client, outlines the capacities being represented, explains any limitations related to client instructions).
- 2) identifies the instructing client (i.e., who has the authority to provide instructions).
- 3) confirms the actions to be taken by the parties in the retainer.
- 4) sets out and explains the basis for fees and disbursements in the retainer (e.g., special or extraordinary disbursements, rates for various personnel performing the work, hourly versus alternative rates, periodic rate increases, contingency arrangements).
- 5) outlines the delegation of responsibilities in the retainer (e.g., within the firm, external consultants, client).
- 6) confirms the acceptable forms of client communication in the retainer (e.g., media and timeframes).

- 7) addresses solicitor-client privilege and privacy issues in the retainer (e.g., confidentiality, distribution of e-mails, sharing information with other advisors).
- 8) addresses conflict of interest issues in the retainer (e.g., termination, confidentiality, consent).
- 9) addresses termination issues in the retainer (e.g., non-payment of fees, no instructions, loss of confidence).
- 10) confirms the retainer and any limitations in writing.
- 11) obtains a monetary retainer where appropriate (e.g., cash transactions).
- 12) confirms changes to the retainer as appropriate (e.g., new client instructions, method/channels for making changes).

**Client Communications**

- 1) communicates with clients in a timely and effective manner (e.g., returns messages in a timely manner, copies the client on correspondence as appropriate, advises on developments).
- 2) manages and updates the client's expectations with respect to timeframes, results, and costs.
- 3) recognizes and is sensitive to clients' circumstances, special needs, and intellectual capacity (e.g., multi-cultural, language [need for interpreters], gender, disability, socioeconomic status, demeanour).
- 4) explains to clients the risk of communicating the details of the case by means of electronic media (e.g., cell phones, e-mail).
- 5) maintains an electronic or written record for each matter for which the lawyer is retained.

**D. Problem/Issue Identification, Analysis, and Assessment**

**The barrister identifies the client's problem and goals and the relevant factual and legal issues, obtains and analyzes information, and generates options and recommendations in order to develop a theory of the case and a litigation strategy.**

**Information Gathering, Case Analysis and Planning**

- 1) obtains relevant facts and documents.
- 2) recognizes urgency and takes emergency steps where necessary (e.g., injunctive relief, issuing a claim to preserve rights).
- 3) reviews and identifies relevant facts and documents.
- 4) identifies the factual and legal issues.

- 5) identifies and obtains additional information and/or resources as needed (e.g., experts, legal research, specialized counsel).
- 6) conducts or delegates research and investigations related to the matter as appropriate.
- 7) complies with all privacy legislation.

#### **Notice to Affected Parties**

- 1) identifies those who may be entitled to notice of the proceedings (e.g., Attorneys General, municipality, insurers) and provides appropriate notice.

#### **Theory of the Case**

- 1) develops an informed theory of the case based on the lawyer's assessment of the facts and law.
- 2) reassesses the theory of the case as the case evolves.

#### **Litigation Strategy**

- 1) develops an appropriate plan and strategies in consultation with the client to achieve desired results.
- 2) considers and communicates to the client the costs and consequences of various courses of action.
- 3) recommends and obtains instructions from the client regarding the most effective tools to achieve desired results.

### **E. Alternative Dispute Resolution**

**The barrister identifies opportunities for and, when appropriate, engages in negotiation and dispute resolution processes in order to achieve early and cost-effective resolution of a client's dispute other than through litigation.**

#### **Negotiation**

- 1) demonstrates an understanding that negotiation is an integral part of the conduct of the matter from inception to completion.
- 2) identifies disputed versus undisputed issues.
- 3) identifies issues that can be negotiated.
- 4) explains to the client the potential consequences of negotiating or failing to negotiate.
- 5) obtains instructions concerning negotiations.
- 6) explores opportunities to negotiate or otherwise resolve issues short of litigation.
- 7) identifies the strategy and tactics to be used in negotiation.
- 8) prepares the client for the negotiation process.

- 9) uses principles of effective negotiation.
- 10) documents the resolution of issues through negotiation.

#### **Mediation and Dispute Resolution**

- 1) demonstrates an understanding of various dispute resolution mechanisms (e.g., mediation, arbitration).
- 2) identifies issues appropriate for dispute resolution.
- 3) explains to the client the potential consequences of mediating or failing to mediate.
- 4) obtains instructions concerning mediation.
- 5) identifies additional remedies that may be uniquely available through dispute resolution.
- 6) considers appropriate dispute resolution options (e.g., mediation, arbitration).
- 7) identifies the strategy and tactics to be used during dispute resolution.
- 8) prepares the client for the dispute resolution process.
- 9) documents the resolution of issues through dispute resolution.

### **F. Litigation Process**

**The barrister initiates and/or responds to litigation proceedings as appropriate by drafting required documents, taking necessary preliminary steps, preparing for and conducting all stages of the proceeding, seeking appropriate remedies, and initiating appellate proceedings where appropriate in order to effectively represent the client.**

#### **Initiating Litigation**

- 1) considers decision-maker (e.g., judge or jury).

#### **Disclosure, Production, and Discovery**

- 1) demonstrates an understanding of applicable document disclosure and discovery requirements.
- 2) obtains timely disclosure, production and discovery as required.
- 3) provides timely disclosure and discovery as required.
- 4) advises the client of disclosure obligations (e.g., full and complete disclosure; ensuring the preservation of relevant documents for disclosure, knowledge of privilege issues).
- 5) prepares for the conduct of any discovery process (e.g., preliminary inquiry, examination for discovery).

- 6) prepares the client for any discovery process.
- 7) takes appropriate steps to enforce disclosure and discovery rights.

**Trial or Hearing Preparation**

- 1) meets timelines for trial or hearing.
- 2) determines the evidence required to support the theory of the case.
- 3) marshals evidence (e.g., obtains witness statements, expert reports, preserves evidence).
- 4) obtains discovery or other relevant transcripts.
- 5) reviews relevant transcripts.
- 6) manages trial or hearing related documents.
- 7) determines the evidence to be called.
- 8) demonstrates an understanding of the use of expert evidence at trial (e.g., expert reports, qualifying the expert).
- 9) identifies the order of the evidence to be called.
- 10) demonstrates an understanding of requests to admit where relevant (e.g., facts and documents).
- 11) demonstrates an understanding of any notice and delivery requirements for specific documentary evidence (e.g., business records, medical and other expert reports).
- 12) demonstrates an understanding of the requirements of a family law trial for the filing of updated financial statements and net family property statements.
- 13) demonstrates an understanding of the purpose and proper form of direct examination.
- 14) prepares own witnesses for direct examination.
- 15) ensures the attendance of witnesses (e.g., subpoena/summons to witness).
- 16) demonstrates an understanding of the purpose and proper form of cross-examination (e.g., impeachment, eliciting evidence helpful to own case).
- 17) prepares own witnesses for cross-examination.
- 18) prepare for cross-examination of witnesses of other parties.
- 19) demonstrates an understanding of the purpose and proper form of re-examination (e.g., rehabilitate the credibility of the witness, clarify evidence).
- 20) explains to witnesses the purpose of re-examination.
- 21) prepares any applications for relief under the *Charter* and service on the Crown.

- 22) anticipates and prepares objections and possible motions.
- 23) considers issues of admissibility of evidence.
- 24) prepares submissions on costs, where applicable.
- 25) prepares submissions on sentence, where applicable.

**Applications to Court, Judicial Reviews and Prerogative Remedies**

- 1) demonstrates an understanding of the rules and tests for applications, judicial reviews and prerogative remedies.
- 2) considers if applications, judicial reviews and prerogative remedies are warranted.
- 3) meets applicable timelines for applications, judicial reviews and prerogative remedies.
- 4) reviews the merits of applications, judicial reviews and prerogative remedies with the client.
- 5) obtains client instructions regarding applications, judicial reviews and prerogative remedies.
- 6) ensures applications, judicial reviews and prerogative remedies are taken to the proper forum.
- 7) prepares all the necessary documents for conduct of applications, judicial reviews and prerogative remedies (e.g., application for judicial review, application records, preparation of facta, order transcript).
- 8) makes oral submissions concerning applications, judicial reviews and prerogative remedies.
- 9) demonstrates an understanding of costs principles relating to applications, judicial reviews and prerogative remedies where available and appropriate.

**Conduct of the Trial or Hearing**

- 1) deals with any preliminary matters (e.g., jurisdictional, pre-trial motion, exclusion of witnesses and publication bans, jury selection).
- 2) plans the delivery of evidence to support the theory of the case.
- 3) considers whether or not to call a particular witness (e.g., the accused in a criminal trial).
- 4) adduces admissions (e.g., introduces excerpts of transcripts where applicable, presents agreed statements of fact).
- 5) initiates and responds to motions as appropriate.
- 6) raises appropriate objections on the record.

### **Appeals**

- 1) demonstrates an understanding of the rules and tests for an appeal of the decision.
- 2) considers if an appeal is warranted.
- 3) meets the timelines for appeals.
- 4) reviews the merits of an appeal with the client.
- 5) obtains client instructions regarding appeals.
- 6) ensures appeals are taken to the proper forum.
- 7) prepares all the necessary documents for conduct of an appeal (e.g., notices of appeal, order transcript, appeal books, compendium, preparation of facta).
- 8) prepares and argues the appeal.
- 9) demonstrates an understanding of costs principles relating to an appeal.
- 10) demonstrates awareness of the procedure to file a notice of appeal in the name of the client only to preserve appellate rights.
- 11) demonstrates awareness of the availability of settlement conferences and the ongoing availability of dispute resolution in appeals.

### **Post-Disposition of Matter**

- 1) ensures the matter has been disposed of appropriately (e.g., minutes of settlement, judgment/order issued and entered, final releases, dismissal order).
- 2) provides final reports and accounting to clients.
- 3) conducts a final review of the file prior to closing the file.