

Entry-Level Solicitor Competencies by Category

A. Ethical and Professional Responsibilities

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) completes all contractual obligations under the retainer.
- 4) 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).
- 5) charges fair and reasonable fees and disbursements (e.g., division of fees and referral fees, full disclosure of fees, appropriation of funds).
- 6) recognizes and fulfils duties relating to confidentiality and disclosure (e.g., solicitor-client privilege).
- 7) obtains all necessary consents at the time of the retainer, respecting reasonable disclosure to third parties (e.g., pursuant to relevant privacy legislation).
- 8) ensures staff understands and adheres to relevant *Rules of Professional Conduct* (e.g., confidentiality, privilege, justified disclosure, integrity, dishonesty or fraud by the client, title insurance rule).
- 9) delegates and supervises appropriately (e.g., provides opportunities for others to learn, enhances cost efficiencies for the client, does not delegate where inappropriate such as the ultimate review of a title search report).
- 10) 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).
- 11) understands the obligation to keep the client informed.
- 12) fulfils all undertakings and does not give an undertaking that cannot be fulfilled.
- 13) avoids engaging in sharp practice.
- 14) recognizes and fulfils fiduciary obligations.
- 15) 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).
- 16) recognizes issues involving the Law Society books and records bylaws (e.g., preserves the clients' property).
- 17) avoids becoming the tool or dupe of an unscrupulous client (e.g., proceeds of crime, money laundering, evidence, fraud, real estate fraud).
- 18) 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, obligations to the court).
- 19) demonstrates integrity (e.g., honesty, meeting financial obligations, duty to report misconduct, responsibility to the Law Society, responsibility to other lawyers).
- 20) 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).
- 21) demonstrates awareness of issues involving electronic registration (e.g., not sharing diskettes, privacy issues, understanding technology).
- 22) markets and advertises ethically as per *Rules of Professional Conduct* (e.g., making services available, marketing legal services).
- 23) approaches ethical issues in accordance with the Law Society model (e.g., follow the law, look to the rules, seek guidance from senior lawyers or practice advisory, exercise caution when in "grey areas", complies in Spirit with the *Rules*).

- 24) 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 Policy, Procedures and Forms

Knowledge of General Statutes, Common Law, Policy, Procedures and Forms

- 1) demonstrates knowledge of statutes of general application and principles of statutory interpretation.
- 2) demonstrates knowledge of fundamental common law (e.g., law of contracts, agency law, trust law, torts law, law of property).
- 3) demonstrates knowledge of purposes, procedures and forms related to substantive law.
- 4) demonstrates a general awareness of specialty areas (e.g., environmental law, employment and labour law).

Real Estate

- 1) demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law:
 - a) *Commercial Tenancies Act.*
 - b) *Condominium Act, 1998.*
 - c) *Construction Lien Act.*
 - d) *Conveyancing and Law of Property Act.*
 - e) *Estates Administration Act.*
 - f) *Family Law Act.*
 - g) *Land Registration Reform Act.*
 - h) *Land Titles Act.*
 - i) *Land Transfer Tax Act.*
 - j) *Real Properties Limitations Act.*
 - k) *Mortgages Act.*
 - l) *Ontario New Home Warranties Plan Act.*
 - m) *Planning Act* (except Section 50)
 - n) *Registry Act.*
 - o) *Residential Tenancies Act, 2006.*
 - p) *Vendors and Purchasers Act.*
 - q) *Succession Law Reform Act.*
 - r) *Execution Act*
- 2) demonstrates knowledge of secondary real estate statutes and related regulations and case law (e.g., *Beds of Navigable Waters Act; Building Code Act,*

1992; Business Corporations Act [Ontario and Federal]; *Certification of Titles Act*; Section 347 of the *Criminal Code*; *Conservation Authorities Act*; *Income Tax Act* [Federal and Provincial]; *Indian Act*; *Interest Act*; *Municipal Act, 2001*; *Personal Property Security Act*; *Power Corporation Act*; *Public Utilities Act*; *Road Access Act*; *Technical Standards and Safety Act, 2000*; *Statute of Frauds*; *Surveys Act*).

- 3) demonstrates an understanding of agreements of purchase and sale (e.g., new and used residential, condominiums, commercial and vacant land).
- 4) demonstrates an understanding of conveyancing (e.g., estate, rural, agricultural, waterfront, new and used residential, condominiums, commercial and vacant land).
- 5) demonstrates an understanding of property insurance instructions.
- 6) demonstrates an understanding of the land registration systems in Ontario.
- 7) demonstrates an understanding of title searching (i.e., in an electronic and non automated system).
- 8) demonstrates an understanding of off-title due diligence.
- 9) demonstrates an understanding of subdivision control: Section 50 of the *Planning Act*.
- 10) demonstrates an understanding of plans and surveys.
- 11) demonstrates an understanding of requisitions on title and off-title matters.
- 12) demonstrates an understanding of the standard mortgage/charge transaction.
- 13) demonstrates an understanding of enforcement of mortgage/charge security.
- 14) demonstrates an understanding of preparation for closing, closing and post-closing procedures.
- 15) demonstrates an understanding of special concerns for residential rental properties (e.g., single unit and multiple unit).
- 16) demonstrates an understanding of remedies (e.g., vendors and purchasers applications, conditions, repudiation, rescission, specific performance, damages, rectification).
- 17) demonstrates an understanding of title insurance (e.g., advantages, conditions, limitations).
- 18) demonstrates an understanding of GST and real estate.

- 19) demonstrates an understanding of commercial transactions.
- 20) demonstrates an understanding of electronic registration.
- 21) demonstrates an awareness of aboriginal property issues.
- 22) demonstrates an understanding of the use of trusts and related liability issues.
- 23) demonstrates an understanding of commercial leasing (e.g., priority issues and non disturbance agreements).
- 24) demonstrates an understanding of leasehold interests including life leases.
- 25) demonstrates an understanding of priority of claims.
- 26) demonstrates an understanding of municipal law applications (e.g., zoning, minor variances).

Wills, Trusts, and Estate Administration and Planning

- 1) demonstrates knowledge of substantive will and estate law including the following primary statutes and related regulations and case law:
 - a) *Accumulations Act*.
 - b) *Estates Act*.
 - c) *Estates Administration Act*.
 - d) *Family Law Act*.
 - e) *Health Care Consent Act, 1996*.
 - f) *Income Tax Acts*.
 - g) *Perpetuities Act*.
 - h) *Rules of Civil Procedure (Rules 74 & 75)*.
 - i) *Substitute Decisions Act, 1992*.
 - j) *Succession Law Reform Act*.
 - k) *Trustee Act*.
- 2) demonstrates knowledge of secondary wills, trusts, and estate statutes and related regulations and case law (e.g., *Child and Family Services Act*; *Children’s Law Reform Act*; *Crown Administration of Estates Act*; *Estate Administration Tax Act, 1998*; *Indian Act*; *Insurance Act*; *Mental Health Act*; *Powers of Attorney Act*; *Trillium Gift of Life Network Act* [formerly Human Tissue Gift Act], *Variation of Trusts Act*).
- 3) demonstrates an understanding of trusts and estate planning.
- 4) demonstrates an understanding of will, trust, and power of attorney drafting and execution (e.g.,

multiple wills, alter-ego trusts, inter vivos trusts, Henson trusts, powers of attorney for property, and powers of attorney for personal care).

- 5) demonstrates an understanding of capacity law (e.g., wills, powers of attorney, guardianship applications, mental health law).
- 6) demonstrates an understanding of taxation at death and of trusts.
- 7) demonstrates an understanding of the impact of the *Family Law Act* on estate planning, administration and litigation (e.g., property and support issues related to same-sex, married and common law spouses).
- 8) demonstrates an understanding of administration of estates (e.g., testate and intestate estates, estate trustee duties, asset administration, income tax, estate administration tax, accounting).
- 9) demonstrates an understanding of estate litigation (e.g., will challenges, interpretation applications, variation of trusts, dependent support, and claims against an estate, equalization applications).
- 10) demonstrates an understanding of fiduciary law (e.g., executors and attorneys powers and duties).
- 11) demonstrates an awareness of cross-border issues (e.g., income and other tax issues, conflicts of law, forced heirship).

Business Law

- 1) demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law:
 - a) *Assignments and Preferences Act*.
 - b) *Bankruptcy and Insolvency Act*.
 - c) *Bulk Sales Act*.
 - d) *Business Corporations Act (Ontario)/Canada Business Corporations Act*.
 - e) *Business Names Act*.
 - f) *Corporations Information Act*.
 - g) *Creditors’ Relief Act*.
 - h) *Fraudulent Conveyances Act*.
 - i) *Income Tax Acts*.
 - j) *Limitations Act, 2002*.
 - k) *Limited Partnerships Act*.
 - l) *Partnerships Act*.
 - m) *Personal Property Security Act*.
 - n) *Securities Act*.

- 2) demonstrates knowledge of secondary business law statutes and related regulations and case law (e.g., *Arthur Wishart Act* (Franchise Disclosure); *Bank Act*; *Canada Corporations Act*; *Companies' Creditors Arrangement Act*; *Competition Act*; *Corporations Act* [Ontario]; *Criminal Code*; *Employment Standards Act, 2000*; *Excise Tax Act*; *Extra Provincial Corporations Act*; *Investment Canada Act*; *Interest Act*; *Personal Information Protection and Electronic Documents Act (PIPEDA)*; *Retail Sales Tax Act*).
- 3) demonstrates an understanding of the different methods of carrying on business (e.g., the advantages and disadvantages of sole proprietorships, partnerships, corporations, co-ownerships, joint ventures).
- 4) demonstrates an understanding of partnership agreements.
- 5) demonstrates an understanding of taxation of corporations and their shareholders.
- 6) demonstrates an understanding of the advantages and disadvantages of incorporating in other jurisdictions.
- 7) demonstrates an understanding of the impact of employment and labour law on transactions.
- 8) demonstrates an understanding of the creation and maintenance of the corporation (e.g., incorporation procedure, organization, amendments).
- 9) demonstrates an understanding of the roles of directors, officers, and shareholders of a corporation (e.g., fiduciary duty, standard of care, election, rights and powers, meetings, shareholder remedies).
- 10) demonstrates an understanding of shareholder agreements.
- 11) demonstrates an understanding of the corporate capital structure: share capitalization (e.g., paid up capital; rights, conditions and restrictions on shares).
- 12) demonstrates an understanding of effecting corporate changes (e.g., Section 85 rollover, Section 86 reorganization; amalgamations, arrangements and reorganizations, windup, dissolution).
- 13) demonstrates an understanding of securities law implications for private companies.
- 14) demonstrates an understanding of due diligence in corporate and commercial transactions (e.g., appropriate searches, inquiries and investigations).
- 15) demonstrates an understanding of debt financing and secured transactions.
- 16) demonstrates an understanding of debtor and creditor's rights and remedies (e.g., secured and unsecured).
- 17) demonstrates an awareness of aboriginal issues in business transactions.
- 18) demonstrates an understanding of the purchase and sale of the business (i.e., shares or assets).
- 19) demonstrates an understanding of GST and RST on commercial transactions.
- 20) demonstrates an understanding of charities and not-for-profit law.
- 21) demonstrates an understanding of franchising and licensing.
- 22) demonstrates an awareness of cross-border issues (e.g., *International Sale of Goods Act*; *Sale of Goods Act*, income tax, business immigration).
- 23) demonstrates an understanding of intellectual property issues (e.g., patents, copyrights, trade marks).
- 24) demonstrates an understanding of the impact of (PIPEDA) on business transactions.

C. Establishing and Maintaining the Solicitor-Client Relationship

Identifying and Verifying the Identity of 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*, takes steps to identify fraudulent transactions, mortgage/charge financing, complies with identification and verification requirements).

Conflicts of Interest

- 1) uses a conflict of interest checking system and monitors for conflicts of interest on an ongoing basis.
- 2) identifies potential conflicts of interest before acquiring confidential information (e.g., multiple

parties, declines to act for transferee and transferor where appropriate).

- 3) takes appropriate action in situations where a 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, properly withdraws).

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) determines whether or not the client is capable of giving instructions (e.g., mental capacity, authority, duress, undue influence).
- 4) determines issues that might affect the resolution of the problem.

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 (e.g., 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., medium 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, conflicts of interest).
- 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., formal reporting, returns phone calls 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).

D. Fulfilling the Retainer

File Administration

- 1) maintains an electronic and written record for each matter for which the lawyer is retained.

Information Gathering and File Analysis

- 1) obtains and reviews relevant facts and documents.
- 2) recognizes urgency and takes emergency steps where necessary (e.g., registers a caution on title, construction liens).
- 3) ascertains the completeness of the documentation provided by the client.
- 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.

Developing the Action Plan

- 1) generates options and recommendations and presents them to the client.
- 2) identifies the risks and costs of various options.
- 3) confirms client instructions with respect to options and recommendations.

Executing the Action Plan

- 1) conducts due diligence as appropriate for the client.
- 2) prepares and/or reviews documentation, searches, and plans as appropriate for the transaction.
- 3) communicates with the other parties in a timely manner (e.g., other lawyers, title insurers).
- 4) utilizes and revises checklists where appropriate.
- 5) determines and satisfies third party requirements (e.g., property insurance, title insurance, lender requirements, appropriate consents and clearances, environmental evaluations).
- 6) identifies problems, solutions/options and obtains client instructions (e.g., conflicts, title search issues).
- 7) conducts negotiations related to the matter as appropriate.

Closing the Transaction

- 1) prepares a closing agenda as appropriate.
- 2) provides interim reports on a timely basis as required (e.g., to the lender, title insurance).
- 3) reviews documentation with the client and obtains signatures as appropriate.
- 4) updates searches and certificates and obtains necessary pre-closing clearances and consents as appropriate.
- 5) supervises staff or others involved in the closing.
- 6) arranges closing logistics (e.g., transfer of funds and third party consents).

- 7) arranges for appropriate undertakings (e.g., to discharge mortgages/charges).
- 8) conducts a final review of the checklist.
- 9) takes appropriate steps when the transaction fails to close (e.g., tender).
- 10) completes the transaction in a timely and appropriate manner (e.g., exchange of deliverables [e.g., documents, property], complete registrations).

Post-Closing Actions

- 1) ensures appropriate undertakings, both given and received, are completed (e.g., discharges mortgages/charges).
- 2) advises all necessary parties of the closing.
- 3) obtains documents to complete the file (e.g., title insurance policies).
- 4) provides final reports and accounting to clients and third parties.
- 5) conducts a final review of the file prior to making the file inactive.