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Professionalism Questions by Practice Area

Administrative Law

- Ethical obligations, to clients and to administration of justice, when appearing at a hearing with no transcript
- Dealing with unrepresented persons on the other side
- Who is the client in different situations e.g. government counsel, tribunal counsel
- As rules of evidence are more relaxed before administrative tribunals, does this relax lawyer's discovery obligations under the Rules?

Business/Corporate Law

- Up the ladder reporting – to whom do you report and how much can you disclose?
- Producing internal documents – determining what was prepared in contemplation of litigation (most companies take the position that everything was documented with the view of avoiding litigation)

Civil Litigation

- Client lies on the stand – how do you handle this situation?
- Client instructs you not to disclose a specific report or piece of evidence – can you argue it's irrelevant?
- In satisfying an undertaking to disclose information prior to mediation, you come across relevant information harmful to your client. Do you have to produce this prior to mediation?
- Parties settle between themselves and tell you afterward – what obligations do you owe?
- Threatening criminal proceedings – when does it become a threat if the client on the other side actually committed a crime? What to do if they have – is it using it to your advantage to simply report the crime? Is it a threat if you actually report it?
- What to do when hearing is pending and you can't get instructions from client?

Criminal Law

- New lawyer assists client within his/her comfort zone but then same client charged with more serious offences (i.e. charges with mandatory sentencing minimums) outside that comfort zone. How should new lawyer handle this?
- In accepting a cash retainer, is there a proceeds of crime issue to be considered?
- In mental health/criminal context, who instructs and can lawyer make decisions without instructions when dealing with fitness to stand trial and NCR issues?
- Issues when dealing with immigration clients whose immigration status may be affected once criminal matter completed
- In preparing client/other witnesses, obligations when asked to provide the “right answers”
- Confidentiality: may be questioned by media or police regarding whether someone is your client; issues with youth and parents paying the bill; sureties and bail; contact by other lawyers to see if you represent someone
- Conflicts’ issues involving co-accused and whether interests same
- Conflicts’ issues when Crowns become defence counsel and vice versa. Can you represent those you previously prosecuted/charged? Any particular issues with former Crowns if Crown truly indivisible such that Crowns all have same knowledge of people previously before the courts?
- Who owns disclosure? Can you give it to your client or the successor lawyer?
- Issues involving medical report disclosure
- What to do when you have possible physical evidence of a crime in your possession?
- Can you cross-examine a former client and, if so, under what circumstances?
- Client lies on the stand
- Crown makes an error in not disclosing criminal record, what are your obligations?
- Duties when your client withdraws instructions to plead guilty
- What to do if your legal aid client won’t accept your advice but LAO has told you that client will not get another legal aid certificate?
- If you’re appointed to represent someone by Court of Appeal (s.684 of *Criminal Code*), can you still withdraw if breakdown in communication?
- Analysis of withdrawal issues in *R. v. Cunningham*

Estates/Wills

- Conflict between beneficiaries and estate trustee
- Conflict between estate trustee not acting in the best interests of the estate – is the lawyer hired to act for the estate trustee or for the estate?
- Who can waive confidentiality and privilege on behalf of the testator?
- Power of attorney for property – determining date of effectiveness and validity (most substantial but elements of practice management)
- Who is client when power of attorney being used?

- Potential conflicts around dual will situations
- Potential conflicts when acting for grantors in drafting powers of attorney to their children e.g. you draft the power of attorney for grantor and the children later contact you asking for a copy or claiming that power of attorney now in effect
- Can you represent client in drafting will if that client names you as a beneficiary? Are your obligations met if you send client for ILA?

Real Estate

- Confirming the validity of a power of attorney for property
- Can lawyer sign on client's behalf when client out of the country or unavailable?
- Can mortgage broker sign on lender or borrower's behalf?
- Undertakings – getting expiry dates, being released, holding money in trust for extended periods of time, irrevocable directions
- Fraud – can you warn victim? What, if anything, can you disclose to the police?
- Extent of your due diligence e.g. writ on title and client says not his name
- What to do if couple, who retained you to sell matrimonial home, can't agree on how to split sale proceeds?

Family Law

- Acting for both spouses when parties agree on settlement terms
- Acting for new boyfriend of spouse when acted for opposing spouse in past
- How to rely children's evidence ie. mom is instructing you to put forward child's evidence; court will not appoint children's lawyer
- What if spouse dies in middle of proceedings? What to disclose? Who gives instructions?
- Client wants to sign unfavourable separation agreement, i.e. no spousal support or even worse, no child support (child support is the right of the child)
- Client wants to waive child support for transfer of matrimonial home – can you facilitate this?
- Can you do real estate transaction for sale of matrimonial home when acting for only one spouse?
- Issues if police ask you to assist in investigation of your family client's murder by his/her spouse?

Professional Responsibility – General

- Difference between confidentiality and privilege
- Confidentiality when the information is a matter of public record/ knowledge
- What to do when you receive a subpoena or police arrive to search your office
- Situations when a lawyer may be “knowingly” assisting the client to do something dishonest or dishonourable

- Issues when lawyer from firm is appointed as a judge and then firm members appear before that judge
- Communicating with a Judge outside court or via letter
- Dissuading a witness from appearing in court, for example spouse in domestic violence matter
- Relations with jurors
- Missing client – no instructions, what to do?
- What is “serious risk” of harm? Is financial harm not included?
- What is “good cause” for withdrawing?
- What is “severe prejudice” to the client for mandatory reporting?
- Where lawyer is victim of fraud, what, if anything, can he/she disclose to police?
- Trust accounts and third parties – need to ensure that trust accounts are not used by clients as bank accounts
- Supervision of, and delegation to, students