



Law Society
of Saskatchewan

New Lawyer Orientation

Ethics in Everyday Practice – Dealing With Your Client

Justice Neal Caldwell
Justice Michael Megaw
Judge Hugh Harradence
Brian Pfefferle

ABOUT THE PRESENTERS:

The professionals who are presenting at this Law Society of Saskatchewan seminar are all volunteers who have donated their valuable time to contribute to continuing professional development.

The Honorable Mr. Justice N. W. Caldwell *Court of Appeal for Saskatchewan* (Regina)

Justice Caldwell holds a Bachelor of Laws (with distinction) from the College of Law at the University of Saskatchewan obtained in 1995 and a Bachelor of Arts from that same university completed in 1992. He was called to the Saskatchewan Bar in 1996 and the British Columbia Bar in 1997.

Prior to his appointment to the Court of Appeal for Saskatchewan in April 2010, Justice Caldwell was a partner at McDougall Gauley LLP, based at the Saskatoon office. Before that, he practised law in Vancouver with Clark Wilson LLP.

Justice Caldwell is published in corporate law, personal property security, electronic commerce, privacy, and regulatory compliance and was a registered trade-mark agent. He has taught courses at the University of Saskatchewan's College of Law and acted as a facilitator for the Saskatchewan bar admissions course.

Justice Caldwell proudly hails from Meadow Lake, in northern Saskatchewan.

The Honorable Mr. Justice M. T. Megaw, *Court of Queen's Bench for Saskatchewan* (Regina)

Justice Megaw obtained his Bachelor of Administration in 1983 from the University of Regina (with distinction) and his Bachelor of Laws (with distinction) in 1984 from the University of Saskatchewan. He was called to the Saskatchewan Bar in 1985 and his practice largely focused on family law, civil litigation and criminal law. Justice Megaw was awarded Queen's Counsel in 2011 before being appointed to the Saskatchewan Court of Queen's Bench Family Law Division in March 2014.

Previous to this appointment, he was in-house counsel for Saskatchewan Government Insurance from 1989 to 1990, an Associate at Robertson Stromberg from 1990 to 1992, a partner at Shirkey, Ulmer, Willner & Megaw from 1992 to 2001 and most recently a partner at Gerrand Rath Johnson LLP from 2001 to 2014. Throughout his practice, Justice Megaw appeared before all levels of Court, including the Supreme Court of Canada.

Justice Megaw has been an active member of the Law Society and has held many positions within the organisation. He was a Bencher from 2010 to 2014, has Chaired various committees, and has been a frequent presenter and facilitator at numerous continuing legal education events.

The Honorable Judge Hugh M. Harradence *Provincial Court of Saskatchewan* (Prince Albert)

Judge Harradence gained his Bachelor of Laws from the University of Saskatchewan in 1985 and his Master of Laws from Osgoode Hall in 2011. He was appointed to the Provincial Court of Saskatchewan in 2006 and has served Chairperson of the Saskatchewan Review Board.

Prior to his appointment Judge Harradence practised primarily criminal defense throughout Saskatchewan, he has also participated in variety of legal education seminars both as a presenter and a participant throughout his career.

He has served in a number of capacities with the Canadian Bar Association, where he was President of the Saskatchewan branch from 1999 to 2000, the Law Society of Saskatchewan where he was a Bencher from 2004 to 2006. Hugh was also Chairman of the Saskatchewan Legal Aid Commission in 2006, was Inquest Coroner in 2001, and served as a Commissioner with the Saskatchewan Commission on First Nations, Metis people and Justice Reform from 2002 to 2004. He has been a member of the faculty of the National Criminal Law Program since 2015 and The Law Society's Trial Advocacy Workshop since 2016

Brian Pfefferle *BRP Pfefferle Law* (Saskatoon)

Brian received his L.L.B. (with distinction) in 2007, and in 2010 graduated with a B.A. from the University of Saskatchewan having been recognized as the most distinguished graduate in the Department of Native Studies. He joined Cuelenaere & Company as an articling student and was called to the Bar in Saskatchewan in 2008. In 2011 Brian opened his own firm "Pfefferle Law Office" which operates out of the Historic Land Titles Building.

Brian has aided in the publication of several academic articles which have been featured in casebooks and course materials and taught as part of university courses in law, sociology, criminology and human justice.

Brian has acted as a presenter with the Law Society of Saskatchewan Continuing Professional Development Webinars, Saskatchewan Legal Education Society of Saskatchewan Inc., (SKLES), Public Legal Education Society of Saskatchewan (PLEA), and he is a member of the Law Society of Saskatchewan, the Canadian Bar Association, the Saskatchewan Trial Lawyers Association, Pro Bono Law Saskatchewan, and the Saskatoon Criminal Defence Lawyers Association.

Law Society of Saskatchewan

New Lawyer Orientation

ETHICS IN EVERYDAY PRACTICE: DEALING WITH YOUR CLIENT

April 13, 2021 (Virtual)

INTRODUCTION

Multitude of Sources for Ethical Guidelines:

- Code of Professional Conduct;
- Law Society of Saskatchewan Rules;
- Queen's Bench Rules;
- Discipline Rulings; and
- Court Decisions.

1. Who Can You Represent?

- (a) Can you represent family or close personal friends? If so, what cautions should you be aware of?

Zink v. Adrian 2005 BCCA 93, at para 40.

- (b) Can you represent other lawyers in your firm?

R. v Ironchild (1984) 30 Sask. R. 269;
Bilson v. University of Saskatchewan (1984) 33 Sask. R 1;
Dustyhorn Estate v. Stickney 2004 SKQB 53;
Adams v. Canadian Tobacco [2010] SJ No. 502; and
Wanner v. Christie [2016] SJ No. 259

- (c) Can you represent yourself?

Code of Conduct Rule 5.2-1; Commentary [1] The Lawyer as Witness; and
Sask. CA Civil Practice Directive No. 1 (July 1, 2016)

2. Getting Cash From Your Client

- (a) Can you accept Cash from your Client?

New Rules as of January 1, 2020

LSS Rule 1503 – Cash transaction rules

LSS Rules 1541-1550 – Client identification and verification

LSS Rule 1511 – Trust accounting rule

Federation of Law Societies Working Group on Anti-Money Laundering and Terrorist Financing Paper – December 14, 2018

3. Can You Breach Privilege?

- (a) When is it permissible to breach solicitor/client privilege with reference to the new rule in the Code? What do you do if a client threatens to harm someone else? Or harm himself?

Smith v. Jones [1999] 1 SCR 435;

Mandatory Disclosure Code of Conduct Rule 3.3-3A (March 2018)

Permitted Disclosure Code of Conduct Rule 3.3-3B (March 2018)

What do you do if a client makes comments that do not indicate an intention to do harm, but are disturbing nonetheless?

4. The Lying Client

- (a) What do you do when a client testifies differently from the information he tells you in your office?

What is your duty to the court when presenting evidence? What if you know the evidence your client is going to give is false?

***Client Telling Completely Different Story
in Witness Box to That Told to Counsel***

Chief Justice Gale: I think it has been reasonably demonstrated that there are still some grey areas around. Let us turn now to the next question, number 12. Mr. Martin I am going to ask you to be good enough to deal with this. The defendant gives evidence; the defendant told counsel he killed the deceased accidentally. To the *surprise* of counsel he puts forward an alibi in the witness box. I would think that the *surprise* of counsel is the understatement of today.

Mr. Martin: Well, I suppose the first thing counsel should do in that situation is try to keep a straight face.

In this situation, there is really nothing that counsel can do. The information given to him by the client is privileged in the absolute sense that the lawyer is not even permitted to disclose it. There is a presumption against the accused committing perjury and I think counsel must assume that what the witness is now saying under oath is the truth and that what he previously told counsel is false.

Counsel must keep the confidence of his client and make whatever representations on his behalf that arise out of the evidence, and go on and do the best he can with the case.

Chief Justice Gale: Thank you, Mr. Martin. Mr. Sedgwick how are your facial muscles?

Mr. Sedgwick: I'd do the best I could and I'm pretty good at keeping my facial muscles under control. Really, it is related to what was said earlier, if that's his defence, that's his defence and you do the best you can with it.

G. Arthur Martin, *Special Lectures of the Law Society of Upper Canada* (1969) Defending a Criminal Case, p. 325; and
LSS Rules 1028 and 1029 Assisting Client with Fraud or other Illegal Conduct.

Criminal Activity, Duty to Withdraw at Time of Taking Information

LSS 1548

(1) If, in the course of obtaining the information and taking the steps required in Rule 1542 and subrules 1545(1) or (3), a member knows or ought to know that the member is, or would be assisting a client in fraud or other illegal conduct, the member must withdraw from representation of the client.

(2) This section applies to all matters, including new matters for existing clients, for which a member is retained after this Rule comes into force

LSS Rule 1549 requires lawyer to monitor client's activity to ensure it is consistent with retainer

LSS Rule 1550 requires lawyer to withdraw if client is engaged in illegal activity

- (b) What do you do when a client, who has just testified, tells you he has lied under oath? Does it make a difference if it is a witness who you have called?
- (c) My client has retained a new lawyer to conduct his trial because I told him I would not put him on the stand after he said he intended to perjure himself. What do I do now?

5. Possession of Evidence

- (a) What do you do if a client tells you the location of evidence that you suspect the police are looking for? What if the evidence is at a public location, or in the client's basement? Does this apply to photos, videos, text messages, etc?

Code of Conduct Rule 5.1-2A (November 2017); Commentaries [4] – [5];
R. v. Ken Murray [2000] OJ No. 2182.

6. In Business with your Client

- (a) Are there any ethical concerns if I invest in my client's company or sit on its board of directors?
- (b) Can I lend money to a client and continue to act?

Code of Conduct Rule Rules 3.4-23 –30 Transactions With Clients;
Code of Conduct Rule 3.4-31 re: Borrowing From Clients;
Code of Conduct Rule 3.4-32 re: Lawyer's Company Borrowing From Client; and
Code of Conduct Rule 3.4-33 re: Lending To Clients.

- (c) Can I take title to a house or land, or a mortgage, in lieu of payment?

See, for example:
LSS v. WRH 2012 SKLSS 8; and
LSS v RCS 2012 SKLSS 1

- (d) Can I be an executor of a will that I prepare for a client?

Code of Conduct Rule 3.4-37–39 Gifts and Testamentary Instruments; and
Frizzell v. Bonneau [2012] S.J. No. 564

7. Advertising

- (a) Can I send out letters soliciting legal work from persons who are not already clients of the firm?

See Law Society Rules re: Advertising Part 19;
Code of Conduct Rule 4.1 Making Legal Service Available;
Code of Conduct Rule 4.2 Marketing; and
Code of Conduct Rule 4.3 Advertising Nature of Practice.

8. Dealing with Complaints

- (a) My client threatened to sue me if I didn't cut my bill in half. I just want this to go away. Can I cut a deal with her and get her to waive all claims against me?

- (b) Can I settle with a client who made a complaint to the Law Society against me?

LSS v. BH 2014 SKLSS 4; and
LSS v. DB 2014 SKLSS 11

- (c) What happens when a professional conduct issue arises with respect to me or my practice? What if a client or another lawyer sues me or threatens to sue me, what do I do?

Obligation to Report to Insurer; and
Rule re: Reporting Charges to Law Society Executive Director LSS Rule 169(1).

9. Firing a Client

How and when can I fire a client?

Code of Conduct Rule 3.7 Withdrawal From Representation;
Code of Conduct Rule 4.1-1; Commentary [4] Right to Decline Representation;

R. v. Cunningham [2010] 1 SCR 331

R. v. Short [2018] OJ No. 5 (ONCA)

Queen's Bench Notice to the Profession May 7, 2008 (60 days)

Provincial Court Practice Directive VI March 21, 2018

Obligatory Withdrawal

Non-Payment of Fees (45/90 days)

QB Rules re: Withdrawal in Civil Matters.

10. *The Golden Rule*

Do not make ethical decisions alone – always find someone to bounce ideas off. Strongly consider contacting the Law Society for advice.

See: "*Wrestling with Alligators*", *Bencher's Digest*, August 2011, p. 4.