

LAW 468.001/588.001: Ethics and professionalism (2023 Summer Term)

Peter A. Allard School of Law at UBC

Full Summer Session 2023 (May 10 – July 19)

Wednesdays 6:30 p.m. to 9:50 p.m.

Allard Hall, room 105 (May 10 – June 14)

Allard Hall, room 104 (June 21 – July 19)

Course instructor: Mark Iyengar – miyengar@peckandcompany.ca
Office hours by appointment.

Course description

This course is about the ethical obligations of Canadian lawyers and issues of professionalism in legal practice. Ethical rules and principles are a fundamental part of the practice of law but how to go about applying them is a complex question that inevitably involves the exercise of judgment and may also require the consideration of one's personal values.

In this course, we will examine the requirements of the *Code of Professional Conduct for British Columbia* and case law that establishes guidelines for ethical legal conduct, but also bring a critical eye to conventional ideas and analyze which rules need to be reformed to achieve objectives such as promoting greater equity and diversity in the profession and greater access to justice. We will also consider the role of the Law Society, some of the challenges faced by the legal profession, and how both the Law Society and individual lawyers can respond to those challenges.

Evaluation

Evaluation will be based on participation, including attendance and a group presentation (20%), and a 3-hour open book final examination (80%). You may bring any materials you wish into the examination, but I **strongly** recommend that you make your own notes. The final exam is scheduled for Wednesday, July 26, 2023, at 9:00 a.m. in Allard Hall, room 104.

Objectives

This course is intended to:

- familiarize you with the rules of professional ethics and the regulatory framework that applies to lawyers in British Columbia,
- develop your understanding of the legal and ethical duties and responsibilities of lawyers and how they apply in practice,

- help you to identify and evaluate ethical issues that arise and exercise good judgement in dealing with them,
- increase your awareness of the resources available to assist you in managing professional ethical issues,
- cause you to reflect on how you want to conduct yourself as a lawyer, and
- make you more aware of the challenges facing the legal profession and how you might respond to them.

Required materials

Our textbook is *Lawyers' Ethics and Professional Regulation*, 4th ed. (or 3rd ed. for many of the readings — see below), by Alice Woolley et al. The book is available at the UBC bookstore. There are likely second-hand copies available as well, as it has been used in a number of other ethics courses.

Students will also need to refer to 1) the annotated *Code of Professional Conduct for British Columbia* (the *BC Code*), and, to a lesser extent, to 2) the *Law Society Rules*. Both of these are available for online review on the Law Society of British Columbia website:

- *BC Code*:
<https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/>
- *Law Society Rules*:
<https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules/>

Course structure

I expect students to have read the assigned materials prior to coming to class. Classes will generally include both a lecture and time for class discussion. Those discussions will not only focus on the content of the readings and materials, but also on a critical analysis of the subject matter. Students should think about whether the cases and rules we study are just, and if not, what alternatives should be considered. The participation grade will be based on attendance, contribution to class discussions, and group presentation.

Group presentations

Group sizes will depend on the number of students enrolled in the class, but they will likely be between three and five students. Students will find and present one or two cases or other readings related to a topic covered in class that week but which has not been assigned as required reading. This case or reading may be from unassigned portions of the textbook or from elsewhere. Each student should speak for a maximum of seven minutes in the presentation. This limit will be enforced strictly.

Course schedule

Required readings for each class are set out below.

Where the reading is from the Woolley text, the first text page number references are to the 4th ed. The page number references that follow in square brackets indicate where the same material appears in the 3rd ed. (* indicates that the material is not identical). Where it is noted that required readings appear in the 4th ed. only, students using the 3rd ed. will need to access a reference copy of the 4th ed. at the law school library (or otherwise).

Wednesday, May 10

Introduction to legal ethics

No required readings.

Wednesday, May 17

What is legal ethics?

Consideration of competing underlying conceptions of a lawyer's ethical role in the Canadian legal system: zealous advocacy, law-as-morality, and personal morality accounts.

- Text, pp. 17–64
- [David M. Tanovich, “Law’s Ambition and the Reconstruction of Role Morality in Canada” \(2005\), 28 Dal. L.J. 267 \(up to p. 286\)](#)
- [Radiolab podcast on the Buried Bodies Case](#)
 - **NB:** This contains graphic descriptions of sexual assault and violence.

A self-governing profession

Introduction to the *Legal Profession Act*, the Law Society of British Columbia, the Law Society of British Columbia Tribunal, the Law Society Rules, the *BC Code* and how they fit together.

- Text, pp. **8–12** [3rd: 7–11], **749–58** [3rd: 742–50]
- Introduction to *BC Code*
- [Ministry of Attorney General, “Legal Professions Regulatory Modernization” \(2022\)](#)
- [Law Society of British Columbia, “Response to the Ministry of Attorney General’s Intentions Paper” \(2022\)](#)

Wednesday, May 24

Getting and choosing clients

Rules re: advertising and solicitation. Ethical and practical issues.

- Allan C. Hutchinson, "Taking It Personally: Legal Ethics and Client Selection" (1998) 1:2 Legal Ethics 168
- *BC Code* 2.1-3(d), 3.2-7, 4.2-3 to 4.2-5 and 4.3-0.1 to 4.3-1
- Text, pp. **103–04** [3rd: 171–72]

Ending client relationships

Rules on withdrawal where is no agreement. Ethical and practical issues.

- *BC Code* 3.7
- Text, pp. **152–53** [3rd: 213–15], **158–62** [3rd: 219–24], **216–19** [3rd: 280–83]

Wednesday, May 31

The duty of confidentiality

The centrality of the duty of confidentiality and the rules in regard to it. Exceptions to the duty of confidentiality.

- *BC Code* 3.3-1 to 3.3-2, 3.3-3 to 3.3-6, 5.1-2.1 and 7.2-10
- Text, pp. **167–88** [3rd: *229-48], **191–97** [3rd: 251-57] and **220–23** [3rd: 284-88]

Competence

Rules re: competence and quality of service. Duties to client and insurer re: errors and omissions. Criminal appeals based on ineffective assistance of counsel.

- *BC Code* 3.1, 3.2 and 7.8
- Text, pp. **105–06** [3rd: 173–74]
- *Mctavish (Re)*, 2018 LSBC 2 (paras. 13–54, 62–74 and 81 only)
- *R. v. Mehl*, 2021 BCCA 264 (paras. 132–49 only)

Wednesday, June 7

The duty of loyalty and conflicts of interests

Rules and case law regarding conflicts of interest. Practical issues that arise in managing conflicts. Dealing with difficult clients.

- *BC Code* 3.4-1 to 3.4-10, 3.4-17 to 3.4-20, and 3.4-26.1 to 3.4-39
- Text, pp. **32–35** [3rd: 33–35], **233–42** [3rd: 299-309], **253–58** [3rd: 323-31], **262–71** [3rd: 333-44], **272–85** [3rd: 346-60], **301–05** [read *Law Society of Upper Canada v. George Douglas Hunter*, 2007 ONLSHP 27], **307–10** [3rd: 384–86]
- [Andrew Lewis, “A Litigator’s Guide to the Challenging Lawyer-Client Relationship: Difficult Conversations With Clients” \(April 24, 2017\) \(pp. 16-21 of pdf\)](#)

Wednesday, June 14

Civility

When civility becomes an ethical issue. Applicable rules.

- *BC Code* 7.2-1
- Text, pp. **349–60** [read paras. 1-9, 63-91, 98-120 of *Groia v. Law Society of Upper Canada*, 2018 SCC 27]
- [Alice Woolley, “Does Civility Matter?” \(2008\), 36 O.H.L.J. 175](#)
- [Alice Woolley, ““Uncivil by too much civility”?: Critiquing Five More Years of Civility Regulation in Canada” \(2013\), 36 Dal. L.J. 239](#)

Wednesday, June 21

Ethics in advocacy

What does it mean to be an “officer of the court”? Ethical obligations in pre-trial procedures, at trial and in negotiations.

- *BC Code* 2.1-2, 5.1-1 to 5.1-2, 5.2-1, 5.2-2, and 5.6-1
- Text, pp. **313–18** [3rd: 391–95], **324–29** [3rd: 400–05], **330 (from “Negotiation”)-331** and **390–95, 332–33** (“Ethics at Trial introductory section only) [3rd: 406 (from “Negotiation”)-408 and 466-472, 408-409] and **343–47** [3rd: 419–23]
- J Alexander Tanford, "The Ethics of Evidence" (2002) 25:3 Am J Trial Advoc 487 (pp. 1-46 of the pdf/pp. 487-531 of the original - up to "Unreliable Evidence")

Witnesses

Ethical issues in pre-trial preparation of witnesses, examination for discovery, and cross-examination.

- *BC Code* 5.3, 5.4-1, 5.4-2, 7.2-6, 7.2-6.1, and 7.2-8
- Text pp. **333 (from “Witness Preparation”)-340** [3rd: 409–16]
- Excerpt from J Alexander Tanford, "The Ethics of Evidence" (2002) 25:3 Am J Trial Advoc 487
- John Douglas Shields & Howard Shapray, “Woodshedding, Interruptions and Objections: How to Properly Conduct and Defend an Examination for Discovery” (2010) 68:5 Advocate (Vancouver) 671

Wednesday, June 28

Cultural competence, unconscious bias, and trauma-informed lawyering

Discrimination in the legal profession. Ethical and legal responsibilities for cultural competency and trauma-informed lawyering.

- *BC Code* 6.3
- Text pp. **119–34** [3rd: 188–89, 192–205], **136–39** [read pp. 26–31 of Pooja Parmar, “Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence” (2019) 97:3 Canadian Bar Review 526]

- [Constance Backhouse, Gender and Race in the Construction of Legal Professionalism \(October, 2003\)](#)
- Videos: [“But I was wearing a suit!” \(Part 1\)](#) and [“But I was wearing a suit!” \(Part 2\)](#)
- [The Trauma-Informed Lawyer Podcast, Season 1, Episode 3: Becoming Trauma-Informed Begins With You](#)

Wednesday, July 5

Undertakings, responsibilities for staff, and billing

Express and implied undertakings. Supervision of paralegals/legal assistants. Key rules re: billing and trust accounts.

- *BC Code* 2.1-4(b), 7.2-11, 7.1-3, 6.1-1 to 6.1-3.3, 6.2 and Appendix E, 3.6-1 to 3.6-3
- *Legal Profession Act*, ss. 69-71
- *Law Society Rules* 3-64, 3-71, 8-1, and 8-2
- *Aleksejev (Re)*, 2019 LSBC 34
- *Juman v. Doucette*, 2008 SCC 8 (paras. 1-6, 23-32, 35-37 only)
- *Wilson (Re)*, 2019 LSBC 25
- Text, pp. **623–25** [read “Shady Billing: Closing the Hall of Shame”]

Access to justice

The nature and scale of the problem. Proposed solutions.

- Text, pp. **661–71** [3rd: *691–701], **692–97** [3rd: 721–26]
- *BC Code* 3.2-1.1
- [Kate Murray \(Legal Services Society, BC\). Achieving Digital Equity in Access to Justice \(2021\) \(pp. 7 and 23–42 of pdf only\)](#)
- Lorne Sossin, "The Public Interest, Professionalism, and Pro Bono Publico" (2008) 46:1 O.H.L.J. 131

Wednesday, July 12

Criminal law: the prosecutor and defence lawyer

Special duties owed by prosecutors. Special topics relating to defence lawyers.

- “The Prosecutor”, “Client Perjury”, and “Plea Discussions” from David Layton and Michel Proulx, *Ethics and Criminal Law*, 2nd ed. (Irwin Law, 2015).

Wednesday, July 19

Course review, Q&A, and exam prep

Short recap. Answers to any questions you have.

No required readings.