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Lawyers & Ethics: Professional Responsibility and Discipline

Gavin MacKenzie

Release No. 5, December 2025

A practical, contemporary text dealing with the issues of professional responsibility regularly confronting lawyers in Canada in every area of practice. A valuable reference source for the practising lawyer and the student. Specific types of ethical problems arising in the major areas of practice are identified, and insightful, practical solutions presented. Areas of practice discussed are criminal, civil litigation, estates, real estate, corporate and in-house counsel. A substantial portion of the work is devoted to discipline proceedings.

What's New in This Release

This release features updates to Chapter 5—Conflicts of Interest in Litigation, Chapter 25—Rules of Professional Conduct, Chapter 26—Discipline Proceedings, Appendix IF—Issues in Focus and Appendix SLL—Selected Legal Literature.

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Highlights

Chapter 26—Discipline Proceedings—§ 26:18. Penalty—Although a reprimand is sometimes dismissively characterized as a “slap on the wrist”, the Law Society of Ontario Tribunal has observed more than once that a reprimand is not without reputational consequence, as a reprimand leaves “a permanent mark on a lawyer’s record and affects his professional reputation and future business opportunities”.

Law Society of Ontario v. Constantine, 2020 ONLSTH 15, quoted with approval in *Law Society of Ontario v. Diamond*, 2024 ONLSTH 145.

Issues in Focus—§ IF:2. How can a client be held to be contributorily negligent in professional negligence matters involving lawyers?—The general standard regarding professional liability for lawyers is that “a lawyer is required to exercise the standard of care of the reasonably competent member of his profession similarly situated in the discharge of his retainer.” In failing to meet this standard, “[a] solicitor who in the course of carrying out a transaction conducts himself in a manner amounting to professional negligence is liable for the damages arising from his failure to meet his professional duties”. The test to be applied in cases alleging solicitor’s negligence will depend on various circumstances, including the sophistication and financial experience of the client, which may have an effect on the extent of the solicitor’s obligations to the client.

Several defences may be put forward to limit or negate liability for professional negligence, including contributory negligence on the part of the client. For the most part, it will be extremely difficult for a lawyer to demonstrate contributory negligence by the client. However, where the client is also a lawyer, or other sophisticated actor, contributory negligence may be easier to prove.