**CLIENT WANTS TO LIE ON STAND ……………………………………………………………………………………**

**CLIENT GIVES YOU A PIECE OF EVIDENCE……………………………………………………………………………**

**YOU WANT TO WITHDRAW FOR ETHICAL REASONS ……………………………………………………………..**

**OBLIGATORY REASONS FOR WITHDRAWAL ……………………………………………………………………….**

**YOUR CLIENT CAN’T PAY YOU…………………………………………………………………………………………**

**CLIENT MIGHT HURT/KILL SOMEONE…………………………………………………………………………………**

**YOU’RE ASKED TO REPRESENT TWO PARTIES IN A TRANSACTION ……………………………………………**

**SEXY TIMES WITH CLIENT …………………………………………………………………………………………….**

**YOU ACTED WITHOUT CIVILITY ……………………………………………………………………………………..**

**MONEY LAUNDERING ………………………………………………………………………………………………..**

**YOUR CLIENT WANTS TO DO SOMETHING ILLEGAL (PRIVATE LAW)…………………………………………**

**YOUR CLIENT WANTS TO DO SOMETHING ILLEGAL (IN HOUSE COUNSEL)…………………………………**

**YOU ARE IN HOUSE COUNCIL ……………………………………………………………………………………..**

**YOU DON’T AGREE WITH YOUR CLIENT ON A COURSE OF ACTION…………………………………………**

**YOU ARE FACING A SELF LITIGANT………………………………………………………………………………**

**YOU WANT TO ADVERTISE YOUR FIRM………………………………………………………………………**

**LAWYERS GONE WILD - DRUNK, HIGH, OR JUST STOOPID………………………………………………**

**PLEAS OF CONVENIENCE………………………………………………………………………………………**

**CASUAL CONVERSATION B/W LAWYERS (OR W/ NON-LAWYERS)………………………………………**

**RECEIVED POSSIBLY CONFIDENTIAL INFO FROM 3RD PARTY……………………………………………**

**OMISSIONS - INADVERTENT OR DELIBERATE………………………………………………………………**

**DUTY TO REPORT - AKA “RAT OUT ANOTHER LAWYER”…………………………………………………**

**COMMUNICATIONS W/ OTHERS………………………………………………………………………………**

**CONDUCT UNBECOMING A LAWYER …………………………………………………………………………**

**WHEN/HOW CAN YOU CHOOSE YOUR CLIENTS:…………………………………………………………..**

**CONSENT……………………………………………………………………………………………………………**

**DUTY AS DEFENSE………………………………………………………………………………………………………………**

**DUTY AS PROSECUTOR ………………………………………………………………………………………………………**

**TEST CASE…………………………………………………………………………………………………………………**

**DUTY TO PROFESSION …………………………………………………………………………………………………………**

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| **CLIENT WANTS TO LIE ON STAND** |
| CASE(S):***Sussman*** (counselling breach of court order, not telling someone to lie on the stand, but might be able to be used to show bringing the profession into disrepute) |
| CODE PROVISION(S):**3.2-7** Dishonesty, fraud by client**2.1** Canon → lawyer’s duty is to serve the cause of justice**5.1-1** Advocacy → Commentary [1] Even though lawyer is zealous advocate, “must discharge this duty by fair and honourable means, without illegality… with candour, fairness, courtesy and respect.” |

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| **CLIENT GIVES YOU A PIECE OF EVIDENCE** |
| CASE(S):***R. v. Murray*** Ken Murray, was asked by Paul Bernardo to get video-tapes of him doing crimes out of his house. Murray held onto these. Murray got off the hook, but now expectation is that lawyer **cannot suppress physical evidence** |
| CODE PROVISION(S):2.1-1 Duties to the state: a) A lawyer owes a duty to the state, to maintain its integrity and its law. A lawyer should not aid, counsel or assist any person to act in any way contrary to the law. **3.5** Preservation of clients’ property (stretch if it’s physical evidence) |

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| **YOU WANT TO WITHDRAW FOR ETHICAL REASONS**  |
| CASE(S):***R v Cunningham* -** Jurisdiction to refuse to grant counsel’s request to withdraw should be exercised exceedingly sparingly - It is not appropriate for the court to refuse withdrawal where an adjournment will not be necessary, nor where counsel seeks withdrawal for ethical reasons |
| CODE PROVISION(S):**3.7-3 Commentary [3]:** |
| **Luban “The Adversary System Excuse”: when professional and personal morality conflict, you should follow your personal morality. ultimately you are a moral person and should make decisions in a moral fashion****LAP Presentation Sustainability of Practice**  |

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| **OBLIGATORY REASONS FOR WITHDRAWAL**  |
| CASE(S): |
| CODE PROVISION(S): **3.7-7** - **Obligatory Withdrawal** * (a) discharged by a client;
* (b) a client persists in instructing the lawyer to act contrary to professional ethics; or
* (c) the lawyer is not competent to continue to handle a matter.
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| **YOUR CLIENT CAN’T PAY YOU**  |
| **CASE(S):***Cunningham* - Lawyer instructs client on papers to fill out for legal aid. Client doesn’t do it. Lawyer can’t get paid and wants out. Forced to stay on because of harm to client if she left so close to trial.NOTE: Code 3.7-9.1 Commentary [1] has a box re: Cunningham **NOTE: *see* 3.7-9.1 Commentary [1] for total breakdown of *Cunningham***  |
| **CODE PROVISION(S):****3.7-3** Non-payment of fees Commentary [1] - [3]: When the lawyer withdraws because the client has not paid the lawyer’s fee, the lawyer should ensure that there is **sufficient time** for the client to obtain the services of **another lawyer** and for that other lawyer to prepare adequately for a hearing or oral trial...**3.7-5** Withdrawal from Criminal ProceedingsNOTE: Code 2.1-3(i) Duty owed to the client - **The Client’s ability to pay cannot justify a charge in excess of the value of the service, though it may require a reduction or waiver of the fee****3.3-5:** A lawyer may disclose confidential information in order to establish or collect the lawyers’ fees, but must not disclose more information than is required.  |
| **NOTE: 5.1-2 When acting as an advocate, a lawyer must not… (b) knowingly assist or permit a client to do anything that the lawyer considers to be dishonest or dishonourable**  |

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| **ACCESS TO JUSTICE**  |
| **CASE(S):** **Access to Justice readings from Justice Donna Martinson**  |
| **CODE PROVISION(S):****2.1-5(c) Duty owed to Oneself:** “a lawyer should make legal services available to the public in an efficient and convenient manner that will command respect and confidence.”**.2-6 Commentary [4]**: When the complainant or potential complainant is unrepresented, the lawyer should have regard to the rules respecing unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused. If the complainant or potential complainant is **vulnerable**, the lawyer should take care not to take unfair or improper advantage of the circumstances. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.**2.1-1(c)**: a lawyer should accept without hesitation, and if need be without fee or reward, the cause of any person assigned to the lawyer by the court, and exert every effort on behalf of that person. 2.2-2 Commentary [1] (b) A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions. (b) participating in legal aid and community legal services programs or providing legal services on a pro bono basisNOTE: 5.6-1 Commentary [1] Encouraging respect for the administration of justice: **The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statement. Yet, for the same reason, a lawyer should not hesitate to speak out against an injustice. → TEST CASE SCENARIO**  |

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| **CLIENT MIGHT HURT/KILL SOMEONE -** Public Safety Exception  |
| CASE(S):***Smith v Jones*** (pp. 216-224).***R v Butt*** - lawyer reveals client’s HIV status and was commended (contentious because of low possibly of HIV transmission from oral sex and other possible routes)  |
| CODE PROVISION(S):BC Professional Conduct Handbook: Chapter 5, s.12 – Disclosure to Prevent a Crime12. *A lawyer* ***may*** *disclose information received as a result of a solicitor-client relationship if the lawyer has reasonable grounds to believe that the disclosure is necessary to prevent a crime involving death or serious bodily harm to any person***NOTE**: Even broader: Law Society of Upper Canada’s Profession Conduct Handbook – Rule 4.11 |
| *Determining when Public Safety outweighs Solicitor-Client Privilege*3 FACTORS to be considered:(1) is there a clear risk to an **identifiable person or group of persons?**(2) Is there a **risk of serious bodily harm or death?**(3) Is the danger **imminent**?**General Rule:** if the privilege is to be set aside the court must find that there is an imminent risk of serious bodily harm or death to an identifiable person or groupIt’s **MAY** not **MUST** |

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| **YOU’RE ASKED TO REPRESENT TWO PARTIES IN A TRANSACTION**  |
| CASE(S):*R v Neil and then elaborated in McKercher* (Bright Line Rule)s*+ Strother* [regarding conflicting interests involving current clients, that a lawyer must not represent one client whose legal interests are directly adverse to the immediate legal interests of another client without consent. This duty arises even if the matters are unrelated.]CODE pg. 26  |
| CODE PROVISION(S):**3.4 Conflicts**3.4-1 Duty to Avoid Conflicts of Interest - Commentary [1], [6], [7 - key]**3.4-2 Consent** Commentary [7] - Lawyer belief in reasonableness of representation **Dispute: 3.4-3** (A lawyer must not represent opposing parties in a dispute)Depending on facts 3.4-4 Concurrent representation with protection of confidential client information**Confidential Information:** 3.3-1, Commentary [6]: a lawyer should take care to avoid disclosure to one client of confidential information concerning or received from another client and should decline employment that might require such disclosure **3.4-1 Duty to avoid conflicts of interest, Commentary [0.1] In a real property transaction,** a lawyer may act for more than one party with different interests only in the circumstances permitted by Appendix C |

\***Factors** to determine whether a Conflict of Interest exists: **3.4-1 Commentary [7]**

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| **SEXY TIMES WITH CLIENT**  |
| CASE(S): ***Hunter*** - (Text: pg. 347-353)**SEE 3.4-1 COMMENTARY [8(e)(i)] for e.g. of areas where conflicts of interest may occur → “A Lawyer has a sexual or close relationship with a client”**  |
| CODE PROVISION(S):**3.4-1** Duty to avoid conflicts of interest → see Commentary [8](e) for sexual relationsCould result in **3.7-2 Optional Withdrawal** depending on situation |

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| **CONFLICT WITH CLIENT**  |
| CASE(S):  |
| CODE PROVISION(S):**3.4-26.1** A lawyer must not perform any legal services if it would reasonably be expected that the lawyer’s professional judgment would be affected by the lawyer’s or anyone else’s (a) relationship with the client, or (b) interest in the client or the subject matter of the legal services  |

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| **YOU ACTED WITHOUT CIVILITY**  |
| **CASE(S):**RvR(AJ) (380-382) *sarcastic and baiting cross-examination* General Motors Acceptance Corp v Isaac Estate (384-388) *Hid jurisprudence**R v Felderhof* (s-246) Judge didn’t uphold duty to restrain uncivil actions of counsel  |
| **CODE PROVISION(S):**Rule 7.1 Responsibility to the society and the profession generallyRule 7.2 Responsibility to lawyers and othersRule 7.3 Outside interests and the practice of lawRule 7.4 The lawyer in public officeRule 7.5 Public Appearances and Public StatementsRule 7.6 Preventing Unauthorized practiceRule 7.7 Retired judges returning to practiceRule 7.8 Errors and Omissions con |
| **ARTICLES:****ALICE WOOLLEY, *“DOES CIVILITY MATTER?”* (PP. 391-398)** abandon the Civility Movement!!**AMY SALYZYN, *“JOHN RAMBO v ATICUS FINCH”* (p. S-231)** |

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| **$$ MONEY LAUNDERING IS AFOOT $$**  |
| **CASES:*****Federation of Law Societies of Canada v Canada (AG),* 2013 BCCA 147** |
| **CODE PROVISIONS:** 3.2-7 A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud. **COMMENTARY** **[1]**A lawyer should be on guard against becoming the tool or dupe of of an unscrupulous client, or of others, whether or not associated with the unscrupulous client**[2]** A lawyer should be alert to an avoid unwittingly becoming involved with a client engaged in criminal activities such as mortgage fraud or money laundering**Law Society Rules**Cash transactions 3-51.1 (1) This Rule applies to a lawyer when engaged in any of the following activities onbehalf of a client, including giving instructions on behalf of a client in respect ofthose activities: (a) receiving or paying funds; (b) purchasing or selling securities, real property or business assets or entities; (c) transferring funds or securities by any means. (2) This Rule does not apply to a lawyer when (a) engaged in activities referred to in subrule (1) on behalf of his or heremployer, or (b) receiving or accepting cash (i) from a peace officer, law enforcement agency or other agent of theCrown acting in an official capacity, (ii) pursuant to the order of a court or other tribunal, (iii) to pay a fine or penalty, or (iv) from a savings institution or public body.(3) While engaged in an activity referred to in subrule (1), a lawyer must not accept anaggregate amount in cash of $7,500 or more in respect of any one client matter or transaction. (3.1) Despite subrule (3), a lawyer may accept an aggregate amount in cash of $7,500 ormore in respect of a client matter or transaction for professional fees,disbursements, expenses or bail. (3.2) A lawyer who accepts an aggregate amount in cash of $7,500 or more undersubrule (3.1), must make any refund greater than $1,000 out of such money in cash. |

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| **YOUR CLIENT WANTS TO DO SOMETHING ILLEGAL (PRIVATE LAW)** |
| CASE(S):*R v Murray*  (Text, pg. 31) |
| CODE PROVISION(S):**5.1-2(e) When acting as an advocate, a lawyer must not**: “knowingly attempt to deceive a tribunal or influence… by otherwise assisting any fraud, crime or illegal conduct” |

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| **YOUR CLIENT WANTS TO DO SOMETHING ILLEGAL (IN HOUSE COUNSEL)** |
| CASE(S):***R v Murray*** Could use ***Everingham*** for the proposition that all lawyers are held to a high standard of professional obligation (not just Crown)? Stretch. |
| CODE PROVISION(S):3.2-8 **Dishonesty, fraud when client an organization****Competence: 3.1-2 Commentary 10**: Discusses giving advice to clients that is not legal advice. This isn’t to do with illegality, but is to do with how In-house counsel conduct themselves “The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice”. |
| OTHER: Lynn Charbonneau of HSBC spoke about how, although the code may allow you to withdraw from a deal without withdrawing from a company (3.2-8 Commentary [5]), this is very unlikely in a real-life scenario. Could use Luban, “Tales of Terror” re: telling client what they want to hear vs. being neutral partisan?Paton, “Corporate Counsel as Corporate Conscience”  |

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| **YOU ARE IN HOUSE COUNSEL** |
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| CODE PROVISION(S):**Competence: 3.1-2 Commentary 10**: Discusses giving advice to clients that is not legal advice. This isn’t to do with illegality, but is to do with how In-house counsel conduct themselves “The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice”.**When the client is an organization****3.2-3** Although a lawyer may receive instructions from an officer, employee, agent or representative, when a lawyer is employed or retained by an organization including a corporation, the lawyer must act for the org in exercising his or her duties and in providing professional services.  **Commentary [1]** outlines how it is the interests of the organization, not individual shareholders that are important **Commentary [2]** outlines how you can accept a joint retainer for the org and someone in it |

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| **YOU DON’T AGREE WITH YOUR CLIENT ON A COURSE OF ACTION** |
| CASE(S): |
| CODE PROVISION(S):**Optional Withdrawal: 3.7-2** If there has been a serious loss of confidence between the lawyer and the client, the lawyer may withdraw**Commentary [1]****2.1-3(e) -** “No client has a right to demand that the lawyer be illiberal or do anything repugnant to the lawyer’s own sense of honour and propriety.” |
| Class conversation with Guest Speaker saying “I |

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| **YOU ARE FACING A SELF LITIGANT** |
| CASE(S): |
| CODE PROVISION(S):**Chapter 2 - Standards of the Legal Profession****2.1-3(d):** “A lawyer should treat adverse witnesses, litigants and counsel with fairness and courtesy, refraining from all offensive personalities. The lawyer must not allow a client’s personal feelings and prejudices to detract from the lawyer’s professional duties…” *
* take particular care to be accurate, candid & comprehensive in presenting your client’s case if the other side is unrepresented - **5.1-1[6]**
* When dealing with unrepresented litigant, lawyer must:

a) urge unrepresented person to obtain independent counselb) make sure the unrepresented party doesn’t think that you represent their interests alsoc) make sure they know you act exclusively for your client - **7.2-9** |

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| **YOU WANT TO ADVERTISE YOUR FIRM** |
| CASE(S):***Law Society of British Columbia v Jabour*** (Text: pg. 2-6)***Law Society of Saskatchewan v Merchant*** (Text: pg. 127)Note: Solicitation - Text pg. 127 |
| CODE PROVISION(S):**Chapter 4 - Marketing of Legal Services****Definition of “marketing activity” - 4.2-4****Content and Format of Marketing Activity - 4.2-5****Marketing Activity likely violates this rule when…: Commentary [1]** |

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| **LAWYERS GONE WILD - DRUNK, HIGH, OR JUST STOOPID - respectful dialogue plz.** |
| CASE(S): |
| CODE PROVISION(S):* can’t appear before a tribunal intoxicated - **5.1-2(p)**
* dishonourable or questionable conduct in professional OR private life reflects adversely on profession & admin of justice - **2.2-1[3]**
* high traditions of the profession - “time-honoured virtues” of probity, integrity, honesty & dignity - **2.1-5(f)**
* duty to report another lawyer’s mental instability if their clients will be materially prejudiced -**7.1-3(d)**
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| **PLEAS OF CONVENIENCE** |
| CASE(S)***R v K(S)*:** (Text, pg. 477-480) |
| CODE PROVISION(S):**5.1-7 Agreement on guilty plea** **5.1-8(a)-(d)**  |

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| **CASUAL CONVERSATION B/W LAWYERS (OR W/ NON-LAWYERS)** |
| CASE(S): |
| CODE PROVISION(S)* Breach of Confidentiality: anyone could overhear the conversation - could be a breach, even if the client is not named - 3rd parties may be able to identify the subject & cause prejudice to your client - **3.3-1[8]**
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| **RECEIVED POSSIBLY CONFIDENTIAL INFO FROM 3RD PARTY**  |
| CASE(S): |
| CODE PROVISION(S):* lawyer’s DOC extends beyond evidentiary rules of privilege & applies regardless of source & whether others may also know info - **3.3-1[2]**
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| **OMISSIONS - INADVERTENT OR DELIBERATE** |
| CASE(S):***General Motors*** (omitted jurisprudence) |
| CODE PROVISION(S):* as advocates, lawyers must treat tribunal with candour, fairness, courtesy, and respect - **5.1-1**
* civil proceedings - must immediately reveal existence of agreement under which the P is guaranteed recovery - **5.1-2[1]**
* can’t knowingly let allow witnesses be presented in false way - no impersonation either! - **5.1-2(k)**
* if you unknowingly fail to do something that would breach duty of candour - you must disclose omission & rectify it as is reasonable under the circumstances - **5.1-4**
* if you discover error / omission that is or may be damaging to the client in an area you’re responsible for - **7.8-1**
	1. promptly inform client w/out admitting legal liability
	2. recommend client obtain independent legal advice
	3. advise client of possibility that you may not be able to continue to act
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| **DUTY TO REPORT - aka “RAT OUT ANOTHER LAWYER”** |
| CASE(S): |
| CODE PROVISION(S):Unless to do so would involve a breach of S/C privilege, as lawyer must report to the Society ….. list of things (see code) - **7.1-3** |

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| **COMMUNICATIONS W/ OTHERS** |
| CASE(S):***Stewart v Canadians Broadcasting Corp*** (1997) O.J. (Greenspan announcing case to world, not related to civility issues, more for confidentiality and improperly benefiting from your client) **p10** |
| CODE PROVISION(S):Communication & correspondence must not be abusive, offensive, or otherwise inconsistent with the proper tone of professional communication - **7.2-4**Lawyers must not record a conversation - even if lawful to do so - between themselves and a client or another lawyer) - **7.2-3** |

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| **CONDUCT UNBECOMING A LAWYER**  |
| CASE(S):Note: Text Pg. 101: “conduct unbecoming a barrister or solicitor” is generally understood to refer to the personal or private conduct of a lawyer which may give rise to professional discipline.”In Ontario, “conduct unbecoming a barrister or solicitor” has been defined as the private or personal conduct of a lawyer which “tends to bring discredit upon the legal profession” and includes dishonest conduct, certain kinds of criminal conduct, and conduct which takes advantage of the age or the lack of sophistication of others”**It has been suggested that the conduct must be of a type which calls into question the lawyer’s integrity or ability to act competently and honestly (text, pg. 102)****Code: 2.2-1 Commentary [3]:** Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client’s trust in the lawyer, the Society may be justified in taking disciplinary action.**[4]** Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer’s professional integrity.  |
| CODE PROVISION(S):**3.3-4(d)** If it is alleged that a lawyer or the lawyer’s associates or employees: (d) have engaged in acts of professional misconduct or conduct unbecoming a lawyer,the lawyer may disclose confidential information in order to defend against the allegations, but must not disclose more information than is required.   |

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| **WHEN/HOW CAN YOU CHOOSE YOUR CLIENTS:** |

**TEXT: pg. 141** - “There is ethical consensus that a lawyer should refuse to take a client if: there is a conflict of interest; the lawyer lacks competence in the matter; there is a continuing retainer with a previous lawyer; the lawyer has the potential to be a witness in a case; or there is an illegal purpose”

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| **Moral Non-Accountability** | **Taking It Personally**  |
| * emphasizes the structural dimensions of the lawyer’s role
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| **CONSENT**  |
| CASE(S):  |
| CODE PROVISION(S):**3.4-2 CONSENT** **(a)** Express consent must be fully informed and voluntary after disclosure**(b)** Consent may be inferred and need not be in writing where all of the following apply (i) - (iv)  |

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| **DUTY OF DEFENCE COUNSEL** |
| CASE(S) |
| CODE PROVISION(S):**5.1-1 Commentary [9] -** when defending an accused person, a lawyer’s duty is to protect the client as far as possible from being convicted, except by a tribunal… Accordingly and notwithstanding the lawyer’s private opinion on credibility or the merits, a lawyer may properly rely on any evidence or defences, including so-called technicalities, not known to be false or fraudulent  |

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| **DUTY AS A PROSECUTOR** |
| CASE(S)***Krieger v Law Society of Alberta*** |
| CODE PROVISION(S):**5.1-3 Duty as a Prosecutor:** when acting as a prosecutor, a laywer must act for the public and the admin of justice resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy and respect **Commentary [1]:**  when engaged as a prosecutor, the lawyer’s primary duty is not to seek to convict but to see that justice is done through a fair trial on the merits. The prosecutor exercises a public function involving much discretion and power and must act fairly and dispassionately. The prosecutor should not do anything that might prevent the accused from being represented by counsel or communicating with counsel and, to the extent required by law and accepted practice, should make timely disclosure to defence counsel or directly to an unrepresented accused of all relevant and known facts and witnesses, whether tending to show guilt or innocence.  |

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| **TEST CASE** |
| CASE(S) |
| CODE PROVISION(S):**3.2-7 Commentary [4]:** A bona fide test case is not necessarily precluded by this rule and, so long as no injury to a person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case. In all situations, the lawyer should ensure that the client appreciates the consequences of bringing a test case. |

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| **RESPONSIBILITY TO THE SOCIETY AND THE PROFESSION GENERALLY - governance!/ Law Society** |
| CASE(S) |
| CODE PROVISION(S):**7.1 Responsibility to the Society and the profession generally** **7.2 Responsibility to lawyers and others - 7.2-1 Courtesy and good faith**  |