

# Professionalism and civility

## Dentons Canada LLP

### CPD Bootcamp

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November 30, 2016

## Welcome and overview

Part I. Ethics, professionalism and the internet

Part II. Professionalism, civility and advocacy

# Professionalism and civility

## Part I: Ethics, professionalism and the internet

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## Ethics, professionalism and the internet

2.1-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

The LSUC may discipline a lawyer for “conduct unbecoming a barrister or solicitor”, which means conduct, including conduct in a lawyer’s personal or private capacity, that tends to bring discredit upon the legal profession including, for example,

- (a) committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer;
- (b) taking improper advantage of the youth, inexperience, lack of education, unsophistication, ill health, or unbusinesslike habits of another, or
- (c) engaging in conduct involving dishonesty or conduct which undermines the administration of justice;

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## Ethics, professionalism and the internet : Online civility

- *Laarakker (Re) (2011) (Law Society of British Columbia)*
- The Respondent, a BC lawyer, posted the following comment about an Ontario lawyer on the “Canadian Money Advisor” blog:

“I am a lawyer. This guy is the kind of lawyer that gives lawyers a bad name. He is relying on intimidation and blackmail to get the lousy \$500. Don’t pay him. I hate these sleazy operators. Speaking as a lawyer, he would have little chance of collecting in court. He would have to [sic] prove that a child [sic] was a habitual criminal. As far as an adult is concerned, he has to prove. Also remember this, he has to bring the action in a court near to where the incident took place (at least in BC) Guess [sic] what – that ain’t going to happen.”

- The Ontario lawyer filed a complaint. The Law Society requested that the BC lawyer remove the blog posting and imposed a fine on the BC lawyer.

## Ethics, professionalism and the internet: Online civility

The Law Society also noted the following in its decision:

[20] In his oral submissions before this Panel, the Respondent indicated that he believed that he was allowed to do what he did in the face of a “rogue lawyer”. He submits that none of his actions constitute professional misconduct or conduct unbecoming.

[22] Finally, the Respondent argued that if his conduct warranted sanction, then the Ontario lawyer’s letter constituted provocation and should be a mitigating factor.

[45] As noted above, the Respondent takes the position that he was allowed, perhaps even compelled, to do what he did in the face of a “rogue lawyer”. Even if the Ontario lawyer can be considered to be a “rogue”, it is not the Respondent’s place to pursue some form of vigilante justice against that lawyer by posting intemperate personal remarks or by writing letters that do not promote any possibility of resolution of the client’s legal dispute.

## Ethics, professionalism and the internet: Online civility

The Law Society of British Columbia determined that the remarks made by the BC lawyer about the Ontario lawyer in the blog posting and in the letter constituted professional misconduct. The Law Society noted, in particular:

[47] The Respondent's actions were a marked departure from the conduct the Law Society expects of its members. The Respondent's belief in the correctness of his position does not relieve him of culpability.

## Ethics, professionalism and the internet: Online civility

- Uncivil behaviour in one's personal life can negatively impact the "good character" assessment by the LSUC and result in an application for a licence to be dismissed.
- *Ryan Jesse Manilla v. Law Society of Upper Canada (2010)*. Mr. Manilla's application for a licence to practice law was dismissed by the Law Society for emails he sent to fellow condominium board members, disputing a proposed increase in fees. One of these emails stated, in part:

"I think this is absolutely ridiculous. You might as well paint targets on your back and hide because if you ever leave your unit again, you run the risk of being shot by the residents in the building."

- On his third appeal of the LSUC's decision, Mr. Manilla was deemed to be of good character, and was granted his licence.

## Ethics, professionalism and the internet: Online civility

- *Ormilla Bhoopaul v. Law Society of Upper Canada (2011)*
- The postings the applicant made online – in her personal capacity – contributed to the LSUC’s decision to dismiss her application for a paralegal licence.
- The applicant maintained one or more blogs, containing ... “many unfounded allegations against a variety of individuals who have had contact with her, as well as racist and threatening statements;...”
- The LSUC determined that the applicant “failed to establish good character”.

## Ethics, professionalism and the internet: Online civility

- André Marin and Warren Kinsella
- The details of the complaint are confidential, as part of the LSUC’s process. According to media articles, André Marin alleged that the posts were very critical.
- André Marin filed a complaint with the LSUC. Following their confidential investigation, the LSUC declined to further pursue the matter.

## Ethics, professionalism and the internet: Social media

- The LSUC rules apply to communications made on the internet, which include communications on social media platforms.
- Social media can be incredibly useful, but there are some risks to communicating via social media.
- **Risk:** Inadvertently forming new client relationships
- **Rule:** LSUC definition of client:  
"client" means a person who:
  - (a) consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or
  - (b) having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on their behalf and includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client's work;
- **Example:** communicating with an individual via social media and providing them with legal advice

## Ethics, professionalism and the internet: Social media

- **Risk:** Conflict of Interest
- **Rule:** LSUC rule 3.4-1 Duty to Avoid Conflicts of Interest
  - A lawyer shall not act or continue to act for a client where there is a conflict of interest, except as permitted under the rules in this Section.
  - Conflict of Interest is defined by the LSUC as: "the existence of a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person. The risk must be more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation arising from the retainer;..."
- **Example:** Providing online commentary or advice in respect of a decision or situation on a social media platform, not knowing that the opposing party to that decision or situation is a client of your firm or company.

## Ethics, professionalism and the internet: Social media

- **Risk:** Failure to protect confidential information

- **Rule:** LSUC rule 3.3-1:

A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and shall not divulge any such information unless

- (a) expressly or impliedly authorized by the client;
- (b) required by law or by order of a tribunal of competent jurisdiction to do so;
- (c) required to provide the information to the Law Society; or
- (d) otherwise permitted by rules 3.3-2 to 3.3-6.

- **Example:** Communicating with a client over social media and deleting messages, without otherwise safeguarding the lawyer-client correspondence.

## Ethics, professionalism and the internet: Social media

### Mitigating Risk

- Examples of tools to mitigate the risks associated with social media use:
  - Think before you post.
  - Consider disclaimer statements on blogs and twitter accounts
  - Consider not providing anything that could be construed as being legal advice to people asking questions on blogs and twitter
  - Consider a social media policy. The LSUC provides the following “Sample Online Activity and Social Media Policy”
  - <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147491875>

## Professionalism and civility

### Part II: Professionalism, civility and advocacy

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## Professionalism and civility

Sections of the LSUC Rules of Professional Conduct which govern the principles of civility and which have a particular application to the practice of litigation:

- Chapter 5: Relationship to the Administration of Justice
- Chapter 7: Relationship to the Law Society and Other Lawyers

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## Examples which speak for themselves:

- Law Society of Upper Canada v. Julia Carmen Ranieri, 2009 ONLSHP 0086
  - Respondent received both a 10 month suspension, followed by an indefinite suspension pending satisfaction of certain conditions.
  - Respondent lawyer found to have failed to, act with integrity, be courteous, civil and act in good faith.
  - Lawyer also found to have **punched her client in the nose**.

## The Law Society of Upper Canada v. Jennifer Ann Bishop, 2010 ONLSHP 0068

- Lawyer licence suspended on an interlocutory basis.
- Grounds for suspension included:
  - Rude and discourteous behaviour including stating client was “trailer trash” and used other expletives to refer to the client.
  - Lawyer also made death threats to the same client, leaving voice messages stating that she was “going to [expletive redacted] kill [him]”.
  - Lawyer continued this behaviour by stating she would kill not only the client but also the client’s young son.
  - The lawyer then made death threats against the Managing Partner of the firm she articled at.

## Law Society of Upper Canada v. Botiuk, 2015 ONLSTH 143

- Lawyer suspended for one month, ordered to continue therapy sessions, and attend CPD sessions in the areas of effective legal writing, civility and professionalism.
- Lawyer admitted making inappropriate comments about a judge who heard a matter in which the lawyer acted as counsel.
- The comments included:

“I cannot help but get the feeling that if I were to pick my nose, there would have been an unrelenting 3 on 1 criticism from opposing counsel and the bench of methodology, what finger I was using, and the order in which nostrils were being picked.”; and,

“What happens when you commit fraud and strip the file? You get a cost order in your favor![sic] Ask [Judge].”

## The Law Society of Upper Canada v. Robson, 2015 ONLSTA 18

- Ongoing dispute between the LSUC and the Lawyer dating back to proceedings brought in 2007.
- From 2007 to 2015, the Lawyer employed a plethora of delay tactics relying on various excuses for delays, including:
  - his assistant's frequent holidays;
  - Storage locker liens which rendered access to files impossible;
  - Illness; and,
  - marital issues.
- It is quite clear that the Lawyer was under significant stress during this period, however the LSUC was more than accommodating in extensions of time.

## Robson continued

- Lawyer writes to Appeal Division on January 28, 2015, seeking a further extension on costs submissions, as follows:

“I refrain from sending correspondence to the Honourable Premier and AG and the Ombudsman for now. I do commend the Ombudsman's Office for reaching out (i don't like phrase) as we go through our next phase together. you have given me a Feb 2 deadline. I do not think that is fair to me or you. I need to have at least until Valentine's Day and on that day I will send you and the your other panelists a better war plan from my side. I am working hard to get your F\*\*\*\*\*s - yes F\*\*\*\*\*s given what you done to my life and that of my children out of a business you should not be in. You as an SRO currently operate as a turd. A stinking steaming giant hypocritically [sic] confliected [sic] turd at the intersection of Queen and Uniisity [sic]. I need a 30 day extension as I await a decision on costs by the Learned Justice Price and you put your legal team together.” [emphasis added]

## Robson further continued

- Having secured an extension to March 16, 2015, the Lawyer presented what the LSUC believed was his costs submissions in an email titled “Cat plays dead...A very smart cat....Robson 07/14”.
- The email contained a video of a cat and the following:

“Dear Panel.

See the Cat. In my view that is what the LSUC does to access to justice. I intend to involve the Premier and the AG in our dispute. No SRO should sit in judgment of its members and the LSUC should be umbrelled [sic] by the Ombudsman. Here are my complaints:

1.) The LSUC is an accessory to murder. 2.) The LSUC is incompetent. 3.) The LSUC is in fundamental conflict .4.) Rule 25 is void. It is substantive. 5.) If Rule 25 is not struck, proceedings against me were utterly negligent and unwarranted. 6.) Mr. Sandler, you really screwed up when you had the opportunity NOT to send me back to Carrot Brain Bredt. I repeatedly advised you that the man has no critical thinking ability and you ignored me. ...”

## Robson further continued

“... Look at your decision again. You do not seem to gather in your head, like the LSUC, the implications of conflict. 7.) **I expect costs of \$750K** to be paid by the LSUC forthwith. 8.) All of the above is submitted without prejudice to any and all other remedies I et al intend to pursue.

Once again, the fleshing out of the above should be done before Mr Mercer. Happy Valentine's Day and Respect to Each of You.” [emphasis added]

## It continues to get worse - Robson

- The Lawyer, following a review of the LSUC's costs submissions, responded as follows:

“I have looked at them briefly. They confirm **the imbecility and a case for continued abhorrence of the Law Society** as it is currently operated. No head whatsoever. **Full cancer preying on the public.** I am requesting time to reply.

Tribunals,

Would you kindly send this on to the subject panel. This is my respectful request for time to reply.

Thank you...” [emphasis added]

## It continues to get worse – Robson

- The Lawyer followed this up with a short note as follows:

“Further, to my earlier email: I am at a temporary loss.

The material you have filed confirms that the Law Society as it is currently permitted to operate is indeed a major cancer.” ...

Does this mean you want to co-operate to build a proper Law Society?

Please send this to the subject Panel....”

## Questions?



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# Thank you

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