

Legal, Ethical and Professional Responsibility

**Speaking Notes (David C. Day, K.C.) for legal ethics program, Monday, 13 July 2026,
Kelowna Delta – Skaha / Vaseaux / Kootenay Hall, Kelowna, B.C.**

Overview

There is a school of thought that in the lawyer-client relationship, subjectively, the more vital party is the lawyer.

A lawyer furnishes the relationship with formal training, practical experience and wisdom capable of providing structure to clients' terms of retention, of repairing clients' legal problems, and of minimizing—if not eliminating--adverse consequences of clients' legal perils.

Lawyer self-governance, if realistically prescribed and implemented, and liability insurance, if reasonably comprehensive and engaged, afford the lawyer ongoing education, supervision and protection from professional error and omission allegations or their consequences.

For practicing lawyers—except those who bear the title but precious little, if any, experience—their greatest jeopardy may be born in the crucible usually called the 'consultation'.

Fundamental to ongoing law services delivery is the confidentiality of the consult, which affords lawyer-client privilege.

Barring consensual audio recording of lawyer-client oral communications, the lawyer needs to rely on signed documents (such as a retention letter or agreement) and manual note-taking. (All the while, the lawyer must appreciate that some retained (or prospective) clients are behaving surreptitiously. Specifically, they are audio- and video-recording everything for future use against a lawyer, usually to minimize or avoid expense of legal services.

Embedded in all lawyer-client relationships are constant tensions burdening the lawyer:

- to endeavour to satisfy the duty of care owed the client,

- to ensure terms of engagement are constantly revised to mirror reality (such as the expense of legal services' performance),
- to persist in being paid;
- to consider the prospect that third parties, who often fancy themselves as client coaches, may be influencing the client's instructions;
- to determine whether a client is subject to the reality or threat of intimate family violence (such as during settlement negotiations),
- to assess whether and, if so what, control factors are compounding the 'family law' retention and
- to consider how the jading impact of years of being told of family toxicity may have fatigued the lawyer's ability to patiently listen so as to accurately receive, and adequately analyze 'family law' instructions.

Paper

This is the 16th semi-annual edition of this Paper.

The Paper has been hyperlinked to facilitate expeditious reliance in daily law practice.

Table Of Contents entries are hyperlinked to the Paper's texts.

Most case authorities, legislation and other research references cited in the text of the Paper are hyperlinked to their full texts.

Paper currency date is 29 June 2026.

The Paper structures content under Legal, Ethical and Professional Responsibility.

In other words: what you must do, should do, and aspire to do.

Or, to quote my now-deceased partner Senator P. Derek Lewis—who continuously practiced 68 years—on the day of my admission to the Bar, in 1968: “get work, get done, get paid”.

At Page 7

The breath of legal responsibility—a lawyer’s duty of care to a client—most pertinent to a ‘family’ lawyer, has lately been confirmed or expanded by the novel tort of ‘intimate family violence’. Basis for such is the May 2026 Supreme Court of Canada decision in *Ahluwalia*, by a 6-3 majority of the Court written by Justice Nicholas Kasirer.

At Page 11

Law society oversight of a lawyer’s private life behaviour—usually the case for many years in the United Kingdom—is increasingly the case in Canada.

At Pages 15 - 16

Since the first edition of this Paper, in 1978, we have noticed an unswerving trend in Canada’s legal profession: the gradual increase, to a majority by August, 2025, if not slightly earlier, of female lawyers in Canada. As of 25 August 2025, nationally, 52% of lawyers and notaires were female. In Quebec, the percentage was 58%.

Incidentally, as of August 2025, sole practitioners, male or female, predominate in practice in British Columbia, Manitoba, Yukon, North West Territories and Nunavut.

At Pages 21 - 28 and 131 - 135

On invoicing, see our treatment.

The highest hourly rate I have seen, documented in a largely routine matter: uncontested divorce; and agreed parenting; limited term periodic ‘child’ and limited term ‘spousal’ financial

support, and property and debts division, was about four years ago: \$1,000 per hour plus GST, in Montreal. [See Page 22.]

At Pages 29 - 30

See our treatment of recovering invoices.

At Pages 30 - 35

See our treatment of aspects of the issue of self-represented litigants.

Particularly memorable, at Pages 33 to 34, is part of a commentary from *Slaw*, Canada's online magazine, by Jennifer Leitch. She is Executive Director of the National Self-Represented Litigants Project.

She writes about the proponent—the wife, Kuldeep—in the *Ahluwalia*, case having no counsel at trial in Ontario Supreme Court; although, by the time she reached Supreme Court of Canada was represented by five counsel, and supported to varying degrees by 39 lawyers on the record for intervenors.

If you are on the record as counsel for a 'family law' client—or any other client—you have obligations to client and Court, at least for so long as you are on the record. To remove yourself, you need leave of the involved Court.

At Page 39

Remember the rule in the 1893 United Kingdom decision of *Browne v. Dunn*, especially when participating in a trial, whose outcome turns on the evidence of witnesses (i.e., instead of the law).

At Page 40

Justice M. Sharma, Ontario Supreme Court, with uncompromising clarity, writes: “This motion is a good example of what family lawyers ought not to do”.

I will spare you

Justice Peter Daley “reached the very troubling conclusion” that counsel [for one of the parties] ... purposefully did not bring to the attention of the court a relevant judicial decision of which counsel was aware, that was *contra* that counsel’s trial position, in *Blake v. Blake* in Ontario Supreme Court. As Justice Daley explains, the responsible counsel was in breach of his duty of candour, as officer of the court, to the court and to counsel opposite.

In the result, the client of counsel—not counsel, who was found to be wanting—suffered costs of \$91,695.13.

At Page 49

In the gallery of a Pictou, Nova Scotia courtroom—civic number 69 Water Street—on 01 February 2024, there allegedly occurred a most bellicose event. A member of the Nova Scotia Bar, as then he was, is said to have assaulted several of his seated law firm colleagues, with fresh water. This and other alleged occurrences involving the same solicitor—details of which I will forego—occasioned disciplinary proceedings against him.

Even before the disciplinary proceedings substantively began, a constellation of preliminary issues came to attention of Nova Scotia’s Supreme Court and Court of Appeal (appeal leave to Supreme Court of Canada denied).

At Pages 52 - 53

Perhaps most significant ‘family law’ legal liability duty of care case in Canada during the most recent several years is detailed in the 2025 Annual Report of LawPRO (Lawyers’ Professional Indemnity Company).

At Pages 55 - 56

LawPRO, which underwrites mandatory primary errors and omissions coverage for over 43,000 Ontario lawyers—about 27% of practicing lawyers, nationally—reports that from 2015 to 2025 ‘family law’ claims ranked fourth behind litigation, real estate, and wills / estates. Most common causes of ‘family law’ claims from 2015 to 2025 were: communications (36%); error in law (19%); time management (11%); inadequate investigation (11%); clerical and delegation (9%); conflicts of interest (3%), and other (11 %).

At Page 56

Tim Lemieux, LawPRO Claim Specialist told me this spring that although lately receiving more ‘family law’ claims—216 in 2023 and 271 in 2025, average payout per claim lowered from \$18,300 in 2023 to \$17,500 in 2025.

At Pages 58 - 59

Civil solicitor liability is probably best addressed in *Luft v. Zinkofer*, a decision written by Justice Sheilia Martin while sitting in Alberta Court of Queen’s Bench in 2016 (before she was appointed to, served on, and retired from Supreme Court of Canada).

At Pages 61, 77

Here cited is a *Canadian Bar Review* article by prolific law researcher and author Professor Nicholas Bala and his colleagues Patricia Hebert and Rachel Birnbaum on ‘Ethical Duties of Lawyers for Parents Regarding Children of Clients Being a Child-Focused Family Lawyer’.

At Pages 66 - 67

Identified are Canadian Bar Association’s toolkits most-likely helpful to ‘family law’ practitioners.

They include a Retainers and Fees toolkit and the November 2024 ‘Ethics of Artificial Intelligence for the Legal Practitioner’.

At Pages 70 - 85

Here addressed is civility among and by lawyers; more precisely, ‘The lack of civility as a persisting problem’.

Note especially reference to advocacy of barrister Eugene Meehan, K.C., Ottawa, impugning incivility at the Bar and elsewhere.

The *Joseph Groia* case in Ontario and Supreme Court of Canada is addressed at **Pages 93-97**.

The *Crowther* case in United Kingdom is addressed at **Page 79**.

The *Doré* case in Quebec and Supreme Court of Canada is summarized at **Page 83**.

Page 84

“The most jet fuel kinetic” language anywhere originated in High Court of England. More carnally-vulgar language could not be found. We obtained and reproduced part of a Court transcript, redacting a trifle at **Page 84**. The alleged offender was the presiding justice.

No sanction was imposed on her.

Nonetheless, incivility is rude, is disrespectful, is impolite.

Incivility causes negative impact.

More often than not, incivility is probably unintended.

And then, at Pages 111 - 114

There is bullying. Bullying, more often than not, involves repeated behaviours. intended to have a negative impact.

Bullying is intended to serve as a function of control of a person or persons.

Bullying often breeds harassment.

Both incivility and bullying create toxic environments.

My senior legal assistant, Kelly Hall, helpfully brought to my attention the fact that as of 01 January 2026, the United Kingdom Bar Council appointed a commissioner for conduct. Her name is Dame Maria Miller. She perceives her role as being to address bullying and harassment in almost every [legal] workplace in the United Kingdom, including behaviour of judges.

At Pages 86 - 91

We address the different types of retentions for legal services.

At Pages 91 - 92

We address termination of retentions.

For the lawyers sued by their former client, as recounted in the decision of NL Court of Appeal referenced at pages 91 and 92, I harbor empathy and have sympathy.

Depending on the nature of your law practices, and how you terminate prior retentions, you may or may not, yet, have lurking, potential liability challenges from clients you thought were history.

At Pages 107 - 108

Negotiating settlements.

During the winter just past, I was—for 47 days—a guest of a trauma hospital, for repair of various malfunctions. Mercifully, functioning of my mental hard drive was not never suspect.

With unoccupied time generously on offer, I read *Good Faith in Canadian Contract Law*, by Toronto lawyer, Brandon Kain.

What a triumph of legal research, analysis and writing.

I had received the two-volume work as a member of the Walter Owen Book Prize jury, funded generously by Canadian Foundation for Legal Research.

3,138 pages—but with a problem for the reader.

The book lacks an index—no doubt a decision of the publisher.

But you should not be impaired in using the book.

At top of page 108 of the Paper is a list of the pages of the book, which I noted, that are germane, in my view, to you improving your legal knowledge of negotiating the specie of agreement we call “domestic contract”.

Pages 136 - 137 Reading List

Items 01, 06, 12 and McLeod and Mamo, *Annual Review of Family Law* (now running at about 1,500 pages with table of cases—and, an index).

[The hyperlinked Paper will, near future, be posted at the ‘Ethics’ portal of the Lewis,

Day website: lewisday.ca]

**DCD, KC
13 July 2026
Kelowna, BC**