Practice Resource

Law Society of British Columbia

Model conflicts of interest checklist

This checklist is designed to help you evaluate your firm's procedures for detecting conflicts of interest and raise questions that could help you avoid conflicts problems.

	Yes	No
1. Do you have a system for discovering conflicts of interest?	☐	☐
2. Do you have routine procedures to obtain basic conflict of interest information before opening a file?	☐	☐
3. Do you check for any potential conflicts prior to receiving confidential information from a potential client?	☐	☐
4. Do you circulate information on the identity of new and prospective clients throughout the firm regularly and frequently?	☐	☐
5. Do you have a central file index, either in a file book, card system or computerized list of all files?	☐	☐
6. Does your central file index include the following information?		
• client name	☐	☐
• affiliates or partners of client	☐	☐
• "also known as" name	☐	☐
• directors or officers of client	☐	☐
• adverse parties	☐	☐
• co-plaintiffs or co-defendants	☐	☐
• known relative of client and other parties	☐	☐
• common law spouses of client and others	☐	☐
• lawyers for any names in the index	☐	☐
7. If a potential conflict is detected, does your firm have one or more lawyers assigned the responsibility of determining whether a conflict does exist?	☐	☐
8. If a potential conflict is found, do you either decline to take the case or notify the client of the potential conflict in writing subject to the duty of confidentiality owed to another person? See Code rule 3.3-1, including Commentary [1] to [6] and rule 3.3-2.	☐	☐
9. Are your conflicts procedures expressed in writing so that all your staff are aware of them?	☐	☐

	Yes	No

10. Does your firm have one person responsible for maintaining the central file index? ☐ ☐

11. Have you discussed the meaning of "client" and "conflict of interest" (as defined in rule 1.1-1) and the conflicts rules in section 3.4 of the *Code of Professional Conduct for British Columbia* (Code) within your firm? ☐ ☐

12. Have you considered the meaning of the duty of loyalty: the duty to avoid conflicts of interest, the duty of commitment to the client's cause, and the duty of candour? See for example *Canadian National Railway Co. v. McKercher LLP*; 2013 SCC 39; *R. v. Neil* 2002 SCC 70 and *Strother v. 3464920 Canada Inc.* 2007 SCC 24. ☐ ☐

13. Do you have a standard letter for conflict disclosures that takes into consideration the duty of confidentiality to existing and former clients? See Code rule 3.3-1, including Commentary [1] to [6] and rule 3.3-2. ☐ ☐

14. Have you or members of your firm read the cases referred to in Code section 3.4 and the annotations on the website and other relevant conflicts cases? ☐ ☐

15. If you share office space with a lawyer who is not a member of your firm, do you have a policy on acting against clients adverse in interest in accordance with Code rules 3.4-42, 3.4-43, 3.4-1 Commentary [8] (g), 3.4-17, Commentary [2], and 3.3-1, Commentary [7]? ☐ ☐

16. If you are asked to represent clients jointly (e.g. spouses, joint purchasers), do you provide them with the advice required by Code rules 3.4-5 and 3.5-6? ☐ ☐

17. Do you act for two or more clients in the same matter without consent in writing? See Code rule 3.4-7. ☐ ☐

18. Is there a substantial risk that your loyalty to or representation of a client would be materially and adversely affected by your relationship with the client, or interest in the client or the subject matter? Consider whether your relative, partner, employer, employee, business associate or friend has a financial interest which would reasonably be expected to affect your professional judgment. See Code rules 3.4-3.4-1, Commentary [8](d)(e) and 3.4-26.1. ☐ ☐

19. Do you represent opposing parties in "friendly" litigation where there seem to be no opposing interests? ☐ ☐

Your answers to questions 1-16 should be YES. Your answers to questions 17-19 should be NO.

Failure to give the preferred answer does not always mean you have a problem, but it does suggest you should evaluate your practice and procedures. It also suggests that you should re-read Canon 2.1-3(b) and (g), section 3.3 and section 3.4 of the Code.