

Explanation	Cases/comments
A lawyer is obliged to uphold the rule of law and administration of justice	
The overriding duty of a lawyer is as an officer of the court.	COSTS: Court has inherent power/discretion to order costs. This will be ordered if there has been a serious dereliction of THE COURT (ie, not to the client). Costs orders are compensatory. (<i>Harley</i>)
A lawyer must not attempt to obstruct, prevent, pervert, or defeat the course of justice.	COSTS: Court has inherent power/discretion to order costs. This will be ordered if there has been a serious dereliction of THE COURT (ie, not to the client). Costs orders are compensatory. (<i>Harley</i>)
A lawyer must use legal processes only for proper purposes. A lawyer must not use, or knowingly assist in using, the law or legal processes for the purpose of causing unnecessary embarrassment, distress, or inconvenience to another person's reputation, interests, or occupation	
A lawyer must not assist in fraud or crime, or in concealment.	
s.4.1 may assist in avoiding or minimising penalty/adverse consequences of fraud or crime	
A lawyer must not certify truth of any matter to any person unless believe on reasonable grounds that it's true after taking appropriate steps to ensure accuracy.	
A lawyer must not threaten (expressly or impliedly) to make any accusation... for a proper person.	
Reporting misconduct	
A lawyer must act competently and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care	Potentially relates to abolition of immunity?

1 A lawyer must at all times treat a client with respect and courtesy and must not act in a discriminatory manner in contravention of [section 21](#) of the Human Rights Act 1993.

2 A lawyer must respond to inquiries from the client in a timely manner.

3 A lawyer must inform the client if there are any material and unexpected delays in a matter.

4 A lawyer (other than barrister) must provide info to client in writing:

- (a) the **basis on which the fees will be charged**, when payment of fees is to be made, and whether the fee may be deducted from funds held in trust on behalf of the client (subject to any requirement of [regulation 9](#) or [10](#) of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008):
- (b) the **professional indemnity arrangements** of the lawyer's practice. This obligation is met if it is disclosed that the practice holds indemnity insurance that meets or exceeds any minimum standards from time to time specified by the Law Society. If a lawyer or a practice is not indemnified, this must be disclosed in writing to the client:
- (c) the **coverage provided by the Lawyers' Fidelity Fund** and if the client's funds are to be held or utilised for purposes not covered by the Lawyers' Fidelity Fund, the fact that this is the case:
- (d) the **procedures in the lawyer's practice for the handling of complaints** by clients, and advice on the existence and availability of the Law Society's complaints service and how the Law Society may be contacted in order to make a complaint.

5 Each lawyer must ensure practice establishes and maintains appropriate mechanisms for complaints

6 A lawyer as a professional person must be available to the public and must not, without good cause, refuse to accept instructions from any client...
7 A lawyer must provide services within the areas of work within the lawyer's fields of practice

Note: slightly related to rule on [immunity](#) being abolished

<p>Good cause for refusal: lack of time, instructions outside normal field of practice, could require breach of professional obligation, and unwillingness to pay normal fee</p> <ul style="list-style-type: none"> 4.1.3: Lawyer who had retainer... is entitled to decline instructions from others that would be inconsistent with the lawyer's obligations under the retainer 	<p>Note: slightly related to rule on immunity being abolished</p>
<p>Right to complete retainer, unless:</p> <ol style="list-style-type: none"> the lawyer is discharged from the engagement by the client; or the lawyer and the client have agreed that the lawyer is no longer to act for the client; or the lawyer terminates the retainer for good cause and after giving reasonable notice to the client specifying the grounds for termination. <p>Includes examples of good cause.</p>	
<p>When client terminates retainer, right to do so any time, subject only to terms in retainer on grounds and notice of termination which are reasonable. Does not affect lawyer's entitlement to reimbursement for services provided.</p>	
<p>Lawyer has no proprietary interest in a client and must not exert undue pressure on a client not to terminate a retainer or to re-engage the lawyer after termination of the retainer.</p> <ul style="list-style-type: none"> 4.4.1: has right to uplift documents 4.4.2: if urgent, make docs available to new lawyer subject to undertaking fees will be paid Etc etc 	
<p>Lawyer must be independent and free from compromising influences or loyalties when providing services to his or her clients</p>	<p>Armitage - JV to market timeshares. Solicitor for both parties in financial difficulties.</p> <ul style="list-style-type: none"> The obligation arising out of the law firm's instructions were of loyalty and good faith to both parties to act in the JV.

	<ul style="list-style-type: none"> ● Cannot knowingly advance the interests of one party over the interests of the other. <ul style="list-style-type: none"> ○ Once the solicitor knew that LT were in financial difficulty, using payments meant for the other party to satisfy their own obligations placed in an actual conflict and had an obligation to disclose, making payouts, or cease acting for the JV. ● Must not allow the performance of obligations to one party to be influenced by the other. <ul style="list-style-type: none"> ○ Must serve both as loyally and faithfully as if serving only one principal. ○ Must not find yourself in the position where you have conflicting duty to one principal without failing obligation to the other. ○ The fact that you cannot fulfil obligations to one party to the other <i>does not</i> excuse liability. ● Fiduciary obligation to Leisuretime not to disclose confidential information does not excuse breach of duty to other party. <ul style="list-style-type: none"> ○ Ordinary course; no obligation to disclose. But if proceeds were being used for LT, an actual conflict.
<p>Relationship between lawyer and client is of trust and confidence that must never be abused</p>	
<p>Professional judgment of a lawyer must be exercised within the bounds of the law and the professional obligations of the lawyer solely for the benefit of the client</p>	
<p>Exercise independent professional judgement on a client's behalf and offer objective advice based on understanding of the law</p>	
<p>Must not continue to act if conflict or risk of conflict between interests of lawyer and interests of a client</p> <ul style="list-style-type: none"> ● 5.4.1: where lawyer has an interest touching on matter in which services are required, must disclose ● 5.4.2: must not act if lawyer has an interest unless matter is not 	

<p>contentious and interests correspond in all respects</p> <ul style="list-style-type: none"> • 5.4.3: must not enter financial, business or property transaction or relationship with client if possibility of trust and confidence being compromised • 5.4.4: lawyer deemed party if between entities related to lawyer by control or between parties w whom lawyer or client has close personal relationship 	
<p>must not engage in business/professional activity (other than law) where professional activity would/could reasonably be expected to compromise the discharge of professional obligations</p>	
<p>lawyer must ensure that a close personal relationship w a third party doesn't compromise discharge of duties to client</p>	
<p>lawyer must not enter into an intimate personal relationship w a client where to do so would or could be inconsistent with the trust and confidence reposed by the client</p> <ul style="list-style-type: none"> • 5.7.1: must not enter into an intimate personal relationship with a client where lawyer is representing client in any domestic relations matter 	<p>Daniels - Solicitor had sex w a client he'd been representing who was vulnerable due to being a victim of domestic violence, mental health problems etc.</p> <ul style="list-style-type: none"> • Suspension serves purpose of general deterrence and to maintain public confidence in the profession. • Daniels argued that due to acceptance of guilt, removal of suspension. But Tribunal had failed to accept his evidence on grounds, so element of dishonesty. Not accepting responsibility for blaming the client was troubling to the Tribunal and suspension should have been struck off.
<p>lawyer shouldn't accept gifts if possibility of gift being or appearing to be inconsistent with trust and confidence reposed by client</p>	
<p>lawyer must not directly or indirectly offer to, or receive from, a third party any reward or inducement</p>	
<p>11 once lawyer becomes aware that a client has/may have a claim against him/her, they should immediately advise the client to seek</p>	

dependent advice and inform client they may no longer act unless
ent, after receiving independent advice, gives informed consent

12 - may resume acting once matter resolved

acting for client, a lawyer must, within the bounds of the law and these
es, protect the interests of the client to the exclusion of the interests of
rd parties

cannot act for more than 1 client on a matter in any circumstances where
ore than negligible risk that the lawyer may be unable to discharge
bligations

- 6.1.1 can act if prior informed consent of all parties
- 6.1.2 if apparent can no longer discharge obligations, must
immediately inform each of the clients of this fact and terminate
retainers

Armitage - JV to market timeshares. Solicitor for both parties
financial difficulties.

- The obligation arising out of the law firm's instructions
were of loyalty and good faith to both parties to act in
the JV.
- **Cannot knowingly advance the interests of one party
of the other.**
 - Once the solicitor knew that LT were in financial
difficulties, using payments meant for the other party to
pay the solicitor's fees placed in an **actual conflict** and had an obligation
to make payouts, or cease acting for the JV.
- **Must not allow the performance of obligations to be
influenced by the other.**
 - Must serve both as loyally and faithfully as if
one principal.
 - Must not find yourself in the position where you
have a duty to one principal without failing obligation
to the other.
 - The fact that you cannot fulfil obligations to one
principal does not excuse liability to the other *does not* excuse liability.
- **Fiduciary obligation to Leisuretime not to disclose
does not excuse breach of duty to other party.**
 - Ordinary course; no obligation to disclose. But
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placed in an **actual conflict** and had an obligation to make payouts, or cease acting for the JV.

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- **Fiduciary obligation to Leisuretime not to disclose information does not excuse breach of duty to other party.**
 - Ordinary course; no obligation to disclose. But because the proceeds were being used for LT, an actual conflict.

Clark-Boyce acting for mother and son.

- No general rule of law that a lawyer should never act in a situation where interests may conflict.
- Can act in a potential conflict if both parties give informed consent.
 - Knowledge of conflict between parties; and
 - That the solicitor may be unable to disclose the full extent of the interests they possess
- Ms Mouat was fully aware of what she was doing and was given advice on conveyancing and legal ramifications. Rejected the advice. No duty on Mr Boyce to go further and refuse to act.
- Because there was no *contractual* duty to advise on the transaction, could not claim that he owed a fiduciary duty.

Rawleigh - undue influence, abusive relationship.

- Solicitor admits that fiduciary duty was breached.
 - Couldn't have acted w/o explaining the conflict. The conflict couldn't be disclosed, and the legal effect of the transaction.
- No causation of harm.
 - Wife was going to sign the guarantee irrespective of the advice demonstrated because she signed despite being advised.
- Duty of care
 - No indicators of demeanour at the time to indicate undue influence to the solicitor. No occasion to suggest undue influence.

any more than speak to her individually.

- If raised the standard of care where family members of it, are willingly seeking legal advice, run the threshold that was intrusively probing into personal matters. Wives would likely find this offensive

Nicholson v Icepak - solicitor acting for insurer and insured in breach of insurance K.

- As soon as it was apparent that Icepak had breached between Icepak and State became unaligned (ie, the
- There was a solicitor-client relationship
 - Even though State was paying the retainer, a get to choose their legal representation, Mr C as Icepak's solicitor. Once doing this, were a albeit couldn't be considered *only* Icepak's so
- Consequently, info disclosed to Tomkins Wake was s professional privilege
 - This info was given in confidence
 - Even though Icepak had an obligation to *Sta* didn't include Mr Chatwin when he was giving
- Mr Chatwin's position was one of likely conflict of inter received info like that he should have advised of a co act.

lawyer must not act in any matter where, by virtue of membership of a public authority by the lawyer, a member of the lawyer's practice, or a member of the lawyer's family,—

- (a) a significant risk of a conflict exists; or
- (b) it may reasonably be concluded that the lawyer or his or her practice are able to make use of the membership to the advantage of the client; or
- (c) the lawyer's ability to advise the client properly and independently is compromised.

lawyer must promptly disclose to client all relevant info the lawyer has

<p>acquires that is relevant to the matter</p>	
<p>must take reasonable steps to ensure client understands nature of retainer and keep informed about progress of retainer</p>	
<p>must promptly answer requests for info</p>	
<p>not required to disclose info to client if:</p> <ul style="list-style-type: none"> • Client has given informed consent to non-disclosure of particular information • Disclosure would likely place health or safety of client or other person at risk • Disclosure would be breach of law • Info relates to proposed retainer that lawyer has declined 	
<p>must not agree to receive info on basis that it will not be disclosed to client unless client has given informed consent</p>	
<p> duty to protect and hold in strict confidence all info concerning a client, the retainer, and client's business and affairs acquired in course of professional relationship</p>	
<p> duty of confidence extends from time of disclosure indefinitely, even after relationship ceases to be a solicitor-client relationship</p>	
<p> lawyer must disclose confidential info where the info relates to offending, necessary to prevent a serious risk to health & safety of any person or required by law</p>	
<p> disclosure permitted if: client expressly or impliedly authorises; relates to crime or fraud, necessary to protect client if they are incapable, to seek assistance from another lawyer re: proper course of professional conduct, or effective operation of lawyer's practice (eg, insurance cover)</p>	
<p> lawyer must not act for client against former client or the lawyer or any</p>	<p><u>Russell McVeagh v Tower</u> - WLG office acted for Tower: re: bid for GPG in a bid to take over Tower. Applied to have the court</p>

former member of lawyer's practice where:

- Practice or lawyer in practice holds confidential info
- disclosure of info would be likely to adversely affect former client
- more than negligible risk of disclosure
- fiduciary obligation owed to former client would be undermined

7.2: Confidentiality not breached if firm has effective information barriers

7.3: Effective information barriers = only a negligible risk of confidential info being disclosed

7.4: Particulars of info barrier must be disclosed to former client before acting for prospective client

acting.

- First inquiry is to duties owed. Are they likely to conflict?
- In absence of risk of disclosing confidential info, no conflict.
 - Court intervention must be reserved for the real risk of confidentiality, keeping in mind the other parties who they want to, and solicitor's right to disclose to the public. Must also consider that there are a number of firms in NZ able to perform this kind of work. Conflicts are difficult to avoid.
- So: was confidential info held that, if disclosed, was likely to affect the client?
- Was there a real or appreciable risk of disclosure?
- No real risk of disclosure.

must not breach or risk breaching duty of confidence the lawyer owes former client that has arisen outside of lawyer-client relationship

lawyer must not charge a client more than a fee that is fair and reasonable for the services provided, having regard to the interests of both client and lawyer and having regard also to the factors set out in [rule 1.1](#).

(a) the time and labour expended:

(b) the skill, specialised knowledge, and responsibility required to perform the services properly:

the importance of the matter to the client and the results achieved:

the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client:

the degree of risk assumed by the lawyer in undertaking the services, including the amount or value of any property involved:

the complexity of the matter and the difficulty or novelty of the questions involved:

the experience, reputation, and ability of the lawyer:

the possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients:

whether the fee is fixed or conditional (whether in litigation or otherwise):

any quote or estimate of fees given by the lawyer:

any fee agreement (including a conditional fee agreement) entered into between the lawyer and client:

the reasonable costs of running a practice:

the fee customarily charged in the market and locality for similar legal services.

the terms must be fair and reasonable, considering interests of both client and lawyer

do not debit fees in trust or get fees in advance, must comply w regulations 9 & 10 of Trust Account Regulations

<p>on request, must provide estimate of fees, and must inform client promptly if it looks like fees will exceed estimate</p>	
<p>client could be eligible for legal aid, must inform them of this promptly and whether willing to work on legally aided matters</p>	
<p>must render final account within a reasonable time of concluding the matter. Must have sufficient info to identify the matter, the period it relates to and time spent</p>	
<p>lawyer who undertakes work of a real estate agent must comply with rules under chapter 16</p>	
<p>only in circumstances and accordance w requirements of ss 333-335 of the Act and in these Rules look at rule for more info** 11: conditional fee statement</p>	
<p>must promote and maintain proper standards of professionalism</p>	
<p>treat other lawyers with respect and courtesy</p>	

must not communicate directly with a person whom the lawyer knows is represented by another lawyer in that matter except as authorised in this rule.

- 10.2.1: can communicate if the matter is urgent and it's not possible to contact the lawyer or practice. Must act fairly and promptly notify the other lawyer of details
- 10.2.2: if reasonably believes no longer represented by that lawyer - must notify other lawyer of intention
- 10.2.3: former client new lawyer to confirm client's instructions and arrange transfer of matters
- 10.2.4: may recommend direct contact with any other party
- 10.2.5: where the person consents and reasonable notice given to other lawyer
- 10.2.6: where communication must be given to that person to be effective

A lawyer must honour all undertakings, whether written or oral, that he or she gives to any person in the course of practice.

- **10.3.1:** This rule applies whether the undertaking is given by the lawyer personally or by any other member of the lawyer's practice. This rule applies unless the lawyer giving the undertaking makes it clear that the undertaking is given on behalf of a client and that the lawyer is not personally responsible for its performance.
- **10.3.2:** A lawyer who receives funds on terms requiring the lawyer to hold the funds in a trust account as a stakeholder must adhere strictly to those terms and disburse the funds only in accordance with them.

Commissioner of IRD v Bhanabhai - via letter, Mr B undertook to pay GST. Was never paid. Court ordered the sum be paid by Mr B with interest. He alleged that it wasn't a personal undertaking but a professional one. Contextually, it should be read as conditional.

- This was a personal undertaking, not on behalf of client. If given on behalf of client, must be clearly stipulated (Einfeld)
- Performance of undertaking was, practically, conditional on contingencies:
 - that he remained in control of settlement proceeds
 - that security arrangements [w finance company] would apply sale proceeds to GST liabilities.
- BUT the undertaking didn't say this, it just said GST would be no commercial point in solicitor sending the undertaking on client's behalf.
- In light of that, letter is best construed as *meaning what it says*. Undertaking to pay GST. **No principle of law requires that an undertaking to be read down so as to be conditional if that of undertaking being possible.**

	<p>Cavell Leitch - Firm undertook not to release any deposits to Marac's prior consent. Breached this by releasing some deposits in summary judgment.</p> <ul style="list-style-type: none"> • [13] no doubt appeal must be allowed. Clearly at least some loss was no loss suffered... by breach of undertaking, and the firm of assignment was inadequate • [20] although breach of solicitor's undertaking was serious, it is arguable that compensation should bear relationship to loss suffered
<p>lawyer must not—</p> <p>(a) stop a trust account cheque drawn on the trust account of the practice of which the lawyer is a member, or a bank cheque, which in either case is payable to another practice, or to a conveyancing practitioner, or to an incorporated conveyancing firm; or</p> <p>(b) cancel, reverse, or amend an order for payment made to another practice, conveyancing practitioner, or incorporated conveyancing firm by way of electronic transfer from the trust account of the practice of which the lawyer is a member—</p> <p>once the cheque or printed verification of the electronic transfer instructions has been handed or dispatched to the payee.</p>	
<p>rule 10.4 does not apply where the payment-</p>	

<p>) is induced by fraud; or</p> <p>) arises from a mistake in the identity of the payee or the payee's ent; or</p> <p>) is made in other circumstances that are of an exceptional nature.</p>	
<p>here a lawyer stops a payment or cancels, reverses, or amends an der for payment, the lawyer must immediately advise the payee of e action that has been taken.</p>	
<p>lawyer who instructs another lawyer (in professional capacity) must y the other lawyer promptly and in full unless something else reed. Applies to barristers.</p>	
<p>ust not, in course of professional activity, make a video or sound cording without first informing person of intention to do so.</p>	
<p>conduct practice in a manner to assure duties... are adhered to and putation of legal profession is preserved</p>	
<p>oid miselading and deceptive conduct</p>	
<p>oid directly contacting prospective client in a way that is intrusive, ensive or inappropriate - or if they know that they don't want to be ntacted</p>	

<p>Lawyer in practice must ensure that conduct of the practice/employees is at all times competently supervised and managed by someone who is qualified to practice</p>	
<ul style="list-style-type: none"> • Chapter 12 - must, when acting in a professional capacity, conduct dealings with others, including self-represented persons, with integrity, respect and courtesy. • Rule 12.1 - when they know a person is self-represented, should inform that person of the right to take legal advice. 	
<ul style="list-style-type: none"> • Rule 12.2 - when a lawyer instructs a third party... absent an agreement to the contrary, lawyer is personally responsible for their fees, costs and expenses 	
<p>Subject to the duty to the court, a lawyer has the duty to act in the best interests of their client</p>	<p>McLoughlin</p> <ul style="list-style-type: none"> • Counsel acted contrary to instructions and deprived client of intended defence • It is not for the court to question counsel's judgment, disregard instructions. Duty is to either act on instructions or not act. <ul style="list-style-type: none"> ○ If duties to court/professional obligations mean that acting on instructions is incompatible, should advise client. If instructions are changed, unable to act further, should inform the Judge and seek leave. <p>COSTS: Court has inherent power/discretion to order costs. This will be ordered if there has been a serious dereliction of duty by THE COURT (ie, not to the client). Costs orders are compensatory. (<i>Harley</i>)</p>

honesty to the court: lawyers must not mislead or deceive the court

McLoughlin

- Counsel acted contrary to instructions and deprived of intended defence
- It is not for the court to question counsel's judgment, disregard instructions. **Duty is to either act on instructions or not act.**
 - If duties to court/professional obligations mean following instructions is incompatible, should advise client. If instructions are changed, unable to act further, should inform the Judge at trial, should inform the Judge and seek leave.

COSTS: Court has inherent power/discretion to order costs. This will be ordered if there has been a **serious dereliction of duty by THE COURT** (ie, not to the client). Costs orders are compensatory. (*Harley*)

Lawyers must not act in a way that undermines the processes of the court

- 13.2.1 A lawyer must treat others involved in court processes with respect.
- 13.2.2 A lawyer must not discuss any case or matter before the court with any **judicial officer** involved in the proceeding either formally or informally outside of the rules of procedure
- 13.2.3 A lawyer must not have contact with **jurors** before a verdict and must not initiate contact with jurors after the verdict where the contact is likely to bring the system of justice into disrepute.
- 13.2.4 A lawyer must not, during the conduct of a proceeding, engage in any relationship with a **witness** that may have the effect or appear to have the effect of interfering with the fair disposition of the proceeding.

COSTS: Court has inherent power/discretion to order costs. This will be ordered if there has been a **serious dereliction of duty by THE COURT** (ie, not to the client). Costs orders are compensatory. (*Harley*)

Subject to overriding duty to the court, lawyers must obtain and follow client's instructions AFTER the client is informed by the lawyer of the nature of decisions to be made and their consequences

Kiliva - Brothers appealed against conviction and sentence on grounds of incompetence of counsel. Claimed counsel had failed to follow instructions and let them testify.

	<ul style="list-style-type: none"> • Barristers - at no stage did clients indicate they wanted to give evidence. • Advice was given before trial about giving evidence. Barristers consulted w clients extensively and advised on risks of cross-examination, and difficulties due to intoxication. Neither of them would give evidence. • One client signed a written instruction that they had read and accepted it. • The other client did not, but evidence of <i>both</i> barristers' affirmation had been given to the same effect. • Barristers had fulfilled their duties to clients and the court. <p>McLoughlin - D was being charged w rape. Denied the offer of an alibi. Counsel interviewed two witnesses who were prepared to give evidence, arranged for their evidence to be given, and notified P. Barrister but decided to take the issue no further as genuinely believed they were lying. Sought to rely on defence of consent and elected to call no evidence. Not consult with client, but asked for approval, which was refused.</p> <ul style="list-style-type: none"> • Counsel acted contrary to instructions and deprived client of intended defence (Chapter 13) • It is not for the court to question counsel's judgment, but to disregard instructions. Duty is to either act on instructions or not act. <ul style="list-style-type: none"> ○ If duties to court/professional obligations mean that acting on instructions is incompatible, should advise client. If instructions are changed, unable to act further, should inform the Judge and seek leave.
<p>must maintain independence at all times.</p> <p>1.5.1: Lawyers must not act in proceedings if they have to give contentious evidence</p>	<p>COSTS: Court has inherent power/discretion to order costs. This will be ordered if there has been a serious dereliction of duty by THE COURT (ie, not to the client). Costs orders are compensatory. (<i>Harley</i>)</p>
<p>where lawyer approached to give evidence relating to a matter they have</p>	

ted on, must not be obstructive and, subject to rules of privilege, provide all info relevant

ust not attack a person's reputation without good cause in court documents or in documents filed in proceeding

ust ensure rules of discovery and privilege are adhered to.

- 13.9.2: must not claim privilege on behalf of client unless proper grounds for doing so
- 13.9.3: must not, other than by application to court, seek to obtain on behalf of clients any documents the lawyer knows to be privileged unless waived
- 13.9.4: if aware privileged documents inadvertently released in circumstances where privilege not waived, must not disclose contents to a client, must inform other lawyer, and return any documents forthwith. Applies despite disclosure rules in chapter 7

COSTS: Court has inherent power/discretion to order costs. This will be ordered if there has been a **serious dereliction of THE COURT** (ie, not to the client). Costs orders are compensatory. (*Harley*)

B v Auckland District Law Society
RM acted for clients investing in bloodstock (mostly so they could avoid paying tax). When this failed, clients sued RM. Law Society investigating. ADLS to provide documents for the purpose of investigation but not to be shown to anyone else or be copied. Letter to ADLS emphasising confidentiality; highlighted documents were privileged. Document given to another lawyer. A new investigator took over and wasn't advised of arrangement. Though happy to keep them confidential, RM asked to have them returned.
Some issue that counsel was acting for both RM and Mr Carr.

- Fundamental application of administration of justice requires disclosure. Without it, individuals seeking legal advice would be deterred from disclosure.
- Balancing two public interests: maintaining the integrity of the profession and administration of justice.
- A lawyer must be able to give an absolute, unqualified assurance that what will never be disclosed without consent.
- Law Society argued that privilege was waived for all purposes.
- Look to true construction of the words. Privilege was waived for the agreed use, privilege was expressed to be in force to the end of the matter.

Nicholson v Icepak - solicitor acting for insurer and insured in breach of insurance K.

- As soon as it was apparent that Icepak had breached between Icepak and State became unaligned (ie, the
- There was a solicitor-client relationship
 - Even though State was paying the retainer, a get to choose their legal representation, Mr C as Icepak's solicitor. Once doing this, were a albeit couldn't be considered *only* Icepak's so
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ust not adduce evidence knowing it to be false.

- 13.10.1: if a witness, not being lawyer's client, gives evidence in support of lawyer's client that lawyer knows is false, lawyer must (in absence of retraction) refuse to examine further on that matter. If client, must (in absence of retraction) refuse to act for the client.
- 13.10.2: not cross-examine on anything if not reasonable instructions or credible basis
- 13.10.6: can't stop witness talking to other party
- 13.10.7: must not communicate w client/witness during cross-examination or re-examination... unless good reason exists and consent of other lawyer and judge. (*Usual rules*)
- 13.10.8: Must not suggest that false or misleading evidence should be given, or that evidence should be suppressed
- 13.10.9: Lawyer who retains expert witness, must take reasonable steps to ensure that expert's independence is reserved, and that they are advised of their duty to the court.
- 13.10.10: **lawyer must take reasonable steps to ensure that remuneration of expert witness is not dependent on the**

- McLoughlin**
- Counsel acted contrary to instructions and deprived o of intended defence
 - It is not for the court to question counsel's judgment, disregard instructions. **Duty is to either act on instr acting.**
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<p>outcome of litigation.</p>	
<p>at all relevant and significant law before the court</p>	
<p>ties of defence lawyer; must protect from conviction ... must put before urt any proper defence according to instructions, but must not mislead e court</p>	<p>Kiliva - Brothers appealed against conviction and sentence on competence of counsel. Claimed counsel had failed to follow and let them testify.</p> <ul style="list-style-type: none"> ● Barristers - at no stage did clients indicate they wanted ● Advice was given before trial about giving evidence. Both consulted w clients extensively and advised on risks of cross-examination, and difficulties due to intoxication neither of them would give evidence. ● One client signed a written instruction that they had read accepted it. ● The other client did not, but evidence of <i>both</i> barristers affirmation had been given to the same effect. ● Barristers had fulfilled their duties to clients and the c <p>McLoughlin</p> <ul style="list-style-type: none"> ● Counsel acted contrary to instructions and deprived c of intended defence ● It is not for the court to question counsel's judgment, disregard instructions. Duty is to either act on instr acting. <ul style="list-style-type: none"> ○ If duties to court/professional obligations mea instructions is incompatible, should advise cli instructions are changed, unable to act furthe at trial, should inform the Judge and seek lea

the legal work of a barrister may be undertaken by a lawyer practising either as a barrister and solicitor or as a barrister sole.

- 14.1 A lawyer who holds a practising certificate as a barrister and solicitor must not hold himself or herself out as practising as a barrister sole.

lawyer who holds a practising certificate as a barrister sole must not—

- (a) practise as a solicitor; or
- (b) carry out the transactional aspects of conveyancing; or
- (c) act as a general agent or attorney in respect of a client's affairs; or
- (d) undertake the work of a real estate agent; or
- (e) receive or hold money or other valuable property for or on behalf of another person; or**
- (f) practise in partnership or in an incorporated law firm unless the barrister sole is the only voting shareholder of the incorporated law firm.

Baledrokadroka - charged with misconduct on many counts.

- Professional misconduct. Received money from client for private purposes prior to the work being done and an
 - Barristers are not subject to trust fund requirements
 - Legal Practitioner's Act: no legal requirements. Up to the client to enforce the management of their money if they will entrust their money to a barrister.
 - Now an express bar: Rule 14.2(e). If a barrister with a practitioner certificate, must not receive money/valuable property for or on behalf of another person.
- **NOTE: WAS STRUCK OFF FOR PRACTISING AS A BARRISTER WITHOUT PRACTISING CERTIFICATE AND FOR DISREPUTING THE PROFESSION**