



# DECISION MAKING CHECKLIST

When you are faced with a professional responsibility issue, consider following these five steps:

## 1. Identify the professional responsibility issue(s)

What is or are the professional responsibility issue(s) raised by the particular situation? For example:

- Can I represent both of these clients?
- Can I enter into this transaction with my client?
- Am I in a conflict of interest?
- Does my client have the capacity to instruct me?
- Do I need to report myself or another lawyer to the Law Society?
- Can I disclose my client's confidential information in this situation?
- Can I withdraw from this file?

In some cases, the professional responsibility issue may be less apparent or more difficult to discern. When identifying the key issue or problem, consider asking yourself the following questions:

- Who is or are my client(s) in this situation?
- To whom do I owe duties?
- What are the pertinent facts that I need to make a decision?
- What is the harm that I am seeking to avoid?
- Who will be impacted by this situation?
- What about the situation makes me feel uncomfortable?
- What is the source of tension or apprehension that I am feeling?
- What are the present and future risks, and to whom?
- Does the situation conflict with my own value system? If so, how and why?
- Do I understand what my professional obligations are in this situation?



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## 2. Review and apply the applicable rules, case law, legislation, or secondary sources

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*Rules of Professional Conduct*, *Paralegal Rules of Conduct* and *Paralegal Professional Conduct Guidelines*, *Law Society Act*, *By-Laws*, and/or regulations:

- Determine if there is an applicable rule or provision.
- Identify whether the standard required is:
  - Mandatory (i.e., you “must” do something), or
  - Permissive (i.e., you “should” or “may” do something).
- Apply the standard to the situation to determine what your responsibilities are.

Disciplinary rulings or other decisions

- Review any [disciplinary rulings](#) or other decisions that interpret the applicable rule or provision.

Legislation or court/tribunal rules

- Consider whether the following apply in the circumstances:
  - Governing statutory authorities (e.g., *The Personal Information Protection and Electronic Documents Act*, *Solicitor’s Act*, *Substitute Decisions Act*, 1992), or
  - Rules of the court or tribunal (e.g., *Rules of Civil Procedure*, *Family Law Rules*, *Criminal Proceedings Rules*, *Landlord and Tenant Board Rules*), including practice directions and policies.

Secondary sources

- Determine if there are any secondary materials written by legal experts (e.g., legal text books, loose-leafs, journals, articles, blogs, etc.) that may help explain what your obligations are and identify relevant legislation and case law.

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## 3. List the possible options and assess the risks

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Based on an assessment of the applicable rules, case law, legislation, and other authorities, identify what your possible options are in the situation.

Consider whether there are any competing values (e.g., duty of loyalty, duty to the administration of justice, integrity, etc.).

Assess the benefits and risks of each of the options.



Consider whether the following motivators or influencers are impacting your assessment:

- Personal or moral values, religious beliefs, political views, or life experiences.
- Profit, reputation, practice area standards, client satisfaction, or ease of implementation.
- Self-serving bias, confirmation bias, unconscious bias, obedience, or conformity.

**Reminder:** These motivating or influencing factors do not alter your professional obligations but may impact your ability to assess and implement the course of action that aligns with your professional responsibilities.

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#### 4. Seek guidance and support

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If you are unsure of what your obligations are or how to proceed, seek guidance. Consider the following supports and resources:

- The Law Society's [Practice Management Helpline](#)
- The Law Society's [Practice Management Resources](#)
- The Law Society's [Coach and Advisor Network](#)
- LAWPRO's [practicePRO](#) resources and aids
- LAWPRO's [avoidclaim.com](#) blog

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#### 5. Document your decision making process and actions

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Once you have decided on a course of action, follow through.

Keep a detailed written record of the options you considered, the steps you took, and the reason(s) why.