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ISBN-10: 1-55093-737-5
ISBN-13: 978-1-55093-737-4

Most Common Ethical Issues in Commercial Transactions

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Legal Education
Society of Alberta

Buying and Selling a Business
Calgary, Alberta – December 3, 2019
Edmonton, Alberta – December 10, 2019

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INTRODUCTION

This paper will address the most common issues addressed by the Office of the Practice Advisor with respect to the buying and selling of a business. This paper is split into five main parts which are in no particular order. The first part deals with the competency of lawyers involved with commercial transactions of all sorts. It addresses the issue of a lawyer taking on a file and whether they have the requisite skill, resources and knowledge of the specific business or industry to handle the matter in question without assistance of another lawyer. It also addresses avoiding becoming the target or unknowing participant in a fraud. The second part deals with common trust condition and undertaking issues that regularly arise during a transaction. The third part of this paper covers the ethics of civility and dealing with “difficult” lawyers during the life of the file. The fourth part deals with common conflicts questions that often arise when you have more than one client. Finally, the paper addresses the role of the Practice Advisor and when or why you may want to give us a call.

COMPETENCE

The Law Society of Alberta Code of Conduct (the “Code”) defines what a “competent lawyer” is in Rule 3.1-1 and Rule 3.1-2 requires that all lawyers in Alberta “must perform all legal services undertaken on a client’s behalf to the standard of a competent lawyer”. The definition of a “competent lawyer” in Rule 3.1-1 is long and should be reviewed but it essentially comes down to whether you have the requisite knowledge and skill to handle a matter.

In addition, the legal services provided must not only be from a “competent lawyer” but from one who is also timely, conscientious, diligent, efficient and civil. (See Rule 3.2-1). There’s good reason for these rules to be right at the beginning of the Code.

What does this mean for the everyday practitioner?

Ultimately, the answer is to be honest with yourself and, more importantly, with the client to whom you owe a duty of candor. The first question to ask of yourself is, given the complexity or specialized nature of the transaction, is it realistic that you handle the matter at hand on your own or should you engage another lawyer who has recognized experience and success in the field of law and/or industry in question. There is no shame in a lawyer admitting to themselves that they do not the proper competency. It is more a recognition of the opportunity to grow and expand your skill set.

This does not necessarily mean you have to have specialized training or prior experience in the particular transaction to handle it on your own for the first time. As a junior lawyer you may have more familiarity with a particular industry, have studied the applicable case law, legislation, and