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<p style="text-align: center;">Lawyers & Ethics: Professional Responsibility and Discipline Gavin MacKenzie Release No. 2, June 2022</p>

Publisher's Special Release Note 2021

The pages in this work were reissued in June 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the June 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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A practical, contemporary text dealing with the issues of professional responsibility regularly confronting lawyers in Canada in every area of practice. A valuable reference source for the practising lawyer and the student. Specific types of ethical problems arising in the major areas of practice are identified, and insightful, practical solutions presented. Areas of practice discussed are criminal, civil litigation, estates, real estate, corporate and in-house counsel. A substantial portion of the work is devoted to discipline proceedings.

What's New in This Release

This release features updates to the case law and commentary in Chapters 4, 23, and 26.

Highlights

- **THE REGULATION OF THE PROFESSION — ADMISSION TO THE BAR — HISTORY AND APPLICATION OF THE GOOD CHARACTER REQUIREMENTS** — In *Amendola v. Law Society of Ontario*, 2022 ONLSTA 3 (L.S. Trib. App. Div.), a paralegal had been practising for 11 years, but had failed to disclose having previously been disciplined as a realtor in his paralegal licensing application. The Ontario Law Society Tribunal's Appeal Division considered whether it had jurisdiction to hold a licensing hearing *after* a license had been granted to the paralegal. A majority decision of the Appeal Division held that the paralegal's licensing application should be dismissed retroactively. The paralegal was free, however, to bring a fresh licensing application and, in that application, to rely on his 11 years of unblemished practice as a paralegal to establish his current good character.
- **THE REGULATION OF THE PROFESSION — DISCIPLINE PROCEEDINGS — PROFESSIONAL MISCONDUCT** — In *Groia v. Law Society of Upper Canada*, the Supreme Court of Canada (SCC) held that law societies should not sanction lawyers for sincerely held but mistaken legal positions or questionable legal strategies. Following the decision in *Merchant v. Law Society of Saskatchewan*, 2022 CarswellSask 2, it seems clear that the SCC's holding is not confined to incivility cases. In *Merchant*, Saskatchewan's Court of Appeal applied *Groia* to a case in which the allegations were not incivility, but that the lawyer had induced a client to sign a direction to pay residential school-related settlement funds to his firm contrary to a prohibition of assignments contained in the Indian Residential Schools Settlement Agreement (IRSSA). The court found that the direction to pay was an assignment, but that the issue was an arguable one. The evidence did not support the Hearing Committee's finding that the lawyer did not have a sincerely held belief that the direction to pay was not prohibited.
- **THE REGULATION OF THE PROFESSION — DISCIPLINE PROCEEDINGS — PENALTY** — Hearing and appeal tribunals have accepted that systemic discrimination may be a mitigating factor in circumstances where the evidentiary record establishes that the systemic discrimination influenced the lawyer's misconduct. In *Law Society of*

Ontario v. Wilkins, 2021 ONLSTA 15 (L.S. Trib. App. Div.), the Appeal Tribunal held that hearing and appeal tribunals should take notice of systemic discrimination generally. Lawyers were not required to demonstrate that disadvantage and discrimination existed, or that they adversely affected racialized and Indigenous individuals and lawyers.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages