

1. Christie Blatchford, *Defence lawyer causes stir with badly written letter promoting himself to accused killer*, National Post, Jan. 17 2013

According to a document posted Tuesday on a list serve for members of the Criminal Lawyers Association, a national group with about 1,000 members, Mr. Leslie wrote Michael MacGregor, the 19-year-old who along with a 31-year-old woman is charged with first-degree murder in the slaying of Sarnia, Ont., kindergarten teacher Noelle Paquette... The 27-year-old teacher went missing... Her body was found in a nearby wooded area outside town on Jan. 2. By the very next day, Mr. MacGregor was represented by a London, Ont., lawyer, who was formally put on the record....

On Jan. 7, Mr. Leslie was writing Mr. MacGregor, modestly singing his own praises and offering his assistance. Mr. Leslie said he specialized "in difficult murder trials" and bragged in particular about two unique skills he said he possessed. "One of the Unique challenges in these types of cases is the [question of] how to control the press," he wrote. "I have had several years of experience in dealing with the press. I had made close contacts with many reporters [that] I would endeavor to use to assist you in your case," he told Mr. MacGregor.

Mr. Leslie also bragged about his "tremendous" expertise in obtaining disclosure from recalcitrant Crown attorneys who don't provide it because, Mr. Leslie said, clearly meaning to say relevant, "they feel it is not reverent. I have the resources and know how to obtain all the disclosure relevant to your case and prepare the best possible defence available," he said, adding that "In relation to your charge I have worked on similar cases such as yours I accept legal aid."...

2. Vignettes

- Linda is pursuing divorce from her husband. Linda has legal representation, but she brings up her case in conversation with her neighbour, Susan, a divorce lawyer. May Susan promote her own services to Linda?
- Linda is pursuing divorce from her husband. Linda has had a preliminary meeting with a lawyer, but she has signed no agreements. Linda brings up her case in conversation with her neighbour, Susan, a divorce lawyer. May Susan promote her own services to Linda?
- Linda comes home from a business trip to find out her husband has pawned her jewelry to cover a gambling debt, which he had run up in trying to pay for his secret drug habit, which he had begun during a year-long affair with Linda's sister. Traumatized, she knocks on her neighbour Susan's door to ask if she could sleep there overnight. Susan is a divorce lawyer; may she offer Linda her business card? <>

Preface

3. Chief Justice Nathan Nemetz, Supreme Court of BC (reported at (1985), 64 B.C.L.R. 113 (B.C.C.A.))

We have no doubt that the right to access to the courts is under the rule of law one of the fundamental pillars protecting the rights and freedoms of our citizens.

4. Leviticus 19:33-34, 24:22

וְכִי־יָגוּר אִתָּךְ גֵּר בְּאַרְצְכֶם לֹא תוֹנוּ אוֹתוֹ: כְּאֹזֶרַח מִכֶּם יִהְיֶה לָכֶם הַגֵּר הַזֶּה אִתְּכֶם וְאַהֲבֵתָ לּוֹ כְּמוֹד כִּי־גֵרִים הָיִיתֶם בְּאֶרֶץ מִצְרַיִם אֲנִי ד' אֱלֹהֵיכֶם:
מִשְׁפַּט אֶחָד יִהְיֶה לָכֶם כְּגֵר כְּאֹזֶרַח יִהְיֶה כִּי אֲנִי ד' אֱלֹהֵיכֶם:

When a stranger lives among you, in your lands, do not abuse him. He shall be as a citizen of yours, the stranger who lives among you, and you shall love him as yourself, for you were strangers in Egypt. I am HaShem your Gd. You shall have one justice for yourself, like stranger like citizen, for I am HaShem your Gd.

5. LSUC Rules of Professional Conduct (2014), Rule 4.1-2(e)

In offering legal services, a lawyer shall not use means...

(e) that otherwise bring the profession or the administration of justice into disrepute.

6. Grace, Re, 1991 CanLII 572 (ON LST), <<http://canlii.ca/t/1gp2d>>, retrieved on 2016-03-17

16. In November of 1988, the Law Society retained the services of Peter Campbell, investigator, to observe Mr. Grace's activities at the Court House over a number of days. Mr. Campbell submitted a report dated December 5th, 1988 in which he reports that, on November 8th, 1988, he attended at the Court House and observed an accused by the name of Mr. Jean Francois Zuger advise the Court that he was unhappy with his solicitor and would be seeking a new solicitor. This took place in courtroom number 5 (remand court). When Mr. Zuger left the courtroom, he was followed closely by Mr. Grace. Mr. Campbell observed Mr. Grace strike up a conversation with Mr. Zuger in the hallway and further observed the two or [sic] them then go to the cafeteria for coffee. Mr. Grace and Mr. Zuger sat together until approximately 12:00 noon. The Court information indicates that on November 9th, 1988, i.e., the following day, Mr. Grace appeared, as counsel, for Mr. Zuger with respect to the charge.

7. Talmud, Shabbat 114a

אמר רבי חייא בר אבא אמר רבי יוחנן: גנאי הוא לתלמיד חכם שיצא במנעלים המטולאים לשוק. והא רבי אחא בר חנינא נפיק! אמר רבי אחא בריה דרב נחמן: בטלאי על גב טלאי. ואמר רבי חייא בר אבא אמר רבי יוחנן: כל תלמיד חכם שנמצא רבב על בגדו חייב מיתה, שנאמר (משלי ח:ל) "כל משנאי אהבו מות" - אל תקרי "משנאי" אלא "משניאי".

Rabbi Chiya bar Abba cited Rabbi Yochanan: It is disgraceful for a Torah scholar to go to the market with patched shoes. But Rabbi Acha bar Chanina went! Rabbi Acha son of Rav Nachman explained: The problem is with patches upon patches. And Rabbi Chiya bar Abba cited Rabbi Yochanan: A Torah scholar who has grease on his clothing is liable for death, as it says, "Those who hate Me, love death." Read it not as "hate Me" but "cause hate for Me".

Vignette 1: Scooping

8. LSUC Rules of Professional Conduct (2014), Rule 4.1-2(d)

In offering legal services, a lawyer shall not use means...

(d) that are intended to influence a person who has retained another lawyer for a particular matter to change their lawyer for that matter, unless the change is initiated by the person or the other lawyer;

9. Grace, Re, 1991 CanLII 572 (ON LST), <<http://canlii.ca/t/1gp2d>>, retrieved on 2016-03-17

5. On April 25, 1988, Sharon Rosenberg made a written complaint to Mr. Michael Neville, President of the Defence Lawyers' Association, with regard to an incident that occurred while she was duty counsel in number 6 court (guilty plea court), on April 20th, 1988. Ms. Rosenberg states that she was present in number 5 court (remand court) when an unrepresented accused by the name of James Bond advised the court he wished to plead guilty. He was subsequently transferred to the guilty plea court where Ms. Rosenberg was duty counsel that morning. Subsequent to receiving disclosure, Ms. Rosenberg met Mr. Bond in the cell block at approximately 9:45 a.m. at which time he confirmed that he wished to be represented by her as duty counsel.

6. Shortly thereafter, Ms. Rosenberg was advised by the Assistant Crown, Mr. B. Dandyk, that Mr. Grace had approached him with respect to Mr. Bond.

7. Ms. Rosenberg advised Mr. Grace that she was acting as duty counsel and inquired as to when Mr. Grace had spoken with Mr. Bond. Mr. Grace responded that he was a friend of the family, through his sister, and that he was acting for free.

8. When Mr. Bond was subsequently brought into the courtroom for plea, Ms. Rosenberg discussed the matter with him. Mr. Bond advised her that he did not request to see Mr. Grace, that his family did not know Mr. Grace, and that he still wished to be represented by Ms. Rosenberg as duty counsel.

10. LSUC, Ethical issues and practice management (<http://www.lsuc.on.ca/with.aspx?id=2147491744>)

Whose "client" is it - the contracting firm/lawyer/paralegal's client or the Contract Lawyer or Paralegal's client? When the individual seeking legal services first retained the contracting firm/lawyer/paralegal, the individual became the contracting firm/lawyer/paralegal's client. However, during the time that the Contract Lawyer or Paralegal provides legal services to the same individual, that individual is now the Contract Lawyer or Paralegal's client also.

11. Talmud, Bava Batra 21b

אמר רב הונא האי בר מבואה דאוקי ריחיא ואתא בר מבואה חבריה וקמוקי גביה דינא הוא דמעכב עילויה דא"ל קא פסקת ליה לחיותי.

Rav Huna said: If an alley resident establishes a mill, and another alley resident establishes one nearer the sole entrance to the alley, the former is legally able to prevent this, saying, "You are interrupting my livelihood."

12. Rabbi Yosef Karo (16th century Israel), Code of Jewish Law, Choshen Mishpat 237:2

אסור למלמד להשכיר עצמו לבע"ה שיש לו מלמד אחר בביתו, אם לא שיאמר בעל הבית: אין רצוני לעכב המלמד שלי.

A teacher may not hire himself out to an employer who already hosts another teacher in his home, unless the employer tells him, "I don't wish to continue to retain my current teacher."

13. Rabbi Yosef Karo (16th century Israel), Code of Jewish Law, Choshen Mishpat 420:11

הכניסו בחדר וסגר הדלת עליו ובטלו ממלאכתו, אינו נותן לו אלא שבת בלבד.

If he puts someone in a room and locks the door, keeping him from working, he pays only for time lost from work.

14. Rabbi Moshe Sofer (18th-19th century Hungary), Chatam Sofer Choshen Mishpat 79

"יורד לאומנתו" - לכאורה נראה כל הנוגע בענין זה אסור מדאורי' וגזל גמור הוא מן התורה... בכלל הא דכתי' "ובין אחיו ובין גרו".

"Entering another's craft" – It appears to me that this entire category is a biblical prohibition; it is full-blown, biblical theft... included in Deuteronomy 1:16, "[And I instructed your judges at that time: Listen between your brothers and judge justly] between a man and his brother, and between the one who comes to live among them."

15. Rabbi Yaakov Yeshayah Blau (21st century Israel), Pitchei Choshen IV 7 footnote 46

ויש אומרים שהוא בכלל גזל, אלא שמכל מקום אין בעל הבית נפטר מלשלם לו שכרו, שהרי אינו יכול לחזור באמצע השכירות...

Some say that this constitutes theft, but the employer is not exempt from paying his salary, for he cannot recant in the middle of the job...

16. Rashi (11th century France) to Bava Batra 22a **ולעלמא ליזבן**

יומא דשוקא הוה, והרבה באין ממקום אחר לקנות מן השוק, לפיכך אין בני העיר מעכבין גם על המוכרים להביא אומנותם ולמכור לנקבצים לשוק.

This was Market Day, when many came from elsewhere to buy in the market. Therefore, the townspeople cannot keep the merchants from bringing their wares and selling to those who gather in the market.

17. Rabbi Yaakov Yeshayah Blau (21st century Israel), Pitchei Choshen IV 7 footnote 48

ומכל מקום נראה שמותר לאדם לפרסם ברבים שהוא עובד בתנאים נוחים, או שנותן שירות טוב יותר...

Still, it appears that one may publicize that he works for good terms, or provides better service...

Vignette 2: Scooping a non-client?

18. LSUC Rules of Professional Conduct (2014), Commentary to Rule 3.7-10

It is quite proper for the successor licensee to urge the client to settle or take reasonable steps towards settling or securing any outstanding account of the former licensee, especially if the latter withdrew for good cause or was capriciously discharged. But if a trial or hearing is in progress or imminent or if the client would otherwise be prejudiced, the existence of an outstanding account should not be allowed to interfere with the successor licensee acting for the client.

19. Mishnah Gittin 5:8 (Talmud, Gittin 59b)

עני המנקף בראש הזית - מה שתחתיו גזל, מפני דרכי שלום. ר' יוסי אומר: גזל גמור.

If a pauper is striking atop an olive tree, [taking] that which is beneath him is theft, due to the ways of peace. Rabbi Yosi said: It is fully theft.

20. Rabbi Shlomo Luria (16th century Poland), Responsa of Maharshah 36

וצריכים אנו לחלק בין טרחא לטרחא, כי ב' חלוקים בטירחא: יש טרחא שאין מועיל כלל, ויש טרחא שמועיל לעניין איסור גזל מדבריהם... לא נקרא טרחא אלא היכא דטרח בגופו שהוא דבר הניכר כגון עני המנקף בראש הזית שאין טירחא גדולה מזה לענין זתים שנשא נפשו למות....

We must distinguish [in the law] between one strain and another, for there are two types of strain: There is strain that is entirely ineffective, and there is strain that turns this into a rabbinically prohibited form of theft... It is not called "strain" unless one strains physically, in a visible way, like a pauper striking atop an olive tree. There is no greater strain than this, regarding olives, for which he endangers his life...

21. Rabbi Yechiel Michel Epstein (early 20th century Lithuania), Aruch haShulchan Choshen Mishpat 273:20

ואם נטלן אחר אין בהם משום גזל גמור להוציאן בדיינים אלא שעבר עבירה ונענש בדיני שמים.

If another takes them, it is not fully theft, such that they could be removed via judges – but he has sinned, and he is punished by the laws of heaven.

22. Talmud, Kiddushin 59a

רב גידל הוה מהפיד בההיא ארעא, אזל רבי אבא זבנה, אזל רב גידל קבליה לרבי זירא, אזל רבי זירא וקבליה לרב יצחק נפחא... אשכחיה, אמר ליה: עני מהפך בחררה ובא אחר ונטלה הימנו, מאי? אמר ליה: נקרא רשע...

Rav Gidel was trying to acquire a certain plot of land, but Rabbi Abba purchased it first. Rav Gidel complained to Rabbi Zeira, who complained to Rav Yitzchak Nafcha... Rav Yitzchak Nafcha asked [Rabbi Abba]: Where a pauper is pursuing a cake, and another takes it from him, what is the law? Rabbi Abba replied: He is called wicked...

23. Talmud, Sanhedrin 81a

דרש רב אחא ברבי חנינא: מאי דכתיב אל ההרים לא אכל - שלא אכל בזכות אבותיו. ועיניו לא נשא אל גלולי בית ישראל - שלא הלך בקומה זקופה. ואת אשת רעהו לא טמא - שלא ירד לאומנות חבירו.

Rav Acha, son of Rabbi Chanina, taught: What is the meaning of Ezekiel 18:6 [describing a righteous person as "not eating of the mountains, not raising his eyes to the idols of the House of Israel and not contaminating another's spouse"]?

- "He does not eat of the mountains" - He does not eat from ancestral merit [but from his own].
- "And he does not raise his eyes to the idols of the House of Israel" – He does not walk upright [arrogantly].
- "And he does not contaminate another's spouse" – He does not enter the craft of another.

24. Rabbi Shlomo Luria (16th century Poland), Responsa of Maharshal 36

ולפי ראות עיני הב"ד יראה להחמיר כאשר פסק הרמב"ם [לפי] שיש כח ביד ב"ד להחמיר לפי הנראה בעיניהם יותר מדין הגמרא.

According to the view of the rabbinical court, they should be strict, as Rambam ruled, for the rabbinical court is empowered to be strict as appears appropriate in their eyes, beyond the rule of the Talmud.

25. Rabbi Moshe Isserles (16th century Poland), Code of Jewish Law, Choshen Mishpat 237:1

וכן אם קונה דבר אחד ובא חבירו ויוכל לקנותו בזול שאינו מוצא לקנותו כך במקום אחר, הוי כמו מציאה...

And so if one is acquiring something, and someone else comes along, and he can buy it for a low price which he will not find elsewhere, it is like finding an item...

26. Rabbi Moses Maimonides (Rambam) (12th century Egypt), Mishneh Torah, Hilchot Matnot Aniyim 10:7

מעלה גדולה שאין למעלה ממנה... נותן לו מתנה או הלואה או עושה עמו שותפות או ממציא לו מלאכה כדי לחזק את ידו עד שלא יצטרך לבריות לשאול

The highest level of tzedakah, beyond which nothing is higher... to give him a gift or loan or create a partnership with him or provide him with work, to strengthen his hand until he no longer needs to ask from others.

27. Rabbi Moses Maimonides (Rambam) (12th century Egypt), Commentary to Avot 1:5

ויהיו עניים בני ביתך - יאמר, שראוי שיהיו משמשיך הדלים והעניים...

"Paupers should be members of your household" – Your servants should come from the poor and indigent...

Vignette 3: The vulnerable client

28. LSUC Rules of Professional Conduct (2014), Rule 4.1-2(c)

In offering legal services, a lawyer shall not use means...

(c) that take advantage of a person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover;

29. LSUC Rules of Professional Conduct (2014), Commentary to Rule 4.1-2

A person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover may need the professional assistance of a lawyer, and this rule does not prevent a lawyer from offering their assistance to such a person. A lawyer is permitted to provide assistance to a person if a close relative or personal friend of the person contacts the lawyer for this purpose, and to offer assistance to a person with whom the lawyer has a close family or professional relationship. The rule prohibits the lawyer from using unconscionable or exploitive or other means that bring the profession or the administration of justice into disrepute.

30. LSUC Rules of Professional Conduct (2014), Rule 3.7-7(c)

Subject to the rules about criminal proceedings and the direction of the tribunal, a lawyer shall withdraw if...

(c) the lawyer is not competent to continue to handle the matter.

31. Leviticus 19:14

לא תקלל חרש ולפני עור לא תתן מכשל ויראת מאלקיך אני ד'

Do not curse the deaf, and do not put a stumbling block before the blind; you shall revere Gd, I am Gd.

32. Midrash, Sifra, Kedoshim 2

היה נוטל ממך עצה, אל תתן לו עצה שאינה הוגנת לו, אל תאמר לו צא בהשכמה שיקפחוהו ליסטים, צא בצהרים בשביל שישתרב

If someone asks you for advice, do not advise him inappropriately. Do not tell him, "Depart in the early morning," such that thieves will attack him, or "Depart at noon," so that he will be overcome by heat.