

1. U.S. Supreme Court, *In re Snyder* 472 U.S. 634 (1985)

In March, 1983, petitioner Robert Snyder was appointed by the Federal District Court for the District of North Dakota to represent a defendant under the Criminal Justice Act. After petitioner completed the assignment, he submitted a claim for \$1,898.55 for services and expenses. The claim was reduced by the District Court to \$1,796.05.

Under the Criminal Justice Act, the Chief Judge of the Court of Appeals was required to review and approve expenditures for compensation in excess of \$1,000... Chief Judge Lay found the claim insufficiently documented, and he returned it with a request for additional information. Because of technical problems with his computer software, petitioner could not readily provide the information in the form requested by the Chief Judge. He did, however, file a supplemental application. The secretary of the Chief Judge of the Circuit again returned the application, stating that the proffered documentation was unacceptable. Petitioner then discussed the matter with Helen Monteith, the District Court Judge's secretary, who suggested he write a letter expressing his view. Petitioner then wrote the letter that led to this case. The letter, addressed to Ms. Monteith, read in part:

"In the first place, I am appalled by the amount of money which the federal court pays for indigent criminal defense work. The reason that so few attorneys in Bismarck accept this work is for that exact reason. We have, up to this point, still accepted the indigent appointments, because of a duty to our profession, and the fact that nobody else will do it."

"Now, however, not only are we paid an amount of money which does not even cover our overhead, but we have to go through extreme gymnastics even to receive the puny amounts which the federal courts authorize for this work. We have sent you everything we have concerning our representation, and I am not sending you anything else. You can take it or leave it."

"Further, I am extremely disgusted by the treatment of us by the Eighth Circuit in this case, and you are instructed to remove my name from the list of attorneys who will accept criminal indigent defense work. I have simply had it."

"Thank you for your time and attention."...

All persons involved in the judicial process – judges, litigants, witnesses, and court officers – owe a duty of courtesy to all other participants. The necessity for civility in the inherently contentious setting of the adversary process suggests that members of the bar cast criticisms of the system in a professional and civil tone. However, even assuming that the letter exhibited an unlawyerlike rudeness, a single incident of rudeness or lack of professional courtesy – in this context – does not support a finding of contemptuous or contumacious conduct, or a finding that a lawyer is "not presently fit to practice law in the federal courts." Nor does it rise to the level of "conduct unbecoming a member of the bar" warranting suspension from practice. Accordingly, the judgment of the Court of Appeals is *Reversed*.

2. LSUC Rules of Professional Conduct (2014), Rules 7.8.2-2, 7.8.2-3

7.8.2-2 The Law Society may discipline a lawyer for professional misconduct.

7.8.2-3 The Law Society may discipline a lawyer for conduct unbecoming a lawyer.

3. *Hutton v. Law Society of Newfoundland*, 1992 CanLII 2757 (NL SCTD)

Hutton was called to the Bar of Nova Scotia on August 9, 1985. He practised until June 5, 1987, when he was suspended from practice by the Nova Scotia Barristers' Society and his practice was placed under custodianship. He was adjudged bankrupt in July, 1987 and discharged absolutely from bankruptcy in May, 1988.

The first decision of the Nova Scotia Barristers' Society, dated June 5, 1987, dealt with complaints involving Hutton's failure to forward money and documents to clients. The Discipline Committee of the Barristers' Society noted that the missing items reached the clients just prior to the hearing and the Committee commented that the "calling of a Formal Hearing [appeared] necessary to cause [the Solicitor] to react". The following comments were made with respect to Hutton's competence:

These were all real estate transactions and the evidence gave us the distinct impression that [the Solicitor] was not at all competent to act in this field. In the opinion of this Committee, [the Solicitor's] attitude toward his clients' affairs is such that his competence to practice law in any field is in question. If his failure to answer correspondence from the Society is an indication of the level of his professionalism, and if his manner in handling the transactions of these clients is an indication of his competence, it would be in the public interest if [the Solicitor] be removed from the practice of law, at

least until such time as he is able to satisfy the Society's Qualifications Committee that his habits, attitudes and practices have improved to the point where he should regain his privileges.

4. T. (S.A.) v. Law Society of Upper Canada, 2015 ONLSTH 22 (CanLII)

Andrew Oliver (for the panel):— On December 4, 2012, the Applicant, S.A.T., applied to the Law Society for a Class P1 licence. In his application, the Applicant disclosed a relatively significant criminal record, albeit for mostly minor offences. Most of those offences involved alcohol. After he submitted his application in late 2012, the Applicant had two further encounters with the criminal justice system. These resulted in convictions on December 19, 2013 for uttering death threats and failing to stop when signalled by a police officer. The Applicant will be on probation until December 2014. The issue in this hearing is whether the Applicant is currently of good character. For the reasons that follow, we find he is not.

5. Law Society of Upper Canada v. Jackson, 2017 ONLSTH 64 (CanLII)

Sarah Jackson, the Lawyer, admits through an agreed statement of facts that she committed professional misconduct when she did not report various criminal charges to the Law Society in 2012 and 2013. She also admits that she engaged in conduct unbecoming a lawyer in January 2013 when she facilitated the acquisition and use of heroin by EC, who died of an overdose on the night she assisted him in getting drugs.

Ms. Jackson, who is in her late 30s and was called to the bar in 2003, has not had an active licence to practise law since January of 2013. From January to August 2013, her status was retired or not working. She was administratively suspended in August 2013. On February 5, 2014, she signed an undertaking not to practise law until these discipline proceedings were completed.

The parties made a joint submission for a penalty of a suspension of eight months, retroactively commencing on May 27, 2016. The proposed order also contained terms that Ms. Jackson not return to practice until a medical practitioner chosen by the Law Society confirmed her ability to meet her obligations as a lawyer and that she pay costs of \$1,000. We accepted the joint submission as reasonable and made the requested order, with reasons to follow...

Professional Conduct

6. Law Society Act, Ontario, R.S.O. 1990, CHAPTER L.8 Section 33

A licensee shall not engage in professional misconduct or conduct unbecoming a licensee.

7. LSUC Rules of Professional Conduct (2014), Commentary [2] to Rule 2.1-1

2.1-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

Commentary [2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

8. Robert Charles Watt v. The Law Society of Upper Canada, 2004 ONLSHP 3 (CanLII)

The financial records of the firm where the applicant worked since 1973 were in disarray. A partner in the firm was independently wealthy and had left much of his earned fees stagnant in firm accounts or with an investment company, which shared the same building with the firm. Client and firm money passed between the investment company and the firm in such a way that the lines of ownership became tangled. As the partner wound down his practice and retired, he agreed that the applicant would be entitled to 50% of the partner's earned but untaken fees, in exchange for the applicant untangling those lines. This pool of funds (the pool) had grown to over \$1,000,000.

The applicant and a trust company were the committees for a family friend. The applicant's father was named as the executor of this friend's will, but when she died in May 1988, the applicant became the de facto trustee. The applicant properly distributed property in the estate worth \$355,000. In July 1988 the applicant received \$465,000 worth of securities that belonged to the estate, two-thirds of which he transferred to his own account. The other one-third he invested, without distributing the resulting income to the heirs of the estate. The securities were never documented as forming part of the estate's value. Over September and October 1998 [*sic* – 1988?], the applicant transferred \$515,000 from the firm's account to his own account. The applicant claimed that he believed he was simply taking money from the pool that he was owed under his agreement with the partner.

9. Law Society Act, Ontario, R.S.O. 1990, CHAPTER L.8 Section 41

A licensee fails to meet standards of professional competence for the purposes of this Act if,

- (a) there are deficiencies in,
  - (i) the licensee's knowledge, skill or judgment,
  - (ii) the licensee's attention to the interests of clients,
  - (iii) the records, systems or procedures of the licensee's professional business, or
  - (iv) other aspects of the licensee's professional business; and
- (b) the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected. 2006, c. 21, Sched. C, s. 37.

10. Rabbi Moses Maimonides (12<sup>th</sup> century Egypt), Mishneh Torah, Laws of Sanhedrin 4:15

מי שאינו ראוי לדון מפני שאינו יודע או מפני שאינו הגון, שעבר ראש גלות ונתן לו רשות או שטעו בית דין ונתנו לו רשות, אין הרשות מועלת לו כלום עד שיהא ראוי, שהמקדיש בעל מום למזבח אין הקדושה חלה עליו.

One who is unfit to judge, because he doesn't know how or because he is unfit, but the exilarch inappropriately licensed him, or the court mistakenly licensed him, the license is ineffective until he is suitable. If one consecrates a blemished animal for the altar, no sanctity takes effect.

11. Talmud, Bava Batra 174a

ההוא דיינא דאחתייה למלוה לנכסי [דלוה] מקמי דלתבעיה ללוה סלקיה רב חנין בריה דרב ייבא

A judge gave a creditor access to a borrower's assets before the claim against the borrower had been filed. Rav Chanin son of Rav Yeiva removed him.

12. Rabbi Yosef Haviva (14<sup>th</sup> century Spain), Nimukei Yosef to Bava Batra, 81a בדפי הרי"ף

סלקו רב חנן דסבר כמו שטעה בזה יטעה בדינים אחרים

Rav Chanin removed him because he thought that just as the judge had erred in this, so he would err in other cases.

13. Rabbi Shimon ben Tzemach Duran (14<sup>th</sup>-15<sup>th</sup> century Algiers), Tashbetz 2:9

לא מצינו דיין שטועה בדינו אף על פי שמשלם מביתו שהוא פסול לדון לפי שכל אדם עשוי לטעו' שאפי' גדולי התנאי' טעו בדינן...

We have not seen that a judge who errs in judgment is disqualified to judge other cases, even where he must pay restitution personally. Everyone makes mistakes; even the great sages of the Mishnah erred in judgments...

14. Rabbi Moses Maimonides (12<sup>th</sup> century Egypt), Mishneh Torah, Laws of Employment 10:7

הנוטע אילנות לבני המדינה שהפסיד, וכן טבח של בני העיר שנבל בהמות, והמקיז דם שחבל, והסופר שטעה בשטרות, ומלמד תינוקות שפשע בתינוקות ולא למד או למד בטעות, וכל כיוצא באלו האומנים שאי אפשר שיחזירו ההפסד שהפסידו, מסלקין אותן בלא התראה שהן כמותרין ועומדין עד שישתדלו במלאכתן הואיל והעמידו אותן הצבור עליהם.

One who plants trees for the community and causes harm, or a municipal butcher who ruins animals, or a bloodletter who wounds, or a scribe who errs with documents, or a schoolteacher who sins with children, not teaching or teaching incorrectly, or any other such trade where one cannot restore that which has been lost, we remove him without warning. They are considered forewarned to work at their tasks, since the community appointed them.

15. Rabbi Shimon ben Tzemach Duran (14<sup>th</sup>-15<sup>th</sup> century Algiers), Tashbetz 2:9

אבל אם הדיין הזה אינו טועה מחמת חכמ' גדול' שיש בו, אלא מפני שאינו זהיר בתלמודו ושגגת תלמודו עולה זדון והרבה מדיניו היו בטעות, ה' אפשר לפסלו.

But if this judge errs not because of the great wisdom required, but because he is careless with his learning, leading to intentional harm, and many of his decisions are in error, one could disqualify him.

Why not police personal conduct?

16. LSUC Rules of Professional Conduct (2014), Commentary [3-4] to Rule 2.1-1

[3] Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the

professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Law Society may be justified in taking disciplinary action.

[4] Generally, however, the Law Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity.

17. Four general factors           Right to practice; Privacy; Access to Justice; Enforcement

18. Three Jewish factors           Privacy; Access to Justice; Dignity of the Sage

19. Talmud, Sotah 22a

"כי רבים חללים הפילה (משלי ז:כו)" זה ת"ח שלא הגיע להוראה ומורה, "ועצומים כל הרוגיה" זה ת"ח שהגיע להוראה ואינו מורה  
"For it has cast down many corpses" refers to a Torah scholar who is unworthy of ruling, and yet he rules; "And she has killed many" refers to a Torah scholar who is worthy of ruling and does not do so.

20. Talmud, Moed Katan 17a

אמר רב הונא באושא התקינו אב בית דין שסרה אין מנדין אותו אלא אומר לו הכבד ושב בביתך חזר וסרה מנדין אותו מפני חילול ד'.  
Rav Huna said: In Usha they enacted that if a Chief Justice goes bad, we do not ex-communicate him. We tell him, "Be honoured and remain at home." If he repeats the act, we ex-communicate him because of desecration of Gd's Name.

21. Rabbi Moshe Sofer (18<sup>th</sup> century Pressburg), Chatam Sofer 5:Choshen Mishpat 162

על הראשונה שלא הכשיל רבי רק שנוגע לו לעצמו ע"ז אמרי' אב"ד שסרה אין מנדי' אותו בפרהסי' אלא אומר' לו בצניעא הכבד ושב בביתך ופסקו רמב"ם רפ"ז מת"ת ובש"ע י"ד סי' של"ד סמ"ב ולא הזכיר אי מורידין אותו מגדולתו...

For the first matter, in which he did not cause the community to stumble but the matter is only personal, regarding this we say, "If a Chief Justice goes bad, we do not ex-communicate him" publicly, but rather we tell him privately, "Be honoured and remain at home." And so ruled Maimonides and the Code of Jewish Law. It did not mention removing him from his position...

But we do police personal conduct

22. Mary F. Southin Q.C., *What is Good Character*, 35 Advocate (Vancouver) 129 (1977)

"good character" means those qualities which might reasonably be considered in the eyes of reasonable men and women to be relevant to the practice of law in British Columbia at the time of application. Character within the Act comprises, in my opinion at least these qualities:

An appreciation of the difference between right and wrong;

The moral fibre to do that which is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequences may be to oneself;

A belief that the law at least so far as it forbids things which are *malum in se* [inherently wrong – MT] must be upheld and the courage to see that it is upheld.

23. LSUC Rules of Professional Conduct (2014), Section 1.1

"conduct unbecoming a barrister or solicitor" means conduct, including conduct in a lawyer's personal or private capacity, that tends to bring discredit upon the legal profession including, for example,

(a) committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer,

(b) taking improper advantage of the youth, inexperience, lack of education, unsophistication, ill health, or unbusinesslike habits of another, or

(c) engaging in conduct involving dishonesty or conduct which undermines the administration of justice;

24. LSUC Rules of Professional Conduct (2014), Rule 2.1-2

A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.

## 25. Talmud, Sanhedrin 27a

"אל תשת רשע עד" - אל תשת חמס עד, אלו גזלנין ומועלין בשבועות.

"Do not set a wicked person as a witness (Exodus 23:1)" – Do not set a person of *chamas* as a witness. These are bandits and people who break oaths.

## 26. Talmud, Sanhedrin 24b

**משנה:** ואלו הן הפסולין: המשחק בקוביא, והמלוה בריבית, ומפריחי יונים וסוחרי שביעית...

**גמרא:** משחק בקוביא מאי קא עביד? אמר רמי בר חמא משום דהוה אסמכתא, ואסמכתא לא קניא. רב ששת אמר כל כי האי גוונא לאו אסמכתא היא, אלא לפי שאין עסוקין ביישובו של עולם. מאי בינייהו? איכא בינייהו דגמר אומנותא אחריתא...

**Mishnah:** These are disqualified: Dice-players, usurers, dove-flyers and merchants of Sabbatical produce...

**Gemara:** What has a dice-player done? Rami bar Chama said: It is *asmachta*, and the transaction is invalid. Rav Sheshet said: These are not *asmachta*, but these people are not involved in settling the world. What's the difference? The difference would be one who has another trade...

## 27. *Bolton v. Law Society* [1994] 1 WLR 512 (C.A.), paragraph 518

It is important that there should be a full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh...

In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that the experience of suspension will make the offender meticulous in his future compliance with the required standards...

The second purpose is the most fundamental of all: to maintain the reputation of the solicitor's profession as one in which every applicant, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession, it is often necessary that those guilty of serious lapses are not only expelled but denied readmission...The profession's most valuable asset is its collective reputation and the confidence which that inspires.

## 28. U.S. Supreme Court, *In re Snyder* 472 U.S. 634 (1985)

As an officer of the court, a member of the bar enjoys singular powers that others do not possess; by virtue of admission, members of the bar share a kind of monopoly granted only to lawyers. Admission creates a license not only to advise and counsel clients but also to appear in court and try cases; as an officer of the court, a lawyer can cause persons to drop their private affairs and be called as witnesses in court, and for depositions and other pretrial processes that, while subject to the ultimate control of the court, may be conducted outside courtrooms. The license granted by the court requires members of the bar to conduct themselves in a manner compatible with the role of courts in the administration of Justice.

## 29. Talmud, Berachot 19b

"אין חכמה ואין תבונה ואין עצה לנגד ד' (משלי כא:ל) - כל מקום שיש חלול ד' אין חולקין כבוד לרב

"There is neither wisdom nor understanding nor counsel opposite Gd" – where there is desecration of Gd, we do not give honour to the great.

## 30. Talmud, Moed Katan 17a

ההוא צורבא מרבנן דהוו סנו שומעניה, אמר רב יהודה היכי ליעביד? לשמתיה, צריכי ליה רבנן! לא לשמתיה, קא מיתחיל שמא דשמיא! אמר ליה לרבה בר בר חנה מידי שמיע לך בהא? אמר ליה הכי אמר רבי יוחנן: מאי דכתיב "כי שפתי כהן ישמרו דעת ותורה יבקשו מפיהו, כי מלאך ד' צבקות הוא (מלאכי ב:ז)?" אם דומה הרב למלאך ד' יבקשו תורה מפיו, ואם לאו אל יבקשו תורה מפיו.

A young scholar was the subject of bad rumours. Rav Yehudah said, "What should we do? Ex-communicate him – the Sages need him! Don't ex-communicate him – this would desecrate the Name of G-d!" He asked Rabbah bar bar Chanah: Have you heard anything regarding this? He replied, "Rabbi Yochanan said: What is the meaning of the verse, 'For the lips of the kohen guard knowledge, and they will seek Torah from his mouth, for he is a *malach* of G-d'?" If your mentor seems like a *malach* of G-d, seek Torah from his mouth. If not, do not seek Torah from his mouth."

31. Rabbi Aryeh Leib Heller (18<sup>th</sup> century Poland), Ketzot haChoshen Choshen Mishpat 46:17

דרשע דחמס חשוד לאותו דבר וחשדינן למשקר בשביל הנאת ממון ומשום הכי חיישינן שמא עתה זייף וחתם, אבל רשע דאינו חמס אף על גב דפסול מצד גזירת הכתוב...

For a wicked person of *chamas* is suspected of that sin, and we suspect that he would lie for financial profit, and so we are concerned that he now forged the documents and signed it. But a wicked person who has not committed *chamas* is disqualified only by fiat of the text...

32. Rabbi Yaakov Zvi Mecklenburg (18<sup>th</sup>-19<sup>th</sup> century Germany), HaKtav v'haKabbalah to Shemot 23:1

הרשע (הרע לשמים) אף שלפי הנראה הוא טוב בטבעו, מ"מ חומד הוא למצוד הרעים (הרע לבריות) וחפץ נפשו אל הגזל והחמס. The wicked person (who is bad to Heaven), although he seems to be of good nature, still, he desires to trap as the wicked do (and he bad to other people). His spirit desires theft and *chamas*.

33. Rashi (11<sup>th</sup> century France), Commentary to Talmud, Sanhedrin 24b שאין

הואיל ואין עסוקין ביישובו של עולם אינן בקיאים בטיב דינין ומשא ומתן, ואינן יראי חטא. Since they are not involved in settling the world, they are not expert in financial law and commerce, and they do not fear sin.

34. Rabbi Moses Maimonides (12<sup>th</sup> century Egypt), Mishneh Torah, Laws of Testimony 10:4

הואיל ולוקחים ממון שאינו שלהם בחמס פסולין כגון הגנבים והחמסנים אף על פי שהחזיר פסול לעדות מעת שגנב או גזל... Because they take money that is not theirs by *chamas*, they are disqualified. Like thieves and bandits – even if they return it, they may not testify from the time they steal or take by force...

35. Talmud, Bava Kama 72b

עד זומם אבוי אמר למפרע הוא נפסל... מההוא שעתא דאסהיד הוה ליה רשע... A plotting witness – Abbaye says he is disqualified retroactively... From the time he testified, he became wicked.

#### Regaining acceptance

36. In re Weisman, Report to Convocation, Jan. 27 1997 – five of the criteria

- The applicant must show by a sufficient course of conduct he is a person to be trusted.
- The applicant must show that his conduct is unimpeached and unimpeachable which can best be established by evidence of trustworthy persons, especially persons with whom the applicant has been associated since the disqualification.
- A sufficient period of time must have elapsed before an application for readmission will be granted.
- The applicant must show by substantial and satisfactory evidence that it is highly unlikely that the applicant will misconduct himself in future if the applicable order is revoked or rescinded.
- The applicant must show that his or her past conduct has been entirely purged (admitting guilt and righting the wrongs).

37. John Blackburn v. Law Society of Upper Canada, 2010 ONLSHP 112 (CanLII)

The Panel must take a measure of the individual to see that he can serve the public interest through his professional activities. In determining whether the Applicant is of good character today, the Panel considered the following factors:

- (a) the nature and duration of the misconduct;
- (b) whether the Applicant is remorseful;
- (c) what rehabilitative efforts, if any, have been taken, and the success of such efforts;
- (d) the Applicant's conduct since the proven misconduct; and
- (e) the passage of time since the misconduct.

38. Law Society of Upper Canada v. Jackson, 2017 ONLSTH 64 (CanLII)

The penalty takes into account that Ms. Jackson spent considerable time in jail before being found not guilty. As a result of her time in jail and the undertaking she gave while the matter was proceeding through the criminal courts, she has been away from the practice of law for more than three years. Combined with that, the eight-month suspension provides significant general and specific deterrence.

39. Talmud, Sanhedrin 25a

ההוא טבחא דאישתכח דנפקא טריפתא מתותי ידיה, פסליה רב נחמן ועבריה. אזל, רבי מזיה וטופריה, סבר רב נחמן לאכשוריה. אמר ליה רבא דילמא איערומי קא מערים! אלא מאי תקנתיה? כדרב אידי בר אבין, דאמר רב אידי בר אבין החשוד על הטריפות אין לו תקנה עד שילך למקום שאין מכירין אותו ויחזיר אבידה בדבר חשוב, או שיוציא טריפה מתחת ידו בדבר חשוב משלו.

A butcher was found to have sold non-kosher meat; Rav Nachman disqualified him and removed him. He grew his beard and nails, and Rav Nachman wished to approve him. Rava said to him: Perhaps he is playing a trick! But how should he be fixed? As Rav Idi bar Avin said: One who is suspected of non-kosher meat cannot be fixed until he goes to a place where he is not known and he returns valuable lost property, or he disposes of valuable non-kosher meat at his own expense.

40. Rabbi Moses Maimonides (12<sup>th</sup> century Egypt), Mishneh Torah, Laws of Testimony 12:9

מאימתי חזרת המועל בשבועה? משיבא לבית דין שאין מכירין אותו ויאמר להם "חשוד אני", או יתחייב שבועה בבית דין שאין מכירין אותו בממון חשוב ישלם ולא ירצה להשבע...

What is the repentance of one who violates an oath? When he goes before a court which does not know him and he admits that he is under suspicion, or he becomes obligated in an oath in a court that does not know him, for a valuable sum, and he pays rather than swear...