Facing Self-Represented Litigants

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Introduction

1. LSUC Rules of Professional Conduct (2014), Rule 7.2

7.2-1 A lawyer shall be courteous, civil, and act in good faith with all persons with whom the lawyer has dealings in the course of their practice.

7.2-1.1 A lawyer shall agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities, and similar matters that do not prejudice the rights of the client.

7.2-2 A lawyer shall avoid sharp practice and shall not take advantage of or act without fair warning upon slips, irregularities, or mistakes on the part of other legal practitioners not going to the merits or involving the sacrifice of a client's rights.

2. LSUC Rules of Professional Conduct (2014), Rule 5.1-2

When acting as an advocate, a lawyer shall not

(e) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed, or otherwise assisting in any fraud, crime, or illegal conduct,

(f) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument, or the provisions of a statute or like authority,

(g) knowingly assert as true a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal,

3. LSUC Rules of Professional Conduct (2014), Rule 7.2-4

A lawyer shall not in the course of professional practice send correspondence or otherwise communicate to a client, another legal practitioner, or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

4. RRO 1990, Reg. 194: Rules of Civil Procedure, Rule 2.03

The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

5. Moore v. Apollo Health & Beauty Care, 2017 ONCA 383 (CanLII), <http://canlii.ca/t/h3plb>, retr. 2018-03-11

[46] In the present case, the trial judge did several things to discharge his responsibility to protect the right of the self-represented person to be heard…

[47] However, the trial judge did not make sufficient inquiries before concluding Ms. Moore had abandoned her claim for Unpaid Wages. Where the evidence of a self-represented party raises a question in the trial judge's mind about the specific relief the party is seeking, a trial judge must make the appropriate inquiries of the party to clarify the matter. Those inquiries must be made in a clear, unambiguous, and comprehensive way so that several results occur: (i) the trial judge is left in no doubt about the party's position; (ii) the self-represented person clearly understands the legal implications of the critical choice she faces about whether to pursue or abandon a claim; and (iii) the self-represented person clearly understands from the trial judge which of her claims he will adjudicate…

[49] In the present case, the trial judge did not make those clear, unambiguous, and comprehensive inquiries. As a result, he proceeded on the erroneous basis that Ms. Moore had abandoned her claim for Unpaid Wages, while Ms. Moore – quite reasonably – thought she had done no such thing. As well, the trial judge failed to inform Ms. Moore clearly that he would not consider her claim for Unpaid Wages, which she had just spent a considerable amount of time reviewing for him. His failure to do so resulted in an unfair trial.

6. LSUC Rules of Professional Conduct (2014), Rule 7.2-9

When a lawyer deals on a client's behalf with an unrepresented person, the lawyer shall:

(b) take care to see that the unrepresented person is not proceeding under the impression that their interests will be protected by the lawyer; and

(c) take care to see that the unrepresented person understands that the lawyer is acting exclusively in the interests of the client and accordingly their comments may be partisan.

7. Pintea v. Johns, [2017] 1 SCR 470, 2017 SCC 23 (CanLII), <http://canlii.ca/t/h3993>, retr. on 2018-03-11

We would add that we endorse the *Statement of Principles on Self-represented Litigants and Accused Persons* (2006) (online) established by the Canadian Judicial Council.

8. Cases

(1) Jonathan sued XLF Pharmaceuticals and lost; he is representing himself in an appeal. Mary, lead counsel for XLF, sees that Jonathan is having difficulty meeting the filing deadline for his factum, but he doesn't seem to be aware that he can request an extension. Is Mary expected to inform Jonathan of this option?

(2) After a car accident, Sarah can no longer work; she files an insurance claim without legal representation. The insurer cites section 33 of the Statutory Accident Benefits Schedule and requests that she sign OCF-5 permitting disclosure of her medical records. David, counsel for the insurance company, knows that Sarah could legitimately limit their access to one year prior to the accident. Is David required to advise Sarah of this limiting option?

(3) A wildfire spreads through a neighbourhood, destroying Rhonda's house. Rhonda's insurer pays living expenses for six months, but refuses to pay for the insured home itself. Veronica, counsel for the insurer, can see that Rhonda's lawyer is providing inadequate representation, and the likely result will be protracted litigation or a settlement for far less than Rhonda deserves. Does Veronica have any obligation to Rhonda?

(4) Mary, lead counsel for XLF Pharmaceuticals in Case #1, advises Jonathan regarding his extension; Jonathan is grateful, as he is on the next three occasions when Mary provides guidance on procedural issues. Are there any concerns Mary should keep in mind while advising Jonathan?

<u>The underlying principle: Access to Justice</u>

9. Chief Justice 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.

10. Deuteronomy 16:18

שֹׁפְטִים וְשֹׁטְרִים תִּתֶּן־לְךָ בְּכָל־שְׁעָרֶיךָ אֲשֶׁר ד' אֱלֹקֶיךָ נֹתֵן לְךָ לִשְׁבָטֶיךָ וְשָׁפְטוּ אֶת־הָעָם מִשְׁפַּט־צֶדֶק׃

You shall place judges and officers at all of your gates, which HaShem your Gd gives you for your tribes, and they shall judge the nation righteously.

11. Talmud, Bava Kama 82a

ודנין בשני ובחמישי דשכיחי דאתו למקרא בסיפרא

Courts judge on Mondays and Thursdays, because people are available as they come read from the Torah.

12. Talmud, Sanhedrin 8a

"כקטן כגדל תשמעון" - אמר ריש לקיש שיהא חביב עליך דין של פרוטה כדין של מאה מנה. למאי הלכתא? אילימא לעיוני ביה ומיפסקיה, פשיטא! אלא לאקדומיה.

Deuteronomy 1:17 says, "Hear the small like the great." Reish Lakish said: The law of a *perutah* should be as beloved to you as the law of 100 *maneh.* For what? If to examine and rule properly, that's obvious! Rather, to put it first.

13. Talmud, Yevamot 122b

דבר תורה אחד דיני ממונות ואחד דיני נפשות בדרישה וחקירה שנאמר משפט אחד יהיה לכם

Biblically, both financial and capital matters should require high-level interrogation of witnesses, as Leviticus 24:22 states, "There shall be one law for all of you."

14. Mishnah, Avot 1:8

אל תעש עצמך כעורכי הדיינין...
רש"י: שאם בא לך אדם א' וישאל עצה ממך היאך יכול לטעון על חבירו אל תאמר לו שום עצה ללמוד אותו לטעון על חבירו
Do not act as the arrangers of the judges…
Rashi: If a person comes to you for advice as to how he could sue another, do not give him any advice, to teach him how to sue another.

15. Canadian Judicial Council, *Statement of Principles on Self-Represented Litigants and Accused Persons*, pg. 7
Judges have a responsibility to inquire whether self-represented persons are aware of their procedural options, and to direct them to available information if they are not. Depending on the circumstances and nature of the case, judges may explain the relevant law in the case and its implications, before the self-represented person makes critical choices.

16. Thomas G. Heintzman O.C., Q.C., McCarthy Tetrault LLP, *Ethical Issues Relating to Lawyers and Unrepresented Litigants in the Civil Justice System*
Presently, I have been a chair of a committee of the American College of Trial Lawyers which has drafted a Code of Conduct for trial lawyers in trials involving unrepresented litigants…
Apart from the duty to the court and his professional regulating body, the lawyer's only duty is to the client. The lawyer is prohibited from creating any conflict of interest between that duty and a duty to others…

17. Rabbeinu Asher (13th-14th century Germany/Spain), Rosh to Bava Kama 1:5
מי שבא לפני ב"ד ואומר "יש לי תביעה על פלוני, ומצאתי לנכסיו במקום ידוע ואני ירא שאם יבואו לידו יבריחם ולא אמצא מקום לגבות ממנו חובי," ומבקש שיעכבו ב"ד הנכסים עד שיתברר תביעתו... ואם רואה הדיין אמתלא בדברי התובע או שלא יוכל ראובן לגבות חובו משמעון כשיגיע הזמן, מצווה הדיין לעכב ממון הנתבע עד שיברר התובע תביעתו... וכן מצאתי בשם הגאון ז"ל כתוב דתקנתא דרבנן הוא באיניש דמפסיד נכסיה משום השבת אבידה. ולי נראה דלא צריכנא לתקנתא דרבנן אלא דין גמור הוא שחייב אדם להציל עשוק מיד עושקו בכל טצדקי דמצי למיעבד.
If one comes to court and says, "I have a claim against *ploni*, and I have discovered assets of his in a certain place and I fear that if they reach him he will hide them and I will have no means of collecting my debt," and he requests that the court hold the property until his claim is clarified… If the judge sees logic in the claim, or that Reuven would not be able to collect his debt from Shimon when the time came, then the judge is instructed to hold the property of the defendant until the plaintiff clarifies his claim… And so I have found from the Gaon z"l, that there is a rabbinic enactment regarding [a defendant] who destroys his property, to restore loss. It appears to me that there is no need for a rabbinic enactment; it is straightforward law that one is obligated to save the abused party from one who would abuse him, with any available strategy.

18. Rabbi Moses Maimonides (Rambam, 12th century Egypt), Mishneh Torah, Hilchot Sanhedrin 2:7
ובכלל "אנשי חיל" שיהיה להן לב אמיץ להציל עשוק מיד עושקו, כענין שנאמר "ויקם משה ויושיען."
Including in "men of *chayil*" is that they must have a brave heart, to save the abused from one who would abuse him, as it says, "And Moshe arose and saved them."

19. Proverbs 31:8-9

פְּתַח פִּיךָ לְאִלֵּם אֶל דִּין כָּל בְּנֵי חֲלוֹף: פְּתַח פִּיךָ שְׁפָט צֶדֶק וְדִין עָנִי וְאֶבְיוֹן:
Open your mouth for the mute, for the judgment of all whose aid is transient. Open your mouth, judge righteously, litigate for the poor and indigent.

20. Talmud, Gittin 37b

כי אתו לקמיה דרב, אמר ליה "מידי פרוסבול היה לך ואבד?" כגון זה 'פתח פיך לאלם הוא.'
When they came to Rav, he would ask, "Perhaps you had a *prozbul* and it was lost?" This is an example of "Open your mouth for the mute."

21. Talmud Yerushalmi Sanhedrin 3:8
רב הונא כד הוה ידע זכו לבר נש בדינא ולא הוה ידע ליה, הוה פתח ליה, על שם [משלי לא ח] "פתח פיך לאלם."

When Rav Huna knew merit for a litigant and the litigant did not know, he would start for him, for, "Open your mouth for the mute."

22. Talmud, Ketuvot 85b-86a

קריבתיה דרב נחמן זבינתה לכתובתה בטובת הנאה, איגרשה ושכיבה. אתו קא תבעי לה לברתה, אמר להו רב נחמן, "ליכא דליסבא לה עצה? תיזיל ותיחלה לכתובתה דאמה לגבי אבוה, ותירתה מיניה." שמעה, אזלה אחילתה. אמר רב נחמן, "עשינו עצמינו כעורכי הדיינין!" מיקרא מאי סבר ולבסוף מאי סבר? מיקרא סבר "ומבשרך לא תתעלם (ישעי' נח:ז)," ולבסוף סבר אדם חשוב שאני.

Rav Nachman's relative sold an option on her *ketubah* claim. She was divorced, and then she died. They came to claim the *ketubah* from her daughter. Rav Nachman said to the sages, "Will no one counsel her? Let her go forgive her mother's *ketubah* claim to her father, and then inherit it from him!" She heard, and went and forgave it. Rav Nachman then said, "We have made ourselves as those who arrange the judges!" What did he think beforehand, and afterward what did he think? At first he thought, "Do not ignore your flesh." In the end he thought that a person of status is different.

23. Rabbi Yom Tov El-Asvili (Ritva, 13th-14th century Spain), Commentary to Ketuvot 86a

אין ספק כי הבת הזאת עניה היתה ומפני כן כיון שהלקוחות לא לקחו אלא בטובת הנאה היה נותן עצה זו על דעת שתתן היא ללקוחות מה שנתנו לאמה ולא יפסידו כלום מקרן שלהם, שאם לא כן תימה גדול הוא שיתן רב נחמן עצה להפסיד ללקוחות שלקחו כדת וכהלכה משום "ומבשרך לא תתעלם"!

Without a doubt, this daughter was poor, and since the purchasers had only bought it at an option price, he gave this advice so that she would pay the purchasers that which they had given her mother, and they would lose none of their investment. Otherwise it would be very shocking for Rav Nachman to give advice to cause the purchasers, who acted legally, to lose for the sake of "Do not ignore your flesh"!

24. Talmud, Bava Batra 5a

רוניא אקפיה רבינא מארבע רוחותיו, א"ל "הב לי כמה דגדרי," לא יהיב ליה. "הב לי לפי קנים בזול," לא יהיב ליה. "הב לי אגר נטירותא," לא יהיב ליה... אתא לקמיה דרבא, א"ל "זיל פייסיה במאי דאיפייס, ואי לא דאיננא לך דינא כרב הונא אליבא דרבי יוסי."

Runya was fenced in on four sides by Raveina. Raveina said, "Pay me for my fencing." Runya did not give it. "Pay me as though these were cheap reeds." Runya did not give it. "Pay me for the guards I saved you." Runya did not give it… The case came to Rava, who told Runya, "Go satisfy him with what will appears him; if you don't, I will rule like Rav Huna within the view of Rabbi Yosi."

25. Rabbi Yechiel Michel Epstein (19th-20th century Lithuania), Aruch haShulchan Choshen Mishpat 17:19

ראובן שתובע לשמעון בעד איזה דבר סכום מעות והדיין רואה שמגיע לו יותר בעד תביעה זו אין לו לדיין לפסוק יותר מתביעתו דמסתמא כל אדם תובע כל מה שיכול לתבוע ואין אדם מוותר ממונו לחנם ומדלא תבע בעצמו הדעת נוטה שאינו מגיע לו יותר מתביעתו או מפני שיודע התובע שמגיע ממנו להנתבע בעד איזה עניין כפי הסכום היתר על התביעה, או שמחל לו מפני איזה טעם... אמנם אם הדיין יודע בהתובע שהוא ירא אלקים ואינו בקי בדין וקרוב הדבר שלכן לא תבעו יותר מפני יראתו שלא יוכשל בגזל יכול הדיין לומר לו דע לך שע"פ הדין מגיע לך יותר וממ"נ אם מחל לו או שמגיע ממנו להנתבע יאמר כן להדיין כיון שהוא ירא אלקים. ואם יאמר שטעה מפני שאינו בקי בדין בוודאי נאמן. וכן כל זכות שרואה הדיין להתובע והוא לא תבע...

If Reuven claims a sum of money from Shimon, and the judge sees that Reuven deserves more for this claim, the judge should not assign more than his claim. It may be assumed that people claim all that they are entitled to claim, and people do not forgive money for nothing. Since he did not claim it himself, logically, he must not deserve more than claim – perhaps because the plaintiff knows that he owes the defendant the difference for something else, or he has forgiven it for some reason… But if the judge knows that the plaintiff is Gd-fearing and is inexpert in the law, and it is likely that this is why he does not claim more – out of fear lest he accidentally steal – then the judge may say to him, "Know that by law you deserve more." What would you want – if he forgave it, or he deserves less from the defendant, he will tell the judge, as he is Gd-fearing. And if he says he erred because he is not expert in law, he certainly will be credible. And so for any merit the judge sees for the plaintiff, which he has not claimed….

26. Rabbi Moses Maimonides (Rambam, 12th century Egypt), Mishneh Torah, Hilchot Sanhedrin 21:10-11

מנין לדיין שלא יעשה מליץ לדבריו של בעל דין שנאמר "מדבר שקר תרחק," אלא יאמר מה שנראה לו וישתוק. ולא ילמד אחד מבעלי דינין טענה כלל, אפילו הביא עד אחד לא יאמר לו "אין מקבלין עד אחד" אלא יאמר לנטען "הרי זה העיד עליך," הלואי שיודה ויאמר "אמת העיד," עד שיטעון הוא ויאמר "עד אחד הוא ואינו נאמן עלי." וכן כל כיוצא בזה. ראה הדיין זכות לאחד מהן ובעל דין מבקש לאמרה ואינו יודע לחבר הדברים, או שראהו מצטער להציל עצמו בטענת אמת ומפני החימה והכעס נסתלק ממנו או נשתבש מפני הסכלות, הרי זה מותר לסעדו מעט להבינו תחלת הדבר משום פתח פיך לאלם, וצריך להתיישב בדבר זה הרבה שלא יהיה כעורכי הדיינין.

How do we know that a judge should not act as an interpreter for the litigant's words? "Distance yourself from falsehood." Rather, he should say what appears to him, and be silent. And he should not teach either litigant any claim; even if a litigant brings just one witness, he should not say, "We don't accept one witness;" rather, he should say to the

defendant, "This one has testified against you." If only the other would admit and say, "He testifies honestly!" Until the defendant says, "He is just one witness, and he is not credible to me." And so in all similar cases.
If the judge sees merit for one party, and that litigant tries to make the point but does not know how to put it together, or the judge sees that the litigant is taking pains to save himself with an honest point, but it escapes him because of his rage and anger, or he is confused because of his foolishness, then he may assist the litigant a little to explain the beginning of it, under "Open your mouth for the mute." One must be very careful with this, lest he be as those who arrange the judges.

27. Rabbi Moshe Sternbuch (20th-21st century Israel, South Africa), Teshuvot v'Hanhagot 3:446
נראה שאם יש לצד אחד טוען רבני מעולה שעולה הון רב, ולשני אין אמצעים כמוהו, יש לחשוש שבזה נסתמים טענותיו, וכעין הא דאיתא בשבועות (לא א) "מנין לשנים שבאו לבית דין אחד לבוש סמרטוטין ואחד לבוש איצטלית בת מאה מנה שאומרים לו לבוש כמותו או הלבישהו כמותך ת"ל מדבר שקר תרחק" ע"ש, וכ"ש בנדון דידן, ראוי לומר למי שיש לו עו"ד מעולה ויקר, "תן לו לאחר כמותך או תופיע כמוהו." ואמנם לא נהגו כן מפני שאצלנו הדין בגדר פשרה, והדיינים לא מרגישים שבזה סותם טענות השני, ולכן רגילים שלא למנוע....
It appears that if one side has an excellent and expensive rabbinic advocate and the other lacks any similar means, we should be concerned that this might block his claims, like Shevuot 31a, "How do we know that if two parties come to court, one wearing rags and the other wearing a 100-maneh shirt, we tell him, 'Wear like him, or dress him like you'? 'Distance yourself from falsehood.'" Certainly in our case it would be appropriate to say to someone who has an excellent, expensive lawyer, "Give the other one what you have, or present as he does."
In truth, people do not do this because our adjudication is actually mediation, and the judges do not sense that this [imbalance] would block the other party's claims, and so they do not prevent this…

28. Deuteronomy 22:1
לֹא תִרְאֶה אֶת שׁוֹר אָחִיךָ אוֹ אֶת שֵׂיוֹ נִדָּחִים וְהִתְעַלַּמְתָּ מֵהֶם הָשֵׁב תְּשִׁיבֵם לְאָחִיךָ׃
Do not see your brother's ox or his sheep wandering, and ignore them; you shall surely return them to your brother.

Limiting Factors
29. Cicciarella v. Cicciarella, 2009 CanLII 34988 (ON SCDC), <http://canlii.ca/t/24ck5>, retr. 2018-03-11
[56] The Appellant asserts that the trial judge was not even-handed in his treatment of the parties. She also alleges that the trial judge's frequent interventions substantially interfered with the trial process. We agree…
[59] In this case, a review of the transcript reveals that not only did the trial judge assume the role of advocate for the Respondent, but also he severely limited Appellant counsel's cross-examination of the Respondent, as well as her submissions at the conclusion of the trial. There were many interruptions; we have selected only a few for illustrative purposes.
[60] For example, Appellant's counsel was not allowed to ask questions about receipts for car parts as the trial judge said these receipts were not relevant. The Appellant relied on these receipts as evidence of the significant investment in the show cars during the marriage. The Respondent claimed the tools had all been stolen. The trial transcript reads as follows:
The Court: Well, what happened to these car parts?
Mr. Cicciarella: They're all gone.
The Court: Where are they gone?
Mr. Cicciarella: To the Rod Shop.
The Court: And what happened to them there?
Mr. Cicciarella: He stole them and that's why I was trying to get that claim.
The Court: Yes.
Ms McLeod: Your Honour we have…
The Court: Yes. So, that is the story on that.
Ms McLeod: …five years worth of receipts…
Mr. Cicciarella: That's the story when I – I tried to clean my hands on somebody else…
The Court: That is the story on it. And that is the end of the examination on car parts.
Ms McLeod: We have…
The Court: What else do you want to examine him on?

Ms McLeod: Okay. Okay. Can I…may I ask a question about it because these receipts Your Honour range from 1984 to 1989 before the car show, five years of all kinds of different very expensive receipts.
The Court: Yes.
Ms McLeod: And he's saying that oh it was all for this one experience at the Rod Shop. We actually have the statement of claim at the Rod Shop that shows what was at the Rod Shop. And those parts do not match up to the receipts that we have today Your Honour. And we're dealing with very expensive wheels and so forth.
The Court: Can you ask a question on it? The answer is no. The questioning on the car parts is over. Now, what is the next thing you want to question him on? [Emphasis added.]

30. Rabbi Shlomo Yitzchaki (Rashi, 11th century France), Commentary to Ketuvot 86a
עשינו עצמינו - כקרוב של בעל דין או אוהבו הבא אצל דיינין ועורכו בראיות אחר זכות אוהבו או קרובו כך למדתי עצה לזו להפסיד שכנגדה.
"We have made ourselves" – like a relative or friend of the litigant, coming to the judges and arranging with proofs for the merit of his friend or relative. Thus I taught this counsel to cause the opposition to lose.

31. Lord Chief Justice Hewart, *R v Sussex Justices, Ex parte McCarthy* ([1924] 1 KB 256, [1923] All ER Rep 233)
It is said, and, no doubt, truly, that when that gentleman retired in the usual way with the justices, taking with him the notes of the evidence in case the justices might desire to consult him, the justices came to a conclusion without consulting him, and that he scrupulously abstained from referring to the case in any way. But while that is so, a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

32. Rabbi Shlomo Yitzchaki (Rashi, 11th century France), Commentary to Ketuvot 86a
אדם חשוב שאני - לפי שלמדין הימנו ויש שיעשו אף שלא לקרובים.
"A person of status is different" – Because they learn from him, and some will do this even for non-relatives.

33. Rabbi Moses Maimonides (Rambam, 12th century Egypt), Mishneh Torah, Hilchot Sanhedrin 21:1
מצות עשה לשפוט השופט בצדק שנאמר "בצדק תשפוט עמיתך." אי זהו 'צדק המשפט'? זו השויית שני בעלי דינין בכל דבר, לא יהא אחד מדבר כל צרכו ואחד אומר לו קצר דבריך, ולא יסביר פנים לאחד וידבר לו רכות וירע פניו לאחר וידבר לו קשות.
There is a mitzvah for a judge to judge righteously, as it says, "You shall judge your peer righteously." What is the 'righteousness of justice'? This is equating the two litigants in all ways. Do not have one speak as much as he needs and tell the other "Abbreviate your words." Do not show favour to one, speaking to him softly, and show a negative face to the other and speak to him harshly.

34. Rabbi Yechiel Michel Epstein (19th-20th century Lithuania), Aruch haShulchan Choshen Mishpat 17:16
וכן אסור להדר פני גדול, שאם באו לפניו עשיר וחכם עם עני והדיוט לא יכבדנו יותר ממה שמחוייב בדין תורה ולא ישאול בשלומו, שלא יסתתמו דברי בעל דינו...
And so it is prohibited to favour the great. If a wealthy and wise person comes to court with a poor, normal person, he should not honour the former more than the Torah mandates, and he should not ask after his welfare, lest the claims of the other litigant be sealed.

35. LSUC Rules of Professional Conduct (2014), Rule 5.1-1
When acting as an advocate, a lawyer shall represent the client resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.
Commentary [1]: In adversarial proceedings, the lawyer has a duty to the client to raise fearlessly every issue, advance every argument and ask every question, however distasteful, that the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law.

36. Rabbi Yeshayah Blau (20th-21st century Israel), Pitchei Choshen I 1:14
בעל חנות שעיקר פרנסתו בכך, אינו חייב לתת סחורתו בהקפה.
הערה לו: אהב"ח ב:ח מכמה טעמים, דכיון שעיקר פרנסתו במה שקונה סחורה תמורת מה שמוכר, ואם יקיף לא יוכל לקנות סחורה. ועוד דהקפת חנות אינה בכלל מצות הלואה....

A store owner whose main livelihood is from the store is not obligated to give [a pauper] merchandise on credit.
Footnote: This is stated by Ahavat Chesed 2:8, for several reasons. Since his main livelihood comes from buying merchandise in exchange for his sales, and giving credit would prevent him buying merchandise. Also, store credit does not fulfill the mitzvah of lending…

37. Talmud, Ketuvot 54b
קריביה דרבי יוחנן הוה להו איתת אבא דהוה קמפסדה מזוני. אתו לקמיה דרבי יוחנן אמר להו איזילו ואמרו ליה לאבוכון דנייחד לה ארעא למזונה...
Rabbi Yochanan's relative had a stepmother who was consuming large amounts for her food. The relatives came to Rabbi Yochanan, who told them, "Go tell your father to designate a parcel of land for her food."

38. Tosafot (12th-14th century Western Europe), Comments to Ketuvot 54b
אף על גב דלעיל (נב:) נתחרט ר' יוחנן על מה שהשיאן עצה, הכא אין גנאי כיון דבדעתה תלוי אם תרצה לקבל.
Even though Rabbi Yochanan regretted giving advice on 52b, here there was no disgrace, for accepting [the land] would depend upon her consent.

<u>In sum</u>

Agreement	Access to Justice; Preserve actual/perceived fairness; Lawyer for #1 must limit aid to #2
Extra Jewish Duties	Aiding the vulnerable; Counsel's duty to self
Extra Jewish Leniency	The self-represented party whose wound is self-inflicted

<u>Our Cases</u>
39. Sharp Practice http://www.lawsociety.bc.ca/docs/publications/handbook/ec/96-03(7).pdf
When a caveat has been filed in one Supreme Court registry but not in others through inadvertence, it is sharp practice for a lawyer to apply for letters of administration without notifying the lawyer who filed the caveat of the proposed application.

40. The Advocates' Society, *Principles of Professionalism/Civility for Advocates*, An Advocate's Duty to Opposing Counsel
4. Advocates must not attempt to gain a benefit for their client solely due to the fact that a litigant is self-represented. Counsel should cooperate with the court in ensuring that a self-represented litigant receives a fair hearing.
5. At trial, advocates are entitled to raise proper and legitimate objections but should not take advantage of technical deficiencies in a self-represented litigant's case which do not prejudice the rights and interests of their client.

41. Solomon v Abughaduma, 2015 ONSC 7670 (CanLII), <http://canlii.ca/t/gmh27>, retr. 2018-03-11
It is not just the duty of judges to ensure that all parties receive a fair hearing. Lawyers are required to do so as well. Counsel are not required to assist parties opposite on matters of substance. Nor do they need to make or even to ensure that the parties opposite understand the strategic choices that might be available to them. But, they are required to assist on scheduling and similar matters to ensure that the other side has an opportunity to present his or her evidence fairly…

42. Rabbi Yehoshua Falk (16th-17th century Poland) Sefer Meirat Einayim (SM"A) to Choshen Mishpat 17:14
ומה שבזה"ז נוהגין לדון לועזים ע"י מורשה שלהם הוא מפני שכל שבאו לדון לפני דיינים קבועין הו"ל כקיבלו עליהם לדון כן ואין לנו אחר הקבלה כלום.
Today's practice of judging *loazim* via their assignee is because all who come for judgment before permanent judges today are as though they had accepted this type of judgment, and there is nothing to do after that acceptance.

43. Talmud, Bava Metzia 80a
אמר רבי יוחנן: המוכר פרה לחבירו ואמר לו "פרה זו נגחנית היא, נשכנית היא, בעטנית היא, רבצנית היא," והיה בה מום אחד וסנפו בין המומין, הרי זה מקח טעות. מום זה ומום אחר, אין זה מקח טעות.
Rabbi Yochanan said: If one sells a cow and says, "This cow gores, bites, kicks and sprawls," and it only has one of those defects, which he included among these defects, that is grounds for claiming it was an erroneous purchase. If he names [only] this defect and one other, it is not an erroneous purchase.