

## 1. Duty to Obey the Law

- Respect for the rule of law is at the heart of the lawyer's duties to the court, clients and third parties, and gives substance to what it means to be a 'good lawyer'.
- [Part 1, 3.1 - Objective of the ASCR](#): 'The objective of these Rules is to assist lawyers to act ethically and in accordance with the principles of professional conduct established by the common law and these Rules'
- [Part 2, r 3](#) – paramount duty to the court and the administration of justice. This prevails to the extent of inconsistency with any other duty
- [R 5.1](#) – A solicitor must not engage in conduct in the course of practice or otherwise, which demonstrates that the solicitor is not a fit and proper person to practise law, or which is likely to a material degree to ([5.1.1](#)) be prejudicial to or diminish the public confidence in the administration of justice; or ([5.1.2](#)) bring the profession into disrepute.

### *Duty to avoid unlawful conduct as a lawyer*

- [R 4.1.5](#) – a solicitor must comply with these Rules and **the law**
- When either:
  - o Acting for a client; or
  - o In their own personal life
- NB: Lawyers have an ongoing obligation to report to the LSB
  - o [s45, 57 LPUL](#)
  - o Show-cause events include crimes
- If the lawyer witnesses/takes part in a crime, they may be called as a witness
  - o See [ASCR 27](#) (conflict of interest, cannot act)

### *ACCC v Sampson [2011] FCA 1165*

- **Facts:** Sampson acting for 2 DVD chains as debt recovery solicitor. Sent out thousands of misleading debt collection notices to customers, claiming the store was entitled to the solicitor's costs be paid by the customer plus other legal costs, notice looked like a court document, and gave representation that judgments could be made and enforced by the solicitors themselves
- **Held:** Guilty of misleading and deceptive conduct, [s52 Trade Practices Act 1974 \(Cth\)](#). Sampson ordered to publish corrective notices, get training, and pay \$30,000 towards ACCC's costs

### *Legal Services Commissioner v Sampson (Legal Practice) [2013] VCAT 1177 (10 July 2013); [2013] VCAT 1439 (16 August 2013)*

- **Facts:**
  - o LSC brought proceedings alleging PMC in relation to Sampson's notices of demand
  - o Sampson behaviour was repeated and damaged public confidence in the legal profession and justice system, indicating she was not fit and proper to practice law
  - o Relied on communications rule - equivalent to ASCR r 34 'dealing with other persons'
- **Held:**
  - o Any lawyer who sent out letters of demand, asserting that there is an entitlement to legal costs of preparing letters of notices of demand, would be liable to having disciplinary proceedings brought against them [35]
  - o The old view was that it is perfectly acceptable for lawyers to adopt a robust approach, and to claim the cost incurred in writing letters of demand as well as the debt itself. Today, this view can no longer be maintained [48]
  - o Had a number of mitigating factors: health problems, under pressure from partners, already adverse results of her having gone through the ACCC proceedings; support to colleagues
  - o Ultimately found that Sampson was still a fit and proper person to act
  - o Received a reprimand only. Ordered to ethics and responsibility training for 2 years, and to pay half of the LSC's legal costs.