

Conflict of Interest



Does my lawyer have a conflict of interest?

Lawyers have a duty of care to look after their clients' interests. This fact sheet explains how conflicts of interest may arise in your dealings with a lawyer or legal practice.

Conflict of interest

Conflict of interest in legal practice, between a lawyer and their client, can arise in many different ways.

Disclosing an interest

In Tasmania, the *Rules of Practice* 1994 require your lawyer:

- to not disclose any information they have obtained about your matter without your consent
- to tell you about any interest they have in any matter where they are acting for you
- to tell you about any matter which might reasonably be regarded as a conflict of interest.

If your lawyer does have an interest in the matter where they are acting for you, and that interest is adverse to your interests, the Rules require your lawyer to stop acting for you, unless you agree that they can continue.

Acting for more than one party

In Tasmania lawyers may act for more than one party in the same transaction or proceeding.

In order to do that your lawyer must be satisfied that:

- all of the parties are aware your lawyer will act for the other party and are also aware that
 - your lawyer may not be able to disclose to any of the parties, including you, the full knowledge your lawyer has of all of the matters about the transaction or proceeding
 - your lawyer may not be able to give advice to one party, including you, if the advice is against the interest of the other party
 - your lawyer must stop acting for all of the parties, including you, if your lawyer decides that they can't continue to act for all of the parties without affecting the interests of one or more of the other parties.
- All of the parties, including you, knowing all of those things, consents to your lawyer acting for more than one party.

Common conflicts of interest

There are three common scenarios where a lawyer or law practice may be affected by a conflict of interest:

- representing one client against a former client;
- representing two or more individual clients with differing interests; or
- where their own business or personal interests are in conflict with those of their client.

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Acting against a former client

The lawyer–client relationship does not completely end when a legal matter concludes or when a client changes their lawyer. Lawyers and legal practices have an ongoing duty of confidentiality to former clients.

Lawyers and legal practices have an obligation to avoid conflicts between the interests of their current clients and the interests of their former clients. For example, if a lawyer or legal practice had knowledge of confidential information about a former client, they should not act against the former client in any matter where that specific information could be used to create an unfair advantage for their new client.

Q. My former lawyer acted for me 5 years ago when I purchased my business. One of my customers is now suing me for an unpaid debt. Can my former lawyer act for them?

A. Although you are no longer a client of your former lawyer, there is still a duty of confidentiality that outlasts the lawyer client relationship. This means that if your former lawyer obtained confidential information about you during the purchase of your business and that confidential information could be used against you, your former lawyer should not act for your customer to recover the debt.

You as a former client

Just because your former lawyer is now on the other side, does not necessarily amount to a conflict of interest. Your former lawyer may be able to act for a new client against you if:

- your former lawyer does not have any confidential information about you which is relevant to the current matter; or
- your former lawyer has obtained informed consent from you that you understand they will be acting for the other side in the matter. You can give your consent to this arrangement if you are confident that no confidential information could be used against you and if you are sure this is a completely separate matter to any previous dealings you had with that lawyer.

If your former lawyer does not hold confidential information about you it is not necessary for them to obtain your consent.

Information barriers

Information barriers (commonly termed ‘Chinese walls’) can be used by legal practices to isolate lawyers who do have conflicts. The barrier prevents them from being involved in, or influencing, a matter concerning one of their former clients. The courts recognise that these information barriers, if enforced effectively, can be sufficient to prevent confidential information from being misused.

Such situations may arise, for example, if a lawyer moves from one legal practice to another, and their new employer is acting against one of the lawyer’s former clients. It can also arise in regional areas where there are few law practices for consumers to choose from.

Family law:

Q. My lawyer has acted for my partner and I for a number of years including selling and buying our last house and holding our wills. I have separated from my partner, can my lawyer act for me against my partner in family law proceedings?

A. Your lawyer most likely holds highly confidential information about both you and your partner which would be relevant to family law proceedings. Your lawyer should not act for you or your partner in those circumstances.

Acting for more than one client

Lawyers are not able to represent more than one client in the same legal matter unless they comply with Rule 12 of the Rules. This protects both the lawyer and the clients in the event that the clients’ interests diverge, even if their interests start out the same.

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However where a lawyer or legal practice does act for both sides in a legal matter it most commonly occurs in business and property transactions and conveyancing. Before the lawyer or law practice commences to act for both sides, they must be satisfied that all of the clients are aware of the arrangements, and all clients must have given their informed consent.

If a conflict does arise between the clients' interests, the lawyer or law practice must cease acting for one or both of the parties immediately. The lawyer or law practice may still represent one party provided their duty of confidentiality is not put at risk and the other party has given their informed consent to the new arrangements.

Lawyers or law practices who fail to obtain fully informed consent from one or all clients before commencing to act in a matter risk facing disciplinary action.

Conveyancing:

Q. Is it alright for my lawyer to act for me and the purchaser in the sale of my family home?

A. Your lawyer can act for both of you in a simple real estate transaction, but both parties must be aware that they have the same lawyer, and the lawyer may be prevented from disclosing the full knowledge that the lawyer has of information relevant to the transaction. The lawyer may also be prevented from giving advice to any one of the parties if the advice is contrary to the interest of the other party. Your lawyer must stop acting for all the parties if they have to act contrary to one of the parties interests. For example if you wish to withdraw from the contract in circumstances which is contrary to the purchaser's interest, your lawyer will need to stop acting for both of you.

Clients' interests conflicting with a lawyer's/legal practice's interests

Lawyers and legal practices must not allow their own interests to come into conflict with the interests of their clients.

Lending money to clients is not prohibited; however it may create ethical concerns for the lawyer, particularly if a dispute arises over the repayment of that loan.

The information contained in this fact sheet does not constitute legal advice.

Further information

If you have any questions or require further information, please contact the Legal Profession Board of Tasmania.

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