

Professionalism and Practice Management Issues in Administrative Law 2021

CHAIR

Lisa Brownstone, Chief Legal Officer
The College of Physicians & Surgeons of Ontario

October 1, 2021



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Professionalism and Practice Management Issues in Administrative Law 2021

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Professionalism and Practice Management Issues in Administrative Law 2021



CHAIR: **Lisa Brownstone**, Chief Legal Officer, *College of Physicians & Surgeons of Ontario*

October 1, 2021

12:00 p.m. to 1:30 p.m.

**Total CPD Hours = 1 h + 20 m Professionalism ^P +
10 m EDI Professionalism ^E**

**Law Society of Ontario
Toronto, ON**

Webcast Only

SKU CLE21-01001

Agenda

12:00 p.m. – 12:02 p.m.

Welcome and Opening Remarks

Lisa Brownstone, Chief Legal Officer,
College of Physicians & Surgeons of Ontario

12:02 p.m. – 12:25 p.m.

How to Better Serve and Manage your Clients

Colleen Hoey, *Mann Lawyers LLP*

Robin Nobleman, *HIV & AIDS Legal Clinic Ontario (HALCO)*

12:25 p.m. – 12:31 p.m.

Question and Answer Session

12:31 p.m. – 12:54 p.m.

Dealing with Compassion Fatigue and Mental Health Issues (10 m )

Françoise Mathieu, M.Ed., CCC. RP., Executive Director,
TEND

Jacqueline Swaisland, *Landings LLP*

12:54 p.m. – 1:00 p.m.

Question and Answer Session

1:00 p.m. – 1:23 p.m.

Who is your Client?

Danielle Bisnar, *Cavaluzzo LLP*

Eli Mogil, *McCarthy Tétrault LLP*

1:23 p.m. – 1:30 p.m.

Question and Answer Session

1:30 p.m.

Program Ends



This program qualifies for the 2023 LAWPRO Risk Management Credit

What is the LAWPRO Risk Management credit program?

The LAWPRO Risk Management Credit program pays you to participate in certain CPD programs. For every LAWPRO-approved program you take between September 16, 2021 and September 15, 2022, you will be entitled to a \$50 premium reduction on your **2023 insurance premium** (to a maximum of \$100 per lawyer). Completing any Homewood Health Member Assistance Plan e-learning course available at homeweb.ca/map also qualifies you for a \$50 credit.

Why has LAWPRO created the Risk Management Credit?

LAWPRO believes it is critical for lawyers to incorporate risk management strategies into their practices, and that the use of risk management tools and strategies will help reduce claims. Programs that include a risk management component and have been approved by LAWPRO are eligible for the credit.

How do I qualify for the LAWPRO Risk Management Credit?

Attendance at a qualifying CPD program will NOT automatically generate the LAWPRO Risk Management Credit. To receive the credit on your 2023 invoice, you must complete the online Declaration Form.

STEP 1:	STEP 2:
<ul style="list-style-type: none"> Attend an approved program in person or online; and/or Self-study a past approved program Completing a Homewood Health e-course* 	Complete the online Declaration form at lawpro.ca/RMdec by Sept. 15, 2022. The credit will automatically appear on your 2023 invoice.

You are eligible for the Risk Management Credit if you chair or speak at a qualifying program provided you attend the entire program.

Where can I access a list of qualifying programs?

See a list of current approved programs at lawpro.ca/RMcreditlist. Past approved programs are usually indicated as such in the program materials or download page. Free CPD programs offered by LAWPRO can be found at www.practicepro.ca/cpd

Whom do I contact for more information?

Contact practicePRO by e-mail: practicepro@lawpro.ca or call 416-598-5899 or 1-800-410-1013.

*One Homewood Health e-learning course is eligible for the credit on a yearly basis.



PROFESSIONALISM AND PRACTICE MANAGEMENT ISSUES IN ADMINISTRATIVE LAW 2021

October 1, 2021

SKU CLE21-01001

Table of Contents

TAB 1	Best Practices for Timely and Effective Client Communication – Practice Checklist.....	1 - 1 to 1 - 3
	<i>Robin Nobleman, HIV & AIDS Legal Clinic Ontario (HALCO)</i>	
	<i>Colleen Hoey, Mann Lawyers LLP</i>	
TAB 2	Dealing with Compassion Fatigue and Mental Health Issues	2 - 1 to 2 - 9
	<i>Françoise Mathieu, M.Ed., CCC. RP., Executive Director, Tend Academy Ltd.</i>	
	<i>Jacqueline Swaisland, Landings LLP</i>	
TAB 3	Who is your Client? Fact Patterns	3 - 1 to 3 - 1
	<i>Danielle Bisnar, Cavaluzzo LLP</i>	
	<i>Eli Mogil, McCarthy Tétrault LLP</i>	

TAB 1

Professionalism and Practice Management Issues in Administrative Law 2021

Best Practices for Timely and Effective Client Communication – Practice Checklist

Robin Nobleman

HIV & AIDS Legal Clinic Ontario (HALCO)

Colleen Hoey

Mann Lawyers LLP

October 1, 2021



Best Practices for Timely and Effective Client Communication—Practice Checklist

Robin Nobleman and Colleen Hoey

Take a Client Centered Approach

- Build a connection – show an interest in the client as a person
- Take the time to understand the client’s expectations around what can be achieved and within what time frame. Encourage realistic expectations.
- Do not be late for appointments

Setting client expectations

- Ask about client preferences for communication
- Explain when and how you will update the client if nothing is happening on their matter
- When the client should correspond with you directly vs. your admin staff (if any)
- Indicate on your voicemail or email outgoing message when clients can expect a response
- Be realistic – don’t overpromise
- Set expectations about communication early by including information about communication in your retainer. Review it with the client. Retainer could include:
 - General time frame for response to client communications.
 - Your expectations for the client’s communication with you, e.g., keeping you informed of new developments and responding to your correspondence
 - When you will update them on their matter

Effective communication depends on needs and abilities of the client

Consider whether the client:

- Has a communication disability that requires accommodation
- Has a mental health disability that requires accommodation
- Has a physical disability affecting their communication that requires accommodation
- Has consistent access to phone and internet
- Has a safe and private place to take phone calls
- Has literacy challenges
- Is more comfortable using an interpreter
- Has dealt with legal matters before
- Has a history of trauma
- Is particularly anxious about this legal matter

Tips for communicating with vulnerable clients and clients with communication-related disabilities

- Ask clients if they require any accommodations. Proactively offer alternate methods for communication if you perceive accommodation needs.
- Ask clients for their communication preferences
- Allow extra time for meetings and be patient
- Use clear, everyday language rather than legal jargon
- Check understanding after explaining an important concept. Ask your client to tell you what they have understood.
- Confirm your understanding by summarizing what the client has said to you. If you do not understand them, politely tell them.
- Provide complex advice orally **and** in writing
- Encourage the client to take notes during your meeting
- Provide public legal education materials to supplement your advice
- Ask the client if they want to include a support person in meetings (after explaining solicitor-client privilege).
- Always communicate directly with the client, not with the support person or interpreter
- Take breaks if needed, or schedule multiple shorter meetings
- Take a trauma-informed approach (see Resources below)
- Recap important points and next steps at the end of the meeting. Provide a written list of documents you need.

Set up your practice to proactively avoid communication problems

- Respond to communications from a client (new or existing) on the day it arrives and at a minimum acknowledge receipt
- If you can't respond substantively for some time, let the client know. Briefly explain why you cannot respond and when they can expect to hear from you. Follow through.
- Use automated out-of-office emails when appropriate
- Create ticklers/calendar reminders for next update to client
- Communicate regularly. Recognize and take opportunities to communicate. E.g. a short letter to accompany the invoice.
- Docket all communications and other work on the file with sufficient detail so that a clear record of what was done when and why is established
- Confirm instructions in writing
- Explain your duty of solicitor-client privilege and confidentiality to build trust. You can only give complete and accurate legal advice if the client is forthright in their communications with you.
- Be candid. Lawyers are required to inform the clients of information that may affect the interests of the client. If you discover an issue disclose it.
- Protect confidentiality. Ensure that new communication tools offer strong protection against data and privacy breaches.

Resources

Communication Disabilities Access Canada – Communication tips

<https://www.cdacanada.com/resources/communication-disabilities/communication-tips/>

Trauma Informed Lawyering

<http://www.traumainformedlaw.org/resources>

ARCH Disability Law Centre

Guide – Tips for Lawyers and Paralegals on Providing Accessible Legal Services to Persons with Disabilities in Ontario: <https://archdisabilitylaw.ca/resource/guide-tips-for-lawyers-and-paralegals-on-providing-accessible-legal-services-to-persons-with-disabilities-in-ontario/>

Fact Sheet – Tips for Lawyers and Paralegals in Ontario: Accommodating clients by communicating via email: <https://archdisabilitylaw.ca/resource/fact-sheet-tips-for-lawyers-and-paralegals-in-ontario-accommodating-clients-by-communicating-via-email/>

Fact Sheet – Tips for Lawyers and Paralegals in Ontario: Accommodating clients requiring a support person: <https://archdisabilitylaw.ca/resource/fact-sheet-tips-for-lawyers-and-paralegals-in-ontario-accommodating-clients-requiring-a-support-person/>

Other

Skill Sets #4: Managing the Lawyer-Client Relationship. By K. Scott McLean. January 16, 2020 In Practice Management: <https://www.mannlawyers.com/practice-management/skill-sets-4-managing-the-lawyer-client-relationship/>

Client Service and Communication. Law Society of Ontario. Provides Guidance on client service and communications: <https://lso.ca/lawyers/practice-supports-and-resources/practice-management-guidelines/client-service-and-communication#2-17-confirmation-of-changes-to-essential-terms-of-the-engagement-6>

Managing the Lawyer/Client Relationship Practice Pro: https://www.practicepro.ca/wp-content/uploads/2017/07/Lawyer_Client.pdf

Technology and its impact on the legal system

The Lawyer Daily. Article by Beverley McLachlin on the need for courts to adapt to the changing and increasingly digital world: [Access to Justice: Embracing technology through online courts | Beverley McLachlin](#) (Feb 20, 2020)



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TAB 2

Professionalism and Practice Management Issues in Administrative Law 2021

Dealing with Compassion Fatigue and Mental Health
Issues

Françoise Mathieu, M.Ed., CCC. RP., Executive Director
Tend Academy Ltd.

Jacqueline Swaisland
Landings LLP

October 1, 2021



**Professionalism and Practice Management Issues in
Administrative Law 2021**

***Dealing with Compassion Fatigue and Mental Health
Issues***

**Françoise Mathieu, M.Ed., CCC. RP.
Executive Director
Tend Academy Ltd.
www.tendacademy.ca**

&

**Jacqueline Swaisland
Partner
Landings LLP
www.landingslaw.com**

The Mental Health Continuum

Originally developed by the Canadian Department of National Defence



Adapted from: Watson, P., Gist, R., Taylor, V. Evlander, E., Leto, F., Martin, R., Vaught, D., Nash, W.P., Westphal, R., & Litz, B. (2013). Stress First Aid for Firefighters and Emergency Services Personnel. National Fallen Firefighters Foundation.

Assessing Contributing Factors

This Venn diagram presents the wide range of factors that can lead to a professional experiencing greater rates of stress and distress which can, over time, contribute to someone developing compassion fatigue and related symptoms.

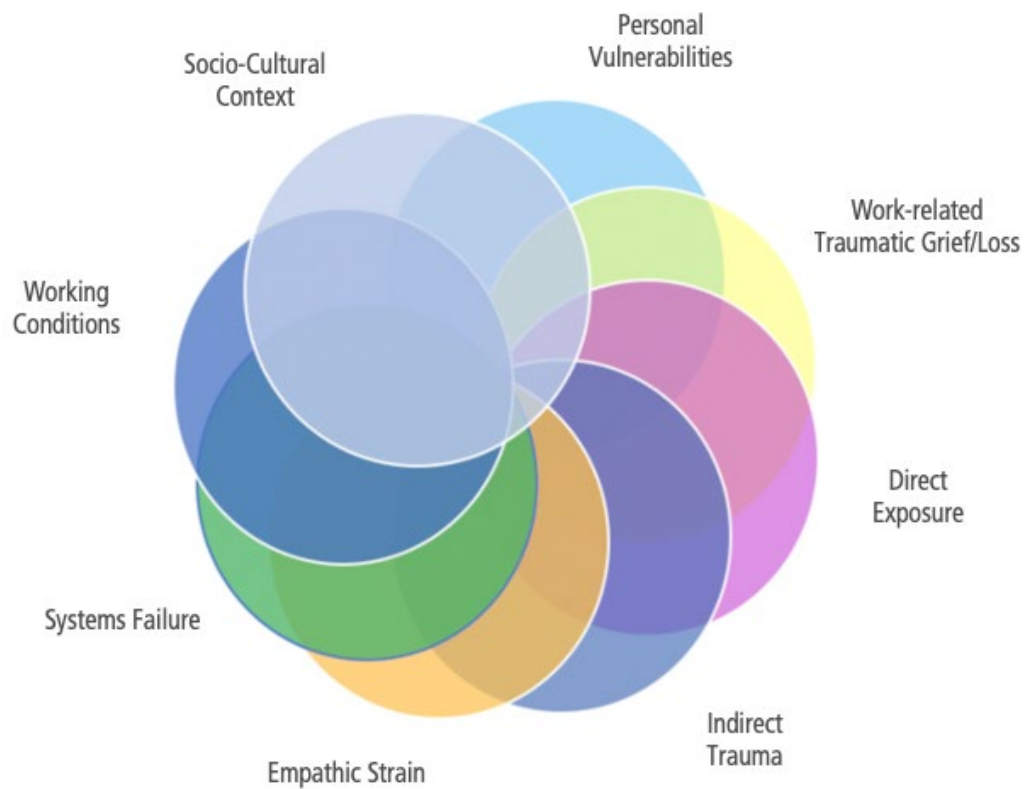


Image courtesy of Dr. Leslie Anne Ross, UCLA

Personal Vulnerabilities

The individual's current life circumstance, their personal history, coping style and personality characteristics all affect how they are impacted by the work. In addition to working in a challenging profession, most helping professionals have other life stressors to deal with. Many are in the "sandwich generation" meaning that they take care of both young children and aging parents. Helpers are not immune to pain in their own lives and in fact some studies show that they are more vulnerable to life changes such as divorce and difficulties such as addictions than people who do less stressful work.

Work related traumatic grief and loss

Traumatic events in the workplace (death of a child or a colleague, critical incident and other distressing situations), loss of a colleague through retirement or other career changes, loss of a beloved leader, school closure, funding cuts, etc.

Direct exposure

Direct exposure refers to traumatic events that happens directly to the individual in question. In the context of helping professionals, there are two kinds of direct exposures, also called "primary trauma":

Primary Trauma from personal life

History of childhood abuse, High ACES score, having escaped a war-torn country, a traumatic loss in their personal life, surviving a motor vehicle accident, etc. Research shows that over sixty percent of helping professionals have a trauma history of their own, which may be why they chose this field of work (to make a difference, to give back, to share their learnings with others.) That, in and of itself is not a problem. The challenge arises when helpers go into the field without having done their own trauma work and are not aware of the ways in which their trauma history negatively impacts the work they do. It can also make us more vulnerable to developing vicarious trauma when bearing witness to our clients' pain and suffering.

Primary trauma caused by work related exposure

This type of primary trauma exposure occurs in the line of duty: working as a firefighter, a search and rescue operator, being a first responder to an accident or a crime scene, being involved in a lock-down or negotiating a hostage taking, working in a war-torn country in unsafe conditions. What makes it *primary* is that it is happening *to* you. During this traumatic situation, you are potentially in harm's way and/or you are overwhelmed by the horror/terror of the situation.

Indirect Trauma

Secondary or Vicarious trauma is caused by an indirect exposure to trauma: you are not in actual danger, you are not at the scene of the traumatic event seeing first-hand the results of a shooting rampage or an accident. Instead, those stories are described to you verbally, in writing or through audio or video recordings. Secondary traumatic exposure can happen through counselling a client who is retelling a story of abuse, reading case files, debriefing a colleague or a client, sitting in court and hearing graphic testimonies or watching a disturbing movie or traumatic news footage. Many first

responders such as firefighters and paramedics are at risk of developing primary trauma in addition to the secondary trauma they are exposed to in the line of duty.

Empathic Strain

Empathic Strain, formerly known as Compassion Fatigue, refers to the profound emotional and physical exhaustion that helping professionals and caregivers can develop over the course of their career as helpers. It is a gradual erosion of all the things that keep us connected to others in our caregiver role: our empathy, our hope - not only for others but also for ourselves. When we are suffering from empathic strain, we start seeing changes in our personal and professional lives: we can become dispirited and increasingly bitter at work, we may contribute to a toxic work environment, we are more prone to work errors, we may violate confidentiality and lose a respectful stance towards our students and colleagues. We become short-tempered with our loved ones and feel constant guilt or resentment at the never-ending demands on our personal time.

Systems failure

Grappling with roadblocks in the systems that we work with. Feeling angry and/or frustrated about a lack of resources, disagreeing about someone's eligibility for a service, there are many examples of systems failure. One result of facing these numerous challenges is moral distress. Moral distress occurs when we are told to do things that we fundamentally disagree with or are morally opposed to. When our values conflict with what is required by law or other rules and regulations.

Working Conditions

Working conditions are profoundly affected by our workplace relationships, sense of trust, quality of communication, perceptions of fairness, workload, who we directly report to, overall workplace climate, rewards, recognitions and many other factors.

Socio-cultural Context

The socio-cultural context of the community, state or country that we live in can profoundly impact our daily levels of stress. Being a member of a minority group and having to navigate discrimination or safety concerns on our way to and from work and even in the workplace. The current political climate, media, being exposed to cyber bullying etc.

Source: TEND ACADEMY LTD.

Tips to Help Legal Practitioners Manage Covid Stress

- **Set realistic boundaries** – The world is different and your professional capacity probably is too. Take an honest inventory of what your current personal capacity is given the stresses of the pandemic and how your personal circumstances have been affected by it. Then set realistic boundaries based on that assessment recognizing that this is not forever, but is needed right now. This may mean reducing your billing target, pro bono activities or setting more realistic short term goals to ensure that your work is not compounding the negative mental health impacts of the pandemic. One strategy to help with this is to have a referral list available of lawyers that you trust that you can refer clients to when you are not able to take them. The benefit is that they can refer back once you have more capacity down the road.
- **Take breaks** – It seems trite but burn out is at an all-time high right now. Taking regular breaks, whether it's to get outside for a walk, turn your cell phone off for a few hours in the evening, or head away for the weekend to a cottage, can help to offset your daily stressors.
- **Talk about it** - Find a mentor or colleague who you can be open with about how you are doing. It's helpful to be able to commiserate with others also trying to juggle a legal practice during the pandemic so that you don't feel as alone. It's an added bonus if you can find somebody who can help you find humour in difficult situations. Laughter *is* often the best medicine.
- **Refer clients to other professionals** – In many cases you may be dealing with clients who themselves are suffering from additional mental health issues brought on or exacerbated by the pandemic. Don't take those issues on as your own and try to avoid playing the role of counselor and confidant as well as their lawyer. Instead, put together a referral list of psychologists and other practitioners who specialize in mental wellness and are willing to do so cheaply if needed so that you can refer your clients to them. This way you are able to focus more on the law and less on attending to your client's psychological and physical needs which you are likely neither equipped, nor being paid, to do.
- **Unplug** – Being bombarded by media stories about the pandemic and other troubling world events can become overwhelming. Try replacing these activities with uplifting or humorous television, exercise, or speaking with friends. If listening to the news is a must for you, try reading it instead of watching the images live on television.
- **Make use of available resources** – there are a lot of resources available to help you manage through the Covid 19 pandemic. Now's a great time to start seeing a counsellor to do regular check ins or to get a wellness coach to help keep you on track with some of your nutrition and exercise goals that can help you deal with pandemic stresses. Check out our resource list below for some great places to start.

Resources

Law Society Member Assistance Program for Lawyers and Paralegals:

<https://homeweb.ca/map>

The Law Society offers a variety of **free** services that you can use to get yourself back on track through its Member Assistance Program. For example, there is a free counselling programs (via phone, video or in person) nutritional advice, financial counselling, and other “plan smart” programs that can help you address other areas of your life (such as parenting) that the Covid 19 pandemic may have adversely affected. There is also a coaching program which partners you with a life coach to help you reach a particular goal and could be very effective at helping you set up positive and healthy strategies for dealing with the Covid 19 pandemic.

Ontario Bar Association Wellness Resources

https://www.oba.org/2020_COVID_19/Lawyer-Wellness
<https://www.oba.org/openingremarks/Mental-Health-Briefs>

TEND Covid-19 resources

<https://www.tendacademy.ca/covid19/>

Secondary Traumatic Stress

Miller, B. (2021) *Reducing Secondary Traumatic Stress: Skills for Sustaining a Career in the Helping Professions*, Routledge.

Resilience

Fisher, P. (2016). *Resilience, Balance & Meaning Workbook*. Victoria, BC: Fisher & Associates Solutions Inc.

Hanley Dafoe, R. (2020) *Resilience in Uncertain Times*: https://robynehd.ca/wp-content/uploads/2020/07/RHD_ResilienceInUncertainTimes_June2020.pdf

Burnout

Moss, J. (2021) *The Burnout Epidemic: The Rise of Chronic Stress and How We Can Fix It*, Harvard Business Review Press.

Alcohol/Sobriety

Grace, A. *This Naked Mind: Control Alcohol*: <https://thisnakedmind.com>

Rick Hanson Covid Webinar

Life after covid summit- Rick Hanson: <https://www.rickhanson.net/life-after-covid-free-online-summit/>

Compassion

Trzeciak, S., Mazzairelli, A. (2019) *Compassionomics: The Revolutionary Scientific Evidence that Caring Makes a Difference*, Pensacola: Studer Group.

Gallo, A. (2021) Managers: Compassion and Accountability aren't Mutually Exclusive: *Harvard Business Review*. <https://hbr.org/2021/08/managers-compassion-and-accountability-arent-mutually-exclusive>

Comparative Suffering

Brown, B. (Host). (2020, March 27). Brené on Comparative Suffering, the 50/50 Myth, and Settling the Ball. [Audio podcast episode]. In *Unlocking Us with Brené Brown*. Cadence13. <https://brenebrown.com/podcast/brene-on-comparative-suffering-the-50-50-myth-and-settling-the-ball/>

Why essential workers are quitting:

The Daily podcast: <https://www.nytimes.com/2021/08/03/podcasts/the-daily/coronavirus-hiring-job-vacancies-hospitality-industry.html>

This American Life podcast: <https://www.thisamericanlife.org/744/essential>

Moral Distress:

Mathieu, F., & McLean, L., (2014) Managing Compassion Fatigue, Moral Distress and Burnout in a context of patient-centered care in Walton, M., Barnsteiner, J., & Disch, J. (eds) *Patient/Family Centered Care – Patient and Care Provider Considerations*, Sigma Theta Tau International.

The Hastings Center: <https://www.thehastingscenter.org/ethics-resources-on-the-coronavirus/>

Schwartz Rounds: <https://www.theschwartzcenter.org>

Workplace Strategies for Mental Health:

<https://wsmh-cms.mediresource.com/wsmh/assets/4grdpctj6igw48w8>



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TAB 3

Professionalism and Practice Management Issues in Administrative Law 2021

Who is your Client?
Fact Patterns

Danielle Bisnar
Cavaluzzo LLP

Eli Mogil
McCarthy Tétrault LLP

October 1, 2021



Who is your Client?

Fact Patterns

Danielle Bisnar, Cavaluzzo LLP

Eli Mogil, McCarthy Tétrault LLP

A. Professional Discipline - Defence

You are defence counsel in a College of Nurses hearing. You are retained through their union insurance plan to represent three nurses. Nurse A is alleged to have sexually abused a patient during a procedure when only Nurse A and the patient were in the room. Nurse B is alleged to have failed to escalate the patient's concerns when reported to her by the patient the next day. Nurse C is a Charge Nurse who is alleged to have failed to complete an incident report and follow up appropriately with the patient and Hospital management when she became aware of the concerns from Nurse B. Each of the nurses has a parallel grievance proceeding regarding discipline/termination by their employer.

B. Professional Discipline -- Prosecutor

Scenario: 14 year old student allegedly verbally abused at school by a teacher. 3 parallel proceedings: 1. Employment (Board). 2. Regulatory (College) 3. Private (Civil)

You are prosecutor at regulatory College. Stakeholders include: student victim, parents, Board and School administration (principals and superintendents), other students/witnesses, the public.

1. Parents raise issue of what the penalty would be if found guilty of misconduct? Insistent that "this teacher should never be able to work anywhere ever", wants certain documents be made exhibits for "future use"
2. Victim raises issue that his parents are "making this a bigger deal than it really is"
3. School administrators worried about "how this looks on them" and reluctant to testify
4. The local newspaper is interested and wants to discuss the "approach to the prosecution" as the "public has a right to know"

C. Union Grievance

You are retained by a union in a grievance arbitration. The grievor was terminated their employer for allegedly harassing co-workers and grieves that her termination is without just cause and a result of racial discrimination by management and co-workers. The co-workers have also filed grievances against the employer with respect to the grievor's alleged harassment. All prep meetings and hearing days are attended by: the grievor; a union staff representative; a union local president; the grievor; the grievor's spouse.