



## **Notes and examples to accompany the NZLLA Principles of Professional Conduct**

### **Service**

*The principles in this section focus on legal information professionals' service to their clients.*

#### Principle 1

Note: This is a high-level principle. Legal information professionals should make every effort to promote the ideal of open access for the public with relevant government agencies, both individually and through their professional association, the New Zealand Law Librarians' Association. However, since much legal information is held in libraries that are privately owned and not open to the public, there will always be constraints upon a legal information professional's ability to embody the ideal in their own practice. These constraints should be kept to the minimum necessary to comply with realistic employment requirements.

#### Principle 2

Note: Since a great deal of legal information is held in private institutions, and very little is available through public libraries, there will always be pressure on law society libraries and university law libraries, in particular, to provide legal information to the public. However, these libraries are funded for specific purposes, namely, to answer the needs of the legal profession, and to supply legal information to the university community. Legal information professionals may also be prevented from offering the legal information service requested because they cannot lawfully offer legal advice, and this may be what the request amounts to.

Example: Database licence agreements usually specify that access is restricted to a specific user group, such as students and staff of a university, or the staff of a law firm. Therefore a request from someone outside this group for access to a database must be declined, and attempt to gain unauthorised access must be prevented.

Example: Some libraries have to limit access to parts of their collection (such as short term loan in an academic library) because they are not resourced to provide a full service to people who are not members of their organisation.

### Principle 3

Note: on the whole, this principle is self-explanatory. However, there are some occasions when the application of the principle may not be apparent.

Example: Legal information professionals may find themselves occasionally receiving research requests from both sides of a case or transaction (particularly in a district law society or academic library environment). It is imperative that any request is dealt with individually and that no mention of content or methodology is made to any other client requesting research, particularly if on a similar topic. Commenting that another client had just asked for the same information could be a serious breach of confidentiality.

### Principle 4

Note: Legal information professionals have a duty to inform clients and users of the currency, likely accuracy and scope of the information resources being used, so that any limitations of these resources are made clear – including whether there are alternative or better sources for certain types of information. Ability to provide service may also be limited by the extent of the information professional's own skills or knowledge; it is equally essential that information users are made aware of any such limitation if it is likely to affect the quality of service provided.

### Principle 5

Note: Formats and sources of legal information are constantly changing. The legal information professional's role is to help clients keep pace with these developments and to assist them to acquire any necessary new skills.

### Principle 6

Note: Giving any assistance which could amount to legal advice could render the legal information professional liable under the Lawyers and Conveyancers Act 2006. Sometimes the line between responding to a request for information and offering legal advice is hard to discern. Frequently the client may be unaware that their request is not in fact a request for information, but rather, a request that the legal information professional interpret the law – which amounts to offering legal advice.

The following types of instructions amount to a request for legal advice and should be declined:

- A request for a legal opinion. Legal information professionals provide access to commentary but do not write it themselves.

- A request that the legal information professional paraphrase or restate the law – for example “off the top of your head, how many directors does a company need? Legal information professionals must direct clients to primary sources for statements of the law.
- Queries such as: ‘what does this section actually mean?’ or “what is the leading case on section 9 of the Fair Trading Act?”

Note: Sometimes the instructions given by the client are inadequate, and there may be a temptation to ‘second guess’ the ‘real’ questions. This should be avoided as a covert form of interpretation. Legal information professionals must ensure that their clients’ instructions are clear and precise and should ask for clarification and further instructions where necessary. Although legal information professionals may offer alternative search suggestions on the basis of their knowledge of sources, ultimate responsibility for direction of the search must always rest with the client.

Examples:

- The client provides a fact scenario and their instructions are limited to “provide all relevant legal information”.
- The original instructions prove to require clarification and the client declines to offer further instructions.

These are situations in which a legal information professional has insufficient information to proceed with research.

## **Business Relationships**

*The principles in this section focus primarily on the relationship between legal information professionals and their institution.*

### Principle 7

Example: Legal information professionals in the private sector should discourage student employees of their law firm or institution from using university databases for the work of the law firm or institution.

Example: Legal information professionals should not obtain or attempt to obtain information by devious or dishonest means. For example, Firm X has a journal article which is not held by any other library in New Zealand. Jill’s formal request for a copy of the article is declined by Firm X for “commercial reasons”. Jill’s neighbour is a secretary at Firm X. It would be inappropriate for Jill to ask her neighbour to send a copy of the article.

### Principle 8

Note: Legal information professionals should put the needs of their institution first and not allow their own interests to compromise their professional actions.

Example: A personal prejudice against a particular publisher should not stop the purchase of a resource which would be valuable to the institution.

Example: The purchasing decisions made by Legal information professionals must not be influenced, nor appear to be influenced by the acceptance of gifts. Accordingly, the practice of some publishers of giving gifts creates difficulties and is to be discouraged.

### Principle 9

Note: In purchasing and using resources, legal information professionals make prudent and informed decisions based on their professional expertise.

Example: Clients who give research instructions to a legal information professional may specify a maximum amount of time to be spent or fees to be charged for the research. If it is clear at the outset that the time or fee limit is too low to allow the legal information professional to perform the research adequately, the client should be presented with options for undertaking the request and a clear understanding of the limitations of each option. If the time or fee limit is reached and it is clear that further research will be required to achieve a satisfactory result, the legal information professional must contact the client with further options for achieving the required outcome and seek further instruction.

Note: Legal information professionals should strive to stay within their resource purchasing budget. They have a duty to point out inadequacies in budgetary allocations or policies to the management of their institution and should advise of the possible business ramifications of those inadequacies.

## **Professional Responsibilities**

*The principles in this section focus on the relations between legal information professionals and between the legal information professional and his or her professional organisation.*

### Principle 10

Example: Robust debate among the legal information professionals is valuable for the development of the profession and its work. However, particularly in public fora such as email lists, legal information professionals should always treat colleagues with respect and refrain from personal criticism.

### Principle 11

Example: Legal information professionals have a duty to raise clients' awareness of copyright law.

#### Principle 12

Note: Some legal issues (for example: abortion, rape, health issues, environmental issues) may raise strong opinions or feelings but these must not cloud the legal information professional's judgement in assisting clients who are defending a view that some find repugnant.

#### Principle 13

This principle is self-explanatory.

#### Principle 14

Note: Legal information professionals need to be vigilant regarding information in vulnerable formats which may become inaccessible through degradation of the medium and should advocate for its preservation and/or onward migration.

## **Legal Responsibilities**

*The principle in this section focuses on legal information professionals and the law.*

### Principle 15

Examples of statutes which may apply include (but are not limited to):

- Copyright Act 1994
- Employment Relations Act 2000
- Incorporated Societies Act 1908
- Lawyers and Conveyancers Act 2006
- Privacy Act 1993