# Law and ethics – video transcript

Hi and happy Law Week.

My name is Jonathan Smithers and I am the head of the legal practices at weekend.

We're celebrating 25 years of VCAT. Boy time flies. Before VCAT, in terms of legal regulation, we had the Legal Profession Tribunal, along with many other tribunals and boards. It was incorporated into Victoria's new super tribunal, VCAT.

Victoria was, of course, the first Australian jurisdiction to create a super tribunal or CAT (civil and administrative tribunal), and of course, virtually all the other states and territories ultimately followed suit and created their own CATs.

So we had in NCAT, QCAT and so on.

The strengths of having a super tribunal are obviously greater administrative efficiency, but I think most importantly that we have a cohesive framework which promotes consistency and fairness in decision making.

While the range of disciplines covered by VCAT is incredibly broad, the fundamental principles of civil and administrative decision making are the same:

* natural justice evidence
* broad based decision making
* and genuine accessibility for ordinary citizens.

Now I understand that in addition to ordinary citizens and members of the legal profession, a big part of the audience for Law Week presentations such as this is law students.

So I thought I would say a few things from the point of view of the Legal Practice List relating to the conduct and the mindset that you will be required to bring to your work. Particularly if you practise as a barrister or a solicitor or in the corporate government or community sector, as a legal practitioner. These comments are informed by our experience in handling disciplinary cases brought to VCAT by the Victorian Legal Services Commissioner, which usually involve an alleged breach by a lawyer of their ethical duties, or as the Legal Profession Uniform law says, a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence.

But what follows is not a comprehensive list, just a couple of points which I think are useful to make from the point of view of the Legal Practice List, being the list within VCAT which handles alleged disciplinary breaches by lawyers.

First remember, from the moment you're admitted to practice as a lawyer, and as soon as all the pictures with your proud parents and family have been taken outside the Supreme Court, your primary duty is to the court and to our system of justice.

You are what is known as an officer of the court.

Your primary duty is to the court, and that overrides your duty to your client, even though they're the ones paying your fees.

This applies to all work done by lawyers, not just work associated with court hearings.

Never mislead a court or any other party with whom you have dealings as a practitioner. For example, in correspondence or in swearing an affidavit or in preparing one for you for your client or for a witness to swear.

Never give an undertaking unless you're sure you can carry it through. So don't give one for example, where it depends on the independent actions of another person who you can't control. To use the old fashioned expression, a lawyer's word is their bond.

You see, our system of justice depends on other practitioners being able to depend on your word, the word you give as a fellow practitioner.

Finally, a big part of our jurisdiction is, not surprisingly, that concerning costs charged by lawyers.

You have an ethical duty not to overcharge or gouge.

Many disputes arise from poor communication from lawyers not being prepared to do the hard work – and it is hard work – of making a genuine and honest attempt to estimate what the matter will cost in various scenarios. Whether it's litigation, family law matter, a commercial law matter, whatever.

After all, knowledge of what the legal costs of various options will be is fundamental to the client's ability to make informed, strategic decisions about their matters.

In summary the practice of law can be very satisfying.

But as you go. Please constantly keep in mind the ethical duties which come with the privilege of being admitted to practice as a legal practitioner in Victoria.

[On screen: Thanks for watching!]