# ETHICAL ISSUES FOR LAWYERS -- AS SEEN THROUGH THE CAMERA LENSE

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Special thanks to Stuart Gordon, Student-at-law, Boghosian + Allen LLP, for sourcing the videos used in, and substantially compiling, this Powerpoint presentation.



# Inadvertent Communications & Courtesy and Good Faith

- **7.2-10** A lawyer who receives **a document** relating to the representation of the lawyer's client and knows or reasonably ought to know that the document was inadvertently sent shall promptly notify the sender.
- [1] Lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or legal practitioners acting for them. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this rule requires the lawyer to notify the sender promptly in order to permit that person to take protective measures.
- For purposes of this rule, includes email or other electronic modes of **"document"** transmission subject to being read or put into readable form.

- 7.2-2 A lawyer shall avoid sharp practice and shall not take advantage of or act without fair warning upon slips, irregularities, or mistakes on the part of other legal practitioners not going to the merits or involving the sacrifice of a client's rights.





# Set-up for the following clip

- The Cross-examining lawyer is named Elsbeth
- She may appear flighty and absent-minded, but she has a keen legal mind.
- She sometimes sees animated images of certain animals and objects. These animated images distract her, especially while trying to examine a witness or make an objection.
- Alicia, the seated lawyer, is aware that Elsbeth is easily distracted due to their past relationship.





# Advocacy

- **5.1-2** When acting as an advocate, a lawyer shall not
- e) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed, or otherwise assisting in any fraud, crime, or illegal conduct,





# Encouraging Compromise or Settlement

- **3.2-4** A lawyer shall advise and encourage the client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and shall discourage the client from commencing or continuing useless legal proceedings.
- [1.2] When the complainant or potential complainant is **unrepresented**, the lawyer should have regard to the rules respecting unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused. If the complainant or potential complainant is vulnerable, the lawyer should take care not to take unfair or improper advantage of the circumstances. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.







# Dishonesty, Fraud, etc. by Client or Others

- **3.2-7** A lawyer shall not
- (a) knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct;
- (b) do or omit to do anything that the lawyer ought to know assists in, encourages or facilitates any dishonesty, fraud, crime, or illegal conduct by a client or any other person; or
- (c) advise a client or any other person on how to violate the law and avoid punishment.


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## Confidential Information

- **3.3-1** A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and shall not divulge any such information unless
- (a) expressly or impliedly authorized by the client;
- (b) required by law or by order of a tribunal of competent jurisdiction to do so;
- (c) required to provide the information to the Law Society; or
- (d) otherwise permitted by rules 3.3-2 to 3.3-6.

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## Threatening Penal or Regulatory Proceedings

- **3.2-5** A lawyer shall not, in an attempt to gain a benefit for a client, threaten, or advise a client to threaten, without reasonable and lawful justification:
- (a) to initiate or proceed with a charge for an offence, including an offence under
- (i) the *Criminal Code* or any other statute of Canada;
- (ii) a statute of a province or territory of Canada; or
- (iii) a municipal by-law; or
- (b) to make a complaint to a regulatory authority.


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# Duty to Avoid Conflicts of Interest

- **3.4-1** A lawyer shall not act or continue to act for a client where there is a conflict of interest, except as permitted under the rules in this Section.
- [4] A lawyer's own interests can impair client representation and loyalty. This can be reasonably obvious, for example, where a lawyer is asked to advise the client in respect of a matter in which the lawyer, the lawyer's partner or associate or a **family member** has a material direct or indirect financial interest. But other situations may not be so obvious. For example, the judgment of a lawyer who has a close personal relationship, sexual or otherwise, with a client who is in a family law dispute is likely to be compromised.

# Set-up for the following clip

- The lawyer in the clip is also the lawyer representing the Byrdes, and the drug cartel for whom they are working





# Set-up for the following clip

- The company Greg works for, Waystar, is experiencing legal troubles.  Greg is potentially implicated in these troubles.

- Waystar, to ensure consistency in the narrative it presents to law enforcement, sends a lawyer to Greg's apartment.





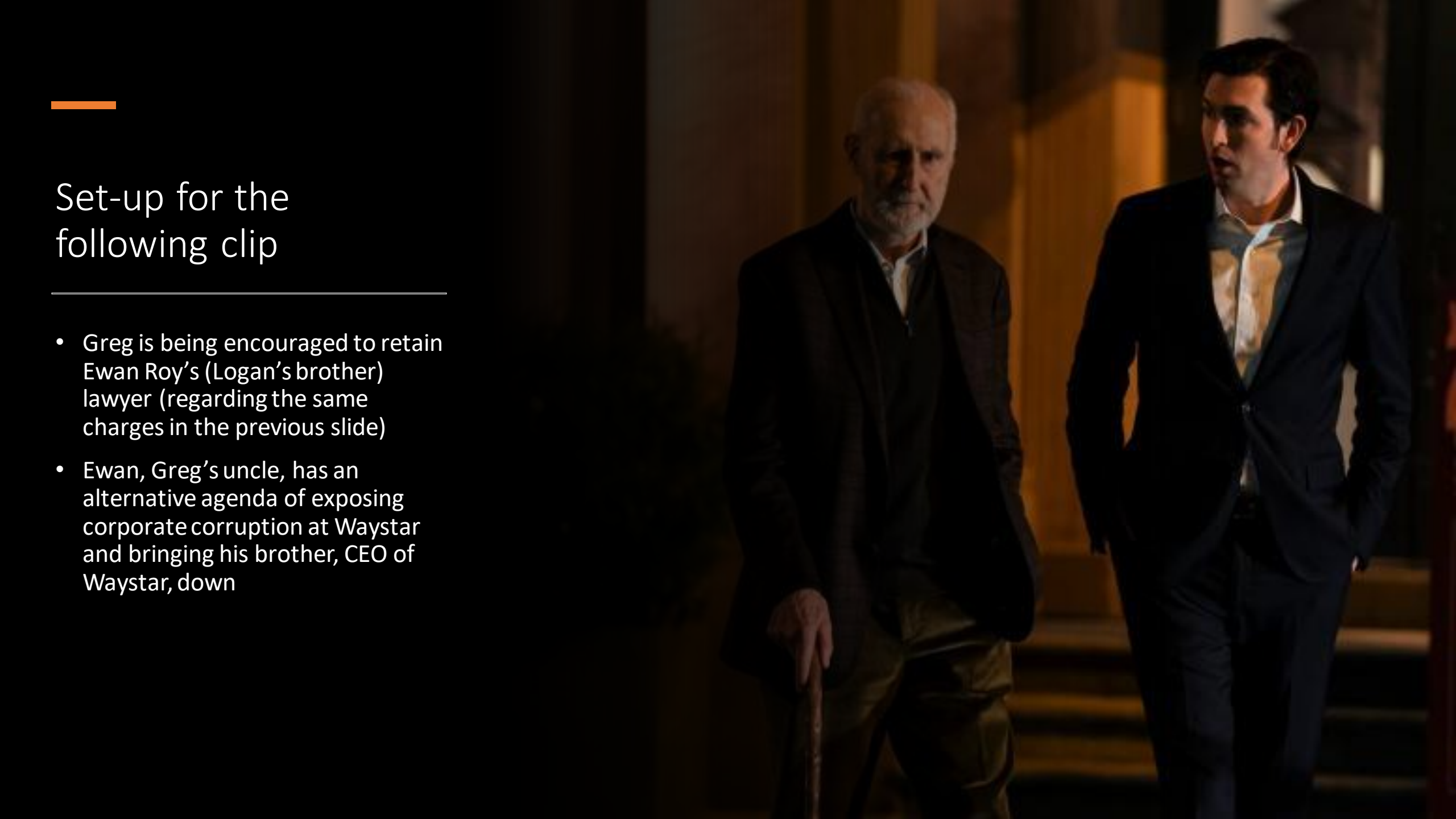


# When Client an Organization

- **3.2-3** Notwithstanding that the instructions may be received from an officer, employee, agent or representative, when a lawyer is employed or retained by an organization, including a corporation, in exercising the lawyer's duties and in providing professional services, the lawyer shall act for the organization.

# Set-up for the following clip

- Greg is being encouraged to retain Ewan Roy's (Logan's brother) lawyer (regarding the same charges in the previous slide)
- Ewan, Greg's uncle, has an alternative agenda of exposing corporate corruption at Waystar and bringing his brother, CEO of Waystar, down

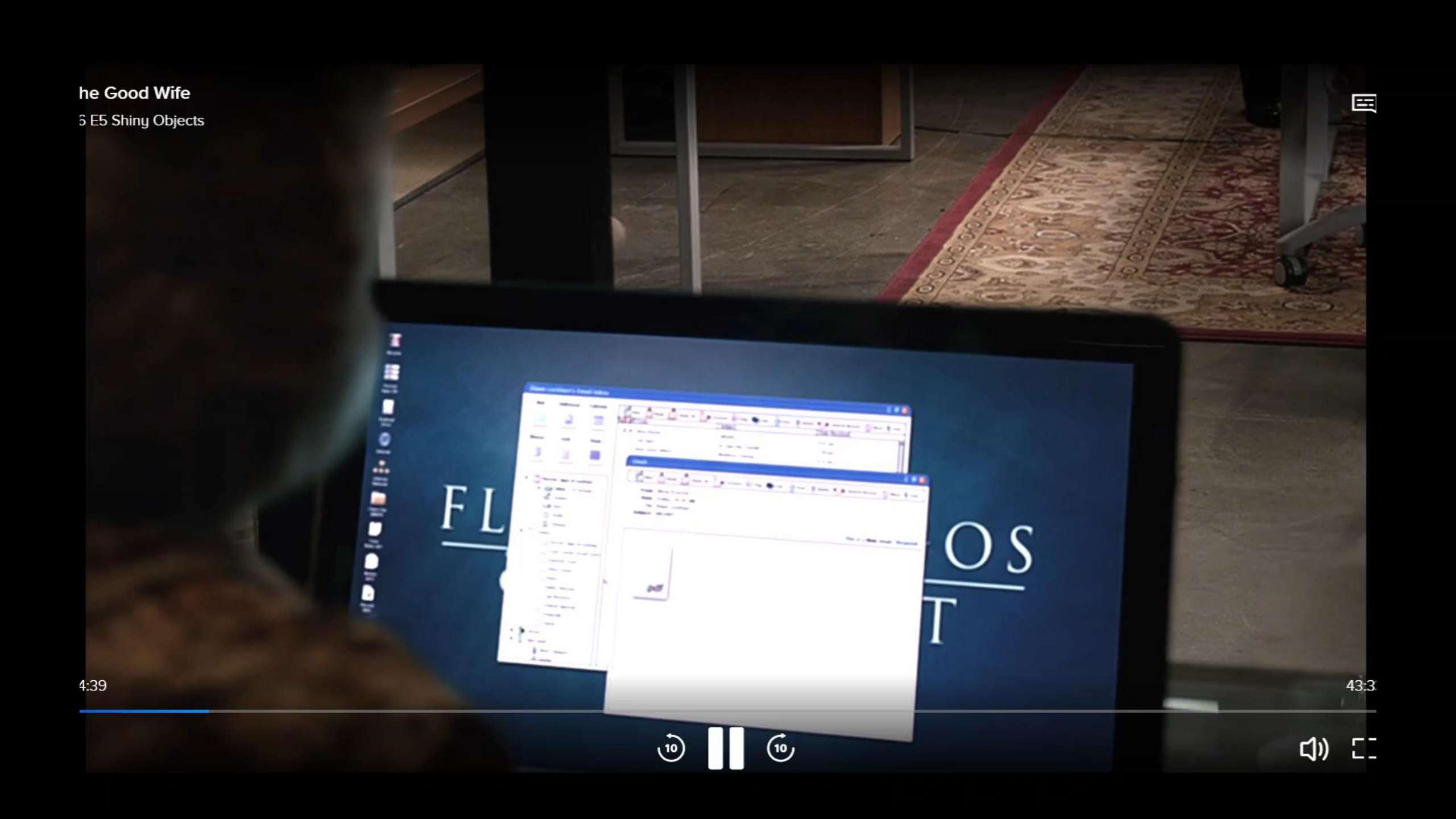






# Who is my client?

- Even when it is apparent what organization, individual, or group of individuals is the client, situations may arise during the retainer that create confusion as to who has proper authority to provide the lawyer with instructions on the client's matter.


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6 E5 Shiny Objects
4:39
43:3
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# *PIPEDA* & Competency

- Should a lawyer whose practice is subject to PIPEDA experience a data breach, the Commissioner recommends the lawyer immediately follow the following four steps:
- (1) Contain the breach and conduct a preliminary assessment.
- (2) Evaluate the risks associated with the breach, including consideration of the personal information involved, the cause and extent of the breach, how many individuals are affected, and the likelihood and type of harm that could occur.
- (3) Consider whether and how to notify any or all of the following: the affected individuals or clients, the Commissioner, the police, insurers, the Law Society, or others.
- (4) Prevent future breaches by learning from the incident and conducting any audit or other investigation that may be needed to address any systemic issues that resulted in the breach.

- 3.1-2 A lawyer shall perform any legal services undertaken on a client's behalf to the standard of a competent lawyer.
- [4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

# Questions?

