

CODE INDEX

*** * * * ***

	<u><i>Page Number</i></u>
<i>PREAMBLE</i> -----	1
<i>LAWYER & CLIENT</i> -----	2
<i>LAWYER & LAWYER</i> -----	7
<i>LAWYER & THE COURTS</i> -----	8
<i>LAWYER & THE LAW SOCIETY</i> -----	10
<i>LAWYERS GENERALLY</i> -----	11

YUKON CODE OF PROFESSIONAL CONDUCT

LAW SOCIETY OF YUKON

Pursuant to s.6(8) the Code of Conduct of the Canadian Bar Association (August 25, 1974) is the Code of Professional Ethics and Conduct to be followed by its members.

PREAMBLE

The legal profession has developed over the centuries to meet a public need for legal services on a professional basis, that is to say, the provision of advice and representation respecting the protection or advancement of the rights, liberties, and property of a person by a trusted adviser with whom such person has a personal relationship and whose integrity, competence and loyalty are assured.

In order adequately to meet this need for legal services, lawyers and the quality of the service they provide must command the confidence and respect of the public, and that can only be achieved by their establishing and maintaining a reputation for integrity, competence and for high standards of legal skill and care.

In fulfilling their professional responsibilities lawyers must necessarily assume various roles that require the performance of many difficult tasks. Not every situation which lawyers may encounter can be foreseen, but the fundamental ethical principles are set out in this Code as a guide and to provide a framework within which lawyers must with courage and ability undertake to provide the legal services which an ever changing and complex society requires.

Although each lawyer must decide the extent to which his or her conduct should rise above the minimum standards, the desire for the respect and confidence of the members of The Law Society and the public which lawyers serve should motivate a lawyer to maintain the highest possible degree of ethical conduct.

The standards of professional conduct of lawyers represent the greatest strength of the legal profession; it must not and will not permit any compromise of those standards.

The Code of Professional Conduct, which follows, can only be understood and applied in the light of its primary concern for the protection of the public interest. Inevitably the practical application of the Code's complex provisions to the diverse situations confronted by an active profession in a changing society will reveal gaps, ambiguities and apparent inconsistencies. The principle of protection of the public interest will serve to guide the reader to the true intent of the Code.

PART ONE

LAWYER AND CLIENT

1. The lawyer owes a duty to the client to be competent to perform the legal services, which are undertaken on behalf of the client.

2. The lawyer should obtain full knowledge of the client's cause before advising thereon and should give a candid opinion of the merits and practicable results of pending or contemplated litigation. The lawyer should be aware of bold and confident assurances especially when his or her employment may depend on such assurances. The lawyer should be aware that seldom are the law and the facts totally on one side and that audi alterum partem is a safe rule to follow.

3. The lawyer has a duty to hold in strict confidence all information acquired in the course of his or her professional relationship concerning a client's business and affairs. It is a lawyer's duty to insist upon the privilege that extends to all communications by a client to the lawyer for the purpose of obtaining professional advice or assistance. The privilege is that of the client and can only be waived by the client. Unless and until waived, it lasts forever and is not suspended by either the end of proceedings or the termination of the lawyer's retainer.

4. No lawyers shall unreasonably fail to answer communications from his or her client. Inattention to communications from clients tends to create dissatisfaction and friction as well as suspicion and is thereby apt to bring the whole profession into disrepute.

5. The lawyer must not advise or represent both sides of a dispute and, save after adequate disclosure to and with the consent of the client or prospective client concerned, he or she should not act or continue to act in a matter when there is or there is likely to be a conflicting interest. A conflicting interest is one which would be likely to affect adversely the judgment of the lawyer on behalf of or his or her loyalty to a client or prospective client or which the lawyer might be prompted to prefer to the interests of a client or prospective client.

6. A lawyer is required to guard the confidence of his or her client and to devote all of his or her skill and diligence to the client's interest. Consequently, once having acted for a client, the lawyer should not act against the client in the same matter.

7. The lawyer owes a duty to the client to observe all relevant rules and laws regarding the preservation and safekeeping of the client's property when it is entrusted to the lawyer. The lawyer should take the same care of the property as a careful and prudent person would take care of his or her own property of like description.

8. A lawyer should strive to avoid acting for both a vendor and a purchaser in a conveyancing transaction. The lawyer shall recommend independent representation.

Having given such recommendation, if a solicitor is prepared to act for both the vendor and the purchaser, the solicitor shall:

- a) inform each that he or she has been asked to act for both that no information received in connection with the matter from one can be treated as confidential so far as the other is concerned, and that if a conflict develops which cannot be resolved, he or she cannot continue to act for either;
- b) if either the vendor or the purchaser is a person with whom the lawyer has a continuing relationship or for whom he or she acts regularly, this fact should be revealed to the other;
- c) obtain the consent in writing of the vendor and the purchaser;
- d) raise all issues which may be of importance to the vendor and the purchaser and explain the legal effect of these issues to both parties.

Where the transaction is a simple conveyance coupled with a mortgage for an institution such as a bank, trust company, life insurance company, or a credit union, the lawyer may act for the purchaser or the vendor and the purchaser's mortgage until and unless an actual conflict arises. However, if a solicitor acts for the purchaser and the purchaser's mortgage, then the solicitor shall not act in any foreclosure proceeding which arises in relation to that transaction.

8A. In all real estate transactions in the Yukon Territory the following undertaking will be implied unless expressly disclaimed in writing:

- a) with respect to receiving the executed Transfer of Land from the vendor's solicitor, the purchaser's solicitor will be deemed to have undertaken to the vendor's solicitor:

- i) not to make use of the Transfer of Land unless and until he/she has sufficient funds in his/her trust account to pay out in accordance with the vendor's Statement of Adjustment;
 - ii) when the purchaser's solicitor has sufficient funds aforesaid in his/her trust account to forthwith file the Transfer of Land for registration in the Land Titles Office for the Yukon Land Registration District;
 - iii) upon completion of registration to pay out in accordance with the vendor's Statement of Adjustments; and,
 - iv) prior to registration of the Transfer to return to the vendor's solicitor, unregistered, the Transfer of Land and vendor's Statement of Adjustments forthwith upon request.
- b) with respect to discharging the vendor's mortgage, the purchaser's solicitor will be deemed to have undertaken to the vendor's solicitor:
- i) to deliver the cheque and covering letter to the mortgagee forthwith after closing;
 - ii) to pay any interest or other charges payable to the mortgagee by reasons of any delay in delivery of the discharge funds; and,
 - iii) to make every reasonable effort to obtain and register a proper form of discharge of the mortgage as soon as possible after closing.

The vendor's solicitor will be deemed to have undertaken to deliver to the purchaser's solicitor the undertaking of the vendor to provide any additional funds required to obtain the mortgage discharge by reason of any error, omission or other change in the mortgage statement, apart from those attributable to delay by the purchaser's solicitor.

- c) where one lawyer is acting for both vendor and purchaser she or he will be deemed to have given the appropriate implied undertakings directly to the vendor and/or purchaser.

9. No lawyer shall enter into an arrangement with any other person or corporation which involves that person or corporation directing clients to the lawyer in return for a portion of the fee paid by the client to the lawyer or in return for any other financial or other reward, direct or indirect.

10. The lawyer should not stipulate for, charge or accept any fee which is not fully disclosed, fair and reasonable.

11. No lawyer shall take fees, as opposed to disbursements, from funds held in trust for a client without the client's express authority unless the work has been performed and a proper bill in respect thereof has been rendered to the client.

12. No lawyer shall enter into a contingency fee arrangement with a client unless the contract is in writing and specifically provides that the client may apply to the taxing office of the Supreme Court to have the ultimate reasonableness of the contract reviewed.

13. A lawyer may accept payment of fees, disbursements or retainer by credit card but shall not accept a charge card slip unless the amount of the charge is inserted at the time the slip is signed by the client.

14. In the event that the amount of fees or disbursements charged by a lawyer is reduced on a taxation, the lawyer shall immediately repay the monies to the client.

15. No lawyer should carry on any business or occupation in such a way that it makes it difficult for a client to distinguish in which capacity the lawyer is acting in a particular instance or which could give rise to a conflict of interest or duty to the client.

16. The lawyer who engages in another profession, business or occupation concurrently with the practice of law must not allow such outside interest to jeopardize his or her professional integrity, independence or competence.

17. A lawyer who engages in business affairs outside the practice of law must strive to ensure that those persons with who he or she engages with in such business affairs are independently represented or advised. This does not preclude a lawyer from acting for the business enterprise with respect to matters involving third parties.

18. No lawyer shall borrow money from a client save the exceptional circumstances, and in that case the onus of proving that the client's interests were fully protected by the nature of the case or by independent advice shall rest upon the lawyer. Persons connected by blood relationships, marriage or adoption, corporate clients whose shares are listed on a stock exchange, insurance corporations and other corporations whose business is that of lending money to members of the public are excepted.

No lawyer shall fail or refuse to disclose in writing any personal interest which he or she may have in the transaction in which a client's funds are or may be invested, whether or not the interest is direct or indirect or through a corporation or syndicate in which he or she has a substantial or controlling interest. In such circumstances, the client must be represented by an independent solicitor in the transaction.

Whether a person lending money to a solicitor on his or her own account or investing funds in a security in which the solicitor has an interest, is to be considered a client within the above principle, is to be determined having regard to all the circumstances. If the circumstances are such that the lender or investor might reasonably suppose that he or she was entitled to look to the solicitor for guidance and advice in respect of the loan or investment, then the solicitor shall consider himself or herself bound by the same fiduciary obligation that attaches to a solicitor in dealings with a client.

19. Negligence in the handling of a client's transaction may be conduct unbecoming.

20. The lawyer should endeavor by all fair and honorable means to obtain for the client the benefit of every remedy and defense that is available in law or equity, but the lawyer must bear in mind that the great trust of the lawyer is to be performed within the bounds of the law. The office of lawyer does not permit or demand the lawyer for any client violation of the law, fraud or chicanery.

21. The lawyer owes a duty to the client not to withdraw his or her services except for good cause and upon giving appropriate notice.

22. The lawyer has a continuing obligation to canvass with each client, in a well-informed manner, all reasonable available dispute resolution processes.

PART TWO

LAWYER AND LAWYER

1. The lawyer's conduct toward his or her fellow lawyer should be characterized by courtesy and good faith. Whatever may be the ill feeling existing between clients it should not be allowed to influence counsel in their conduct and demeanor towards each other or toward suitors in the case. All personalities between them should be scrupulously avoided, as should colloquies between counsel, which cause delay and promote unseemly wrangling.
2. The lawyer should endeavor as far as possible to suit the convenience of the opposing counsel when the interests of his or her client or the cause of justice will not be injured by so doing.
3. The lawyer should give no undertakings that cannot be fulfilled and must fulfil every undertaking that is given.
4. The lawyer should never in any way communicate upon the subject in controversy, or attempt to negotiate or compromise the matter directly with any party represented by a lawyer except through such lawyer.
5. The lawyer should avoid all sharp practice and should take no paltry advantage when his or her opponent has made a slip or overlooked some technical matter. No client has a right to demand that counsel should be illiberal or that counsel shall do anything repugnant to his or her own sense of honor and propriety.
6. No lawyer shall unreasonably refuse or delay in responding to communications from another lawyer.
7. When a lawyer who has been on salary to a firm leaves that firm, he or she shall not attempt to take any of the firm's clients.
8. A lawyer must at all times recognize that disgraceful or dishonorable conduct whether in the lawyer's professional or private life may tend to bring disrespect upon the profession as a whole and a lawyer must therefore strive to avoid both private and professional activities and behavior that could harm the general reputation of the profession.

PART THREE

LAWYERS AND THE COURTS

1. A lawyer's conduct should at all times be characterized by candor and fairness. A lawyer should at all times maintain towards Judges a courteous and respectful attitude and insist on similar conduct by his or her client.

2. Judges, not being free to defend themselves, are entitled to receive the support of the Bar against unjust criticism and complaint. When there is proper ground for complaint against a judicial officer it is a right and duty of the lawyer to submit the complaint to the appropriate authorities.

At all times lawyers must appropriately defend the independence of the Judiciary.

3. The lawyer should not offer evidence, which he or she knows the court should not admit. The lawyer should not either in arguments to the Court or in address to the jury, assert his or her personal belief in his/her client's innocence, or in the justice of his or her cause, or as to any of the facts involved in the matter under investigation.

4. The lawyer should never seek to privately influence directly or indirectly, the Judges of the Court in his or her favor, or in that of the client, nor should the lawyer attempt to curry favor with juries by fawning, flattery, or pretended solicitude for their personal comfort.

5. The lawyer should treat adverse witnesses, litigants, and counsel with fairness, refraining from all offensive personalities. The lawyer must avoid imparting to professional duties the client's feelings and prejudices. At the same time the lawyer should discharge his or her duty to the client with firmness and without fear of judicial disfavor or public unpopularity.

6. It is a lawyer's right to undertake the defense of any person accused of a crime regardless of his or her opinion as to the guilt of the accused. Having undertaken to defend, the lawyer is bound by all fair and honorable means to present every defense that the law permits.

7. A lawyer acting as counsel should not appear as a witness for his or her own client except as to mere formal matters such as to the attestation or custody of an instrument, or when it is essential to the ends of justice. If a lawyer is a necessary witness in a cause with respect to other matters, conduct of the case should be entrusted to other counsel.

8. No lawyer shall appear in Court in an intoxicated or drugged condition.

9. When a witness is under cross-examination, the lawyer who called the witness shall not converse with the witness about the case except with the permission of the opposing counsel.

10. A lawyer in Court shall at all times appear appropriately attired.

11. Except in exceptional circumstances no lawyer shall discuss a case privately with the trial judge unless opposing counsel is present.

12. When engaged as a prosecutor, the lawyer's primary duty is not to convict but to see that justice is done. To that end he or she should withhold no facts tending to prove either the guilt or innocence of the accused.