

PROFESSIONAL CONDUCT HANDBOOK

Published under the authority of Convocation for the
guidance of members of the Law Society of
Upper Canada

LAW SOCIETY OF UPPER CANADA
OSGOODE HALL, TORONTO

PREFACE

This handbook contains rulings of the Professional Conduct Committee of Convocation upon some important aspects of professional ethics, as well as certain previously published notices from the Discipline Committee, the Canons of Ethics of the Canadian Bar Association and the Rules of the Law Society respecting accounts. It is intended to fulfil three main functions:

- (1) To serve as a basic textbook in the Bar Admission Course;
- (2) To bring these rulings to the attention of all Ontario lawyers, as standards of professional conduct;
- (3) To ensure the orderly preservation of future published rulings.

As further rulings and reasons for judgment of the Discipline Committee in matters of general interest are approved by Convocation, they will be printed in the Ontario Reports in a convenient form, so that they may be readily detached and added to this handbook.

The Professional Conduct Committee is prepared to consider and rule upon further aspects of professional ethics which require clarification or specific direction and invites the profession to bring such matters to its attention. Where requested, such enquiries will be kept confidential.

We are all vitally interested in the establishment and maintenance of the highest standards of professional conduct. Publication of declared standards is the first essential step; faithful adherence to them is the next. Breach of them constitutes unprofessional conduct and will be treated as such.

I invite the co-operation of all members of the Bar of Ontario in our endeavour to keep our profession strong and above reproach.

JOHN D. ARNUP,
Treasurer

Osgoode Hall,
April, 1964

Law Society of Ontario

INTERPRETATION

In these Rulings :

- (a) The words "barrister" and "solicitor" are used interchangeably.
- (b) All Rulings have been adopted by Convocation. Unless it is stated to the contrary, the Rulings were initiated by The Professional Conduct Committee. Reference in the rulings to "The Committee" means the Professional Conduct Committee.
- (c) "Members" means members of the Law Society of Upper Canada.

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RULES RESPECTING ACCOUNTS
(Adopted by Convocation October 20, 1961)

1. Every barrister and solicitor who receives money in trust for a client (save money hereinafter expressly exempted from the application of this rule) shall forthwith pay such money into an account at a chartered bank (or trust company or loan company authorized by law to receive money on deposit or a Province of Ontario Savings Office) to be kept in the name of such barrister and solicitor or in the name of the firm of which he is a member or by which he is employed and designated as a trust account. Any barrister and solicitor may keep one such account, or as many as he thinks fit.

2. Rule 1 shall not apply to money which :

- (a) the client in writing requests a barrister and solicitor to withhold from the trust account or to deposit elsewhere;
- (b) a barrister and solicitor pays into a separate account opened or to be opened in the name of a client or some person named by that client or the duly authorized agent of that client;
- (c) in the ordinary course of business upon its receipt is paid on behalf of the client to a third party;
- (d) is upon its receipt paid to the client;
- (e) is paid to a barrister and solicitor expressly on account of costs or fees.

3. No money shall be drawn from the trust account other than money properly required for payment to or on behalf of a client, or money drawn to be paid to the barrister and solicitor in respect of a liability of the client to the barrister and solicitor; provided that the money so drawn shall not in any case exceed the total of the money held for such client.

4. Rule number 3 shall not prevent a barrister and solicitor from drawing from the trust account money which may by mistake or accident have been paid into the trust account in contravention of these rules.

5. Where a barrister and solicitor receives money representing in part money belonging to a client and in part money belonging to the barrister and solicitor, and it is not prac-

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licable to split the money, he shall pay the whole of such money into the trust account. Rule number 3, however, shall not prevent the barrister and solicitor from drawing from the trust account that portion which belongs to him.

6. At all times the barrister and solicitor shall maintain sufficient balances on deposit in the trust account or accounts to meet all his obligations with respect to funds held in trust for clients.

7. Every barrister and solicitor shall maintain books, records and accounts in connection with his practice to record:

- (a) all money received in trust for clients;
- (b) all disbursements out of money held in trust;
- (c) the unexpended balance of money held in trust for each person for whom such money is held;
- (d) all other money received and disbursed in connection with his practice;
- (e) all valuable property held in trust other than money including marketable securities (stock certificates, bonds, debentures, deposit receipts, treasury bills, or other negotiable instruments) and any thing of value or instrument which could be negotiated by the barrister and solicitor.

8. As a minimum requirement, to comply with Rule number 7, every barrister and solicitor shall maintain the following:

- (a) a book or books recording all receipts and disbursements of money to distinguish between:
 - (i) the receipt of all money in trust for clients and all disbursements out of money held in trust, and
 - (ii) the money received and the money paid on his own account;
- (b) a book or books recording separately for each person for whom money has been received in trust, all such money received and disbursed, and any unexpended balance;
- (c) a book or books or separate file showing all fees and other billings to clients;
- (d) bank statements or pass books for both general and trust accounts;

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- (e) a record showing a monthly comparison of the total of balances held in the trust account (or accounts) and the total of all unexpended funds held in trust for clients as they appear from the books and records of the barrister and solicitor together with the reasons for any differences between the totals;
- (f) a listing of all valuable property held in trust for each client.

9. Nothing in these rules shall deprive a barrister and solicitor of any recourse or right, whether by way of lien, set-off, counterclaim, charge or otherwise, against money standing to the credit of a trust account.

10. The Benchers of the Law Society of Upper Canada or the Discipline Committee, acting either on their own motion or on written complaint lodged with them may, at any time, require an investigation to be made by a Chartered Accountant designated by the Benchers or the Discipline Committee of the books and accounts of any barrister and solicitor for the purpose of ascertaining and reporting whether these rules have been and are being complied with by him and he shall produce to such Chartered Accountant all such evidence, vouchers, records, books and papers as such Chartered Accountant may require for the purpose of such investigation.

Before instituting an investigation on a complaint made by a third person, the Benchers or the Discipline Committee may require prima facie evidence that a ground of complaint exists, and may require the payment by such complainant to the Law Society of a reasonable sum to be fixed by the Benchers or the Discipline Committee to cover costs of the investigation and the costs of the barrister and solicitor against whom the complaint is made.

A copy of any report resulting from such investigation shall be furnished to the said barrister and solicitor.

11.(a) Every barrister and solicitor shall forthwith notify the Secretary of the receipt by him of any petition to declare him a bankrupt, or the making by him of any general assignment for the benefit of his creditors.

(b) From and after the date a barrister and solicitor

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is declared to be a bankrupt or makes any general assignment for the benefit of his creditors, and so long as he remains an undischarged bankrupt he shall not without the written permission of the Discipline Committee accept from or on behalf of clients any money or other property other than in payment of his costs and fees.

12. In these rules, unless the context otherwise requires, the words "barrister and solicitor" include a firm of barristers and solicitors and a person who is either a barrister or solicitor. The word "money" includes current coin, government or bank notes, cheques, drafts, post office orders or express or bank money orders. The word "client" includes any person or body of persons corporate or unincorporate on whose behalf a barrister and solicitor in connection with his practice receives money or other property.

Words importing the masculine gender shall include females, and words in the singular shall include the plural, and words in the plural shall include the singular.

13. The Benchers, on the report of the Discipline Committee, shall have power to treat any infringement of these rules or any failure to comply therewith as professional misconduct.

Ruling 1

CANONS OF ETHICS

Adoption by Convocation

Convocation has adopted as Ruling 1 the Canons of Legal Ethics of The Canadian Bar Association. They are set out below together with the prefatory statement made by the Association:

CANONS OF LEGAL ETHICS

Approved by The Canadian Bar Association, at the Fifth Annual Meeting, Ottawa, September 2nd, 1920, as a correct, though not exhaustive, statement of some of the ethical principles which should be observed by the members of the legal profession:

It is not possible to frame a set of rules which will particularize all the duties of the lawyer in all the varied relations of his professional life, and no attempt has been made to do so.

The following Canons of Ethics should therefore be construed as a general guide and not as a denial of the existence of other duties equally imperative though not specifically mentioned.

The lawyer is more than a mere citizen. He is a minister of justice, an officer of the Courts, his client's advocate, and a member of an ancient, honourable and learned profession.

In these several capacities, it is his duty to promote the interests of the State, serve the cause of justice, maintain the authority and dignity of the Courts, be faithful to his clients, candid and courteous in his intercourse with his fellows and true to himself.

1. To the State

(1) He owes a duty to the State, to maintain its integrity and its law and not to aid, counsel, or assist any man to act in any way contrary to those laws.

— (2) When engaged as a public prosecutor his primary duty is not to convict, but to see that justice is done; to that end he should withhold no facts tending to prove either the guilt or innocence of the accused.

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— (3) He should take upon himself without hesitation and if need be without fee or reward, the cause of any man assigned to him by the Court and exert his best efforts on behalf of the person for whom he has been so assigned counsel.

(4) It is a crime against the State, and therefore, highly non-professional in a lawyer, to stir up strife or litigation by seeking out defects in titles, claims for personal injury or other causes of action for the purpose of securing or endeavouring to secure a retainer to prosecute a claim therefor; or to pay or reward directly or indirectly any person, for the purpose of procuring him to be retained in his professional capacity.

2. To the Court

— (1) His conduct should at all times be characterized by candour and fairness. He should maintain towards the Judges of the Courts a courteous and respectful attitude and insist on similar conduct on the part of his client, at the same time maintaining a self-respecting independence in the discharge of his professional duties to his client.

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

— (3) He should not offer evidence which he knows the Court should not admit. He should not, either in argument to the Court or in address to the jury, assert his personal belief in his client's innocence, or in the justice of his cause, or as to any of the facts involved in the matter under investigation.

(4) He should never seek to privately influence, directly or indirectly, the Judges of the Court in his favour, or in that of his client, nor should he attempt to curry favour with juries by fawning, flattery or pretended solicitude for their personal comfort.

3. To the client

(1) He should obtain full knowledge of his client's cause

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before advising thereon and give a candid opinion of the merits and probable results of pending or contemplated litigation. He should beware of bold and confident assurances to clients, especially where the employment may depend on such assurances. He should bear in mind that seldom are all the law and facts on the side of his client and that "*audi alteram partem*" is a safe rule to follow.

(2) He should at the time of retainer disclose to the client all the circumstances of his relations to the parties and his interest in or connection with the controversy, if any, which might influence the client in selection of counsel. He should avoid representing conflicting interests.

(3) Whenever the controversy will admit of fair adjustment the client should be advised to avoid or to end the litigation.

(4) He should treat adverse witnesses, litigants and counsel with fairness, refraining from all offensive personalities. He must avoid imparting to professional duties the client's personal feelings and prejudices. At the same time he should discharge his duty to his client with firmness and without fear of judicial disfavour or public unpopularity.

(5) He should endeavour by all fair and honourable means to obtain for his client the benefit of any and every remedy and defence which is authorized by law. He must, however, steadfastly bear in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of the lawyer does not permit, much less does it demand of him, for any client, violation of law or any manner of fraud or chicanery.

(6) It is his right to undertake the defence of a person accused of crime, regardless of his own personal opinion as to the guilt of the accused. Having undertaken such defence, he is bound by all fair and honourable means to present every defence that the law of the land permits to the end that no person may be deprived of life or liberty but by due process of law.

(7) He should not, except as by law expressly sanctioned, acquire by purchase or otherwise any interest in the subject

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matter of the litigation being conducted by him. He should act for his client only and having once acted for him he should not act against him in the same matter or in any other matter related thereto, and he should scrupulously guard and not divulge his client's secrets or confidences.

(8) He should report promptly to his client the receipt of any monies or other trust property and avoid the co-mingling with his own, or use of trust money or property.

(9) He is entitled to reasonable compensation for his services, but he should avoid charges which either over-estimate or under-value the service rendered. When possible he should adhere to established tariffs. The client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge or even none at all.

(10) He should avoid controversies with clients regarding compensation so far as is compatible with self-respect and with the right to receive reasonable recompense for services. He should always bear in mind that the profession is a branch of the administration of justice and not a mere money getting trade.

(11) He should not appear as witness for his own client except as to merely formal matters, such as the attestation or custody of an instrument, or the like, or when it is essential to the ends of justice. If he is a necessary witness with respect to other matters, the conducting of the case should be entrusted to other counsel.

4. *To his fellow lawyer*

(1) His conduct towards his 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 lawyers in their conduct and demeanour towards each other and towards the suitors in the case. All personalities between them should be scrupulously avoided as should also colloquies between counsel which cause delay and promote unseemly wrangling.

(2) He should endeavour as far as possible to suit the

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convenience of the opposing counsel when the interests of his client or the cause of justice will not be injured by so doing.

- ✓ (3) He should give no undertaking he cannot fulfil and he should fulfil every undertaking he gives. He 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.
- ✓ (4) He should avoid all sharp practice and he should take no paltry advantage when his opponent has made a slip or overlooked some technical matter. No client has a right to demand that his counsel shall be illiberal or that he shall do anything repugnant to his own sense of honour and propriety.

5. *To himself*

(1) It is his duty to maintain the honour and integrity of his profession and to expose without fear or favour before the proper tribunals unprofessional or dishonest conduct by any other member of the profession, and to accept without hesitation a retainer against any member of the profession who is alleged to have wronged his client.

(2) It is the duty of every lawyer to guard the Bar against the admission to the profession of any candidate whose moral character or education unfits him for admission thereto.

(3) The publication or circulation of ordinary simple business cards is not *per se* improper, but solicitation of business by circulars or advertisements or by personal communications or interviews not warranted by personal relations, is unprofessional. It is equally unprofessional to seek retainers through agents of any kind. Indirect advertisement for business by furnishing or inspiring newspaper comment concerning causes in which the lawyer has been or is connected, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's position, and like self-laudations defy the traditions and lower the tone of the lawyer's high calling, should not be tolerated. The best advertisement for a lawyer is the establishment of a well merited reputation for personal capacity and fidelity to trust.

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(4) No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client; he has a right to decline employment.

(5) No client is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the State, or disrespect for the judicial office, or the corruption of any persons exercising a public or private trust, or deception or betrayal of the public.

(6) Every lawyer should bear in mind that the oath of office taken on his admission to the Bar is not a mere form, but is a solemn undertaking, and on his part should be strictly observed.

(7) He should also bear in mind that he can only maintain the high traditions of his profession by being in fact as well as in name a gentleman.

Ruling 2

ACTING FOR BOTH SIDES

- (a) **Conflict of interest**
- (b) **Disclosure of confidential information**

The Committee's ruling, which is here set out, was published in the Ontario Weekly Notes for March, 1960:

Where a solicitor is asked to act for a vendor and purchaser or in any other matter where he contemplates that there may be a conflict of interest between two clients, he should in all such cases inform both parties that he is acting for both parties, obtain their consent to do so and advise them that if a conflict of interest arises which cannot be resolved he cannot continue to act for both parties in that matter and may not be able to act for either.

A solicitor who discloses confidential information obtained from one party or who uses such confidential information against the interest of the party from whom he obtains it is guilty of professional misconduct.

Ruling 3

REAL ESTATE PRACTICE

Builder advertising free deed

It was reported to the Discipline Committee that some builders gave prospective purchasers to understand they would be furnished with a registered deed at the builder's expense. There were variations on the theme: some offers to purchase, for instance, read: "Vendor will provide a registered deed without warranty of title."

In April 1959 the Discipline Committee published the following ruling:

The dangers inherent in the practice are so manifest that this Committee must warn all members of the profession that to permit their services to be used in such a transaction on any regular basis may be regarded as professional misconduct.

Upon further complaints being received the Committee published the following ruling in February 1960:

The Discipline Committee's view is that a solicitor should refuse to act for any vendor who advertises or holds out through representations of salesmen or otherwise as an inducement to purchasers that a registered Deed is included in the purchase price, or who to the solicitor's knowledge directly or indirectly leads purchasers to believe that it is unnecessary for them to be separately represented in the transaction.

Ruling 4

REAL ESTATE PRACTICE

Builder offering services of his lawyer free

A further variation of the practice in Ruling 3 has been considered by the Committee at the request of the solicitor involved. Under it the vendor proposed to make an offer to the following effect to prospective purchasers:

You are free to have any solicitor of your own choosing to act on your behalf in the purchase of this home and to certify the title. However, if you wish to use my lawyer, who is familiar with the title to your land, I am prepared to pay his fees in full for acting on your behalf including searching and certification of title to the land.

The Committee saw two objections to this: one, the "steering" of clients to the office of the vendor's solicitor by this means and, secondly, that although the solicitor would nominally be acting for both vendor and purchaser, his true position as solicitor for the vendor was underlined by the fact that the vendor was paying both his own and the purchaser's fees. The solicitor was placed in a virtually untenable position. The Committee, therefore, disapproved the proposed participation of the solicitor in such an arrangement.

Ruling 5

REAL ESTATE PRACTICE

Solicitor acting for builder where no one acting for purchasers

A solicitor enquired about the propriety of an arrangement whereby he, at the request of a builder, would prepare the Deed, insurance transfers, mortgage assumption agreement, statement of adjustments and other documents relevant to the sale of a residential property, register the Deed and send the Deed together with the other papers to the builder. The builder then, as vendor, completed the sale and turned the Deed over to the purchasers. For this service the solicitor would charge the builder the tariff scale for acting for a vendor. The builder assured the solicitor that he made no suggestion to the proposed purchasers that the solicitor was acting also for them; on the contrary, he made it clear that the solicitor was acting only for him. The solicitor saw the purchasers only once, at the time of their attendance at his office to complete the mortgage assumption agreement. At that time he also took the opportunity of stating that he did not act for them or represent their interests in any way.

Nevertheless, the solicitor was troubled by the absence of separate representation for the purchasers. In the result he was the only solicitor connected with the transactions. The purchasers, however, all assured him that they were satisfied with this arrangement.

The Committee ruled that on these facts it was in a strict sense not objectionable for the solicitor to act. But nevertheless the danger of his position being misunderstood by the purchasers or, perhaps innocently, misrepresented to the purchasers by someone else remained. Because of this danger the Committee could not condone the arrangement.

If, however, the solicitor wished to continue to act, the Committee suggested that for his own protection, and that of all other parties, he should write to the builder stating that he was not permitted to be a party to any scheme whereby it was suggested, either directly or indirectly, to prospective purchasers that the vendor's solicitor would be representing

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their interests or that their legal fees, if they engaged the vendor's solicitor, would be paid in whole or in part by the vendor. He should, furthermore, give written notice to purchasers who attended at his office confirming his oral statement to them that he did not represent them but only his client, the builder, and if they wished representation they should consult another solicitor.

Ruling 6

REAL ESTATE PRACTICE

- (a) Sharing fees with unqualified persons**
- (b) Builder "steering" clients to solicitor**
- (c) Solicitor agreeing to act for no fees or for reduced fees**

In July 1955 the Discipline Committee published the following notice to the profession:

The attention of the Discipline Committee has been called to the making of arrangements between real estate brokers and solicitors, or between a builder, a real estate broker and a solicitor, under which the solicitor agrees to handle all of the purchases and sales and the advancing of mortgage moneys in return for a reduction in fees, or no fees charged to the builder-client. Other variations of arrangements along similar lines have been drawn to the attention of the Committee.

In the opinion of the Discipline Committee, any arrangement between a solicitor and a real estate broker which involves the real estate broker making a practice of suggesting to the purchaser that the services of the solicitor be retained is a form of solicitation constituting unprofessional conduct.

Any arrangement whereby a solicitor permits a real estate agent or any other unauthorized person to share in the fees which are charged to a client is a breach of The Solicitors Act and constitutes unprofessional conduct.

Any transaction which in substance infringes the above principles, even though indirectly, is nevertheless in breach of them and constitutes conduct unbecoming a solicitor.

The following further notice on the same subject was published by the Discipline Committee in January 1957.

On July 8, 1955 and October 28, 1955 again by direction of Convocation, there was published in the Ontario Weekly Notes a Notice to the Profession about fee-splitting with unqualified persons (such as real estate

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agents) who brought or referred business to a solicitor. The attention of the profession is again directed to this notice. Recently charges of professional misconduct were laid against two solicitors, and it was admitted by them that they had made a practice of paying real estate agents for referring business to them. Both the solicitors involved were recent graduates and so pleaded in extenuation and also said that the practices of which they were found guilty were widespread, and that they had merely conformed. In view of their youth, and as it was the first case of its kind to come before Convocation, the solicitors were not punished as severely as their offence warranted, but were reprimanded in Convocation.

Convocation now gives notice to the profession that if hereafter a solicitor is found guilty of any such practice, it will be considered a most serious offence, warranting severe punishment.

Ruling 7

SOLICITORS' UNDERTAKINGS

Personal liability of solicitor

Undertakings when exchanged between solicitors are a matter *uberrimae fidei*. They should be written and absolutely unambiguous in their terms. If a solicitor giving an undertaking does not intend to accept personal responsibility, he should state this expressly and quite clearly in the undertaking itself. In the absence of such a statement the person to whom the undertaking is given should be deemed to expect that the giver will honour it personally.

Thus the use of such words as "on behalf of my client" or "on behalf of the vendor" do not relieve the solicitor giving the undertaking of personal responsibility.

Ruling 8

WILLS

Practice of inserting clause directing Executors to appoint solicitor

The practice of routinely inserting a clause in a Will along the following lines, *without express instructions from the client*, was considered by the Committee:

I direct my Executors to employ the services of as my solicitor in connection with the probate of my Will and the administration of my estate.

The Committee ruled that this practice is objectionable as being a form of solicitation. The clause, or one similar, was not objectionable only where it was included in the Will at the express and unsolicited request of the client. (Note: It was held in *Re Croft*, [1950] O.W.N. 171 that such a direction has no binding effect on the Executor.)

Ruling 9

DISBARRED PERSONS

Employment by other solicitors

With respect to the employment of persons who have been disbarred or struck off the Rolls the Committee has ruled that such persons :

- (i) must not be held out as a solicitor ;
- (ii) must not be permitted to do work which only a solicitor may legally do ; and
- (iii) must not deal directly with the public.

Ruling 10

SIGNS

It is proper for solicitors to have name plates to indicate the location of their offices. But it must be remembered that the purpose of a sign or name plate is to indicate to clients, and those who already are acquainted with the solicitor, where the solicitor is located. They are not for the purpose of attracting the world at large. They should, therefore, be of modest dimensions and in good taste. Signs of a commercial or advertising character or which otherwise do not conform to these principles will be dealt with by the Committee when brought to its attention.

Ruling 11

AUTOMOBILE CLUBS

Solicitors acting for those offering legal benefits

With respect to solicitors acting for automobile clubs which offer legal assistance in matters arising out of the operation of motor vehicles to their members, the Committee has ruled that:

1. Solicitors may act for non-profit motor clubs which allow their members to choose their own solicitors and which do nothing to "steer" their members to particular named solicitors.
2. The conduct of solicitors who act for motor clubs which do "steer" their members to particular named solicitors will be referred to the Discipline Committee.

Ruling 12

LETTERHEADS

(a) To contain names of qualified persons only

It is not proper for a solicitor or firm of solicitors to use letterhead paper which includes the names of living persons who are not qualified to practise in Ontario.

(b) Exception in re "patent agents"

The one exception applies to patent agents. The Committee has ruled that solicitors who practise in the industrial property field may show on their letterheads the names of patent and trade-mark agents, who are identified as such but who are not solicitors.

Ruling 13

MUNICIPAL COUNCILS

Possible conflict of interest and duty

The Discipline Committee published the following notice to the profession in April 1956:

On February 13th last the Council of the City of Toronto resolved:

That the Government of Ontario be requested to enact the necessary legislation to make it clear that a lawyer who is a member of Metropolitan Council or of any municipal council shall not be entitled to accept a fee for acting for any person in a matter in which the council of which he is a member may act by resolution or by-law.

This resolution was considered by Convocation at its February meeting and it was the opinion of Convocation that the question was one of legal ethics, and that it properly fell within the purview of the Discipline Committee. On the instructions of Convocation the Committee brings this matter to the attention of the profession, reminding them that no lawyer can serve two conflicting interests, and if a member of the profession holds any elected or appointed office he should NOT accept any retainer through which his duty to his client and his duty to such office may conflict.

The Committee will deal with any infractions of this precept which come to its notice.

Ruling 14

**BORROWING FROM CLIENTS AND INVESTING
CLIENTS' MONEY**

Failure to observe governing principles is professional misconduct

On the recommendation of the Discipline Committee the following statement by Convocation was published in the Ontario Reports for June 7, 1963.

It is a matter of grave concern to Convocation that in a number of instances of professional misconduct on the part of Solicitors, in relation to the misuse of trust funds or the improper obtaining of monies, the borrowing of money by the Solicitors in question from clients has been a factor leading to the professional misconduct involved. In some instances the monies have been borrowed from the client without any security, other than the promissory note of the Solicitor. Usually the money was borrowed from the client for the purpose of being reinvested by the Solicitor for his own profit. This practice, of course, must be carefully distinguished from the normal and traditional function of the Solicitor in placing funds left with the Solicitor on trust to be invested on behalf of the client. In performing such function the Solicitor is in no way personally involved in the transaction and providing that he acts without negligence in investing the funds of the client, obtains the security bargained for by the client, and makes a full and accurate report to the client, he incurs no personal liability.

The relationship existing between a Solicitor and his client is a fiduciary one and no conflict between his own interest and his duty to his client can be permitted to exist.

Convocation expresses the following views on the subject for the guidance of the Profession:

1. A Solicitor should not borrow money from his clients save in 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 will rest on the Solicitor.

2. In transactions in which the client's funds are invested in a security in which the Solicitor has a personal interest, either direct or indirect or through a Corporation or Syndicate in which the Solicitor has a substantial or controlling interest, the fullest disclosure must be made to the client in writing and the client must be represented by an independent Solicitor in the transaction.
3. Whether a person lending money to a Solicitor on his 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 was entitled to look to the Solicitor for guidance and advice in respect of the loan or investment, then the Solicitor should consider himself bound by the same fiduciary obligation that attaches to a Solicitor in dealings with a client.

In accordance with the above statement, Convocation hereby notifies the profession that any failure to observe the principles above referred to by a Solicitor is, in general, professional misconduct and will be dealt with accordingly.

Convocation also wishes to draw to the attention of the profession that the giving of independent advice by a Solicitor to a lender or investor in the above circumstances, once undertaken, imposes a high duty on the Solicitor giving such independent advice and is an undertaking not to be lightly assumed or merely perfunctorily discharged.

The above statements do not purport to be exhaustive. The attention of the profession is called to the numerous reported authorities as to the duty of the Solicitor to his client and the various transactions and dealings that the courts have held to be improper or reprehensible conduct in violation of these principles, and which, in addition to their consequences at law, constitute professional misconduct.

Ruling 15

MORTGAGE BROKERS

Solicitors acting as such

Since the introduction of the Mortgage Brokers Registration Act a solicitor who falls within its provisions must obtain registration thereunder. The Act defines a mortgage broker as:

... a person who carries on the business of lending money on the security of real estate, whether the money is his own or that of another person, or who holds himself out as or who by an advertisement, notice or sign indicates that he is a mortgage broker, or a person who carries on the business of dealing in mortgages.

Limitations are placed, pursuant to this Act, on such solicitors advertising in this field. But such advertising is still subject also to the views of the Law Society as expressed in Rulings from time to time.

The Committee has ruled it to be unobjectionable for a solicitor to place a notice in the classified advertising pages of daily newspapers that he has money to loan. An advertisement showing this and merely his name and address and phone number with no reference to qualification as a solicitor is unobjectionable. But anything beyond this is.

Ruling 16

ADVERTISING

(a) Telephone directories

It is proper for a solicitor to be listed in the yellow pages of the telephone directory under the heading "Lawyers". But it is objectionable to be listed under the heading "Estate Administration" or other headings calculated to attract business or to indicate a specialty.

(b) "District" listings

Where the directory lists lawyers in its yellow pages on a geographical or "district" basis, it is proper for a solicitor to be listed in a district in which he has his office (or his house if he is willing to conduct business there) and also under any general area listing which includes such district. But it is not proper for a solicitor to be listed in a district unless his house or office address is, in fact, in that district.

Ruling 17

ADVERTISING

Solicitor's name appearing on advertising or letterheads of client

It is improper for a solicitor to permit his name to appear as "solicitor", "counsel" or otherwise on the advertising of a company offering to the public specialized services, as for instance in labour relations matters. It is equally improper for a solicitor in private practice to allow his name to appear on the letterhead of a company as being its solicitor or counsel. This does not apply to being listed on the letterhead of a charitable organization, along with other officers, with the heading "Honorary Counsel" or similar designation.

Ruling 18

ADVERTISING

(a) Newspaper: paid "reader" advertisement

Paid advertisements containing biographical detail to announce the opening of a practice or the admission of a member to practise are objectionable as offending canon 5(3) of the Canons of Ethics of the Canadian Bar Association. A solicitor must not publish nor permit anyone else to pay for publication of information about his legal practice.

(b) Newspaper: professional cards

There is no objection to the placing of a proper professional card in the daily newspaper or in other publications read by the general public. Such a card may be printed in the classified advertising section under the heading "Lawyers" or "Barristers and Solicitors".

But the placing of such a card in a newspaper or other publication in association with promotional or commercial text or material calculated to attract business or to call attention to special qualifications or to connections of the solicitor is objectionable.

Ruling 19

ADVERTISING

Professional directories; Ontario Legal Telephone Book 1963

It is an improper solicitation to be listed in a professional directory as being ready and willing to do certain kinds of work such as account collecting. Thus it is objectionable to be listed in a publication known as "The Ontario Legal Telephone Book 1963" published by the Canadian Collectors Association. This Company invites members of the legal profession to be listed in a directory to enable "credit houses, finance houses, credit unions" etc. who buy the book to be put in touch with the solicitor who has his name listed as a person available for "local assignments for court appearances and for other legal work". (The quotations are from the company's circular letter addressed "To all Ontario Barristers and Solicitors" of January 15, 1963.)

Thus a listing therein, whether paid or unpaid, would be considered by the Committee an improper solicitation of business and, therefore, objectionable.

Ruling 20

LETTERS FROM THE LAW SOCIETY

Failure to answer is a disciplinary offence

In a notice to the profession published in February 1945 and republished in January 1955 the Discipline Committee ruled that:

. . . it is a strict duty of a member of the Law Society to reply promptly to any letter received from the Society's Secretary relating to the professional conduct of such member. Failure to do so is, in the opinion of the Committee, professional misconduct and conduct unbecoming a member of the Society and deserving of disciplinary action.

Due respect for the disciplinary jurisdiction of its Law Society would soon disappear not only among its own members but among the public at large, if a member of the Society were permitted to ignore and indeed to defy the earnest efforts of the Society to maintain an unassailable standard of professional conduct.

Ruling 21

TRUST ACCOUNTS

Interest thereon

Convocation has ruled, in a notice to the profession published in February 1962, that:

A solicitor may, if he thinks that it is practicable so to do, either by reason of the length of time during which clients' moneys will be in his hands or the amount of moneys so deposited with him, pay such moneys into a separate trust account, and shall then credit the client with any interest so earned. Where, however, such a course is not practicable, then there is no objection to a solicitor arranging with his bankers to credit his own office account with any interest earned on his trust account.

Ruling 22

ANNOUNCEMENTS

Cards may be circulated or published

It is proper for a solicitor to circulate among the profession or among clients or other persons already known to him announcement cards pertaining to his practice which convey information of use to them, such as a change of address or in the personnel of the firm. It is also proper to have such cards published in newspapers, the Ontario Reports, or in such other media as are justified by the nature of his practice or the character of his clientele. But such announcements should always be modest and in good taste.

Ruling 23

LEGAL WRITING

A solicitor may write for a "legal" publication, that is, one intended to be read normally only by members of the legal profession, sign his name, and have his professional qualifications, firm name and biographical facts stated.

A solicitor may write for "a non-legal" publication, that is, one with a general readership such as a newspaper, trade magazine, etc. and sign his name. He may be referred to as a Barrister and Solicitor or Queen's Counsel, as the case may be. But he may not be referred to as a specialist, nor may any statement of special qualifications, experience or abilities be made by him or otherwise.

Ruling 24

SPECIALIZATION

A solicitor may not, by published notice or otherwise, describe himself as a "specialist" in any branch of law or knowingly permit himself to be so described.

A number of announcement cards that are objectionable on this basis have come to the attention of the Committee. They announce, for example, that "Mr. X will be associated with the firm 'specializing in industrial relations' or 'taxation matters'."

On the other hand, if a solicitor has confined or restricted his practice to a certain branch of law, there is no objection to his announcing this in such terms or to his permitting himself, if the occasion requires it, to be described as having done so.

Ruling 25

INSURANCE

Legal representation in criminal and other proceedings

An insurance company enquired of Convocation concerning the addition of the endorsement set out below to any owner's policy on payment of an additional premium:

It is hereby declared and agreed that in consideration of an additional premium of the Company

- (a) for representation of any Coroner's Inquest or Fatal Accident Inquiry in respect of any death which may be indemnified under Section A of the Policy to which this endorsement is attached;
- (b) for defence in the event of any proceedings being brought in a Court of Summary Jurisdiction in respect of any act which may be the subject of indemnity under Section A of the Policy to which this endorsement is attached; and
- (c) for defence in the event of any proceedings being taken under the Criminal Code of Canada in respect of any act which may be the subject of indemnity under Section A of the Policy to which this endorsement is attached, unless such act is manifestly unlawful or the doer of it knows it to be unlawful.

Provided that:—

- (i) There shall be deducted from each and every claim under this endorsement which exceeds the sum of One Hundred Dollars (\$100.00), 25% of the total claim.
- (ii) The Company shall in no event be liable for more than the sum of Two Thousand Dollars (\$2,000.00).
- (iii) The Company may relieve itself of any further liability in respect of the coverage herein provided upon paying to the Insured the said sum of Two Thousand Dollars (\$2,000.00) less the expenses incurred by the Company to date of payment.
- (iv) The insurance by this endorsement shall not apply in connection with any event occurring whilst the person driving is under 21 years of age.
- (v) There shall be no liability under this endorsement in connection with any event occurring outside the territorial limits of the Dominion of Canada.

The indemnity provided by this endorsement is in addition to any indemnity which may be provided by the Policy to which this endorsement is attached, in respect of legal representation.

PROFESSIONAL CONDUCT HANDBOOK

The matter was referred to the Committee. Convocation adopted the Committee's ruling as follows:

It would not be unprofessional conduct for a barrister and solicitor to act for an accused insured under the proposal, provided that the policy, when read with the endorsement, makes it clear that the insured when exercising his rights under the endorsement has the right to choose his own lawyer and the right to control the legal proceedings.

Ruling 26

COLLECTION AGENCIES

Canada Bonded Attorney

The Discipline Committee has found it necessary to publish four notices to the profession concerning the association of members of the profession with the organization known as Canada Bonded Attorney. These notices have all been to the effect that no member of the profession may enter into any arrangement, directly or indirectly, to share professional fees with unqualified persons. At one time this company invited solicitors to act as its agent in collection matters for a percentage of the professional fees recovered by the solicitors. This practice was expressly prohibited by the Discipline Committee in notices to the profession published in 1938, 1939 and 1955. The payment of a proportion of the fees or commissions so earned to this company was stated expressly by the Committee to be professional misconduct and conduct unbecoming a barrister and solicitor.

The matter has been brought again to the notice of the Society. The company now appears to invite solicitors to enter indirectly into arrangements that result in the practice prohibited above. The Professional Conduct Committee has reaffirmed the Discipline Committee's previous ruling. Hence any arrangement whether direct or indirect that leads to the splitting of fees with this company is prohibited.

In addition, since the arrangement involves the listing of the solicitor in a directory circulated by this company among business men and others for the purpose of directing collection work to the listed solicitor, such a listing amounts to "touting" and is improper for the reason expressed in the Committee's ruling (Ruling 19) on the Ontario Legal Telephone Book 1963.



Ruling 27

COLLECTION AGENCIES

(a) Purporting to have legal departments

The attention of the Law Society has been called many times to the practice of some collection agencies in leading the public to think, incorrectly, that letters they send are written by lawyers. This practice was covered by a notice (set out below) sent by the Registrar of Collection Agencies to the agencies in March 1958:

SPECIAL NOTICE TO ALL COLLECTION AGENCIES

Complaints have been received by this Department from the Law Society of Upper Canada against collection agencies using the words "Legal Department" or similar words on collection letters mailed to debtors. The Department believes such complaints to be well founded as it clearly leads the debtor to believe that such letters have been sent by a lawyer. All collection agencies therefore are henceforth prohibited from signing the words "Legal Department" or similar words on collection letters mailed to debtors unless such letters are signed by a lawyer who is employed on a full-time basis.

Collection agencies are also prohibited from sending collection letters to debtors on a lawyer's stationery. No objection of course can be taken where the agency retains a lawyer who prepares, signs and dispatches the letter to the debtor.

"R. B. Whitehead"

Superintendent of Insurance.

Any infractions of the prohibition in the first paragraph of Mr. Whitehead's letter should be reported to the Superintendent of Insurance or to the Professional Conduct Committee.

(b) The practice of sending form letters purporting to be from lawyers

The attention of the Law Society has many times been drawn to the practice referred to in the second paragraph of Mr. Whitehead's letter. This practice involves a solicitor not really acting as a solicitor but merely lending his name to a mimeographed form which the creditor company prepares and sends out to debtors, or furnishing his letterhead to a collection agency for this purpose.

PROFESSIONAL CONDUCT HANDBOOK

The Discipline Committee and the Professional Conduct Committee have both ruled that no collection letter may be sent out over the signature of a solicitor unless the letter is on his letterhead, prepared under his supervision, signed by him and sent from his office.

Ruling 28

SPLITTING FEES

With conveyancers, notaries public, students, clerks and others

Any arrangement whereby solicitors directly or indirectly share, split or divide fees with conveyancers, notaries public, students, clerks or other persons who bring or refer business to the solicitor's office is improper and constitutes professional misconduct. It is similarly improper for a solicitor to give any financial or other reward to such persons for referring business.

Thus an arrangement between a solicitor and a conveyancer to divide fees on applications for Probate or Administration is improper whether both participate in the work involved or not.

Similarly, any arrangement whereby in return for a flat fee or for part of the fee charged a solicitor permits his name to be placed on such applications which have been prepared by the conveyancer is equally improper.

PROFESSIONAL CONDUCT HANDBOOK

Ruling 29

FIRM NAME

Use of “and Company” is improper

The use of the phrase “and Company” in a firm name by a member of the Society, either practising alone or in association with others, is improper on the ground that such use has a commercial connotation not in keeping with the nature of the profession.

Ruling 30

PUBLIC APPEARANCES BY SOLICITORS

1. "Appearance" herein means appearance on radio, television or other public forum.
2. No solicitor should:
 - (a) solicit appearances in his professional capacity as a solicitor;
 - (b) attempt to use appearances as a means of professional advertisement;
 - (c) engage in his capacity as a solicitor in any appearance that might reflect ill on the profession.
3. A solicitor may appear in his private or personal capacity as a speaker, actor or otherwise on a non-legal programme where his professional capacity as a solicitor is not the reason for his appearance in which circumstances he should not be described as a barrister, solicitor or Queen's Counsel or otherwise described as a lawyer.
4. Where the reason for a solicitor's appearance is his professional capacity he may be described by name and by his professional designation as a Professor of law, Barrister and Solicitor or Queen's Counsel as the case may be and a reasonable amount of biographical material may be given but, except in the case of a full-time academic, no reference may be made by him or any other to indicate that he is a specialist in any branch of law.
5. The overriding principle is that all public appearances by solicitors should be governed by considerations of good taste.
6. A solicitor should not, by direct statement, inference or otherwise, make it appear that he speaks on behalf of the Law Society, the Canadian Bar Association or a County law association or any other group or association of lawyers unless he has their specific authority to do so.
7. Compliance with this ruling, by the solicitor appearing, or by any other person associated with the appearance, shall *prima facie* be the responsibility of the solicitor.

Ruling 31

TARIFF OF FEES

The following statement of policy was proposed by the Discipline Committee and was adopted by Convocation in October 1957:

1. That it is ethical for County Law Associations to establish a tariff of fees;
2. That an inflexible tariff which does not in itself allow for deviation in proper cases, should be discouraged;
3. That the Discipline Committee is not prepared to recommend enactment of any rule providing that a mere breach of a tariff is in itself a disciplinary offence;
4. That holding himself out or allowing himself to be held out as prepared to do professional business at fees less than the appropriate scale prevailing in the area in which he practises, is unprofessional conduct on the part of a solicitor;
5. That it is not practicable for the Discipline Committee in the first instance to investigate alleged breaches of the principle set out in paragraph 4, but that such breaches should first be investigated by the local association, which in its discretion could make a report to the Discipline Committee setting out the facts ascertained by the Association.

