

PROFESSIONAL CONDUCT HANDBOOK

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

Revised to January 1, 1973

LAW SOCIETY OF UPPER CANADA
OSGOODE HALL, TORONTO

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LAW SOCIETY OF UPPER CANADA

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.**

INDEX

	Page
Acting for both sides (Ruling 2)	11
Acting for one side, other side unrepresented (Ruling 3) ..	13
Advertising	
“district” listings (Ruling 16)	39
newspaper	
Professional cards (Rulings 10, 16, & 24)	27, 39, 55
professional directories (Ruling 16)	39
solicitor’s name appearing on advertising of client (Ruling 3)	13
solicitors advertising as mortgage brokers (Ruling 15)	37
telephone directories (Ruling 16)	39
touting, advertising and soliciting (Ruling 3)	13
Announcements, what cards may be circulated or published (Ruling 16)	39
Appointment of solicitor in estate (Ruling 8)	23
Automobile clubs, solicitors acting for (Ruling 3)	13
Borrowing from clients and investing clients’ money, governing principles (Ruling 14)	35
Breaches, Notification of, to the Society (Ruling 33)	73
Builder	
advertising free deed (Ruling 3)	13
offering services of his lawyer free (Ruling 3)	13
“steering” clients to solicitor (Ruling 3)	13
Canons of ethics (Ruling 1)	5
Collection agencies	
purporting to have legal departments (Ruling 27(a)) ..	61
sending form letters purporting to be from lawyers (Ruling 27(b))	61

PROFESSIONAL CONDUCT HANDBOOK

	Page
Conduct — notification of Breaches to the Society	
(Ruling 33)	73
Conflict of interest and duty (Rulings 2 & 13)	11, 33
County tariffs (Ruling 31)	69
Directories (Ruling 16)	39
Disbarred persons, employment by other solicitors	
(Ruling 9)	25
Disclosure of confidential information (Ruling 2(a))	11
Division of fees (Ruling 34)	75
Ethics, Canons of Canadian Bar Association (Ruling 1) ..	5
Fees	
division of (Ruling 34)	75
finders' (Ruling 15(2))	37
"holding out" to accept reduced fees (Ruling 31)	69
reducing in exchange for business (Ruling 3)	13
splitting with others. See Splitting fees	
tariffs (Ruling 31)	69
Financial obligations (Ruling 32)	71
Firm name	
to contain names of qualified persons only (Ruling 10) ..	27
use of "and Company" improper (Ruling 29)	65
"Holding out" to accept reduced fees (Ruling 31)	69
Honorary counsel (Ruling 3)	13
Insurance	
acting for automobile clubs (Ruling 3)	13
legal representation in criminal and other proceedings	
(Ruling 25)	57
Interest on trust accounts (Ruling 21)	49
Interpretation	v
Investing client's money (Ruling 14)	35
Judges, retired, returning to practice (Ruling 35)	77

PROFESSIONAL CONDUCT HANDBOOK

	Page
Legal writing (Ruling 23)	53
Letterheads, to contain names of qualified persons only (Ruling 10)	27
Letters from the Law Society, failure to answer (Ruling 20)	47
Mortgage brokers, solicitors acting as (Ruling 15)	37
Name plates. See Signs	
Newspapers	
advertisements, announcements (Rulings 3 & 16) ..	13, 39
writing for (Ruling 23)	53
Municipal councils, conflict of duty (Ruling 13)	33
Obligations, duty to meet financial (Ruling 32)	71
Patent agents (Ruling 10)	27
Personal liability of solicitors on undertakings (Ruling 7)	21
Professional directories (Ruling 16)	39
Public appearances by solicitors (Ruling 30)	67
Publication, writing for (Ruling 23)	53
Radio appearances by solicitors (Ruling 30)	67
Real estate practice	
acting for both sides (Ruling 2)	11
acting for one side, other side unrepresented (Ruling 3)	13
builder advertising free deed (Ruling 3)	13
builder offering services of his lawyer free (Ruling 3)	13
builder "steering" clients to solicitor (Ruling 3)	13
sharing fees with unqualified persons (Rulings 28 & 34)	63, 75
solicitor agreeing to act for no fees or for reduced fees (Ruling 3)	13
Retired judges returning to practice (Ruling 35)	77
Signs	
purpose and type (Ruling 10)	27
use of "and Company" (Ruling 29)	65

PROFESSIONAL CONDUCT HANDBOOK

	Page
Sharing fees. See splitting fees, division of fees	
Solicitors' undertakings, personal liability for (Ruling 7)	21
Specialization, advertising or announcing a specialty (Ruling 24)	55
Splitting fees	
with conveyancers, notaries public, students, clerks and others (Ruling 28)	63
"Steering" business	
automobile clubs (Ruling 3)	13
Tariff of fees (Ruling 31)	69
Telephone directories	
listings (Ruling 16)	39
Television and radio, public appearances on (Ruling 30) ..	67
Trust accounts	
interest on (Ruling 21)	49
Wills, clause directing executors to appoint solicitor (Ruling 8)	23
Writing for publication (Ruling 23)	53

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.

PROFESSIONAL CONDUCT HANDBOOK

(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

PROFESSIONAL CONDUCT HANDBOOK

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

PROFESSIONAL CONDUCT HANDBOOK

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

PROFESSIONAL CONDUCT HANDBOOK

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.

PROFESSIONAL CONDUCT HANDBOOK

(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.

PROFESSIONAL CONDUCT HANDBOOK

Ruling 2

ACTING FOR BOTH SIDES

A solicitor must not act for two or more clients where their interests are in conflict. However, 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 parties, he should in all cases inform both parties that he is acting for both parties and that no information which he receives in connection with the transaction from either party can be treated as confidential so far as the other party is concerned. He should obtain the consent of both parties to act for them and advise them that if there is a conflict of interest which cannot be resolved he cannot continue to act for both parties in that matter and may not be able to act for either.

Ruling 2 (a)

DISCLOSURE OF CONFIDENTIAL INFORMATION

Subject to lawful authority and to the special circumstances set forth in Ruling 2, the disclosure by a solicitor of confidential information obtained by him in the course of carrying out his professional duties, or the use of such confidential information either for the benefit of the solicitor or against the interest of the party from whom such confidential information was obtained, is professional misconduct.

PROFESSIONAL CONDUCT HANDBOOK

Ruling 3

TOUTING, ADVERTISING AND SOLICITING

1. A member shall not directly or indirectly do or permit any act or thing to be done which can reasonably be regarded as professional touting, advertising or as designed primarily to attract professional work.
2. Without limiting the generality of Ruling 1 or the foregoing section of this Ruling, each of the following actions is improper for a member :
 - (a) to hold himself out or permit himself to be held out as being prepared to provide professional services at fees that are less than reasonable and appropriate in the circumstances in order to obtain professional work ;
 - (b) to permit his name to appear as solicitor, counsel or Queen's Counsel on any advertising material offering goods (other than securities or legal publications) or services to the public ;
 - (c) while in private practice, to permit his name to appear on the letterhead of a company as being its solicitor or counsel of a business, firm or corporation, other than the designation of honorary counsel or honorary solicitor on the letterhead of a non-profit or philanthropic organization which has been approved for such purpose by the Professional Conduct Committee ;
 - (d) to act for a vendor of property who to the knowledge of the solicitor advertises or makes any representation through salesmen or otherwise, as an inducement to a purchaser, that a registered deed is included in the purchase price, or leads purchasers to believe that it is unnecessary for them to be represented in the transaction ;
 - (e) to hold out or permit himself to be held out to any prospective purchaser as being specially fit to act for such purchaser because of his special knowledge as solicitor of the vendor ;

20th October, 1972.

New page 13 for Professional Conduct Handbook.

Please detach this page and put it in your own copy of the Handbook, and destroy former Ruling 3.

PROFESSIONAL CONDUCT HANDBOOK

- (f) to permit a vendor or his agent to hold out to a prospective purchaser that he, as solicitor for the vendor, will act for such purchaser and that the vendor will pay, in whole or in part, his fees as solicitor for such purchaser;
- (g) to arrange for or to encourage any other person (e.g. real estate agent) to make a practice of recommending to any party that the member's services be retained;
- (h) to act for or accept a brief from or on behalf of a member of a club or organization as for example an automobile club which makes a practice of "steering" its members, provided that a solicitor shall be entitled to assist a community social agency by providing legal advice or service on a gratuitous basis for persons falling within the scope of the agency's activities.

20th October, 1972

New page 14 for Professional Conduct Handbook.

PROFESSIONAL CONDUCT HANDBOOK

Ruling 4

REAL ESTATE PRACTICE

This Ruling was repealed by Convocation on the 16th April, 1971.

The subject matter formerly covered by this Ruling is now covered by Ruling 3.

16th April, 1971.

New page 15 for Professional Conduct Handbook.

Please detach this page and put it in your own copy of the Handbook.

PROFESSIONAL CONDUCT HANDBOOK

Ruling 5

REAL ESTATE PRACTICE

This Ruling was repealed by Convocation on the 16th April, 1971.

The subject matter formerly covered by this Ruling is now covered by Ruling 3.

16th April, 1971.

New page 17 for Professional Conduct Handbook.

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PROFESSIONAL CONDUCT HANDBOOK

Ruling 6

REAL ESTATE PRACTICE

This Ruling was repealed by Convocation on the 16th April, 1971.

The subject matter formerly covered by this Ruling is now covered by Ruling 3.

16th April, 1971.

New page 19 for Professional Conduct Handbook.

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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 solicitors

No member of The Law Society of Upper Canada shall retain, occupy office space with, use the services of or employ in any capacity having to do with the practice of law any person who in Ontario, or elsewhere, has been disbarred and struck off the Rolls, or has been suspended, or has been involved in disciplinary action and has been permitted to resign as a result thereof, and who has not yet been readmitted.

21st January, 1972

New page 25 for Professional Conduct Handbook

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PROFESSIONAL CONDUCT HANDBOOK

Ruling 10

SIGNS AND LETTERHEADS

1. Members should not use on their letterhead or on signs identifying their office the names of persons who
 - (a) if living are not qualified to practise in Ontario,
or
 - (b) if dead never were qualified to practise in Ontario.
2. Members who practise in the industrial property field may show the names of patent and trade-mark agents registered in Canada who are identified as such but who are not solicitors.
3. Firm names used in letterheads or signs should comply with paragraph 1 of this Ruling.
4. A member's letterhead and the signs identifying his office should be restricted to the name of the lawyer or firm, a list of the members of any firm including counsel practising with the firm and the words "barrister-at-law", "barrister and solicitor", "lawyer", "law office", or the plural where applicable, the words "notary" or "commissioner for oaths" or both and their plural where applicable may be added. A statement of office hours or alternative addresses may appear, and the words "patent and trade mark agent" in proper cases.
5. Such words as "money to loan", "insurance office", "proctors", "attorneys", "mortgages", "solicitor to the township", or any other client, and the like if now in use will be removed.
6. Lettering and signs will be of modest size and in good taste. As a general guide no sign need have the letters larger than six inches in height.
7. The Professional Conduct Committee may in special circumstances authorize exceptions to this Ruling.

18th March, 1966.

PROFESSIONAL CONDUCT HANDBOOK

Ruling 11

AUTOMOBILE CLUBS

This Ruling was repealed by Convocation on the 19th, November, 1971.

The subject matter formerly covered by this Ruling is now covered by Ruling 3, sub-section (h).

19th, November, 1971.

New page 29 for Professional Conduct Handbook

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PROFESSIONAL CONDUCT HANDBOOK

Ruling 12

LETTERHEADS

This Ruling was repealed by Convocation on the 18th March, 1966.

The subject matter formerly covered by this Ruling is now covered by Ruling 10.

18th March, 1966.

Ruling 13

**CONFLICT OF INTEREST WITH REGARD TO
PUBLIC AND OTHER OFFICES**

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.

15th January, 1965

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.

PROFESSIONAL CONDUCT HANDBOOK

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 AND OTHER FINANCIAL TRANSACTIONS

1. 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.

2. Finders' Fees

(a) It is improper for a lawyer acting for the person introduced by him to a mortgage company, other financial institution or other lender, to accept a finder's fee unless (i) he makes full disclosures to his client, and (ii) pays the fee over to the client or credits the same against his own account to the client. The principle here involved is that the lawyer should not, by receiving or bargaining for compensation from any source except his client, put himself in a position which might interfere with his undivided loyalty to the client.

(b) Quite apart from any question of finders' fees, a lawyer should not introduce a client to a mortgage company, financial institution, or other lender for which he regularly acts, unless (i) he makes disclosure of his relationship with the latter to the client, and (ii) counsels the client to obtain appropriate independent advice.

Ruling 16

**DIRECTORIES, ANNOUNCEMENTS AND
PROFESSIONAL CARDS**

1. No member shall authorize or permit any notice or announcement or card to be circulated or to be published in any newspaper, periodical, programme or other publication except in accordance with the provisions of this Ruling.
2. No member shall authorize or permit the insertion in the yellow pages of any telephone directory of more than one standard listing in regular type under the heading "Lawyers" for the firm and for each lawyer thereof in the section for each area where the firm maintains an office or branch office. Members who are Patent Agents or Attorneys may have a similar listing under the heading "Patent Attorneys & Agents".
3. No member shall authorize or permit the insertion in the white pages of a general telephone directory of more than one listing for the firm including the names of its members and associates and for each lawyer thereof in the section for each area where the firm maintains an office or branch office.
4. A member or firm may circulate among the profession or among his or its clients or publish in any newspaper in Ontario, announcements in good taste, without photographs, (other than at the time of call to the Bar), containing only information pertaining to his or its practice such as to change of office hours, change of address or of personnel.
5. A member may insert a card, notice or announcement in good taste in any law list, legal directory, legal periodical or similar publication, when such publication has been approved by Convocation and on such terms as Convocation may from time to time approve. Such approval may be withdrawn at any time.
6. A member's personal professional card shall contain no more than the information permitted on his, or his firm's, letterhead pursuant to the provisions of Rulings 10 and 24 of the Rules of Professional Conduct. For those members who are not in private practice, the card may include the name of his employer.

21st March, 1969.

New page 39 for Professional Conduct Handbook.

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PROFESSIONAL CONDUCT HANDBOOK

Ruling 17

ADVERTISING

This Ruling was repealed by Convocation on the 16th April, 1971.

The subject matter formerly covered by this Ruling is now covered by Ruling 3.

16th April, 1971.

New page 41 for Professional Conduct Handbook.

Please detach this page and put it in your own copy of the Handbook.

PROFESSIONAL CONDUCT HANDBOOK

Ruling 18

TOUTING, ADVERTISING AND SOLICITING

This Ruling was repealed by Convocation on the 16th April, 1971.

The subject matter formerly covered by this Ruling is now covered by Ruling 3.

16th April, 1971.

New page 43 for Professional Conduct Handbook.

Please detach this page and put it in your own copy of the Handbook.

PROFESSIONAL CONDUCT HANDBOOK

Ruling 19

ADVERTISING

This Ruling was repealed by Convocation on the 18th February, 1966.

The subject matter formerly covered by this Ruling is now covered by Ruling 16.

18th February, 1966.

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.

PROFESSIONAL CONDUCT HANDBOOK

Ruling 21

TRUST ACCOUNTS

Except where the client otherwise directs in writing, all trust accounts in which are deposited the funds of more than one client shall be maintained in non-interest-bearing accounts.

17th January, 1969

49

New page 49 for Professional Conduct Handbook.

Please detach this page and put it in your own copy of the Handbook.

PROFESSIONAL CONDUCT HANDBOOK

Ruling 22

ANNOUNCEMENTS

This Ruling was repealed by Convocation on the 18th February, 1966.

The subject matter formerly covered by this Ruling is now covered by Ruling 16.

18th February, 1966.

PROFESSIONAL CONDUCT HANDBOOK

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 other statement of his special or professional qualifications, experience or abilities be made by him or otherwise, nor may his firm name be stated.

16th June, 1972.

New page 53 for Professional Conduct Handbook.

Please detach this page and put it in your own copy of the Handbook.

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.

PROFESSIONAL CONDUCT HANDBOOK

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.

PROFESSIONAL CONDUCT HANDBOOK

Ruling 26

COLLECTION AGENCIES

This Ruling was repealed by Convocation on the 18th February, 1966.

The subject matter formerly covered by this Ruling is now covered by Ruling 16.

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.

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.

PROFESSIONAL CONDUCT HANDBOOK

Ruling 32

DUTY TO MEET FINANCIAL OBLIGATIONS

To maintain the honour of the Bar members have a professional duty (quite apart from any legal liability) to meet financial obligations in relation to their practice such as debts incurred to Sheriffs, Special Examiners, Registrars of Deeds and other public officials; agency accounts and obligations to members of the profession.

When a member incurs an obligation on behalf of a client which he is not prepared to pay personally he shall make his position clear in writing at the time the obligation is incurred.

23rd April, 1965.

PROFESSIONAL CONDUCT HANDBOOK

Ruling 33

NOTIFICATION OF BREACHES TO THE SOCIETY

Unless it be privileged or otherwise unlawful it is proper for any member to bring to the attention of the Society any instance involving or appearing to involve professional misconduct or conduct unbecoming a barrister, solicitor or student-at-law or reflecting on the honour of the Bar and the duty of every member to bring such instances to the Society's attention when they involve shortage of trust funds.

15th October, 1965.

PROFESSIONAL CONDUCT HANDBOOK

Ruling 34

DIVISION OF FEES

No division of fees for legal services is proper except with another lawyer, based upon a division of service or responsibility.

21st January, 1966.

Ruling 35

RETIRED JUDGES RETURNING TO PRACTICE

Without the express approval of Convocation, no Judge of the Supreme Court of Canada, the Exchequer Court of Canada, the Supreme Court of Ontario or of a County or District Court who hereafter retires or resigns and returns to practice, shall appear as counsel or advocate in any court or in chambers or before any administrative board or tribunal.

15th April, 1966.