

LAW SOCIETY OF NUNAVUT

Civility & Professionalism

Une présentation de

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BLG
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7.2 RESPONSIBILITY TO LAWYERS AND OTHERS

Courtesy and Good Faith

7.2-1 A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of their practice.

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

7.2-3 A lawyer must not, in the course of the lawyer's practice, use any device to record a conversation between the lawyer and a client, another lawyer or any person, even if lawful, without first informing the other person of the intention to do so.

7.2-4 A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

Commentary

[1] The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their functions properly.

[2] Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.

[3] A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.

[4] A lawyer should agree to reasonable requests concerning trial dates, adjournments, the waiver

INTEGRITY

2.1-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

Commentary

[1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about their lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.

[2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

[3] Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be reasonably likely to impair a client's trust in the lawyer, the society may be justified in taking disciplinary action.

[4] Generally, however, the society will not be concerned with the purely private or extra- professional activities of a lawyer that do not bring into question the lawyer's professional integrity.

Courtesy¹⁴

5.1-5 A lawyer must be courteous and civil and act in good faith to the tribunal and all persons with whom the lawyer has dealings.

Commentary

[1] Legal contempt of court and the professional obligation outlined here are not identical, and a consistent pattern of rude, provocative or disruptive conduct by a lawyer, even though unpunished as contempt, may constitute professional misconduct.

Quality of Service

3.2-1 A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.

Commentary

[1] This rule should be read and applied in conjunction with section 3.1 regarding competence.

[2] A lawyer has a duty to provide a quality of service at least equal to that which lawyers generally expect of a competent lawyer in a like situation. An ordinarily or otherwise competent lawyer may still occasionally fail to provide an adequate quality of service.

[3] A lawyer has a duty to communicate effectively with the client. What is effective will vary depending on the nature of the retainer, the needs and sophistication of the client and the need for the client to make fully informed decisions and provide instructions.

[4] A lawyer should ensure that matters are attended to within a reasonable time frame. If the lawyer can reasonably foresee undue delay in providing advice or services, the lawyer has a duty to so inform the client, so that the client can make an informed choice about their options, such as whether to retain new counsel.

But Wait...

- While there are individual sections in the Code of Conduct that specifically focus upon civility and professionalism, remember that these principles should be applied in the application of all sections of the Code of Conduct.

- For example:

Quality of Service

Further 3.2-1 Commentary:

Examples of expected practices

...

[5] The quality of service to a client may be measured by the extent to which a lawyer maintains certain standards in practice. The following list, which is illustrative and not exhaustive, provides key examples of expected practices in this area:

...

(o) being civil.

The Broader Profession

- The Rules and code of conduct stipulate **minimum standards** for professional conduct.
- **“Principles of Civility and Professionalism for Advocates”** (February 20, 2020) produced by the Advocates’ Society provides helpful guidelines and principles that go beyond this minimum standard.
- Duties we will highlight:
 - An Advocates’ Duty to the Profession
 - An Advocate’s Duty to Clients
 - An Advocate’s Duty to the Court
 - An Advocate's Duty to Opposing Counsel
 - An Advocates Duty to Self-Represented Litigants
 - An Advocate’s Duty to Other Parties and Witnesses
 - An Advocates’s Duty of the Judiciary

An Advocate's Duty to the Profession and Duty to Clients

An Advocate's Duty to the Profession

13. Advocates should be conscientious and respectful in their treatment of their colleagues within their workplaces. They should show sensitivity and understanding of their colleagues' circumstances and make the workplace inclusive and welcoming.

An Advocate's Duty to Clients

17. Advocates should pursue the interests of their clients resolutely, to the best of their abilities, within the bounds of the law and the rules of professional conduct. Advocates should "raise fearlessly every issue, advance every argument and ask every question."¹ At all times, however, they should represent their clients responsibly and with civility and integrity. The duty of zealous representation should be pursued in a manner consistent with duties to the court, to opposing counsel, and to the administration of justice.

18. Advocates should refrain from acting on instructions from a client that conflict with their duty to the court or other professional duties.

19. Advocates should advise their clients with honesty and candour.

Scenario 1 – Zealous Advocacy and Setting Client Expectations

You represent a client in a tumultuous family law matter. Tensions are running high and your client is very emotional. When discussing your legal strategy for the case, your client explains that they hired you to be a shark and to absolutely destroy the other side. Your client insists that you refuse to cooperate with the other side, and drag on the matter as long as possible to exhaust the other side's legal resources.

Discussion:

- What are your ethical obligations?
- How should you respond to your client?

An Advocate's Duty to the Court and the Judiciary

An Advocate's Duty to the Court

22. Advocates should use tactics that are legal, honest, and respectful of courts and tribunals.
23. Advocates should act with integrity and professionalism, while maintaining their overarching responsibility to ensure civil conduct.

An Advocate's Duty to the Judiciary

What Judges Can Expect from Advocates

72. Judges are entitled to expect that advocates will treat the court with candour, fairness, and courtesy.

Scenario 2: Social Media Use (or misuse)

Amanda had a trial before a judge of the Nunavut Court of Justice. The trial was long and hard fought by all sides. Ultimately, the judge decided to award damages against Amanda's client. She is furious. She decides to take her anger out on Facebook and writes a status stating the following:

- The judge was completely lost and didn't understand the issues and should go back to law school
- The judge is biased and only granted in favour of the Plaintiff because the Plaintiff's family knows the judge
- Identified the judge by name in their post.

Discussion:

Do these comments published on the social network raise issues relating to professionalism and civility?

An Advocate's Duty to Opposing Counsel

An Advocate's Duty to Opposing Counsel

29. The proper administration of justice requires the orderly and civil conduct of proceedings. Advocates should always act with civility. They should engage with opposing counsel in a civil manner even when faced with challenging clients, issues, conflicts, or disagreement. This duty applies to communications with all opposing counsel, including those that are more junior at the bar, and also taking into account diversity, equity, and inclusion.
30. Advocates should require those under their supervision to conduct themselves with courtesy and civility.
31. Advocates should extend professional courtesies to opposing counsel that do not prejudice their client.
32. Ill feelings that may exist between clients, particularly during litigation, should not influence advocates in their conduct, demeanour, or overall civility toward opposing counsel.
33. Advocates should always be honest and truthful with opposing counsel.
34. Advocates should demonstrate the same courtesy and civility shown to opposing counsel towards paralegals, articling students, self-represented litigants, or others.

Communications with Opposing Counsel

39. Advocates should avoid sending intemperate correspondence, including e-mails.

40. Advocates should avoid acrimony or disparaging personal remarks when interacting with opposing counsel.

Comments Made about Opposing Counsel

42. Advocates should not make ill-considered, gratuitous, derogatory, or uninformed comments about opposing counsel to others, including clients and the court. However, reasoned criticism based on evidence of lack of competence, unacceptable or discriminatory conduct, or unprofessional acts may be made in the appropriate forum.

43. Advocates should avoid posting critical comments about an identifiable opposing counsel on social media.

44. Advocates should not attribute bad motives or improper conduct to opposing counsel, except when well-founded and relevant to the issues of the case. If such improper conduct amounts to a violation of applicable rules of professional conduct, advocates may (or may be obliged to) report the conduct to the appropriate regulator.

45. Advocates should not ascribe a position to opposing counsel that opposing counsel has not taken, or otherwise seek to create an unjustified inference based on opposing counsel's statements or conduct.

Scenario 3: Threatening Counsel

A lawyer acting for the opposing side has become increasingly aggressive. Their latest email correspondence includes personal attacks against you, including:

- Where did you go to law school? You don't understand anything, and deserve to be disbarred.
- I was talking about your position with my colleagues and we laughed at how ridiculous it was.
- Seriously, look out. I may complain to the law society about you and how you're incompetent.

Questions for Discussion:

- (a) Does this email constitute a breach of the Code of Conduct?
- (b) What steps should you take if you receive this kind of correspondence?
 - How would you respond to this email?

Scenario 4: Obstructive Counsel

You are conducting examinations for discovery of the Plaintiff in a personal injury matter. Plaintiff's counsel repeatedly interrupts you before you're able to ask questions to the Plaintiff stating: "that's not relevant" or "oh they won't be answering that one." You have barely been able to ask any questions without interruption and counsel is getting increasingly aggressive.

Discussion:

- (a) What should you do?
- (b) Where is the line between zealous advocacy and inappropriate, unethical conduct?

Duty to Self-Represented Litigants, Other Parties and Witnesses

An Advocate's Duty to Self-Represented Litigants

58. Advocates should treat self-represented litigants with the same respect and courtesy shown to other counsel.

An Advocate's Duty to Other Parties and Witnesses

69. Advocates should always be honest, courteous, and civil in their communications with witnesses. Advocates should not abuse, intimidate, or harass a witness.

Scenario 5: The Inexperienced Self-Rep

You are representing a client in a dispute. The other side is unrepresented. You receive an email from the self-rep regarding an upcoming motion. The self-rep provides their position in the body of the email, including facts and evidence upon which they are intending to rely to rely at the motion. They explain they're going to send this email to the court.

Discussion:

(a) How do you respond to this email?

Questions?

The logo for the law firm BLG, consisting of the letters 'BLG' in a bold, blue, sans-serif font. The logo is positioned in the top right corner of the slide, partially enclosed by a thick blue L-shaped graphic element.

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