

Chapter 7 Relationship to the Law Society and Other Lawyers

SECTION 7.1 RESPONSIBILITY TO THE PROFESSION, THE LAW SOCIETY AND OTHERS

Communications from the Law Society

7.1-1 A lawyer shall reply promptly and completely to any communication from the Law Society in which a response is requested.

[Amended – October 2014]

Meeting Financial Obligations

7.1-2 A lawyer shall promptly meet financial obligations incurred in the course of practice on behalf of clients unless, before incurring such an obligation, the lawyer clearly indicates in writing to the person to whom it is to be owed that it is not to be a personal obligation.

[Amended - January 2009]

Commentary

[1] In order to maintain the honour of the Bar, lawyers have a professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed, or undertaken on behalf of clients unless the lawyer clearly indicates otherwise in advance.

[Amended - January 2009]

[2] When a lawyer retains a consultant, expert, or other professional, the lawyer should clarify the terms of the retainer in writing, including specifying the fees, the nature of the services to be provided, and the person responsible for payment. If the lawyer is not responsible for the payment of the fees, the lawyer should help in making satisfactory arrangements for payment if it is reasonably possible to do so.

[3] If there is a change of lawyer, the lawyer who originally retained a consultant, expert, or other professional should advise him or her about the change and provide the name, address, telephone number, fax number, and e-mail address of the new lawyer.

Duty to Report Misconduct

7.1-3 A lawyer shall report to the Law Society, unless to do so would be unlawful or would involve a breach of solicitor-client privilege,

- (a) the misappropriation or misapplication of trust monies;
- (b) the abandonment of a law or legal services practice;
- (c) participation in serious criminal activity related to a licensee's practice;
- (d) the mental instability of a licensee of such a serious nature that the licensee's clients are likely to be materially prejudiced; and
- (e) [FLSC - not in use]
- (f) any other situation where a licensee's clients are likely to be severely prejudiced.

[Amended – June 2007, October 2014]

Commentary

[1] Unless a licensee who departs from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Law Society any instance involving a breach of these rules or the rules governing paralegals. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Law Society directly or indirectly (e.g., through another lawyer).

[2] Nothing in this rule is meant to interfere with the traditional solicitor-client relationship. In all cases the report must be made *bona fide* without malice or ulterior motive.

[Amended – June 2007]

[3] Often, instances of improper conduct arise from emotional, mental, or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Law Society supports Homewood Human Solutions (HHS) and similar support services that are committed to the provision of confidential counselling for licensees. Therefore, lawyers acting in the capacity of peer counsellors for HHS, the Ontario Lawyers Assistance Program (OLAP) or corporations providing similar support services will not be called by the Law Society or by any investigation committee to testify at any conduct, capacity, or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Law Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or criminal activity related to the lawyer's practice. The Law Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

[Amended – January 2013]

Encouraging Client to Report Dishonest Conduct

7.1-4 In addition to other advice appropriate in the circumstances, a lawyer shall encourage a client who has a claim or complaint against an apparently dishonest licensee to report the facts to the Law Society as soon as reasonably practicable.

[Amended – October 2014]

7.1-4.1 If the client refuses to report their claim against an apparently dishonest licensee to the Law Society, the lawyer shall inform the client of the policy of the Compensation Fund and shall obtain instructions in writing to proceed with the client's claim without notice to the Law Society.

7.1-4.2 A lawyer shall inform a client of the provision of the *Criminal Code* dealing with the concealment of an indictable offence in return for an agreement to obtain valuable consideration (section 141).

7.1-4.3 If the client wishes to pursue a private agreement with the apparently dishonest lawyer, the lawyer shall not continue to act if the agreement constitutes a breach of section 141 of the *Criminal Code*.

Duty to Report Certain Offences

7.1-4.4 If a lawyer is charged with an offence described in By-Law 8 of the Law Society, he or she shall inform the Law Society of the charge and of its disposition in accordance with the by-law.

[Amended – June 2007]

Commentary

[1] By-Law 8 relates to the reporting of serious criminal charges under the *Criminal Code* and charges under other Acts that bring into question the honesty of a lawyer or that relate to a lawyer's practice of law. Such a charge may be a red flag that clients may need protection. The Law Society must be in a position to determine what, if any, action is required by it if a lawyer is charged with an offence described in By-Law 8 and what, if any, action is required if the lawyer is found guilty.

[Amended - June 2007]

SECTION 7.2 RESPONSIBILITY TO LAWYERS AND OTHERS**Courtesy and Good Faith**

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

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 function 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 other legal practitioners or the parties. The presence of personal animosity between legal practitioners 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 legal practitioners, but should be prepared, when requested, to advise and represent a client in a complaint involving another legal practitioner.

[4] [FLSC - not in use]

[Amended – June 2009]

7.2-1.1 A lawyer shall agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities, and similar matters that do not prejudice the rights of the client.

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

7.2-3 A lawyer shall not use any device to record a conversation between the lawyer and a client or another legal practitioner, even if lawful, without first informing the other person of the intention to do so.

[Amended - June 2009, October 2014]

Communications

7.2-4 A lawyer shall not in the course of professional practice send correspondence or otherwise communicate to a client, another legal practitioner, 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.

7.2-5 A lawyer shall answer with reasonable promptness all professional letters and communications from other legal practitioners that require an answer, and a lawyer shall be punctual in fulfilling all commitments.

Communications with a Represented Person

7.2-6 Subject to rules 7.2-6A and 7.2-7, if a person is represented by a legal practitioner in respect of a matter, a lawyer shall not, except through or with the consent of the legal practitioner

[Amended – September 2011]

- (a) approach or communicate or deal with the person on the matter; or
- (b) attempt to negotiate or compromise the matter directly with the person.

[Amended – June 2009]

7.2-6A Subject to rule 7.2-7, if a person is receiving legal services from a legal practitioner under a limited scope retainer on a particular matter, a lawyer may, without the consent of the legal practitioner, approach, communicate or deal directly with the person on the matter, unless the lawyer receives written notice of the limited nature of the legal services being provided by the legal practitioner and the approach, communication or dealing falls within the scope of the limited scope retainer.

[New – September 2011]

Second Opinions

7.2-7 A lawyer who is not otherwise interested in a matter may give a second opinion to a person who is represented by a legal practitioner with respect to that matter.

[Amended - June 2009]

Commentary

[1] Rule 7.2-6 applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract, or negotiation, who is represented by a legal practitioner concerning the matter to which the communication relates. A lawyer may communicate with a represented person concerning matters outside the representation. This rule does not prevent parties to a matter from communicating directly with each other.

[2] The prohibition on communications with a represented person applies only where the lawyer knows that the person is represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but actual knowledge may be inferred from the circumstances. This inference may arise where there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of the other legal practitioner by closing their eyes to the obvious.

[3] Where notice as described in rule 7.2-6A has been provided to a lawyer for an opposing party, the lawyer is required to communicate with the legal practitioner who is representing the person under a limited scope retainer, but only to the extent of the matter or matters within the scope of the retainer as identified by the legal practitioner. The lawyer may communicate with the person on matters outside of the limited scope retainer.

[New – September 2011]

[4] Rule 7.2-7 deals with circumstances in which a client may wish to obtain a second opinion from another lawyer. While a lawyer should not hesitate to provide a second opinion, the obligation to be competent and to render competent services requires that the opinion be based on sufficient information. In the case of a second opinion, such information may include facts that can be obtained only through consultation with the first legal practitioner involved. The lawyer should advise the client accordingly, and if necessary consult the first legal practitioner unless the client instructs otherwise.

[Amended - June 2009]

Communications with a Represented Corporation or Organization

7.2-8 A lawyer retained to act on a matter involving a corporation or organization that is represented by a legal practitioner shall not, without the legal practitioner's consent or unless otherwise authorized or required by law, communicate, facilitate communication or deal with a person

- (a) who is a director or officer, or another person who is authorized to act on behalf of the corporation or organization;
- (b) who is likely involved in decision-making for the corporation or organization or who provides advice in relation to the particular matter;
- (c) whose act or omission may be binding on or imputed to the corporation or organization for the purposes of its ability; or
- (d) who supervises, directs or regularly consults with the legal practitioner and who makes decisions based on the legal practitioner's advice.

7.2-8.1 If a person described in rule 7.2-8(a), (b), (c) or (d) is represented in the matter by a legal practitioner, the consent of the legal practitioner is sufficient to allow a lawyer to communicate, facilitate communication or deal with the person.

7.2-8.2 In rule 7.2-8, “organization” includes a partnership, limited partnership, association, union, fund, trust, co-operative, unincorporated association, sole proprietorship and a government department, agency, or regulatory body.

Commentary

[1] The purpose of rule 7.2-8 and rules 7.2-8.1 and 7.2-8.2 is to protect the lawyer-client relationship of corporations and other organizations by specifying persons with whom a lawyer may not communicate, facilitate communication or deal if the lawyer represents a client in a matter involving a corporation or organization and the corporation or organization is represented by a legal practitioner. They apply to litigation as well as to transactional and other non-litigious matters. A lawyer may communicate with a person in a corporation or other organization, other than those referred to in rule 7.2-8, even if the corporation or organization is represented by a legal practitioner. These rules are intended to advance the public policy of promoting efficient discovery and favours the revelation of the truth by addressing the circumstances in which a corporation or organization is allowed to prevent the disclosure of relevant evidence. They are not intended to protect a corporation or organization from the revelation of prejudicial facts.

[2] Generally, rule 7.2-8 precludes contact only with those actively involved in a matter. For example, in a litigation matter, it does not preclude contact with mere witnesses. Further, communications with persons within the corporation or organization are not barred merely by virtue of the possibility that their information might constitute “admissions” in the evidentiary sense. To proscribe contact with any person within a corporation or organization on the basis that he or she may make a statement that might be admitted in evidence against the corporation or organization would be overly protective of the corporation or organization and too restrictive of an opposing counsel’s ability to contact and interview potential witnesses. Fairness does not require the presence of a corporation’s or organization’s legal practitioner whenever a person within the corporation or organization may make a statement admissible in evidence against it.

[3] Rule 7.2-8 prohibits communications by a lawyer for another person or entity concerning the matter in question with persons likely involved in the decision-making process about the matter. These individuals are so closely identified with the interests of the corporation or organization as to be indistinguishable from it. They would have the authority to commit the corporation or organization to a position with regard to the subject matter of the representation. This person would have such authority as a corporate officer or because for some other reason the law cloaks him or her with authority, including making decisions affecting the outcome of the matter, including litigation decisions, or because their duties include answering the type of inquiries posed. These individuals include those to whom the organization’s legal practitioner looks for decisions with respect to the matter.

[4] Thus, subject to the exceptions set out in it, rule 7.2-8 would prohibit contact with those persons who exercise managerial responsibility in the matter, who are alleged to have committed the wrongful acts at issue in the litigation, or who have authority on behalf of the corporation to make decisions about the course of the litigation.

[5] A lawyer is not prohibited from communicating with a person in a litigation matter unless the person's act or omission is believed, on reasonable grounds, to be so central and obvious to a determination of liability that the person's conduct may be imputed to the corporation or organization. If it is not reasonably likely that the person is an active participant for liability purposes or a decision-maker respecting the outcome of the matter, nothing in rule 7.2-8 precludes informal contact with such a person.

[6] An individual who regularly consults with the corporation's or organization's legal practitioner concerning a matter will not necessarily be a person who also directs the legal practitioner. In some large corporations and organizations, some management personnel may direct or control counsel for some matters but not others. The mere fact that a person holds a management position does not trigger the protections of the rule.

[7] A person who is simply interviewed or questioned by a corporation's or organization's legal practitioner about a matter to gather factual information does not "regularly consult" with the legal practitioner. While a person's duties within a corporation or organization may include answering litigation-related inquiries, rules 7.2-8 to 7.2-8.2 do not prohibit an inquiry of this person by opposing counsel that is related to the person's knowledge of the historical aspects leading up to the alleged injury or damage which give rise to the subject matter of the representation.

[8] The prohibition on communications with a represented corporation or organization applies only where the lawyer knows that the entity is represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but actual knowledge may be inferred from the circumstances. This inference may arise where it is reasonable to believe that the entity with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of counsel by closing their eyes to the obvious.

[9] Rule 7.2-8 does not prevent a lawyer from communicating with employees or agents concerning matters outside the representation.

[10] As a practical matter, to avoid eliciting privileged or confidential information and ensure that the communications are proper, the lawyer should identify himself or herself as representing an interested party in the matter when approaching a potential witness or other person in the corporation or organization. The lawyer should also advise the person whom he or she is hoping to interview that they are free to decline to respond. See also Section 5.3 (Interviewing Witnesses).

[11] A lawyer representing a corporation or other organization may also be retained to represent employees of the corporation or organization. In such circumstances, the lawyer must comply with the requirements of the rules in Section 3.4 (Conflicts), and particularly rule 3.4-5 to rule 3.4-9. A lawyer must not represent that he or she acts for an employee of a client, unless the requirements of the rules in Section 3.4 have been complied with, and must not be retained by an employee solely for the purpose of sheltering factual information from another party.

[12] If the representation by the legal practitioner described in rule 7.2-8.1 is only with respect to the personal interests of the individual, consent of the corporation's or organization's counsel would be required with respect to the corporation's or organization's interests.

[13] **Unions** – Rule 7.2-8 is not intended to prohibit a lawyer for a union from contacting employees of a represented corporation or organization in circumstances where proper representation of the union's interests requires communication with certain employees who are the holders of information. For example, a lawyer retained by a union with respect to a termination grievance in which the union alleges that the employer, who is represented, has breached the collective agreement, is not prohibited from contacting employees who may have information on the termination or events leading up to the termination.

[14] Similarly, a management-side labour lawyer would not offend rule 7.2-8 if the lawyer contacted an employee who is a member of a bargaining unit represented by a legal practitioner.

[15] **Governments** –The concept of the individual who may “bind the organization” may not apply in the government context in the same way as in the corporate environment. For government departments, ministries and similar groups, rules 7.2-8 to 7.2-8.2 are intended to cover individuals who participate in a significant way in decision-making or who provide advice in relation to a particular matter.

[16] In government, because of its complexity and despite its hierarchy, it may not always be clear to whom a lawyer is authorized to communicate on a particular matter and who is involved in the decision-making process. The roles of these individuals may not be discrete, as different officials at different levels in different departments provide advice and recommendations. For example, in a contract negotiation, employees from one ministry may be directly involved, but those from another ministry may also have sensitive information relevant to the matter that may require protection under rule 7.2-8.

[17] In addition, the legal branch at the particular ministry is usually considered to always be “retained”. There may be circumstances where the only appropriate action is to contact the legal branch. In all cases, appropriate judgment must be exercised.

[18] In general, rules 7.2-8 to 7.2-8.2 are not intended to

(a) constrain lawyers who wish to contact government officials for a discussion of policy or similar matters on behalf of a client;

(b) affect access to information requests under such legislation as the *Freedom of Information and Protection of Privacy Act* (Ontario) or the federal *Access to Information Act*, including situations where a litigant has named the provincial or federal Crown, respectively, as a defendant; or

(c) affect the exercise of the duties of public servants under the *Public Service of Ontario Act, 2006* with respect to disclosure of information.

[19] Municipalities – Similar to government, in the municipal context, it is recognized that no one individual has the authority to bind the municipality. Each councillor is representative of the entire council for the purposes of decision-making. Rule 7.2-8, for example, would not permit the lawyer for an applicant on a controversial planning matter that is before the Ontario Municipal Board to contact individual members of council on the matter without the consent of the municipal solicitor.

[20] Rules 7.2-8 to 7.2-8.2 are not intended to:

- (a) prevent lawyers appearing before council on a client's behalf and making representations to a public meeting held pursuant to the *Planning Act*;
- (b) affect access to information requests under such legislation as the *Municipal Freedom of Information and Protection of Privacy Act*, including situations where a litigant has named the municipality as a defendant; or
- (c) restrain communications by persons having dealings or negotiations, including lobbying, with municipalities with the elected representatives (councillors) or municipal staff.

[Amended – November 2010]

Unrepresented Persons

7.2-9 When a lawyer deals on a client's behalf with an unrepresented person, the lawyer shall:

- (a) [FLSC - not in use]
- (b) take care to see that the unrepresented person is not proceeding under the impression that their interests will be protected by the lawyer; and
- (c) take care to see that the unrepresented person understands that the lawyer is acting exclusively in the interests of the client and accordingly their comments may be partisan.

[Amended – October 2014]

Commentary

[1] If an unrepresented person requests the lawyer to advise or act in the matter, the lawyer should be governed by the considerations outlined in these rules about joint retainers.

[New – October 2014]

Inadvertent Communications

7.2-10 A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably ought to know that the document was inadvertently sent shall promptly notify the sender.

Commentary

[1] Lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or legal practitioners acting for them. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this rule requires the lawyer to notify the sender promptly in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of this rule, as is the question of whether the privileged status of a document has been lost. Similarly, this rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this rule, “document” includes email or other electronic modes of transmission subject to being read or put into readable form.

[2] [FLSC - not in use]

[New – October 2014]

Undertakings and Trust Conditions

7.2-11 A lawyer shall not give an undertaking that cannot be fulfilled and shall fulfill every undertaking given and honour every trust condition once accepted.

[Amended – October 2014]

Commentary

[1] Undertakings should be written or confirmed in writing and should be absolutely unambiguous in their terms. If a lawyer giving an undertaking does not intend to accept personal responsibility, this should be stated clearly in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given is entitled to expect that the lawyer giving it will honour it personally. The use of such words as “on behalf of my client” or “on behalf of the vendor” does not relieve the lawyer giving the undertaking of personal responsibility.

[1.1] In real estate transactions using the system for the electronic registration of title documents (“e-reg”TM), the lawyers acting for the parties (with their consent) will sign and be bound by a Document Registration Agreement that will contain undertakings. When entering into a Document Registration Agreement, a lawyer should have regard to and strictly comply with their obligations under rule 7.2-11.

[2] Trust conditions should be clear, unambiguous and explicit and should state the time within which the conditions must be met. Trust conditions should be imposed in writing and communicated to the other party at the time the property is delivered. Trust conditions should be accepted in writing and, once accepted, constitute an obligation on the accepting lawyer that the lawyer must honour personally. The lawyer who delivers property without any trust condition cannot retroactively impose trust conditions on the use of that property by the other party.

[3] The lawyer should not impose or accept trust conditions that are unreasonable, nor accept trust conditions that cannot be fulfilled personally. When a lawyer accepts property subject to trust conditions, the lawyer must fully comply with such conditions, even if the conditions subsequently appear unreasonable. It is improper for a lawyer to ignore or breach a trust condition he or she has accepted on the basis that the condition is not in accordance with the contractual obligations of the clients. It is also improper to unilaterally impose cross conditions respecting one's compliance with the original trust conditions.

[4] If a lawyer is unable or unwilling to honour a trust condition imposed by someone else, the subject of the trust condition should be immediately returned to the person imposing the trust condition, unless its terms can be forthwith amended in writing on a mutually agreeable basis.

[5] Trust conditions can be varied with the consent of the person imposing them. Any variation should be confirmed in writing. Clients or others are not entitled to require a variation of trust conditions without the consent of the legal practitioner who has imposed the conditions and the lawyer who has accepted them.

[6] Any trust condition that is accepted is binding upon a lawyer, whether imposed by another legal practitioner or by a lay person. A lawyer may seek to impose trust conditions upon a non-licensuree, whether an individual or a corporation or other organization, but great caution should be exercised in so doing since such conditions would be enforceable only through the courts as a matter of contract law and not by reason of the ethical obligations that exist between licensees.

[7] A lawyer should treat money or property that, on a reasonable construction, is subject to trust conditions or an undertaking in accordance with this rule.

[Amended - November 2007, October 2014]

SECTION 7.3 OUTSIDE INTERESTS AND THE PRACTICE OF LAW**Maintaining Professional Integrity and Judgment**

7.3-1 A lawyer who engages in another profession, business, or occupation concurrently with the practice of law shall not allow such outside interest to jeopardize the lawyer's professional integrity, independence, or competence.

Commentary

[1] A lawyer must not carry on, manage or be involved in any outside interest in such a way that makes it difficult to distinguish in which capacity the lawyer is acting in a particular transaction, or that would give rise to a conflict of interest or duty to a client.

[2] When acting or dealing in respect of a transaction involving an outside interest, the lawyer should be mindful of potential conflicts and the applicable standards referred to in the conflicts rule and disclose any personal interest.

[New – October 2014]

7.3-2 A lawyer shall not allow involvement in an outside interest to impair the exercise of the lawyer's independent judgment on behalf of a client.

Commentary

[1] The term “outside interest” covers the widest possible range of activities and includes activities that may overlap or be connected with the practice of law such as engaging in the mortgage business, acting as a director of a client corporation, or writing on legal subjects, as well as activities not so connected such as, for example, a career in business, politics, broadcasting or the performing arts. In each case the question of whether and to what extent the lawyer may be permitted to engage in the outside interest will be subject to any applicable law or rule of the Law Society.

[2] Where the outside interest is not related to the legal services being performed for clients, ethical considerations will usually not arise unless the lawyer's conduct might bring the lawyer or the profession into disrepute or impair the lawyer's competence as, for example, where the outside interest might occupy so much time that clients' interests would suffer because of inattention or lack of preparation.

SECTION 7.4 THE LAWYER IN PUBLIC OFFICE**Standard of Conduct**

7.4-1 A lawyer who holds public office shall, in the discharge of official duties, adhere to standards of conduct as high as those that these rules require of a lawyer engaged in the practice of law.

Commentary

[1] The rule applies to a lawyer who is elected or appointed to a legislative or administrative office at any level of government, regardless of whether the lawyer attained the office because of professional qualifications. Because such a lawyer is in the public eye, the legal profession can more readily be brought into disrepute by a failure to observe its ethical standards.

[2] Generally, the Law Society will not be concerned with the way in which a lawyer holding public office carries out official responsibilities, but conduct in office that reflects adversely upon the lawyer's integrity or professional competence may be the subject of disciplinary action.

[3] [FLSC - not in use]

[Amended – October 2014]

SECTION 7.5 PUBLIC APPEARANCES AND PUBLIC STATEMENTS**Communication with the Public**

7.5-1 Provided that there is no infringement of the lawyer's obligations to the client, the profession, the courts, or the administration of justice, a lawyer may communicate information to the media and may make public appearances and statements.

Commentary

[1] Lawyers in their public appearances and public statements should conduct themselves in the same manner as with their clients, their fellow legal practitioners, and tribunals. Dealings with the media are simply an extension of the lawyer's conduct in a professional capacity. The mere fact that a lawyer's appearance is outside of a courtroom, a tribunal, or the lawyer's office does not excuse conduct that would otherwise be considered improper.

[2] A lawyer's duty to the client demands that, before making a public statement concerning the client's affairs, the lawyer must first be satisfied that any communication is in the best interests of the client and within the scope of the retainer.

[3] Public communications about a client's affairs should not be used for the purpose of publicizing the lawyer and should be free from any suggestion that the lawyer's real purpose is self-promotion or self-aggrandizement.

[4] Given the variety of cases that can arise in the legal system, particularly in civil, criminal, and administrative proceedings, it is impossible to set down guidelines that would anticipate every possible circumstance. Circumstances will arise where the lawyer should have no contact with the media and other cases where the lawyer is under a specific duty to contact the media to properly serve the client.

[Amended – October 2014]

[5] A lawyer is often involved in a non-legal setting where contact is made with the media about publicizing such things as fund-raising, expansion of hospitals or universities, programs of public institutions or political organizations, or in acting as a spokesperson for organizations that, in turn, represent particular racial, religious, or other special interest groups. This is a well-established and completely proper role for the lawyer to play in view of the obvious contribution it makes to the community.

[6] A lawyer is often called upon to comment publicly on the effectiveness of existing statutory or legal remedies, on the effect of particular legislation or decided cases, or to offer an opinion about cases that have been instituted or are about to be instituted. This, too, is an important role the lawyer can play to assist the public in understanding legal issues.

[Amended – June 2009]

[6.1] A lawyer is often involved as advocate for interest groups whose objective is to bring about changes in legislation, governmental policy, or even a heightened public awareness about certain issues. This is also an important role that the lawyer can be called upon to play.

[7] Lawyers should be aware that when they make a public appearance or give a statement they will ordinarily have no control over any editing that may follow or the context in which the appearance or statement may be used, or under what headline it may appear.

Interference with Right to Fair Trial or Hearing

7.5-2 A lawyer shall not communicate information to the media or make public statements about a matter before a tribunal if the lawyer knows or ought to know that the information or statement will have a substantial likelihood of materially prejudicing a party's right to a fair trial or hearing.

Commentary

[1] Fair trials and hearings are fundamental to a free and democratic society. It is important that the public, including the media, be informed about cases before courts and tribunals. The administration of justice benefits from public scrutiny. It is also important that a person's, particularly an accused person's, right to a fair trial or hearing not be impaired by inappropriate public statements made before the case has concluded.

SECTION 7.6 PREVENTING UNAUTHORIZED PRACTICE**Preventing Unauthorized Practice**

7.6-1 A lawyer shall assist in preventing the unauthorized practice of law and the unauthorized provision of legal services.

[Amended – June 2007]

Commentary

[1] Statutory provisions against the practice of law and provision of legal services by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal ability, but they are immune from control, regulation, and, in the case of misconduct, from discipline by the Law Society. Moreover, the client of a lawyer who is authorized to practise has the protection and benefit of the lawyer-client privilege, the lawyer's duty of secrecy, the professional standard of care that the law requires of lawyers, and the authority that the courts exercise over them. Other safeguards include professional liability insurance, rights with respect to the assessment of bills, rules respecting the handling of trust monies, and requirements for the maintenance of compensation funds.

Working With or Employing Unauthorized Persons

7.6-1.1 Without the express approval of a committee of Convocation appointed for the purpose, a lawyer shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the practice of law or provision of legal services any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, has had their licence to practise law or to provide legal services revoked, has been suspended, has had their licence to practise law or to provide legal services suspended, has undertaken not to practise law or to provide legal services, or who has been involved in disciplinary action and been permitted to resign or to surrender their licence to practise law or to provide legal services, and has not had their licence restored.

Practice by Suspended Lawyers Prohibited

7.6-1.2 A lawyer whose licence to practise law is suspended shall comply with the requirements of the by-laws and shall not

- (a) practise law;
- (b) represent or hold himself or herself out as a person entitled to practise law; or
- (c) represent or hold himself or herself out as a person entitled to provide legal services.

[New - January 2008]

Commentary

[1] Part II of By-Law 7.1 (Operational Obligations and Responsibilities) and Part II.1 of By-Law 9 (Financial Transactions and Records) set out the obligations of a lawyer whose licence to practise law is suspended.

[Amended - May 2008]

Undertakings Not to Practise Law

7.6-1.3 A lawyer who gives an undertaking to the Law Society not to practise law shall not

- (a) practise law;
- (b) represent or hold himself or herself out as a person entitled to practise law; or
- (c) represent or hold himself or herself out as a person entitled to provide legal services.

[New - January 2008]

Undertakings to Practise Law Subject to Restrictions

7.6-1.4 A lawyer who gives an undertaking to the Law Society to restrict their practice shall comply with the undertaking.

[New - January 2008]

SECTION 7.7 RETIRED JUDGES RETURNING TO PRACTICE

7.7-1 [FLSC – not in use]

Definitions

7.7-1.1 In rule 7.7-1.2 “retired appellate judge” means a lawyer

(a) who was formerly a judge of the Supreme Court of Canada, the Court of Appeal for Ontario, or the Federal Court of Appeal;

[Amended - January 2009]

(b) who has retired, resigned, or been removed from the Bench; and

(c) who has returned to practice.

Appearance as Counsel

7.7-1.2 A retired appellate judge shall not appear as counsel or advocate in any court, or in chambers, or before any administrative board or tribunal without the express approval of a committee of Convocation appointed for the purpose. This approval may only be granted in exceptional circumstances and may be restricted as the committee of Convocation sees fit.

7.7-1.3 In rule 7.7-1.4, “retired judge” means a lawyer

(a) who was formerly a judge of the Federal Court, the Tax Court of Canada, the Supreme Court of Ontario, Trial Division, a County or District Court, the Ontario Court of Justice, or the Superior Court of Justice;

[Amended - January 2009]

(b) who has retired, resigned, or been removed from the Bench; and

(c) who has returned to practice.

7.7-1.4 A retired judge shall not appear as counsel or advocate

(a) before the court on which the judge served or any lower court; and

(b) before any administrative board or tribunal over which the court on which the judge served exercised an appellate or judicial review jurisdiction

for a period of three years from the date of their retirement, resignation, or removal, without the express approval of a committee of Convocation, appointed for the purpose, which approval may only be granted in exceptional circumstances and may be restricted as the committee of Convocation sees fit.

[Amended – October 2014]

SECTION 7.8 ERRORS AND OMISSIONS**Informing Client of Error or Omission**

7.8-1 When, in connection with a matter for which a lawyer is responsible, the lawyer discovers an error or omission that is or may be damaging to the client and that cannot be rectified readily, the lawyer shall

- (a) promptly inform the client of the error or omission being careful not to prejudice any rights of indemnity that either of them may have under an insurance, client's protection or indemnity plan, or otherwise;
- (b) recommend that the client obtain legal advice from an independent lawyer concerning any rights the client may have arising from the error or omission; and
- (c) advise the client that in the circumstances, the lawyer may no longer be able to act for the client.

[Amended – October 2014]

Notice of Claim

7.8-2 A lawyer shall give prompt notice of any circumstance that the lawyer may reasonably expect to give rise to a claim to an insurer or other indemnitor so that the client's protection from that source will not be prejudiced.

Commentary

[1] Compulsory insurance imposes obligations on a lawyer, but these obligations must not impair the relationship and duties of the lawyer to the client. The insurer's rights must be preserved. There may well be occasions when a lawyer believes that certain actions or the failure to take action have made the lawyer liable for damages to the client when, in reality, no liability exists. Further, in every case a careful assessment will have to be made of the client's damages arising from the lawyer's negligence.

[1.1] Many factors will have to be taken into account in assessing the client's claim and damages. As soon as a lawyer becomes aware that an error or omission may have occurred, that may reasonably be expected to involve liability to the client for professional negligence, the lawyer should take the following steps:

[Amended - January 2009]

- (a) immediately arrange an interview with the client and advise the client that an error or omission may have occurred, that may form the basis of a claim by the client against the lawyer;

- (b) advise the client to obtain an opinion from an independent lawyer and that, in the circumstances, the first lawyer might no longer be able to act for the client;
- (c) subject to the rules in Section 3.3 (Confidentiality), inform the insurer of the facts of the situation;
- (d) co-operate fully and as expeditiously as possible with the insurer in the investigation and eventual settlement of the claim; and
- (e) make arrangements to pay that portion of the client's claim that is not covered by the insurance immediately upon completion of the settlement of the client's claim. This would include payment of the deductible under a policy of insurance in accordance with By-Law 6 (Professional Liability Insurance).

[Amended - January 2009]

Co-operation

7.8-3 When a claim of professional negligence is made against a lawyer, he or she shall assist and co-operate with the insurer or other indemnitor to the extent necessary to enable the claim to be dealt with promptly.

Responding to Client's Claim

7.8-4 If a lawyer is not indemnified for a client's errors and omissions claim or to the extent that the indemnity may not fully cover the claim, the lawyer shall expeditiously deal with the claim and shall not take unfair advantage that would defeat or impair the client's claim.

7.8-5 In cases where liability is clear and the insurer or other indemnitor is prepared to pay its portion of the claim, a lawyer has a duty to pay the balance.

SECTION 7.8.1 RESPONSIBILITY IN MULTI-DISCIPLINE PRACTICES

Compliance with these Rules

7.8.1-1 A lawyer in a multi-discipline practice shall ensure that non-licensee partners and associates comply with these rules and all ethical principles that govern a lawyer in the discharge of their professional obligations.

[Amended - June 2009]

SECTION 7.8.2 DISCIPLINE**Disciplinary Authority**

7.8.2-1 A lawyer is subject to the disciplinary authority of the Law Society regardless of where the lawyer's conduct occurs.

Professional Misconduct

7.8.2-2 The Law Society may discipline a lawyer for professional misconduct.

Conduct Unbecoming a Lawyer

7.8.2-3 The Law Society may discipline a lawyer for conduct unbecoming a lawyer.