

PREFACE

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The legal profession has developed over the centuries to meet a public need for legal services on a professional basis. Traditionally, this has involved the provision of advice and representation to protect or advance the rights, liberties and property of a client by a trusted adviser with whom the client has a personal relationship and whose integrity, competence and loyalty are assured.

In order to satisfy this need for legal services adequately, lawyers and the quality of service they provide must command the confidence and respect of the public. This can only be achieved if lawyers establish and maintain a reputation for both integrity and high standards of legal skill and care. The lawyers of many countries in the world, despite differences in their legal systems, practices, procedures and customs, have all imposed upon themselves substantially the same basic standards. Those standards invariably place their main emphasis on integrity and competence.

In Canada, the provincial legislatures have entrusted to the legal profession through its governing bodies responsibility for maintaining standards of professional conduct and for disciplining lawyers who fail to meet them. Generally, the preparation and publication of codes of ethics and professional conduct have been left to the profession. It is a responsibility that must be accepted and carried out by the profession as a whole.

The pertinent laws in Canada use various terms to describe conduct that subjects the lawyer to discipline, for example, "professional misconduct", "conduct unbecoming" and "acts derogatory to the honour or dignity of the Bar". Some statutes also provide that disciplinary action may be taken if a lawyer is convicted of an indictable offence, or for "misappropriation or wrongful conversion", or "gross negligence" or for conduct "incompatible with the best interests of the public or the members of the [Law] Society", or for breach of the applicable statute itself or the rules made under it.

With few exceptions the statutes do not specify the kinds of conduct that will subject a lawyer to discipline. For its part, the Code does not attempt to define professional misconduct or conduct unbecoming, nor does it try to evaluate the relative importance of the various rules or the gravity of a breach of any of them. By enunciating principles of what is and is not acceptable professional conduct, the Code is designed to assist governing bodies and practitioners alike in determining whether in a given case the conduct is acceptable, thus furthering the process of self-government.

The essence of professional responsibility is that the lawyer must act at all times *uberrimae fidei*, with utmost good faith to the court, to the client, to other lawyers, and to members of the public. Given the many and varied demands to which the lawyer is subject, it is inevitable that problems will arise. No set of rules can foresee every possible situation, but the ethical principles set out in the Code are intended to provide a framework within which the lawyer may, with courage and dignity, provide the high quality of legal services that a complex and ever-changing society demands.

The extent to which each lawyer's conduct should rise above the minimum standards set by the Code is a matter of personal decision. The lawyer who would enjoy the respect and confidence of the community as well as of other members of the legal profession must strive to maintain the highest possible degree of ethical conduct. The greatness and strength of the legal profession depend on high standards of professional conduct that permit no compromise.

The Code of Professional Conduct that follows is to be understood and applied in the light of its primary concern for the protection of the public interest. This principle is implicit in the legislative grants of self-government referred to above. Inevitably, the practical application of the Code to the diverse situations that confront an active profession in a changing society will reveal

gaps, ambiguities and apparent inconsistencies. In such cases, the principle of protection of the public interest will serve to guide the practitioner to the applicable principles of ethical conduct and the true intent of the Code.