GUIDE OF PROFESSIONAL COURTESY

and

Informal Procedure for Receiving and Treating Breaches to the Guide of Professional Courtesy
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In March 2006, the Council of the Bar of Montreal adopted the Guide of Professional Courtesy for lawyers. This pamphlet, which supplements the provisions of the Code of Ethics of Advocates, aims to guide members of the Bar in their relationships with their colleagues, both in Court and in the negotiation of non contentious matters.

The Guide of Professional Courtesy has no force of law. It is intended to serve a pedagogical purpose and aims to teach young lawyers and to remind more experienced ones that the principles of civility must characterize our professional conduct.

After the Guide was adopted, the Ethics and Image Committee drafted an Informal Procedure for Receiving and Treating Breaches to the Guide of Professional Courtesy, which was adopted by the Council of the Bar of Montreal in February 2008, the text of which is published in the second part of this pamphlet.

This procedure, separate from the disciplinary process, is collegial and confidential. It relies on the contribution of highly reputable lawyers, members of the Advisory Committee on Professional Courtesy, whose names can be consulted at www.barreaudemontreal.qc.ca in the section «The Bar/Committees».

As of today, under the Informal Procedure for Receiving and Treating Breaches to the Guide of Professional Courtesy, members of the Bar and the Judiciary may report any breach to the director general of the Bar of Montreal, at (514) 866-9392, extension 226. It is important to remember, however, that breaches of the Code of Ethics of Advocates must be reported to the syndic of the Barreau du Québec.
Preface

In a society founded on the rule of law and the fundamental value of the human being, the role of the lawyer, whose purpose is to serve the interest of justice, is especially important.

A lawyer’s role is not limited to representing the interests of his clients. Under the Bar Act, he is also an officer of the court and participates in the administration of justice.¹

In performing his duties, a lawyer must at all times act with dignity, integrity, honour, respect, moderation and courtesy.²

Therefore, in addition to respecting the code of ethics to which he must adhere, a lawyer must adopt and maintain, through his words and deeds, a standard of conduct that reflects the principles of equity, respect and good faith on which our legal system is founded.

These values are particularly important in the context of judicial proceedings where the parties may be antagonistic and the stakes high. In these cases, it is particularly important that the lawyer act professionally and competently.

This professionalism is exemplified by an impartial attitude and the fair and efficient handling of litigation which serves to maintain the public’s trust in the legal system.

Given the importance of these principles, the Bar of Montreal believes it appropriate to propose standards of professional conduct which will assist its members in their legal practice. These guidelines are not intended to impede counsel’s diligent, professional or even vigorous representation of his client’s interests, but aim to encourage lawyers to perform their duties courteously, while upholding the authority of the court.

Nota: The masculine gender includes the feminine and is used for the sole purpose of lightening the text.

¹ Section 2 of the Act Respecting the Bar (K.S.U. c. B-1)
² Code de déontologie des avocats, article 2.00.01
The lawyer’s conduct

To ensure the proper administration of justice, the serenity of judicial hearings and the respect of the rights of parties and witnesses, a lawyer should at all times be courteous and civil to those engaged in the judicial and administrative process, including legal support staff.

When communicating with these individuals, a lawyer shall never use racist, sexist, condescending or prejudicial language. A lawyer shall avoid acting in a manner which may adversely affect the honour and dignity of the legal profession or tarnish the image of justice.

The lawyer’s conduct toward the court

A lawyer must at all times treat the court with courtesy and respect.

A lawyer shall be punctual in fulfilling his commitments to the court. It is the lawyer’s duty to inform his clients and witnesses of the dates, locations and times of the hearings they are required to attend.

When a lawyer, or his client or witness, is unable to attend a hearing on time, he shall immediately inform the court and opposing counsel, or the unrepresented litigant.

During court hearings, a lawyer should help to ensure that the order, dignity and decorum appropriate to the courtroom are maintained.

In this respect, a lawyer shall:

- be suitably dressed; a gown must be worn when required by the rules of procedure, unless otherwise permitted by the court;
- take the necessary steps to ensure that his clients and witnesses do not disrupt the hearing; for instance, by refraining from reacting to the answers of other witnesses or to questions from counsel or the court;
- advise his clients and those he has summoned as witnesses to dress suitably and to behave in a serious and reserved manner in court;
- stand when addressing the court or when the court addresses him, unless exempted by the court;
- address the court by using the designations “Monsieur le Juge”, “Madame le ou la Juge”, “Mister Justice”, “Madam Justice”, “Judge”, or any other designation appropriate to the type of adjudicator;
- never turn his back when addressing the bench;
- not make any noise which could disrupt the hearing;
- ensure that mobile phones and other electronic devices are switched to off;

3 Extract of section 8B of the Rules of Practice of the Superior Court of the Province of Quebec, Criminal Division, and section 38.1 from the Rules of practice of the Superior Court of Quebec in civil matters.
stand and use the appropriate formulation when objecting to evidence, such as: “Objection!” or “Je m’oppose à cette question, Monsieur or Madame le or la Juge”, “Objection”, “I object” or any other formulation appropriate to the adjudicator;

where the exclusion of witnesses is ordered, direct his witnesses not to discuss their evidence amongst themselves;

address the bench when making a request of another party. A lawyer must not directly address opposing counsel, unless authorized by the court;

not interrupt the court when being addressed;

comply with any request, decision or order of the court, subject to the right of appeal;

refrain from making remarks or acting in a manner which is disparaging, condescending or sarcastic in reaction to a decision of the court;

honestly answer questions put to him by the court or explain why he is unable to answer;

respect schedules and deadlines agreed to by the parties or set by the court, unless he has legitimate reasons for not being able to do so;

at the end of a hearing, remain in his place with his client until the judge has left the courtroom;

avoid using the courtroom as a cloakroom.

A lawyer should communicate with the judge or the adjudicator hearing the case only for legitimate reasons. He should do so in writing, having first notified opposing counsel or the unrepresented litigant, and after providing him with a copy of the letter. If the lawyer communicates with the judge or adjudicator orally, he shall invite opposing counsel or the unrepresented litigant to take part in the conversation or, failing that, obtain their consent to speak alone with the judge or adjudicator.

Once a case is taken under reserve, a lawyer may not submit new arguments or authorities, or otherwise attempt to influence the court, unless permission is first obtained.

With regard to any pending case in which he is involved, a lawyer shall exercise discretion and avoid all public comments which may have a negative impact on the case or on the administration of justice.

Although a lawyer is entitled to disagree with a court’s decision and to express his disagreement courteously and respectfully, he must refrain from unfairly criticising the judge or adjudicator who rendered the judgment.
The lawyer’s conduct toward other lawyers

General considerations

Any animosity which may exist between litigants should not affect the manner in which counsel behave towards each other.

A lawyer shall answer with reasonable promptness all requests from other counsel, whether made verbally or in writing.

A lawyer shall avoid all unnecessary procedures, and where possible, should discuss and attempt to reach agreement with opposing counsel.

In scheduling matters, a lawyer shall consult with opposing counsel, attempt to avoid conflicts and demonstrate flexibility.

If he must postpone or cancel a hearing, examination or meeting, a lawyer shall immediately inform opposing counsel.

A lawyer shall honour his commitments toward other lawyers, be they written or oral.

If a lawyer undertakes a commitment to which he does not intend to be personally bound, he should clearly say so.

When serving documents or subpoenas, a lawyer shall avoid taking opposing counsel by surprise.

During hearings before the court

A lawyer’s conduct toward other counsel shall at all times be courteous and respectful; during a court hearing, lawyers shall address one another as “Maitre” and use the expressions “my friend”, “my confrère” or “my consœur”.

A lawyer shall not denigrate other counsel and shall abstain from making remarks or engaging in conduct which is disparaging, condescending or sarcastic.

A lawyer shall co-operate to ensure that justice is properly served. He shall endeavour to accommodate other counsel and witnesses who are unable to attend appointments.

A lawyer shall immediately inform opposing counsel of his intention to make use of new documentary evidence at a hearing which has not previously been disclosed or filed in accordance with the law or rules of procedure. He will provide everyone at the hearing with a copy of such evidence.

Lawyers may not use the French informal form of address “tu” in court.

When a lawyer is speaking in court, other counsel shall remain seated until they are allowed to speak or they wish to raise an objection.

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4 These guidelines also apply to a lawyer’s conduct toward unrepresented litigants.
During an examination out-of-court
During an examination out-of-court, a lawyer shall conduct himself as though he were in a courtroom before a judge.

A lawyer shall not make remarks or engage in conduct which is disparaging, condescending or sarcastic in reaction to an answer from a witness or an objection raised by opposing counsel.

A lawyer shall not unreasonably object to questions asked by opposing counsel, or interrupt the examination.

A lawyer shall not request unnecessary examinations out-of-court in an attempt to impose an undue financial burden on another party.

The lawyer’s conduct toward witnesses
In addition to the provisions contained in the Déclaration de principes concernant les témoins enacted on June 1, 1998, and those contained herein, a lawyer shall:

- inform his witnesses of the date, location and time when they must attend to testify;
- provide details of the document(s) they must bring, if any;
- notify his witnesses in a timely manner if their summons to testify has been postponed or cancelled;
- co-operate with other counsel in fixing the order of witnesses so as to avoid having witnesses wait unnecessarily before testifying;
- in light of the circumstances, maintain a courteous and respectful attitude toward the witness he is examining or cross-examining, be it during an examination out-of-court or a hearing. In all cases, examinations and cross-examinations shall not be vexatious or abusive;
- avoid approaching a witness he is examining in an unduly aggressive or intimidating manner;
- refrain from misleading a witness.

A lawyer shall take reasonable steps to inform his clients and witnesses of their duty to behave in a courteous and respectful manner toward the court, counsel, parties, witnesses and administrative staff. A lawyer should correct his client or witness if they address other counsel or persons with the informal form of address “tu” and he shall request that they address lawyers with the title “Maitre”.

The lawyer’s conduct toward his client
A lawyer has a duty of loyalty toward his client. This duty of loyalty shall not, however, be expressed in an excessive manner such as to cause a lawyer to breach these guidelines or prevent him from giving objective and independent advice.
A lawyer shall communicate regularly with his client and shall respond to his calls and requests expeditiously and courteously.

It is a lawyer’s duty to inform his client in a timely manner if his case has been postponed or a hearing has been cancelled.

A lawyer shall attempt to achieve the best possible results for his client, in the quickest and least expensive manner possible under the circumstances.

A lawyer shall inform his client that he will not participate in any attempt to unjustifiably delay the case, or harass or intimidate the other party or attempt to deplete his financial resources.

A lawyer shall explain the court’s settlement conference services to his clients, as well as any other methods of conflict resolution.

A lawyer shall inform his client that civility and courtesy form a part of his professional obligations, and he shall explain that it is generally desirable to hold settlement discussions with other parties and that this does not constitute a sign of weakness.

Conclusion

Our profession, and how we practice it, is rooted on the principles of morality and honour.

In his Oath of Office, every member of the Bar pledges to uphold the honour and dignity of the legal profession.

It is up to each of us to reaffirm this commitment on a daily basis.
Informal Procedure for Receiving and Treating Breaches to the Guide of Professional Courtesy

WHEREAS, the Bar of Montreal, in an effort to counsel its members, decided to create a Consultation Committee in matters of Professional Courtesy;

WHEREAS, the Consultation Committee will assume the important role of preventing breaches of Professional Courtesy.

For purposes of implementing this confidential service, the Bar of Montreal adopts the following informal process:

1. Upon request, the Consultation Committee shall have the mandate of intervening, with members of the Bar of Montreal, to counsel them in matters of Professional Courtesy.

2. The Consultation Committee shall be composed of the President and 30 members of the Bar with at least 10 years admission belonging to different areas of expertise and who are known for their excellence in their area of practise, and, for their respect of the rules of Professional Courtesy. The President and members of the Consultation Committee shall be named by the Council of the Bar of Montreal.

3. Attorneys and Members of the Judiciary shall have recourse to the Consultation Committee when faced with breaches of Professional Courtesy. In cases of violation of the Lawyers Code of Ethics, the Complainant shall be referred to the Syndic of the Bar of Quebec.

4. Requests for consultation will be delivered to the management of the Bar of Montreal. The management of the Bar of Montreal will refer the request to the President of the Consultation Committee.

5. After receipt of the Complaint by the President of the Consultation Committee, he will either intervene himself or refer the request to a member of the Consultation Committee.

6. The member to whom the request is referred will communicate confidentially and only with the persons involved. If necessary, a meeting may be held.

7. No file will be created by the Bar of Montreal, the Consultation Committee, or the member of the Consultation of Committee to whom the request is referred.
8. When a breach is alleged with respect to an attorney of the Criminal Prosecution Service, or with respect to an attorney of the Office of the Director of Criminal and Penal Prosecutions, or with respect a Prosecutor of the Municipal Court, the Complaint shall be referred to the Director of the Office where this attorney works.

9. When there is a breach reported by a member of the public, it shall be referred to the Office of the Syndic of the Bar of Quebec.