

M O N T S E R R A T

NO. 13 OF 2010

SUPREME COURT (AMENDMENT) ACT 2010

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Section 2 amended
3. Section 75 repealed and replaced
4. Schedule inserted

I ASSENT

Peter Waterworth

GOVERNOR

DATE: 11.8.2010

M O N T S E R R A T

NO. 13 OF 2010

AN ACT TO AMEND THE SUPREME COURT ACT (CAP. 02.01).

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat and by the Authority of the same as follows—

Short title

1. This Act may be cited as the Supreme Court (Amendment) Act, 2010.

Section 2 amended

2. Section 2 of the principal Act is amended by inserting the following definitions in alphabetical order—

“**Code of Ethics**” means the Code of Ethics set out in the Schedule;

“**disciplinary offence**” has the meaning assigned in section 75.”

Section 75 repealed and replaced

3. Section 75 of the principal Act is repealed and replaced by the following:

“Discipline for reasonable cause

75. (1) Any two Judges of the High Court may, for reasonable cause, discipline a barrister or solicitor in any one or more of the following ways—

- (a) suspend him from practising in Montserrat during any specified period;
- (b) order his name to be struck off the Court Roll;
- (c) order him to pay a fine not exceeding \$100,000; or
- (d) order him to compensate or reimburse a person who incurred an expense or loss as a result of the behaviour which constitutes the reasonable cause.

(2) Subject to subsection (3), reasonable cause includes, but is not limited to, the commission by the barrister or solicitor of a disciplinary offence.

(3) A disciplinary offence is—

- (a) breach of the rules in Part B of the Code of Ethics; or
- (b) behaviour that is in breach of the rules in Part A of the Code of Ethics that the High Court considers a derogation from the standard of conduct expected of a barrister or solicitor to an extent that, or in circumstances that, amount to professional misconduct.

(4) The Chief Justice and any other two Judges of the Supreme Court shall determine the procedure for applications for the discipline of a barrister or solicitor under this section, and may, for this purpose, make an order under section 85 or make rules of court.”.

Schedule inserted

4. The following new Schedule is inserted into the principal Act after section 86:

“SCHEDULE

CODE OF ETHICS

PART A

*General Guidelines**I In relation to the profession and himself*

1. A barrister or solicitor shall observe the rules of this Code, maintain his integrity and the honour and dignity of the legal profession and encourage other barristers or solicitors to act similarly and shall refrain from conduct which is detrimental to the profession or which may tend to discredit it both in the practice of his profession and in his private life.

2. A barrister or solicitor shall in the discharge of his professional duties expose without fear or favour before the proper tribunals unprofessional or dishonest conduct by any other barrister or solicitor and shall not lightly refuse a retainer against another barrister or solicitor who is alleged to have wronged his client or committed any other act of professional misconduct.

3. (1) A barrister or solicitor shall scrupulously preserve his independence in the discharge of his professional duties.

(2) A barrister or solicitor practising on his own account or in partnership shall not engage in any other business or occupation which may cause him to cease to be independent.

4. A barrister or solicitor shall protect the profession against the admission of any person whose moral character or education renders him unfit for admission.

5. A barrister or solicitor shall not endeavour by direct or indirect means to attract the client of another barrister or solicitor and where a client is referred to him by another barrister or solicitor, the client remains for all other purposes the client of the referring barrister or solicitor and the barrister or solicitor to whom the client is referred shall act with due deference to the relationship between the client and the referring barrister or solicitor.

6. A barrister or solicitor may speak in public or write for publication on legal topics so long as it is not likely to be regarded as being concerned with the giving of individual advice.

7. (1) A barrister or solicitor shall endeavour to uphold standards of integrity, capability, dedication to work, fidelity, and trust.

(2) A barrister or solicitor shall not seek retainers through agents of any kind.

8. A barrister or solicitor shall defend the interest of his client without fear of judicial disfavour or public unpopularity and without regard to any unpleasant consequences to himself or to any other person.

9. A barrister or solicitor has a right to decline employment and is not obliged to act either as adviser or advocate for every person who may wish to become his client.

10. A client is not entitled to receive nor is a barrister or solicitor entitled to render any service or advice facilitating—

- (a) disrespect for a judicial office;
- (b) the corruption of any person exercising a public or private trust; or
- (c) the deception or betrayal of the public.

11. Every barrister or solicitor shall bear in mind that the oath of office taken on his admission to practise is not a mere formality but is a solemn undertaking to be strictly observed on his part.

II In Relation to the territory and the public

12. A barrister or solicitor owes a duty to Montserrat to maintain its integrity, constitution and laws and not to aid, abet, counsel or assist anyone to act in a manner contrary to this duty.

13. The primary duty of a barrister or solicitor when engaged as a public prosecutor is not to secure a conviction but to see that justice is done and to that end he shall not withhold facts tending to prove either guilt or innocence of the accused.

14. A barrister or solicitor shall endeavour by lawful means, where the needs of society require, to promote and encourage the modernisation, simplification and reform of legislation.

15. A barrister or solicitor shall not by his actions, 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 a retainer to prosecute a claim or pay or reward any person directly or indirectly for the purpose of procuring him to be retained in his professional capacity, and where it is in the interest of his client he shall seek to obtain reasonable settlement of disputes.

16. A barrister or solicitor shall not except for good reason refuse his services in respect of the offences of murder and treason.

17. A barrister or solicitor shall not be deterred from accepting proffered employment owing to the fear or dislike of incurring the disapproval of officials, other barristers or solicitors or members of the public.

18. Where a barrister or solicitor consents to undertake legal aid and he is requested by the competent authority to undertake the representation of a person who is unable to afford legal representation or to obtain legal aid, the barrister or solicitor shall not, except for compelling reasons, seek to be excused from undertaking that representation.

19. A barrister or solicitor in undertaking the defence of a person accused of crime shall use all fair and reasonable means to present every defence available at law.

III In relation to clients

20. (1) A barrister or solicitor shall always act in the best interest of his client, represent him honestly, competently and zealously and endeavour by all fair and honourable means to obtain for him the benefit of any and every remedy and

defence which is authorised by law, always bearing in mind that his duties and responsibilities should be carried out within the boundary of the law.

(2) The first concern of a barrister or solicitor should always be the interest of his client and the exigencies of the administration of justice which should rank before his right to compensation for his services.

21. (1) A barrister or solicitor should, before advising on the cause of a client, obtain a sound knowledge of the matter and give a candid opinion of its merits or demerits and the probable results of pending or contemplated litigation.

(2) A barrister or solicitor should be reluctant in proffering bold and confident assurances to his client especially where his employment may depend on these assurances in light of the fact that the law is not always on the side of his client and that the law allows for the *audi alteram partem* rule to be followed.

(3) Where a dispute allows for settlement without litigation, a barrister or solicitor should advise his client to avoid or settle the dispute.

22. (1) A barrister or solicitor shall at the time of agreeing on a retainer disclose to his client all the circumstances of his relations to the parties and his interest in or connection with the dispute which may influence the client in his selection of a barrister or solicitor.

(2) A barrister or solicitor shall scrupulously guard and never divulge the secrets and confidence of his client except with his client's consent.

23. A barrister or solicitor shall treat adverse witnesses, litigants and other barrister or solicitors with fairness and courtesy, refraining from offensive personal references and should refrain in conducting his professional duties from being influenced by his client's personal feelings and prejudices.

24. A barrister or solicitor has the right to undertake the defence of a person accused of crime regardless of his own personal opinion as to the guilt of the accused and having undertaken to conduct the defence, he is bound by all fair and honourable means to present every defence that the law of the land permits so that no person may be unjustly deprived of life or liberty.

25. (1) A barrister or solicitor may represent multiple clients only if he can adequately represent the interests of each and if each consents to his representation after full disclosure of the possible effects of multiple representation.

(2) A barrister or solicitor shall, in all situations where a possible conflict of interest arises, resolve the conflict by leaning against multiple representation.

26. (1) A barrister or solicitor shall deal with the business of his client with all due expedition and shall whenever reasonably so required by the client, provide him with full information as to the progress of the business.

(2) It is improper for a barrister or solicitor to accept a case unless he can handle it without undue delay.

27. Where a barrister or solicitor determines that the interest of his client requires it, he may with the specific or general consent of the client refer his business or part of it to another barrister or solicitor whether or not a member of his own firm.

28. (1) A Queen's Counsel may accept instructions, appear or do any work without a junior, except where he would otherwise be unable properly to carry out his instructions or conduct his case if he were to do so.

(2) Where more than one barrister or solicitor appears as advocate for the same party in the same proceedings, the decision of who shall lead the conduct of the case shall, subject to the instructions of the client, be settled by the barrister or solicitor representing that party before they appear in court and shall not be altered during the course of the proceedings and the leader shall have all authority over the conduct of the case.

(3) A barrister or solicitor, including a Queen's Counsel who appears with the leader is entitled to an appropriate negotiated fee for his conduct of the case.

29. (1) A barrister or solicitor is entitled to reasonable compensation for his services but should avoid charges which either overestimate or undervalue the service rendered.

(2) A barrister or solicitor shall not charge in excess of the value of the service rendered because of the ability of a client to pay, however, he may consider the indigence of a client as a factor in charging below the value of the service rendered, or not charging at all.

(3) A barrister or solicitor should avoid controversies with clients regarding compensation for his services as far as is compatible with self-respect and his right to receive compensation for his services.

30. The right of a barrister or solicitor to ask for a retainer or to demand payment of out-of-pocket expenses and commitments and to withdraw his services for non-payment of these fees shall not be exercised where the client may be unable to find other timely assistance to prevent irreparable damage being done to his case.

31. Where a barrister or solicitor engages a foreign colleague to advise on a case or to co-operate in handling it, he is responsible for the payment of the charges involved except if there is an express agreement to the contrary, but where a barrister or solicitor directs a client to a foreign colleague he is not responsible for the payment of the charges, nor is he entitled to a share of the fee of his foreign colleague except where there is an express agreement to the contrary.

32. Subject to paragraph 12 of Part B, a barrister or solicitor may at any time withdraw from employment —

- (a) where the client fails, refuses or neglects to carry out an agreement with or his obligation to the barrister or solicitor as regards the expenses or fees payable by the client;
- (b) where his inability to work with colleagues indicates that the best interest of the client is likely to be served by his withdrawal;
- (c) where his client freely assents to the termination of his employment;
- (d) where by reason of his mental or physical condition or other good and compelling reason it is difficult for him to carry out his employment effectively; or
- (e) in cases of conflict as contemplated in paragraph 25 of this Part or paragraph 8 of Part B.

33. (1) A barrister or solicitor may not appear as a witness for his own client except in merely formal matters or where the appearance is essential to the ends of justice.

(2) If a barrister or solicitor is a necessary witness for his client with respect to matters other than those that are merely formal, he shall entrust the conduct of the case to another barrister or solicitor of his client's choice.

IV In relation to the courts and the administration of justice

34. (1) A barrister or solicitor shall maintain a respectful attitude towards the court and shall not engage in undignified or discourteous conduct which is degrading to the court.

(2) A barrister or solicitor shall encourage respect for the courts and the judges.

(3) A barrister or solicitor shall not support unjust criticisms of judges and magistrates.

(4) Where there is ground for complaint against a judge or magistrate a barrister or solicitor may make representation to the proper authorities and where this is done, the barrister or solicitor shall be protected.

35. A barrister or solicitor shall endeavour always to maintain his status as an advocate and shall 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 his personal knowledge as to any of the facts involved in the matter under investigation.

36. A barrister or solicitor shall never seek privately to influence directly or indirectly the judges of the court in his favour or in the favour of his client, nor shall he attempt to influence juries by fawning, flattery or pretended solicitude for their personal comfort.

37. A barrister or solicitor shall be punctual in attendance before the courts and concise and direct in the trial and disposition of causes.

38. A barrister or solicitor appearing before the court shall at all times be attired in the manner prescribed or agreed upon by the proper authorities and as befits the dignity of the court.

V In relation to his fellow barristers or solicitors

39. (1) The conduct of a barrister or solicitor towards his fellow barristers or solicitors shall be characterised by courtesy, fairness and good faith and he shall not permit ill-feelings between clients to affect his relationship with his colleagues.

(2) All personal conflicts with barristers or solicitors should be scrupulously avoided as should also colloquies between them which cause delay and promote unseemly wrangling.

40. (1) A barrister or solicitor shall reply promptly to letters from other barristers or solicitors making inquiries on behalf of their clients.

(2) A barrister or solicitor shall endeavour as far as reasonable to suit the convenience of the opposing barrister or solicitor when the interest of his client or the cause of justice will not be injured by so doing.

41. A barrister or solicitor shall not give a professional undertaking that he cannot fulfil.

42. (1) A barrister or solicitor shall in the course of his professional duties report improper or unprofessional conduct by a colleague to himself or his client to a competent authority, except where the information relating to the improper or unprofessional conduct is received in professional confidence in which case he shall respect the duty of silence imposed in those circumstances.

(2) A barrister or solicitor shall in the course of his professional duties expose without fear a barrister or solicitor who is alleged to have wronged a client and shall not lightly refuse a retainer against another barrister or solicitor if called upon to do so.

43. Where a barrister or solicitor has been sent money, documents or other things by a colleague in pursuance of a legal matter on condition that the receiving party will use them for a particular purpose, he must comply with that request or immediately return the money, document or other things.

44. A barrister or solicitor shall not in any way communicate upon a subject in controversy or attempt to negotiate or compromise a matter directly with any party represented by another barrister or solicitor except through that other barrister or solicitor or with his prior consent.

45. (1) A barrister or solicitor shall not ignore the customs or practices of the legal profession even when the law expressly permits it, without giving timely notice to the opposing barrister or solicitor.

(2) A barrister or solicitor should avoid all sharp practices and should refrain from taking any paltry advantage when his opponent has made or overlooked some technical error or matter, bearing in mind that no client has a right to demand that a barrister or solicitor representing him shall be illiberal or shall do anything repugnant to his own sense of honour and propriety.

46. A barrister or solicitor shall not accept instructions to act in court proceedings in which to his knowledge a client has previously been represented by another barrister or solicitor, unless he first notified the other barrister or solicitor of the change, and makes reasonable efforts to ensure that the other barrister or solicitor has been paid for his services, however he shall be considered to have notified the other barrister or solicitor if he has made reasonable efforts to notify him of the change.

47. A barrister or solicitor shall not accept instructions to act in proceedings other than court proceedings in which to his knowledge, another barrister or solicitor has previously represented the client unless he makes reasonable efforts to ascertain that the retainer of that barrister or solicitor has been determined by the client or that the client wishes both barrister or solicitor to represent him.

48. A barrister or solicitor who instructs or employs another barrister or solicitor to act on behalf of his client shall, unless otherwise agreed, pay the proper fee of that barrister or solicitor whether or not he has received payment from the client.

VI General

49. Nothing contained in this Code shall be construed as derogating from any existing rules of professional conduct and duties of a barrister or solicitor which are in keeping with the traditions of the legal profession and which are not specifically provided for in this code.

50. Where in any particular matter explicit ethical guidance does not exist, a barrister or solicitor shall determine his conduct by acting in a manner that

promotes public confidence in the integrity and efficiency of the legal system and the legal profession.

51. (1) A person who previously held a substantive appointment as a judge of the Supreme Court shall not appear as a barrister or solicitor in any of the courts of Montserrat for a period of five years commencing on the date of his retirement, resignation or other termination of appointment.

(2) This rule shall not apply to a person who is appointed to act as a judge in a temporary capacity.

PART B

Mandatory Provisions and Specific Prohibitions

1. A barrister or solicitor shall not practise as a barrister or solicitor unless he has been enrolled on the court roll in accordance with the provisions of this Act.

2. (1) A barrister or solicitor shall never knowingly mislead the court.

(2) A barrister or solicitor shall not withhold facts or secrete witnesses in order to establish the guilt or innocence of the accused.

3. A barrister or solicitor shall not hold out any person who is not qualified to practise law as a partner, associate, consultant or barrister or solicitor.

4. A barrister or solicitor shall not become involved in a matter unless at the request of a party to the matter; however, it is proper for a barrister or solicitor to become involved in matters referred by another barrister or solicitor or an association of barristers and solicitors for which he is engaged in any other manner not inconsistent with this Code.

5. A barrister or solicitor shall not in the carrying on of his practice or otherwise permit any act or thing which is likely or is intended to attract business unfairly or can reasonably be regarded as touting or public advertising.

6. (1) A barrister or solicitor shall not in any way make use of any form of public advertisement calculated to attract clients to himself or any firm with which he is associated and he shall not permit, authorise or encourage anyone to do so or reward anyone for doing so on his behalf.

(2) A barrister or solicitor shall not permit his professional standing to be used for the purpose of advertising any particular product, service or commercial organisation.

(3) Despite subparagraphs (1) and (2)—

(a) a barrister or solicitor or law firm may have a website or publish professional newsletters, the contents which shall—

(i) be in accordance with the good practice of the legal profession, and may inform of the firm, its members and staff and current legal issues; and

(ii) shall not contain anything derogatory of the legal profession, Government, judiciary or their respective members;

(b) a barrister or solicitor may permit limited and dignified identification of himself as a barrister or solicitor—

(i) in political advertisements relevant to the cause of a political campaign or issue;

- (ii) in public notices where the announcement of his professional status is required or authorised by law or is reasonably necessary for a purpose other than attracting potential clients;
 - (iii) in reports and announcements of *bona fide* commercial, civic, professional or political organisations in which he serves as a director or officer;
 - (iv) in and on legal textbooks, articles, professional journals and other legal publications and in dignified and restrained advertisements of these publications; or
 - (v) in announcements of any public address, lecture, or publication by him on legal topics except that these announcements do not emphasize his own professional competence and are not likely to be regarded as being concerned with the giving of individual advice by him;
- (c) a barrister or solicitor may speak in public or write for publication on legal topics so long as it is not likely to be regarded as being concerned with the giving of individual advice;
- (d) the following cards, office signs, letterheads or directory listings may be used by a barrister or solicitor but in a restrained and dignified form—
- (i) a professional card identifying the barrister or solicitor by name and as a barrister or solicitor, giving his decorations and degrees, legal or otherwise, his addresses, telephone numbers and the name of his law firm or professional associates;
 - (ii) a brief professional announcement card which may be delivered only to barristers, solicitors, clients, former clients, personal friends and relations, and government bodies stating new or changed associations, addresses, or firm names or similar professional matters;
 - (iii) a sign of a size and design compatible with the existing practice of the profession displayed on or near the door of the office and in the building directory identifying the law office;
 - (iv) a letterhead identifying the barrister or solicitor by name and as an barrister or solicitor and giving his decorations and degrees, legal or otherwise, his addresses, telephone numbers and the name of his law firm and of his associates;
 - (v) a listing in a telephone directory, a reputable law list, legal directory or biographical reference giving a brief biographical or other relevant information and the professional card, office sign, letterhead or listing may also state that the barrister or solicitor is a notary public;
 - (vi) a listing in a legal or other related journal or publication giving information on the contact details of the barrister or solicitor and his firm, and the services provided.

7. Where a barrister or solicitor commits a criminal offence which is of a nature likely to bring the profession into disrepute, the commission of the offence shall constitute professional misconduct if—

- (a) he has been convicted by a court, including a foreign court of competent jurisdiction, of the offence; or
- (b) he has been prosecuted and has been acquitted by reason of a technical defence or he has been convicted but the conviction is quashed by reason of some technical defence.

8. A barrister or solicitor shall not acquire directly or indirectly by purchase or otherwise a financial or other interest in the subject matter of a case which he is conducting.

9. (1) A barrister or solicitor shall not enter into partnership or fee sharing arrangements concerning the practice of law with a non-qualified body or person.

(2) A barrister or solicitor shall not enter into an arrangement for or charge or collect a fee in contravention of this Code or any law.

10. (1) A barrister or solicitor shall not charge fees that are unfair or unreasonable and in determining the fairness and reasonableness of a fee the following factors may be taken into account—

- (a) the time and labour required, the novelty and difficulty of the questions involved and the skill required to competently perform the legal service;
- (b) the likelihood that the acceptance of the particular employment will preclude other employment by the barrister or solicitor;
- (c) the fee customarily charged in the locality for similar legal services;
- (d) the amount, if any involved;
- (e) the time limitations imposed by the client or by the circumstances;
- (f) the nature and length of the professional relationship with the client;
- (g) the experience, reputation and ability of the barrister or solicitor concerned; and
- (h) any scale of fees or recommended charges prescribed by law.

(2) A barrister or solicitor shall not accept any fee or reward for merely introducing a client or referring a case or client to another barrister or solicitor.

(3) A barrister or solicitor shall not charge a contingency fee except with the prior agreement of the client for reasonable commissions on the collection of liquidated claims.

11. (1) A barrister or solicitor shall not act in any manner in which his professional duties and personal interests conflict or are likely to conflict except with the specific approval of his client given after full disclosure to the client.

(2) A barrister or solicitor shall not accept or continue his retainer or employment on behalf of two or more clients if their interests are likely to conflict or if his independent professional judgment is likely to be impaired.

12. (1) A barrister or solicitor who withdraws from employment under paragraph 32 of Part A shall not do so until he has taken reasonable steps to avoid foreseeable prejudice or injury to the position and rights of his client including —

- (a) giving adequate notice;
- (b) allowing time for employing another barrister or solicitor;

- (c) delivering to the client all documents and property to which he is entitled subject however to any lien which the barrister or solicitor may have over these items;
- (d) complying with any laws, rules or practice that may be applicable; and
- (e) where appropriate, obtaining the permission of the court where the hearing of the matter has commenced.

(2) A barrister or solicitor who withdraws from employment shall refund promptly that part of the fees, if any, already paid by his client as may be fair and reasonable having regard to all the circumstances of the case.

13. A barrister or solicitor shall withdraw forthwith from employment or from a matter pending before a tribunal—

- (a) where the client insists upon his presenting a claim or defence that he cannot conscientiously advance;
- (b) where the client seeks to pursue a course of conduct which is illegal or which will result in deliberately deceiving the court;
- (c) where a client has in the course of the proceedings perpetrated a fraud upon a person or tribunal and on request by the barrister or solicitor has refused or is unable to rectify the same;
- (d) where his continued employment will involve him in the violation of the law;
- (e) where the client by any other conduct renders it unreasonably difficult for the barrister or solicitor to carry out his employment effectively or in accordance with his judgment and advice, the rules of law or professional ethics; or
- (f) where for any good and compelling reason it is difficult for him to carry out his employment effectively.

14. A barrister or solicitor shall not retain money he receives for his client for longer than is absolutely necessary.

15. A barrister or solicitor shall never disclose, unless ordered to do so by the court or required by statute, what has been communicated to him in his capacity as a barrister or solicitor by his client or the barrister or solicitor of his client and this duty not to disclose extends to his partners and to any junior barrister or solicitor assisting him, however, a barrister or solicitor may reveal confidences or secrets necessary to establish or collect his fee or to defend himself or associates against an accusation of wrongful conduct.

16. A barrister or solicitor shall not permit his professional services or his name to be used in any way that would make it possible for persons who are not legally authorised to do so to practise law.

17. A barrister or solicitor shall not delegate to a person not legally qualified and not in his employ or under his control any functions which by the laws of Montserrat should only be performed by a qualified barrister or solicitor.

18. A barrister or solicitor shall not act with inexcusable or undue delay, negligence or neglect in the performance of his duties.

19. A barrister or solicitor shall not engage in undignified or discourteous conduct which is degrading to the court or his profession.

20. A barrister or solicitor shall not wilfully make false accusations against a judge or magistrate.

21. A barrister or solicitor who holds a public office shall not use his public position to influence or attempt to influence a tribunal to act in favour of himself or of his client.

22. A barrister or solicitor shall not accept private employment in a matter upon the merits of which he previously acted in a judicial capacity or for which he had substantial responsibility while he was in public employment.

23. A barrister or solicitor shall not give, lend or promise anything of value to a Judge, juror or official of a tribunal before which there is pending any matter in which he is engaged.

24. A barrister or solicitor shall not, in any proceedings in a court, communicate or cause any other person to communicate with a juror information as to the merits of the proceeding, and shall only do so with a judge or person exercising judicial functions—

(a) in the normal course of the proceedings; or

(b) where authorised by law or the practice of the courts.

25. A barrister or solicitor shall not for the purpose of making any person unavailable as a witness, advise or cause that person to secrete himself or leave the jurisdiction of the court.

26. A barrister or solicitor shall not pay or offer to pay or acquiesce in the payment of compensation to a witness for giving evidence in any cause or matter except as reimbursement for expenses reasonably incurred and as reasonable compensation for loss of time in attending, for preparation and testifying, and in the case of an expert witness a reasonable fee for his professional services.

27. A barrister or solicitor shall not knowingly use perjured testimony or false evidence or participate in the creation or use of evidence that he knows to be false.

28. A barrister or solicitor shall not counsel or assist his client or a witness in conduct that the barrister or solicitor knows to be illegal or fraudulent, and where he is satisfied that his client has in the course of the particular representation perpetrated a fraud upon a person or tribunal, he shall promptly call upon the client to rectify the act.

29. A barrister or solicitor shall not knowingly make a false statement of law or fact.

30. (1) A barrister or solicitor shall not commit a breach of an undertaking given by him to a judge, a court, tribunal or any of its officials, whether the undertaking relates to an expression of intention as to future conduct or is a representation that a particular state of facts exists.

(2) A barrister or solicitor shall not knowingly represent falsely to a judge, a court or tribunal that a particular state of facts exists.

31. In pecuniary matters a barrister or solicitor shall be most punctual and diligent and shall never mingle funds of others with his own and shall at all times be able to refund money he holds for others.

32. A barrister or solicitor shall keep accounts as clearly and accurately as is possible to distinguish the financial position between himself and his client as and when required.

33. Nothing contained in paragraphs 31 and 32 shall deprive a barrister or solicitor of any recourse or right whether by way of lien, set-off, counterclaim, charge or otherwise against monies standing to the credit of an account maintained by that barrister or solicitor for a client.

34. Where no provision is made in this Code in respect of any matter, the rules and practice of the legal profession which govern the particular matter shall apply in so far as is practicable.”

Teresina Bodkin
SPEAKER

Passed by the Legislative Council this 4th day of August, 2010.

Judith Jeffers
CLERK OF COUNCIL