

Schedule 1

CODE OF CONDUCT

[regulation 8]

1. Introduction

It is the duty of an industrial agent —

- (a) to comply with the provisions of this code of conduct;
- (b) not to engage in conduct which is illegal, dishonest or which may otherwise bring industrial agents into disrepute; and
- (c) to be competent as an industrial agent.

2. Application to bodies corporate

Where a body corporate is registered as an industrial agent, this code applies to the body corporate and to each officer of the body corporate.

3. Business integrity and diligence

- (1) An industrial agent must not attempt to further a client's case by unethical or dishonest means.
- (2) An industrial agent must not knowingly assist or seek to induce another person to breach this code of conduct.
- (3) An industrial agent must take reasonable care to ensure that the partners or employees of the agent do not do any act that would be a breach of this code of conduct if done by the agent.
- (4) An industrial agent must treat clients fairly and in good faith, giving due regard to a client's position of dependence upon the agent, and the high degree of trust which a client is entitled to place on the agent.
- (5) An industrial agent must always be completely frank and open with a client and with all others so far as the interests of the client permit and must at all times give a client a candid opinion on any matter in which the agent acts for that client.
- (6) An industrial agent must take such action consistent with the agent's retainer as is necessary and reasonably available to protect and advance a client's interests.
- (7) An industrial agent must at all times use his or her best endeavours to complete work on behalf of a client as soon as is reasonably possible, and if an industrial agent accepts instructions and it is, or becomes, apparent to the agent that the work cannot be done within a reasonable time, the agent must so inform the client.
- (8) An industrial agent must not take unnecessary steps or do work in such a manner as to increase proper costs to the client.

- (9) If it is in the best interests of the client of an industrial agent to do so, the agent must endeavour to reach a solution by settlement rather than commence or continue proceedings.

4. Confidentiality

- (1) An industrial agent must strive to establish and maintain a relationship of trust and confidence with clients.
- (2) An industrial agent must impress upon a client that the agent cannot adequately serve the client without knowing everything that might be relevant to the client's interests and that the client should not withhold information that the client might think is embarrassing or harmful to the client's interests.
- (3) An industrial agent must not, without the client's consent, directly or indirectly reveal a client's confidence, or use the confidence in any way detrimental to the interests of that client, or lend or reveal the contents of the confidence in any brief or instructions to any person except to the extent —
 - (a) required by law, rule of court or court order; or
 - (b) necessary for replying to or defending any charge or complaint of criminal conduct or misconduct contrary to this code brought against the agent.

5. Conflict of interest

- (1) An industrial agent must disclose to a client any conflict of interest that the industrial agent has or may have in any matter concerning that client.
- (2) An industrial agent must not act or continue to act on behalf of a client if to do so would or may give rise to a conflict of interest adverse to the client unless the client has been fully informed of the nature and implications of the conflict and consents to the industrial agent acting or continuing to act on behalf of the client.

6. Proceedings

- (1) Subject to this code of conduct, an industrial agent must provide advice and conduct each case and matter in the manner the agent considers most advantageous to the agent's client.
- (2) An industrial agent must not knowingly deceive or mislead a court.
- (3) An industrial agent must at all times —
 - (a) act with due courtesy to a court;
 - (b) use his or her best endeavours to avoid unnecessary expense and waste of a court's time;

- (c) when so requested, inform the court of the probable length of the case;
 - (d) inform the court of the possibility of a settlement provided the agent can do so without revealing the existence or content of “without prejudice” communications; and
 - (e) subject to this code of conduct, inform the court of any development that affects the information already before the court.
- (4) In cross examination which goes to a matter in issue, an industrial agent may put questions suggesting fraud, misconduct or the commission of a crime provided that the agent is satisfied that the matters suggested are part of the case of the agent’s client and he has no reason to believe that they are only put forward for the purpose of impugning the witness’s character.
- (5) Questions which affect the credibility of a witness by attacking the witness’s character, but which are otherwise not relevant to the actual inquiry, must not be put in cross examination unless there are reasonable grounds to support the imputation conveyed by such questions.

7. Advertising

An industrial agent must not engage in promotional conduct or advertising about the agent’s skills, experience, fees or results in a manner which is misleading or deceptive or likely to mislead or deceive.

8. Withdrawal

- (1) An industrial agent must recognize that a client is entitled to change industrial adviser at any time without giving a reason and must, subject to the satisfaction of any lien the agent may have taken, take all reasonable steps to facilitate such a change should a client so request.
- (2) If a client engages another industrial agent in a matter and that agent is of the opinion that the conduct of the preceding agent in the matter warrants the making of a complaint, the agent must so advise the client.
- (3) An industrial agent may withdraw from representing a client —
- (a) at any time and for any reason if withdrawal will cause no significant harm to the client’s interests and the client is fully informed of the consequences of withdrawal and voluntarily assents to it;
 - (b) if the industrial agent reasonably believes that continued engagement in the case or matter would be likely to have a seriously adverse effect upon the agent’s health;

- (c) if the client commits a significant violation of a written agreement regarding fees or expenses;
 - (d) if the client made material misrepresentations about the facts of the case or matter to the agent;
 - (e) if the agent has an interest in any case or matter which the agent is concerned may be adverse to that of the client;
 - (f) if such action is necessary to avoid the agent breaching this code of conduct; or
 - (g) if any other good cause exists.
- (4) If an industrial agent withdraws from representing a client the agent must take reasonable care to avoid foreseeable harm to the client, including —
- (a) giving due notice to the client;
 - (b) allowing reasonable time for the substitution of a new agent;
 - (c) co-operating with the new agent; and
 - (d) subject to the satisfaction of any lien the agent may have, promptly turning over all papers and property and paying to the client any monies to which the client is entitled.

9. Fees

- (1) An industrial agent must as soon as possible inform a client in writing of the basis of calculation of the costs of the agent.
- (2) During the course of a retainer, an industrial agent must promptly advise the client of any circumstances likely to have a substantial effect on the amount, or basis of calculation, of such costs or any disbursements.

10. Trust moneys

An industrial agent must not hold for or on behalf of a client or other party any moneys in trust without the written authorization of that person.