

# LAW SOCIETY OF THE NORTHWEST TERRITORIES



## PRACTICE ADVISORY

### Guidelines on Ethics and the New Technology

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#### POLICY:

1. **Technology and the Duty of Competence**  
Chapter II of the Code deals with competence. The commentary includes a list of characteristics covered by the term "competence"; this would include the maintenance and improvement of knowledge and skills with respect to new technologies in the practice of law.
2. **Practising Law on the Internet**  
The Code deals with upholding the law of other jurisdictions, privileged communications, conflict of interest, and the capacity in which a lawyer is acting, and these provisions apply equally to the use of new technologies in the practice of law (see, e.g., Chapters I, III, VI, XIII, XV, and XVI).
3. **Confidentiality and the Internet**  
Chapter IV of the Code deals with confidentiality. The relevant principles and rules apply to the use of new technologies, even if the commentary does not specifically address the use of e-mail, cellular communications or facsimiles. A lawyer using electronic means of communication must ensure that communications with or about a client reflect the same care and concern for matters of privilege and confidentiality normally expected of a lawyer using any other form of communication. If a lawyer receives privileged communication through e-mail that s/he was not intended to receive, s/he should deal with it in the same way as if it were mailed to him by mistake.
4. **Advertising**  
Chapter XIV of the Code deals with advertising, solicitation and making legal services available. Lawyers who choose to maintain web sites should be aware of possible ethical issues. Web sites are a form of advertising; therefore, Chapter XIV and Policy Directive No. 2 will apply to such web sites. Lawyers should also be aware of Policy Directive No. 4 with respect to letterheads and signs when designing their web sites. The contents of a web site may also be considered to be "public statements" by a lawyer, which is governed by Chapter XVIII of the Code. Finally, the lawyer should

be cautious that some of the content of their web site may be considered legal advice. It is also important that lawyers consider issues around unauthorized practice in another jurisdiction.

5. Software Piracy

Software piracy is illegal and unethical. Such activity is governed not only by the Code but also by the Criminal Code and federal intellectual property legislation. Chapters I and XIX of the Code deal generally with integrity and questionable conduct. Lawyers should ensure that all software used in their office is appropriately licensed.

Generally, when interpreting this policy a lawyer should refer to the Code and policy directives. Like the Code and directives, this policy should be understood and followed in its spirit as well as in the letter. The details of fact situations in which the Code, directives and policies apply will change as technology changes, but the principles of ethical professional conduct do not.

COMMENTARY:

Except where it conflicts or appears to conflict with a Policy Directive adopted by the Executive of the Law Society, in which event the lawyer shall request clarification from the Executive of the Law Society.

In this instance, “new technology” includes but is not limited to computers and electronic communication (e.g., office computers and networks, the World Wide Web, Internet and e-mail communication, and software support).