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LAWYERS' DUTIES TO THE COURT

I. INTRODUCTION

DUTIES of various kinds are imposed on those who practise the legal profession. Lawyers have to comply with ethical duties which are usually laid down and supervised by professional bodies empowered by statute to regulate and monitor the profession. These ethical duties govern the way in which the profession is conducted and range from duties concerning the etiquette of behaviour between lawyers to those requiring honesty and good faith in dealing with clients. Under the general law, contractual, tortious or fiduciary duties, may be imposed on lawyers. Contractual duties ordinarily arise out of relationships between lawyers and their clients, as do tortious and fiduciary duties, which may also stem from lawyers' relationships with reliant third parties. In addition, lawyers owe duties to "the court". This does not mean that duties are owed to a particular judge. On the contrary, duties of this kind are in reality owed to the larger community which has a vital public interest in the proper administration of justice. That public interest is indeed the source of these duties¹; and the court, in enforcing them, is acting as trustee and guardian of the due administration of justice. For that reason, since time immemorial, the courts have assumed the inherent power to impose these duties.² The underlying principle is that "the court has a right and duty to supervise the conduct of those appearing before it, and to visit with penalties any conduct of a lawyer which is of such a nature as to defeat justice in the very cause in which he is engaged professionally".³

Accordingly, duties owed by lawyers to the court are legal duties imposed by the general law. They are personal in nature and cannot be delegated.⁴ They are not duties owed to individuals or parties to litigation, nor are they ethical duties such as those supervised in England by the Inns of Court, the Bar Council, and the Law Society. The ethical rules of these bodies do not determine the nature of duties owed as a matter of law to the court. A breach of a duty owed to the court gives rise to unlawful conduct which may not necessarily be unethical (and, moreover, unethical conduct may not be unlawful).⁵

The role of lawyers has always been essential to the achievement of justice under the adversarial system. The accuracy of Lord Eldon's well-

¹ *Rondel v. Worsley* [1969] 1 A.C. 191 at p. 227 per Lord Morris of Borth-y-Gest.

² *Myers v. Elman* [1940] A.C. 282 at p. 302 per Lord Atkin.

³ *Myers v. Elman*, *supra*, at p. 319 per Lord Wright.

⁴ *Myers v. Elman*, *supra*.

⁵ Examples of the distinction can be seen in *Harrison v. Tew* [1989] 1 Q.B. 307 at p. 337, confirmed on appeal [1990] 2 A.C. 523; and *Re A Solicitor* [1975] 1 Q.B. 475 at p. 483.