



Federation of
Law Societies
of Canada

Fédération des ordres
professionnels de juristes
du Canada

Consultation Report

Draft Amendments to Duty to Report Rule 7.1-3

Model Code of Professional Conduct

April 14, 2025

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INTRODUCTION

1. The [Model Code of Professional Conduct](#) (the “Model Code”) was developed by the Federation of Law Societies of Canada (the “Federation”), and adopted by the Council of the Federation in 2009, with the goal of harmonizing the ethical and professional conduct standards for the legal profession across Canada.
2. The Model Code is not authoritative, but rather provides model rules and commentary for the law societies to consider integrating into their codes of professional conduct. Since approval of the first iteration of the Model Code, all Canadian law societies outside of Quebec¹ have adopted it, although in many cases with amendments to address local circumstances or practices.
3. The Council of the Federation established the Standing Committee on the Model Code of Professional Conduct (the “Standing Committee”) to review the Model Code on an ongoing basis and to ensure that it is responsive to and reflective of current legal practice and ethics. The Standing Committee monitors changes in the law of professional responsibility and legal ethics, receives and considers feedback from law societies and other interested parties regarding the rules of professional conduct, and makes recommendations for amendments to the Model Code.
4. The Standing Committee has undertaken a review of the ethical duty, set out in Rule 7.1-3 in the Model Code, to report the conduct of a lawyer to the law society in specified circumstances (referred to as the “duty to report”).
5. The scope of the review included consideration of:
 - a) current wording in Rule 7.1-3 pertaining to mental health and wellness challenges, following concerns raised in the 2022 Phase 1 report on the National Study on the Health and Wellness of Legal Professionals in Canada (“National Wellness Study”);
 - b) the overall wording in the Rule, with a view to improving clarity; and
 - c) potential inclusion of a duty to report discrimination and harassment, following adoption in October 2022 of discrimination and harassment rules in the Model Code.
6. In this review, the Standing Committee sought input from the Federation’s Law Society Equity Network, the Discipline Administrators’ Steering Committee, the Chair of the Federation’s Standing Committee on Mental Health and Wellness, and the Model Code Law Society Liaisons Group. It also hosted a panel on the topic at the March 2024 Legal

¹ The ethical rules contained in the *Code des Professions*, a provincial statute governing all professional orders in Quebec, and those in the Code of Professional Conduct of Lawyers and the Code of Ethics of Notaries, together impose rules of professional conduct on Quebec lawyers and notaries largely consistent with those contained in the Model Code.



Ethics Forum² in order to broaden the range of views considered.

7. The Standing Committee has developed draft amendments to Rule 7.1-3 and the related commentary which aim to address concerns related to mental health and wellness and improve the clarity of the Rule overall. It has not included in the draft amendments an express duty to report discrimination and harassment; comments on the Steering Committee's process in reaching that decision are provided in this report.

8. The Standing Committee's seeks feedback on its proposals from the law societies. Please send your comments to consultations@flsc.ca by Friday, December 19, 2025. The Standing Committee will carefully consider the input received and will then present final proposed amendments to the Council of the Federation. If approved by Council, the amendments will be available for the law societies to consider adoption in their jurisdictions.

DRAFT AMENDMENTS TO RULE 7.1-3

9. The draft amendments to Rule 7.1-3 and related commentary, and the reasoning underlying the proposals, are set out below in the order they appear in the Rule. (See Appendix 1 for the text of the Rule and commentary, with proposed amendments highlighted.)

Preface to Rule 7.1-3

10. Rule 7.1-3 provides: "Unless to do so would be unlawful or would involve a breach of solicitor-client privilege, a lawyer must report to the Society..." (followed by a list of the circumstances giving rise to a duty to report).

11. The Standing Committee proposes the following amendments to the preface: "Unless to do so would be unlawful ~~or would involve a breach of solicitor-client privilege~~, a lawyer must report to the Society, in respect of themselves or another lawyer:...".

12. The amendments are proposed for the following reasons.

- a) The reference to solicitor-client privilege has been moved to the commentary (the commentary is discussed further below), since every rule in the Model Code is subject to solicitor-client privilege unless the application is explicitly modified. Including a reference to solicitor-client privilege in the Rule is potentially confusing as it might suggest a unique application in this context.
- b) The words "in respect of themselves or another lawyer" have been added to clarify

² See [2024 Legal Ethics Forum Agenda](#), Session 3: *The Duty to Report – How Far Does This Ethical Obligation Extend?*



that the duty includes self-reporting. The question of whether self-reporting is required was raised in discussions with the Model Code Law Society Liaisons Group. The law society representatives who contributed to the discussion confirmed that the Rule had been interpreted and applied to include self-reporting and that they considered that appropriate. The Standing Committee agrees with this application and looks forward to hearing any additional perspectives on the question.

Subclauses to Rule 7.1-3

13. The preface to Rule 7.1-3 is followed by subclauses listing circumstances that will give rise to a duty to report:

- a) the misappropriation or misapplication of trust monies;*
- b) the abandonment of a law practice;*
- c) participation in criminal activity related to a lawyer's practice;*
- d) conduct that raises a substantial question as to another lawyer's honesty, trustworthiness, or competency as a lawyer;*
- e) conduct that raises a substantial question about the lawyer's capacity to provide professional services; and*
- f) any situation in which a lawyer's clients are likely to be materially prejudiced.*

14. The following amendments are proposed to these subclauses:

- a) the abandonment of a law practice; [moved, text unchanged]*
- b) the misappropriation or misapplication of trust monies; [moved, text unchanged]*
- c) participation in criminal activity related to a lawyer's practice;*
- d) conduct that raises a substantial question about another a lawyer's honesty, honour, or integrity; trustworthiness, or competency as a lawyer; and*
- e) conduct that raises a substantial question about a lawyer's competence to provide legal services ~~conduct that raises a substantial question about the lawyer's capacity to provide professional services.~~*
- ~~f) any situation in which a lawyer's clients are likely to be materially prejudiced.~~*

15. The reasons for the proposed amendments are as follows.



Positioning of Subclauses a)-c)

16. The positioning of subclauses a)-c) has been altered so that “the misappropriation or misapplication of trust monies” (now b)) and “participation in criminal activity related to a lawyer’s practice” (now c)), immediately precede “conduct that raises a substantial question as to a lawyer’s honesty, honour, or integrity” because the conduct described in b) and c) relate to “honesty, honour, or integrity” (i.e., more so than the abandonment of a law practice). While not a change to the substance, and not a significant issue, in the Standing Committee’s view the new order improves the flow and the clarity of the Rule.

Revised Wording: Honesty, Honour, or Integrity

17. Conduct that raises a substantial question as to a lawyer’s “honesty” or “trustworthiness” has been amended to read “honesty, honour, or integrity”, in order to create a stronger foundation in the rule for a duty to report conduct that may occur outside the provision of legal services or the business of law and which impact a lawyer’s integrity. The duty of integrity under Rule 2.1-1 is the “duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and the other member of the profession honourably and with integrity.” (underlining added). The duty to act honourably and with integrity is also reflected, not just in Rule 2.1-1, but in other rules and commentary throughout the Model Code.

18. While the duty of integrity applies to conduct outside of professional practice, it also provides parameters on the application of the duty outside of professional practice that will inform the application of the duty to report.³ (i.e., “...if the conduct is such that knowledge of it would be likely to impair a client’s trust in the lawyer.”) The term “trustworthiness” has been removed, as it is used only once in the Model Code, in commentary to Rule 2.1-1 (Integrity), and is considered redundant with the concepts of “integrity” and “honesty”.

Separate Clause regarding Competence

19. A substantial question as to a lawyer’s “honesty, honour, or integrity” has been separated in the proposed amended Rule from a substantial question as to a lawyer’s “competence to provide legal services” (now d) and e)), in order to further clarify that conduct, outside the context of providing legal services, may give rise to a duty to report (i.e., where it raises a substantial question of a lawyer’s honesty, honour and integrity, as

³ Rule 2.1-1, comm [3] “Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client’s trust in the lawyer, the Society may be justified in taking disciplinary action.”

Rule 2.1-1, Comm [4]: “Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer’s professional integrity.”



discussed above).

Deletion of Subclause re: Capacity to Provide Professional Services

20. The Standing Committee proposes deletion of current subclause e) which imposes a duty to report where there is “conduct that raises a substantial question about the lawyer’s capacity to provide professional services”. This was adopted in 2016 and replaced “the mental instability of a lawyer of such a nature that the lawyer’s clients are likely to be materially prejudiced”, with a view to removing stigmatizing language. (The 2016 amendments are found in Appendix 2 to this report.)

21. The Standing Committee’s proposal to delete current subclause e) builds on the 2016 revisions to Rule 7.1-3, arising from an evolving understanding of the appropriate response to mental health and wellness concerns, the aim to further reduce stigma related to mental health conditions, and because lawyers considering their duty to report are ill-equipped to assess such conditions. It also reflects the 2019 decision of the Law Society of British Columbia to rescind this clause in its Code of Professional Conduct for similar reasons.⁴

22. The 2022 National Wellness Study provides further support for this change: “[s]ince lawyers are not qualified health professionals, it is difficult to conceive of any legal professional being well equipped to evaluate whether a fellow legal professional’s mental health challenges rise to the level of raising a substantial question about their capacity to provide professional services”.⁵ The Study also raised concerns that this aspect of the duty to report risks exacerbating the reluctance of lawyers to reach out to their peers and seek assistance when experiencing mental health challenges.

23. Further, the Rule is intended to focus on observable conduct, not on assessments of capacity. A question of capacity might portend future misconduct, but is speculative and will likely call for a highly subjective assessment by the reporting lawyer. Further, it is difficult for the law societies to respond to reports of incapacity through traditional disciplinary processes without identifiable conduct.⁶ This proposed amendment to the Rule moves the focus squarely to conduct, which the Standing Committee considers to be appropriate for the Model Code.

Removal of Catch-all Clause

24. The catch-all clause in f) is intended to impose a duty to report situations which may

⁴ Law Society of British Columbia, [Code of Professional Conduct, Rule 7.1-3](#)

⁵ National Wellness Study, Recommendations, p. 30, [Phase I 2020-2022 Targeted Recommendations](#)

⁶ Many law societies have developed alternative disciplinary processes, which is laudable and responsive to recommendations in the National Wellness Study. However, it cannot be presumed when considering the ethical duties in the Model Code that such processes are or will be adopted in every jurisdiction.



prejudice a client but are not otherwise captured by the rule. The Standing Committee proposes removing this clause on the basis that the revised clauses d) and e) adequately and more clearly set out the threshold (a substantial question about actual conduct) that should give rise to a duty to report. Further, in the experience of Standing Committee members, the test of “material prejudice” to clients is difficult to apply for a lawyer considering making a report or the law society receiving the report.⁷

Commentary to Rule 7.1-3

25. The commentary to Rule 7.1-3 has been substantially revised. For clarity, a chart showing both the existing and the proposed commentary is provided here, followed by discussion of each amended or new commentary (the entire rule with the changes highlighted is found in Appendix 1).

Current Commentary	Amended Commentary
<p>[1] Unless a lawyer who departs from proper professional conduct or competence is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer). In all cases, the report must be made without malice or ulterior motive.</p>	<p>[1] Nothing in this rule is meant to interfere with the lawyer-client relationship. As with all rules in the [Code], the rule should be read in the context of a lawyer’s other duties, particularly a lawyer’s duties to protect privileged and confidential information.</p>
<p>[2] Nothing in this rule is meant to interfere with the lawyer-client relationship.</p>	<p>[2] The rule addresses conduct that gives rise to a duty to report. A lawyer is not obligated to report a mere suspicion regarding another lawyer’s conduct or to investigate to corroborate that suspicion. Where the circumstances do not rise to the level of a duty to report, it remains within a lawyer’s discretion to report any conduct which concerns them, with the protection of the public in mind.</p> <p>[COMMENTARY 1 AND 2 INCLUDE ELEMENTS RELATED TO CURRENT COMMENTARY 1 AND 2]</p>
<p>[3] Instances of conduct described in this rule can arise from a variety of stressors, physical, mental or emotional conditions, disorders or addictions. Lawyers who face such challenges</p>	<p>[3] If the threshold in the rule is met, a lawyer is not relieved of the duty to report to the Society on the basis that they have reported the conduct to other authorities or through other processes. [NEW]</p> <p>[4] Although a variety of challenges and stressors may contribute to conduct that is described by the rule, the presence of the challenges or stressors in and of themselves do not give rise to a duty to report. Lawyers who face significant challenges are encouraged to seek assistance as</p>

⁷ The term “material prejudice” is not used elsewhere in the Model Code, other than in Rule 7.1-3., although avoiding “prejudice” to clients is used in various rules/commentary and “serious prejudice” is used in Rule 3.7-3 with respect to the withdrawal of services.



<p>should be encouraged by other lawyers to seek assistance as early as possible.</p> <p>[4] The Society supports professional support groups, such as the [Lawyers' Assistance Program and the Risk and Practice Management Program], in their commitment to the provision of confidential counselling. Therefore, lawyers providing peer support for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging serious misconduct or in criminal activity related to the lawyer's practice or there is a substantial risk that the lawyer may in the future engage in such conduct or activity. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.</p>	<p>early as possible. A lawyer who observes a colleague struggling should consider encouraging their colleague to seek assistance. [COMMENTARY 4 RELATES TO CURRENT COMMENTARY 3]</p> <p>[5] Lawyers who provide peer support or counselling through a professional support program are bound to respect the confidentiality obligations imposed by that program. Further, lawyers who provide this assistance will not be called by the Society or by an investigation committee to testify at a conduct, capacity or competence hearing without the consent of the lawyer who received the assistance. [COMMENTARY 5 RELATES TO CURRENT COMMENTARY 4]</p>
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26. The comments below are made in reference to the amended Commentary.

Commentary [1]

27. The statement currently in commentary [2], "Nothing in this rule is meant to interfere with the lawyer-client relationship" has been moved into the first commentary, along with reference to the application of solicitor-client privilege (previously included in the Rule itself, as discussed under Preface above) and duties related to confidential information. In the Standing Committee's view, these foundational statements are better positioned at the start of the Commentary.

Commentary [2]

28. Amended commentary [2] is a substantial revision to the content in current commentary [1] which addresses, broadly speaking, the threshold for a duty to report and the action required. Members of the Model Code Law Society Liaisons Group reported a need to clarify when a lawyer has a duty to report. The Standing Committee agreed that the



current wording in commentary [1] is more likely to create uncertainty than helpful guidance.

29. In particular it may be unclear to the reader whether the commentary is advising that there is a duty to report minor breaches (to prevent larger problems in the future), or whether it is speaking to a lawyer's discretion to report any conduct of concern, whether or not the mandatory duty to report is triggered. The Standing Committee's proposed revisions to this content (now in amended commentary [2]) are intended to separate these ideas, and specifically to confirm that:

- a) a mere suspicion of another lawyer's conduct does not give rise to the duty to report, since a mere suspicion would not meet the thresholds set out in the Rule (i.e., the conduct clearly described in a) - c) and the "substantial question" required in revised d) and e);
- b) a lawyer with a suspicion is not required to investigate in order to corroborate that suspicion; and
- c) while a duty to report may not arise, a lawyer still has the discretion to report any conduct which concerns them, with the public interest in mind.

30. The caveat that a discretionary report must be made without malice or ulterior motive has been removed because, in the Standing Committee's view, that is obvious given a lawyer's other ethical duties and a statement to that effect is unnecessary.

31. Further, the phrasing "another lawyer", i.e. "A lawyer is not obligated to report a mere suspicion regarding another lawyer's conduct...", is intentionally used as a lawyer is required to self-report and a "suspicion" does not apply to oneself.

Commentary [3]

32. New commentary [3] is intended to clarify that the duty to report is not relieved by reporting through other avenues, such as a workplace reporting process (or police report, human rights complaint, as the case may be), to avoid any uncertainty which might lead to a failure to report serious misconduct to the law society based on a lawyer's belief that they have otherwise fulfilled their obligations.

Commentary [4]

33. Draft commentary [4] revises the text in current Commentary [3], which speaks to the underlying "stressors" that might give rise to instances of conduct described in the Rule. The revisions to this commentary relate to the proposed deletion of subclause e) in the Rule regarding the duty to report questions of "capacity", discussed earlier in this report. The draft amendments remove the examples of the stressors, as they emphasize mental health and



addiction issues as the primary causes of misconduct; other challenges, such as family breakdown or financial difficulties, can also underlie concerning conduct. There is no evidence of a closer correlation between mental health challenges and practice issues leading to discipline, than there is between financial stress (for example) and practice issues leading to discipline.

34. Further, specific examples of stressors are unnecessary as there must be specific conduct identified which meets the threshold in the Rule for a duty to report; the “stressor” itself is insufficient. If a mental health or addiction problem results in conduct that meets the threshold in the Rule, the focus of the investigation will be on the conduct itself, although assistance will undoubtedly be available as needed through peer assistance programs (and in some jurisdictions, alternative discipline streams). Lawyers who face significant challenges (whether or not it is a mental health challenge) are encouraged in the commentary to seek assistance as early as possible.

Commentary [5]

35. Proposed commentary [5] revises the text in current commentary [4], with the intention of simplifying the statement regarding confidentiality of information provided to counsellors through peer assistance programs, while respecting the differences that exist in those programs across the country. The revisions remove the prescriptive detail while referring the reader to the confidentiality obligations of the local assistance program (which may vary). The commentary continues to confirm that the law society will not call lawyers who provide this assistance to testify at a hearing without the consent of the lawyer who received the assistance.

36. The commentary also removes the phrase “[t]he Society cannot countenance such conduct regardless of a lawyer’s attempts at rehabilitation”, which serves only to shame or scold a lawyer who seeks rehabilitation for mental health or addiction issues (the term “rehabilitation” being most often used in this context). This amendment further advances the Standing Committee’s objective of reducing stigmatizing language in Rule 7.1-3, following on the recommendations of the National Wellness Study, and also reflects changes made to the LSBC Code of Professional Conduct in 2019.

COMMENTS ON DUTY TO REPORT DISCRIMINATION AND HARASSMENT

37. This review initially stemmed in part from the introduction in October 2022 of ethical rules in the Model Code regarding discrimination and harassment (Rule 6.3). Although work had commenced on a potential duty to report discrimination and harassment, it was decided



that completion of that piece of the project would be postponed to a later date, due to the lengthy revision and consultation process that went the development of Rule 6.3, the difficult issues that were evident in a potential duty to report discrimination and harassment (particularly concern about the risk of additional harm to the affected person and to vulnerable bystanders), and the intention to take a broader look at the duty to report while considering reporting in the context of discrimination and harassment.

38. At the start of the review, although there was some difference in opinion within the Standing Committee on the topic (which remains), it seemed likely that it would propose the inclusion in Rule 7.1-3 of an express duty to report discrimination and harassment (with exceptions). That thinking was based on several factors.

- a) Numerous studies have established that discrimination and harassment are rife in the legal profession, and articles have called for the regulators to do more (although there are different views on the right approach).⁸
- b) The adoption of expanded ethical duties in the Model Code pertaining to discrimination and harassment responded to this crisis and was a significant step forward. Nevertheless, there is a strong instinct to use every tool in our toolbox to combat discrimination and harassment in the profession, including a duty to report in the Model Code, and to send a strong message that it will not be tolerated.
- c) A duty to report discrimination and harassment violating ethical duties under Rule 6.3 can be implied, if the conduct meets the threshold in Rule 7.1-3.⁹ Guidance in the commentary, including to relieve the affected person and vulnerable bystanders from the obligation, would lessen the potential impact of that implied duty.¹⁰

⁸ Robert Cribb, [Sexual harassment, discrimination forcing women lawyers to quit](#) (Toronto Star, February 18, 2024); Amy Salyzyn, [Reporting Sexual Harassment: A New Professional Duty for Lawyers?](#) (Slaw, June 3, 2020); Elaine Craig and Jocelyn Downie, [Everyone turns to lawyers for #MeToo advice, but the legal community needs its own reckoning](#) (Globe & Mail, December 24, 2019); Noel Semple, [Harassment in the Legal Profession: A Few Bad Apples?](#) (Slaw, February 24, 2020); IBA report, [Us Too?: Bullying and Sexual Harassment in the Legal Profession](#) (2019); National Wellness Study, Recommendations, p. 36-37, [Phase I 2020-2022 Targeted Recommendations](#); 2024/25 law society articling survey results in [Manitoba, Saskatchewan, Alberta, B.C.](#) and Ontario; [Racial Equity Survey Report; NSBS Survey Results on racial discrimination and harassment in the legal profession](#) (October 15, 2024)

⁹ In the same way that a duty to report discrimination and harassment is implied in the professional standards of: a) the ABA pursuant to [Rule 8.4\(g\)](#) which defines professional misconduct to include discrimination and harassment and [Rule 8.3 \(a\)](#) which imposes a duty to report a “violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer...”; b) the [New Zealand Law Society](#), pursuant to Rule 2.8 setting out a duty to report misconduct and Rule 10.3 prohibiting bullying, discrimination and harassment; and c) the Solicitor’s Regulatory Authority, pursuant to [Rule 7.7](#) (duty to report any facts or matters that the lawyer reasonably believes are capable of amounting to a serious breach of their standards or requirements by any person regulated by the SRA) and [SRA principles](#) requiring a lawyer to act in a way that encourages equality, diversity and inclusion (see also SRA enforcement strategy, [section 1.2 Reporting concerns](#)).

¹⁰e.g., the New Zealand Code, *ibid*, includes an exception to the duty to report in Rule 2.8.4 for lawyers providing confidential support, a lawyer who is a victim of the suspected misconduct, or where the disclosure would pose a serious risk to the health or safety of the victim.



39. However, through the process of this review, especially in discussions with law society groups and representatives involved with equity issues, it has become clear to the Standing Committee that there is little to no support for including an express duty to report discrimination and harassment in the Model Code. There was near unanimous agreement among the people the Standing Committee spoke with that the risk of harm to the affected person, as a result of their loss of agency and control over the situation, cannot be justified, particularly given the unlikelihood that an express duty to report would have an appreciable impact on the prevalence of discrimination and harassment in the profession. Further, from a practical point of view, the law societies could not investigate a report without the affected person's involvement (i.e. when the report is made by a third party) as they would lack needed evidence, and would be very reluctant to contact the affected person to discuss the third-party report due to the harm such a communication would likely have.

40. It is noted that the Standing Committee's conclusion is consistent with the 2023 decision of the Department of National Defence and Canadian Armed Forces, following the review led by The Honourable Louise Arbour, to repeal its duty to report sexual misconduct due to: a) the unintended consequences for the person affected by removing their agency and control in the reporting process; and b) the fact that the duty to report appeared to be more of an impediment than an incentive to report.

41. Madame Arbour commented that "...experience has shown that the duty to report has not achieved its intended purpose and, worse, has served only to terrorize and re-victimize those it was meant to protect." She offered further comments on the best way forward: "Over time, when sexual misconduct is dealt with more appropriately in the [Canadian Armed Forces], impediments to reporting will be reduced, and victims will be more willing to come forward. That will be the best way to ensure that the authorities, including the chain of command, are aware and equipped to deal with the issue going forward."¹¹

42. The International Bar Association, in its 2019 report on discrimination and harassment in the legal profession, recommended flexible (rather than strict) reporting models to empower affected persons to report, as well as training, mentorship and other measures to raise awareness and effect cultural change.¹² The Standing Committee notes that many law societies are actively developing such measures, which is encouraging and directly supported by the discrimination and harassment rules in the Model Code.

43. Although the Standing Committee itself is not unanimous in its view on this topic, it respects the input it has received and, further, it seems clear that there would be insufficient

¹¹ [Report of the Independent External Comprehensive Review](#) (The Honourable Louise Arbour, May 20, 2022), p. 161, also Recommendation #11

¹² IBA report, [Us Too?: Bullying and Sexual Harassment in the Legal Profession](#) (2019), pp. 106-108



law society support for inclusion of an express duty to report discrimination and harassment in the Model Code at this time. Each law society will, of course, determine its own course of action, which might include a mandatory duty to report discrimination and harassment with an exception where there is a risk to safety or wellbeing.¹³

44. The Standing Committee wishes to express its gratitude again for the generous contributions of the law society groups and individuals who provided their input in this process.

CONCLUSION

45. Please submit your comments to consultations@flsc.ca by Friday, December 19, 2025. The Standing Committee will carefully consider all input received and will make further changes to the draft amendments that it considers appropriate. The final proposed amendments will then be presented to the Council of the Federation. If approved by Council, the amendments will be made available to the law societies to consider adoption and implementation in their jurisdictions.

¹³ The last iteration of draft commentary on a duty to report discrimination and harassment developed by the Standing Committee before this conclusion was reached, follows. The aim was to keep the guidance simple and to not include detailed exceptions.

[4] Discrimination or harassment will give rise to a duty to report if the conduct raises a substantial question as to a lawyer's honesty, honour or integrity under Rule 7.1-3 (d). A lawyer will be relieved from the duty to report if reporting would create a risk to anyone's safety or wellbeing (other than that of the lawyer whose conduct is the subject of the report).



APPENDIX 1

Proposed amendments to Duty to Report

7.1-3 Unless to do so would be unlawful ~~or would involve a breach of solicitor-client privilege~~, a lawyer must report to the Society, in respect of themselves or another lawyer:

- (a) the misappropriation or misapplication of trust monies; [moved from (b) to (a)]
- (b) the abandonment of a law practice; [moved from (a) to (b)]
- (c) participation in criminal activity related to a lawyer's practice;
- (d) conduct that raises a substantial question about as to another a lawyer's honesty, honour, or integrity; trustworthiness, or competency as a lawyer; and
- (e) conduct that raises a substantial question about ~~the~~ a lawyer's competence ~~capacity~~ to provide legal professional services. ; ~~and~~
- (f) ~~any situation in which a lawyer's clients are likely to be materially prejudiced.~~

Commentary

~~[1] — Unless a lawyer who departs from proper professional conduct or competence is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer). In all cases, the report must be made without malice or ulterior motive.~~

[1] Nothing in this rule is meant to interfere with the lawyer-client relationship. As with all rules in the [Code], the rule should be read in the context of a lawyer's other duties, particularly a lawyer's duties to protect privileged and confidential information.

~~[2] — Instances of conduct described in this rule can arise from a variety of stressors, physical, mental or emotional conditions, disorders or addictions. Lawyers who face such challenges should be encouraged by other lawyers to seek assistance as early as possible.~~

[2] The rule addresses conduct that gives rise to a duty to report. A lawyer is not obligated to report a mere suspicion regarding another lawyer's conduct or to investigate to corroborate that suspicion. Where the circumstances do not rise to the level of a duty to report, it remains within a lawyer's discretion to report any conduct which concerns them, with the protection of the public in mind.

[3] If the threshold in the rule is met, a lawyer is not relieved of the duty to report to the Society on the basis that they have reported the conduct to other authorities or through other processes.

[4] Although a variety of challenges and stressors may contribute to conduct that is described by the rule, the presence of the challenges or stressors in and of themselves do not give rise to a duty to report. Lawyers who face significant challenges are encouraged to seek assistance as early as possible. A lawyer who observes a colleague struggling should consider encouraging their colleague to seek assistance.

[5] ~~The Society supports professional support groups, such as the [Lawyers' Assistance Program and the Risk and Practice Management Program], in their commitment to the provision of confidential counselling. Therefore, Lawyers providing peer support or counselling through for a professional support program groups are bound to respect the confidentiality obligations imposed by that program.~~



~~Further, lawyers who provide this assistance will not be called by the Society or by any investigation committee to testify at a any conduct, capacity or competence hearing without the consent of the lawyer who received the assistance from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging serious misconduct or in criminal activity related to the lawyer's practice or there is a substantial risk that the lawyer may in the future engage in such conduct or activity. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.~~



APPENDIX 2

2016 amendments to Duty to Report

Duty to Report **Misconduct**

7.1-3 Unless to do so would be unlawful or would involve a breach of solicitor-client privilege, a lawyer must report to the Society:

- (a) the misappropriation or misapplication of trust monies;
- (b) the abandonment of a law practice;
- (c) participation in criminal activity related to a lawyer's practice;
- ~~(d) the mental instability of a lawyer of such a nature that the lawyer's clients are likely to be materially prejudiced;~~
- (d) conduct that raises a substantial question as to another lawyer's honesty, trustworthiness, or competency as a lawyer; and
- (e) conduct that raises a substantial question about the lawyer's capacity to provide professional services; and
- ~~(e)~~
- (f) any other situation in which a lawyer's clients are likely to be materially prejudiced

Commentary

[1] Unless a lawyer who departs from proper professional conduct or competence is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer). In all cases, the report must be made without malice or ulterior motive.

[2] Nothing in this paragraph rule is meant to interfere with the lawyer-client relationship. ~~In all cases, the report must be made without malice or ulterior motive.~~

[3] ~~Often, i~~ Instances of ~~improper~~ conduct described in this rule can arise from a variety of stressors, physical, mental or emotional conditions, disorders or addictions, , mental or family disturbances or substance abuse. Lawyers who face such challenges suffer from such problems should be encouraged by other lawyers to seek assistance as early as possible.

[4] The Society supports professional support groups , such as the [Lawyers' Assistance Program and the Risk and Practice Management Program], in their commitment to the provision of confidential counselling. Therefore, lawyers providing peer support acting in the capacity of counsellors for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or in criminal activity related to the lawyer's practice or there is a substantial risk that the lawyer may in the future engage in such conduct or activity. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

