



# **LIANS/NSBS Solo and Small Firm Virtual Conference 2022**

Current Issues in Professional  
Responsibility

Elaine Cumming  
Director of Professional Responsibility

# Federation of Law Societies of Canada

## **Model Code of Professional Conduct**

The Model Code of Professional Conduct was developed by the Federation of Law Societies of Canada to synchronize as much as possible the ethical and professional conduct standards for the legal profession across Canada. First adopted by the Council of the Federation in 2009, the Model Code has now been adopted by 13 of the 14 provincial and territorial law societies.

# Review of Rule 6.3 Harassment and Discrimination

## **Beginning:**

The Law Societies Equity Network (“LSEN”): provided the initial impetus for the examination of Rule 6.3 on Harassment and Discrimination. They advised the Standing Committee that in their opinion, the existing rules and commentary may not adequately reflect the importance of preventing discrimination and harassment.

The Standing Committee agreed that it was essential to clarify the harassment and discrimination provisions of the Model Code and to include specific guidance on bullying.

# 2020 National Consultation

In January of 2020, the Standing Committee issued its Consultation Report addressing duties related to non-discrimination and harassment and *ex parte* communications with courts and tribunals.

It is important to note that in the months following the release of the Standing Committee's 2020 Consultation Report, the Federation formally committed to reconciliation with Indigenous peoples and adopted Guiding Principles for Fostering Reconciliation that inform all aspects of Federation work.

The response to the Standing Committee's 2020 Consultation Report was significant, complex and lengthy. The Standing Committee took great care in reviewing and understanding all the feedback received and is now recommending further changes to the discrimination, harassment, and proposed *ex parte* language.

# 2021 Consultation

In July 2021, the Standing Committee circulated a second consultation report regarding the proposed rule changes. This document included a summary of the feedback that had been received on the first consultation in an effort to ensure that there was an explanation for any recommendations that were not accepted for the updated draft.

The Standing Committee was very grateful for the thoughtfulness of the law societies in responding to its work. The second consultation process was an unusual step, but was meant to assure law societies and other stakeholders that their feedback is critical to inform future conversations about responsibilities towards First Nations, Inuit and Métis peoples, systemic barriers in the profession, and professionalism generally.



## 6.3 EQUALITY, HARASSMENT AND DISCRIMINATION

### **Current Rules:**

**6.3-1** The principles of human rights laws and related case law apply to the interpretation of this rule.

**6.3-2** A term used in this rule that is defined in human rights legislation has the same meaning as in the legislation.

**6.3-3** A lawyer must not sexually harass any person.

**6.3-4** A lawyer must not engage in any other form of harassment of any person.

**6.3-5** A lawyer must not discriminate against any person.

# Amended Rules

## **Discrimination**

**6.3-1.** A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.

## **Harassment**

**6.3-2** A lawyer must not harass a colleague, employee, client or any other person.

## **Sexual Harassment**

**6.3-3** A lawyer must not sexually harass a colleague, employee, client or any other person.



## Reprisal

**6.3-4** A lawyer must not engage in any other form of harassment of any person. is prohibited from engaging or participating in reprisals against a colleague, employee, client or any other person because that person has:

- a. inquired about their rights or the rights of others;
- b. made or contemplated making a complaint of discrimination, harassment or sexual harassment;
- c. witnessed discrimination, harassment or sexual harassment; or
- d. assisted or contemplated assisting in any investigation or proceeding related to a complaint of discrimination, harassment or sexual harassment.



# Cultural Competence

The FLSC has established an Indigenous Advisory Council (IAC) to provide guidance and advice on the Federation's reconciliation work.

- The IAC will comprise Indigenous peoples representing different regions, cultures, age groups and gender identities.
- The IAC will guide and support the Federation's efforts to build relationships with Indigenous stakeholders and support other Federation initiatives as needed, and will provide recommendations to Federation Council where appropriate.
- The Standing Committee will be seeking advice, guidance and support from the IAC as it works to draft amendments to the Model Code regarding expectations for lawyers' cultural competence.