

## **Model Code of Conduct**

### **Introduction to the New Alberta *Code of Conduct***

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## **Introduction to Alberta's New Code of Conduct**

On November 1, 2011, the Law Society of Alberta will implement a new *Code of Conduct*. It will replace the *Code of Professional Conduct* which has been in place in Alberta since 1995. The purpose of this paper is to provide some background regarding the reasons for the development of the new Code, its origins, and a summary of important changes.

The new *Code of Conduct* may be viewed on the Law Society of Alberta website.

## **THE IMPORTANCE OF NATIONAL STANDARDS**

The Federation of Law Societies of Canada was established in 1972, as an association with representatives from all 14 law societies in the country, two of which are in Quebec. The Federation was at first a venue in which to exchange views and information. Over time, it has become more important to exchange information concerning issues of national interest. As issues have become more complex, the Federation has undertaken a more prominent role in facilitating the exchange of views and information on a variety of subjects.

The mission of the Federation is to operate as a forum for the exchange of views and information of common interest to the various law societies, and to foster cooperation among the governing bodies of the legal profession with a view to achieving uniformity. The Federation has no binding authority – its role is to coordinate the efforts of its member law societies.

In 1994, the Federation's member law societies entered into an Interjurisdictional Practice Protocol. In 2002, the National Mobility Agreement was struck and, in 2006, a Territorial Mobility Agreement. Though it took eight years for everyone to sign, all law societies are party to a mobility agreement which governs the work of their lawyers in other jurisdictions, and the work of lawyers from other jurisdictions in theirs.

Each Canadian law society has exclusive authority in its own jurisdiction, and each has its own code of conduct. The Federation's member law societies have, however, acknowledged the desirability of a nationwide regulatory regime for the interjurisdictional practice of law to promote uniform standards and procedures, to ensure that lawyers practice competently and ethically in all Canadian jurisdictions. The Federation also seeks to maintain public confidence in a self-regulated legal profession. A national Model Code is only one initiative by which the Federation seeks to meet this goal, by assuring consistency in national standards. Other ongoing work involves the management of assurance fund claims, admission standards, and disciplinary matters.

Although the various provincial codes of conduct are generally quite similar in content, the codes follow different formats and organization, and certain concepts are subject to different wording or nuances. In some cases, however, different conduct is proscribed. For example, currently each code provides for a measure of disclosure when a client tells a lawyer that the client is about to commit a harmful act. In some cases, the lawyer is

obliged to disclose the client's intention in order to prevent future harm. In other provinces, the lawyer has discretion to do so. In yet other provinces, the severity of the future harm or the nature of the anticipated crime dictates whether or not disclosure is mandatory, permitted or prohibited. Different ethical standards make it more difficult for lawyers to take advantage of the opportunities available to them under our mobility agreement, and are difficult to justify in many cases.

## **STAGES OF DEVELOPMENT**

Work on a national Model Code of Conduct began in 2004. The first Federation committee was charged with the task of drafting a code which would synchronize the ethical and professional standards of conduct for the legal profession across Canada. The first committee included representatives from all across the country, including former Alberta Benchers, Judge Larry Anderson and Bradley Nemetz, Q.C. The first draft was available for review in the spring of 2007. Thereafter, the draft was circulated to the various law societies.

In August 2007, the law societies were asked to review the first draft of the Model Code and provide feedback. Specifically, we were all asked to identify principles which might not be covered in the draft or which were subject to different treatment in a particular jurisdiction. In these early stages, the Benchers of the Law Society of Alberta approved the Model Code in principle, though the Model Code was subject to continued review through another Federation committee, the Model Code Implementation Committee, which began its work in March 2008. This committee was chaired by Mona Duckett, Q.C., former Law Society President, and was populated by law society staff lawyers from across the country, including our own Ross McLeod, Q.C., Practice Advisor in the Law Society's Edmonton office. The resulting draft was finally circulated in October 2009 and our Law Society has been engaged in its review ever since.

In 2010, the Professional Responsibility Committee was assigned the task of reviewing the Federation's draft Model Code. A panel of committee members met on an almost weekly basis to conduct a detailed review of the Federation's Model Code. The Professional Responsibility Committee attempted to make as few changes as possible, to ensure national consistency in the Codes across the country and consistency with the original Model Code. There were, however, certain Alberta practices and standards which the Committee recommended should be continued in the Alberta Code. There were also a number of areas in which we felt the Model Code could be improved to be more consistent with the law. A number of provisions were accordingly revised by the Professional Responsibility Committee and the new Code was approved by the Benchers at meetings in November 2010 and February 2011. The implementation date of November 1 was set in June this year.

The Federation's Model Code can be viewed on-line at <http://www.flsc.ca/en/pdf/ModelCode.pdf>. Two elements of the Federation's Model

Code have remained outstanding. These relate to conflicts and the future harm exception to confidentiality.

The Practice Advisors welcome any and all questions from Alberta lawyers. Concerns may also be brought to the Professional Responsibility Committee, as that Committee often responds to inquiries from the membership for Code interpretations.

#### **WHAT'S NEW, WHAT'S NOT**

While the new Code will obviously have some new features, the basic principles pursuant to which our members have been practicing law remain mostly unchanged.

On first glance, the new Code obviously has a different format. Formerly, we had fifteen distinct chapters. We will now have six chapters, though within these chapters essentially the same subject matter is covered as that which is contained in our current Code.

The new Code will now contain the following chapters:

Definitions

Chapter 1 – Standards of the Legal Profession

Chapter 2 – Relationships to Clients

Chapter 3 – Marketing of Legal Services

Chapter 4 – Relationship to the Administration of Justice

Chapter 5 – Relationship to Students, Employees and  
Others

Chapter 6 – Relationship to Society and Other Lawyers

For the time being, the Law Society of Alberta has carried forward our existing Chapter 6 on Conflicts from our *Code of Professional Conduct*, with necessary modifications to formatting and cross-references. It appears as Rule 2.04 of the new Code. The Federation has a draft conflicts chapter in place, though it has not yet been approved pending the outcome of an ongoing dialogue with the CBA about the issue of conflicts affecting current clients.

The following is a summary of changes made to the Model Code to ensure consistency with Alberta practice and standards. The provisions in our new Alberta Code to which reference is made are contained in Appendix "A":

1. The Model Code definition of a "law firm" was different from ours, as the current Alberta definition includes lawyers practicing from the same premises, even if independent practitioners. Space-sharing practitioners, for example, would not currently be allowed to handle