Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

Consultation Report

Draft Amendments in Response to Call to Action 27

Model Code of Professional Conduct

November 28, 2023

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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, to synchronize as much as possible the ethical and professional conduct standards for the legal profession across Canada; 13 of the 14 provincial and territorial law societies have adopted the Model Code or taken steps to ensure that their rules of professional conduct are consistent with the Model Code.

2. 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.

3. The Standing Committee has undertaken an examination of the Model Code to determine what changes are needed in response to the Truth and Reconciliation Commission's Call to Action 27. This initiative also aligns with the Federation's commitment to foster reconciliation in all of its work.[1]

4. Call to Action 27 reads:

> *We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.*

5. A number of Canadian law societies have already implemented educational requirements pertaining to Call to Action 27. The Standing Committee has focused its work on the ethical and professional obligations of Canadian legal professionals to inform themselves on the matters underlying Call to Action 27, in order to ensure competence, provide better service to clients and protect the public. It considered: i) the inclusion of additional rules and commentary (both specific to reconciliation and with general application regarding cultural awareness); and ii) revisions to existing Model Code provisions to ensure alignment with the proposed additional rules and commentary.

[1] See Federation's Guiding Principles for Fostering Reconciliation, December 2020, online here.

6. With every project, the Standing Committee engages in a process of review, analysis and deliberation before developing and seeking input on draft amendments from law societies and other interested parties. The extensive process of review on this project included the additional step of wide-ranging dialogue with Indigenous groups and individuals in the legal community to ensure that the draft amendments were properly informed before being distributed for feedback. The Standing Committee members are very grateful for the generosity of those who participated in this dialogue and were deeply impacted by all that they learned.

7. The Standing Committee now seeks feedback from the law societies and other interested parties on draft amendments to the Model Code in response to Call to Action 27. Feedback is essential to assist the Standing Committee in determining whether the correct elements have been captured, which are both responsive to Call to Action 27 and appropriate for the Model Code; and to identify potential challenges to implementation.

8. As the law societies (those that choose to adopt the amendments) will be called upon to implement and ensure compliance with the new rules, their input and perspectives on the proposals are critical. Other interested parties should be aware that these draft amendments have not yet been reviewed by the law societies.

9. Comments should be sent to consultations@flsc.ca by November 29, 2024. The Standing Committee will carefully consider all the input received and will make further changes to the draft amendments as it considers appropriate. The final proposed amendments will then be presented to the Council of the Federation. Once approved by Council, the amendments will be shared with the law societies to consider adoption and implementation in their jurisdictions.

BACKGROUND AND PROCESS OF REVIEW

Federation Commitment to Fostering Reconciliation

10. The Federation's response to Call to Action 27 is multi-faceted and ongoing, and is guided by engagement with its Indigenous Advisory Council. The amendments to the Model Code outlined in this Consultation Report are focused on the ethical and professional conduct standards for the legal profession. Some of the other Federation initiatives which seek to advance Truth and Reconciliation are briefly described here, for context.

11. Individual law societies are directly responsible for the continuing professional development of legal professionals[2] practicing in their jurisdictions. Since 2015, they have been actively developing diverse, jurisdiction-specific responses to the Calls to Action.[3] The Federation supports and encourages these efforts while also recognizing the value of national consistency in light of the shared public interest mandate and the national mobility of lawyers.

12. To that end, the Federation created a TRC Calls to Action Advisory Committee ("Advisory Committee") in the spring of 2017, bringing together law society, legal academic, and Indigenous perspectives with a mandate to make recommendations to the Council of the Federation on responding to Calls to Action 27 and 28 (which calls on law schools to take similar action). Following a recommendation from the Advisory Committee, the Federation issued Guiding Principles for Fostering Reconciliation in December 2020, which support a diversity of approaches to reconciliation.[4]

13. The Federation's commitment to reconciliation informs all its work. Currently there are three projects underway which involve examination of rules and standards in response to the Calls to Action: i) review of the National Requirement, which sets the minimum legal education standards for eligibility to bar admission programs in common law jurisdictions; ii) review of the National Discipline Standards which help ensure members of the public are treated promptly, fairly and openly when they make a complaint against a legal professional; and iii) the examination of the Model Code, the subject of this report.

14. While the goal in each case is to foster reconciliation, each of these Federation projects has a different mandate, looking at amendments to a different resource with a different objective. It is important to keep in mind that the Model Code is only one piece of this puzzle and can only address issues that relate to the ethical duties of legal

[2] "Lawyer" in the Model Code (section 1.1) is defined as "a member of the Society" (the law society adopting the provisions), which can mean a notary or paralegal depending on the jurisdiction. For that reason, the term "legal professional" is used throughout this report, rather than "lawyer", except within direct quotations from the Model Code.
[3] See Law Society initiatives summarized on the Federation website here.
[4] *Supra* 1

professionals. More broadly, while the Federation is committed to reconciliation, it is limited by its mandate in the steps it can take and the impact it can have on the justice system. In drafting the amendments to the Model Code, the Standing Committee kept in mind the Federation's role, the Model Code's purpose, and the ongoing efforts of the law societies in each jurisdiction to respond to the Calls to Action.

Review Process Leading to Draft Amendments

15. At the start of every review, the Standing Committee spends the time needed to inform itself and often seeks input from legal practitioners, legal academics, or other experts in the area under study. Standing Committee members spent considerable time in the first phase of this review studying materials, attending educational programming, reviewing presentations, and engaging with Indigenous practitioners and Indigenous legal academics. The Standing Committee built a foundation of knowledge and understanding of the elements of (and underlying) Call to Action 27, including the profound knowledge gaps within the legal profession regarding Indigenous realities and the traumatic experiences Indigenous people have suffered in their interactions with the legal profession and the judicial system.

16. The Standing Committee also heard clearly in these early discussions that it needed to engage with a broad range of Indigenous individuals and groups prior to drafting amendments to the Model Code to respond to Call to Action 27. The Standing Committee subsequently met with or otherwise received input from over twenty additional Indigenous individuals and groups, including Indigenous advisory groups at law societies, law firms, law schools, legal clinics, and community advocacy groups.

17. The Standing Committee is very grateful for the generous contributions received. Given the related projects ongoing within the Federation, the input naturally spans issues that pertain specifically to the ethical duties of lawyers, as well as issues of more general concern to the law societies and issues more closely connected with the minimum legal education standards set out in the National Requirement. The Federation has its eye on this continuum and has taken all input received onboard, as it applies in these different contexts.[5]

18. The input received from these individuals and groups was not part of a public consultation and is referenced in the discussion of the draft amendments in this report on an

[5] The Standing Committee was very grateful to receive input in the initial review process from the Indigenous Bar Association, Indigenous advisory groups at the law societies in Ontario, Alberta, British Columbia, Yukon, Saskatchewan and New Brunswick, the Association for Canadian Clinical Legal Education, Chantelle Johnson, Christina Cook, Val Napoleon, John Borrows, Patricia Barkaskas, Karen Drake, Naiomi Metallic, Constance MacIntosh, Richard Devlin, Cheryl Simon, Eva Ottawa, Brenda Gunn, Pooja Parmar, Karen Wilford, Dianne Corbière, Myrna McCallum, Kathleen Lickers, Candice Metallic, Andrea Menard and Andrea Hilland. The Standing Committee is also very appreciative of the ongoing guidance received from Alana Robert and the Federation's Indigenous Advisory Council.

unattributed basis. Note that comments received in response to this public consultation may be attributed in the final report.

19. A few concepts which guided the Standing Committee's work in drafting the proposed amendments are summarized below. They are derived from the Standing Committee's learning, the input received and its own reflection on and experience with the Model Code. This is not an exclusive list and further details of the input received and the Standing Committee's thinking on the issues are included in the discussion of the draft amendments later in this report.

i) A baseline level of knowledge of Indigenous realities, the laws of Indigenous peoples, the experiences of Indigenous peoples in the justice system, and the past and ongoing impacts of colonialism on Indigenous peoples is an essential aspect of competence for all legal professionals, whether or not they provide services to Indigenous clients; it is needed to understand the underlying infrastructure of our country and justice system and to fulfill ethical obligations to improve and promote public confidence in the administration of justice.

ii) The early input received consistently confirmed that, at the same time, legal professionals with this baseline level of knowledge should not consider themselves or present themselves as experts in Indigenous law.[6]

iii) Additional responsibilities, appropriate to the circumstances, might be warranted for legal professionals dealing with Indigenous clients or other parties.

iv) While there is undoubtedly a place for specific rules and commentary pertaining to Truth and Reconciliation, existing rules should be examined for their applicability and be revised as needed.

v) There are existing rules in the Model Code which do not require revision but are relevant to the draft amendments pertaining to Call to Action 27; for example, the relevant factors in determining whether a legal professional has the requisite degree of knowledge and skill in a particular matter (Rule 3.1-2, commentary [3]), the duty to understand one's limitations and to seek out knowledge needed to be competent to handle a matter (Rule 3.1-2, commentary [5]-[7]), and the duties regarding discrimination and harassment with particular attention to the unique experiences of Indigenous peoples (Rule 6.3-1, commentary [3]).

vi) The terms "inter-cultural competence" or "Indigenous inter-cultural competence"

[6] It should be noted that the term Indigenous law in this report refers to the laws of Indigenous peoples, which may include Indigenous legal orders, legal processes or legal traditions. It does not refer to Canadian law as it applies to Indigenous peoples.

are viewed by some as problematic due to: i) the assumption that someone can be competent in another culture; and ii) the difficulty of defining this term. A better approach, especially given the nature and purpose of the Model Code, is to clearly describe the duties that relate to this concept, along with guidance in the commentary.

vii) The Model Code sets out the ethical rules for legal professionals; it is not the role of, or appropriate for, the Model Code to specify how the knowledge and skills required to meet the enumerated responsibilities should be acquired.

20. Following on these concepts, the Standing Committee's draft amendments were built on four pillars which have broad support in our consultations to date:

i) Our focus should be on knowledge and communication, as a firm foundation for ethical duties (rather than requiring that anyone adopt a particular perspective).

ii) A baseline level of knowledge and communication skills should be required for all legal professionals.

iii) A higher level of knowledge and communication skills should be required for practitioners dealing with matters involving Indigenous clients or other parties, appropriate to the circumstances.

iv) Some of what was learned in the review process suggests related changes are warranted beyond the scope of Call to Action 27, to improve client service and enhance public protection. The Standing Committee has included such changes in the draft amendments, where it considered appropriate.[7]

DRAFT AMENDMENTS

21. The Standing Committee's approach, in considering the response to Call to Action 27 pertaining to ethical duties, has been to consider the whole Model Code. That distinguishes this review from others in which a discrete set of new rules and commentary is put forward for consideration by the law societies and other interested parties. Draft amendments are proposed in multiple parts of the Model Code, to ensure alignment; including in the Preface and in Rules 2.1 Integrity, 3.1 Competence, 3.2 Quality of Service, 5.1 The Lawyer as Advocate, 6.2-2 Duties of Principal, and 6.3-1 Discrimination. As mentioned, the draft amendments include new rules and commentary as well as proposed revisions to existing

[7] Acknowledged as relevant but not included in this review are: i) the possible need for revision of the rules regarding contingency fee agreements (Rule 3.6-2) when entered into with vulnerable clients, including Indigenous peoples; and ii) possible addition of provisions regarding the duty to report discrimination and harassment (Rule 6.3). Both issues are on the Standing Committee's priority list with work on duty to report scheduled to commence in November 2023.

rules and commentary. They also include rules with specific reference to Indigenous peoples and rules with more general application.

22. It should also be noted that all rules and commentary in the Model Code apply to the interactions of legal professionals with Indigenous peoples and with respect to matters with specific impact on Indigenous peoples. The Standing Committee is proposing new rules or revisions to existing rules where, in its view, elaboration as they apply regarding Indigenous peoples is necessary to assist legal professionals in providing legal services in a way that ensures the public interest is protected.

23. The draft amendments are addressed below and are also set out in the Appendix to this report.

Preface

24. The Preface orients the reader to foundational concepts underlying the Model Code. As such, the Standing Committee considers it important to incorporate a reference to the goal of reconciliation with Indigenous peoples. In the Standing Committee's view, a simple statement is appropriate, situated in the context of the evolving nature of the practice of law and in line with the high level of the rest of the Preface. Specific ethical duties with respect to reconciliation will be clearly set out in the rules (supplemented by guidance in the commentary).

25. The last two paragraphs of the Preface are provided below, with the added statement highlighted. (The full Preface is set out in the Appendix.)

> *The practice of law continues to evolve. Advances in technology, changes in the culture of those accessing legal services and the economics associated with practising law will continue to present challenges to lawyers. In addition, lawyers must understand that the legal profession has a role to play in efforts to seek reconciliation with Indigenous peoples.*
>
> *The ethical guidance provided to lawyers by their regulators should be responsive to this evolution. Rules of conduct should assist, not hinder, lawyers in providing legal services to the public in a way that ensures the public interest is protected. This calls for a framework based on ethical principles that, at the highest level, are immutable, and a profession that dedicates itself to practise according to the standards of competence, honesty and loyalty. The Law Society intends and hopes that this Code will be of assistance in achieving these goals.*

2.1 Integrity

26. Rule 2.1-1 stipulates that "a lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the

profession honourably and with integrity."

27. The Commentary to the Rule provides guidance and detail on the essential elements of integrity, the importance of honourable conduct, and the potential consequences of dishonourable conduct.

28. While the entire Rule applies equally to a legal professional's conduct with respect to Indigenous peoples, the following additional wording in Commentary [2] is proposed as, in the Standing Committee's view, it is appropriate to highlight the need to inspire the confidence, respect and trust of Indigenous peoples in order to advance the goals of reconciliation.

> ***Commentary***
>
> ***[1]*** *Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.*
>
> ***[2]*** *Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, including the confidence, respect and trust of Indigenous peoples, and avoid even the appearance of impropriety.*
>
> [See Appendix for the rest of the Commentary 3-4]

29. Rule 2.1-2 stipulates that "a lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions."

30. The Commentary to the Rule clarifies that this duty pertains to the enhancement of the profession through participation in the community and sharing of knowledge and experience with colleagues and students. As such, in the Standing Committee's view, this is an appropriate opportunity to encourage legal professionals to learn more about Indigenous peoples within their community and to share that knowledge and experience with others.

> ***Commentary***
>
> ***[1]*** *Collectively, lawyers are encouraged to enhance the profession through activities such as:*
>
> *a) sharing knowledge and experience with colleagues and students informally in day-to-day practice as well as through contribution to professional journals and publications, support of law school projects*

and participation in panel discussions, legal education seminars, bar admission courses and university lectures;

b) *participating in legal aid and community legal services programs or providing legal services on a pro bono basis;*

c) *filling elected and volunteer positions with the Society;*

d) *acting as directors, officers and members of local, provincial, national and international bar associations and their various committees and sections; ~~and~~*

e) *acting as directors, officers and members of non-profit or charitable organizations; and*

f) *learning about Indigenous peoples within the lawyer's community and sharing that knowledge and experience with colleagues and students.*

3.1 Competence

31. Most of the rules and commentary (and revision to existing rules) proposed by the Standing Committee are found under Competence. The Standing Committee's review to date, including the input received, supports the view that i) additional skills, ii) a baseline level of knowledge of Indigenous issues, perspectives and law for all legal professionals, and iii) additional knowledge when interacting with Indigenous clients or other parties are required for legal professionals in Canada to provide competent legal services in the public interest.

Competence, 3.1-1, Definition of Competent Lawyer

32. Rule 3.1-1 defines a "competent lawyer" as "a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement" and then elaborates on the necessary knowledge, skills and attributes, again in the context of a particular matter. The Standing Committee proposes the following amendments to the Rule, including new Commentary.

3.1-1 *In this section,*

"Competent lawyer" *means a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement, including:*

a) *knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the lawyer practises, including the ways in which those areas intersect with the rights, law and legal processes of or applicable to Indigenous peoples;*

b) *investigating facts, identifying issues, ascertaining client objectives, considering possible options and developing and advising the client on appropriate courses of action;*

c) *implementing as each matter requires, the chosen course of action through the application of appropriate skills, including:*

   i) *legal research;*
   ii) *analysis;*
   iii) *application of the law to the relevant facts;*
   iv) *writing and drafting;*
   v) *negotiation;*
   vi) *alternative dispute resolution;*
   vii) *advocacy; and*
   viii) *problem solving.*

d) *communicating at all relevant stages of a matter in a timely and effective manner;*

e) *performing all functions conscientiously, diligently and in a timely and cost-effective manner;*

f) *applying intellectual capacity, judgment and deliberation to all functions;*

g) *complying in letter and spirit with all rules pertaining to the appropriate professional conduct of lawyers;*

h) *recognizing limitations in one's ability to handle a matter or some aspect of it and taking steps accordingly to ensure the client is appropriately served;*

i) *managing one's practice effectively;*

j) *pursuing appropriate professional development to maintain and enhance legal knowledge and skills; ~~and~~*

k) *otherwise adapting to changing professional requirements, standards, techniques and practices; and*

l) *employing trauma-informed and culturally-informed practices as appropriate.*

Commentary

[1] *Clients, and others that the lawyer deals with on a matter, may approach situations in ways unexpected by the lawyer as a result of trauma, or because of differences in their cultural backgrounds and norms. It is part of the competent lawyer's skill set to develop strategies to respond appropriately and to seek out necessary advice to develop those skills.*

[2] *Competence can be built through development in law school, bar admission programs, articling, continuing professional development, self-study, and experience. It is the lawyer's responsibility to ensure they have the knowledge, skills, and attributes to competently undertake a particular matter.*

33. The additional wording in Rule 3.1-1a) requires as an element of competence that the legal professional know the ways in which the rights, law and legal processes of (or applicable to) Indigenous people intersect with the substantive law and procedure in the areas of law in which the legal professional practices. Indigenous rights, law, and legal processes may be relevant in a particular matter and, in the Standing Committee's view, expansion of competence, to ensure competent service generally and to Indigenous clients particularly, requires an understanding of how they intersect with the substantive law and procedure which the legal professional practices. Developing an understanding of this intersection does not mean that a legal professional is or can hold themselves out as being an "expert" in Indigenous law; this is discussed later in this report (at paragraphs 45-46).

34. The importance of making space for Indigenous law was consistently expressed in the early feedback as a critical part of reflecting reconciliation in the Model Code and is consistent with the Federation's Guiding Principles for Fostering Reconciliation.[8] While the Standing Committee takes both of these sources as informative, not determinative (as there are other factors to consider in ensuring that the Model Code ethical rules are carefully drawn), the Standing Committee's view is that this requirement is reasonable and achievable. As with all the proposals in this report, input on this point is critical to help ensure the best final result.

35. The additional provisions in Rule 3.1-1 l) include the employment of "trauma-informed practices" and "culturally-informed practices", where appropriate, as additional components of competence. The employment of these practices apply generally to a competent legal professional's practice, and not exclusively in relation to Indigenous peoples.

36. The inclusion of these additional components of competence is an important step, in the Standing Committee's view, which reflects the increasing diversity of Canadian society and sensitivity to cultural differences, and understanding of the impact of trauma on effective communication. The proposed new Commentary emphasizes these concepts, the responsibility of the legal professional to develop the knowledge, skills and attributes appropriate to competently undertake a particular matter (including these additional components), and the sources through which they may be developed.

37. Adding definitions of "trauma-informed practices" and "culturally-informed practices" was considered, however the Standing Committee decided instead to add guidance in the Commentary. None of the other components of competence listed in Rule 3.1-1 are defined in the Model Code and understanding of these terms will evolve as education on this content

[8] *Supra* 1. The Guiding Principles state: "2b) Reconciliation requires that we make space for Indigenous legal orders, processes and traditions as part of Canada's legal landscape, and recognize how such traditions connect to, or diverge from, the common and civil law systems. c) A legal system that fails to recognize and make space for Indigenous legal orders and the experiences of Indigenous peoples fails to properly serve Indigenous peoples."

develops at every level. The impact of a client's trauma on a legal professional's conduct is also not a new concept in the Model Code; it is addressed in Rule 4.1-1 which cautions against, when offering legal services, taking advantage of a person who has suffered unresolved trauma. Resources are also available to help legal professionals learn how to employ these practices.[9]

38. The Standing Committee considered including the concept of "culturally-safe" practices but received divided input on whether it was possible for even the most committed legal professionals to provide a "culturally-safe" environment for Indigenous clients, at least at this point in the journey of reconciliation.

39. As noted earlier in this Report, the review process and input received revealed that the terms "intercultural competency" or "Indigenous intercultural competency" are viewed by some as problematic, particularly within a document like the Model Code where clarity is critical given the potential consequences of failing to meet the standards. However, being aware of how different backgrounds and experiences influence how people communicate and receive information is essential to providing competent legal services in the public interest. In the Standing Committee's view, the term "culturally-informed" is straightforward, particularly when combined with the guidance offered in the Commentary.

40. The concepts of trauma-informed and culturally-informed practices are reinforced in other draft amendments discussed further below: i) Rule 3.1-2, Commentary [3] f) which includes as a factor in assessing the ability of a legal professional to take on a matter whether they have the "ability to interact effectively with people of various cultures", ii) Rule 3.1-2, Commentary [4C], which emphasizes the importance of being open to learning about cultures other than one's own and considering the application of new perspectives; and iii) Rule 3.2-1, Commentary [3] which emphasizes the importance of effective communication to quality of service and the impact of trauma and cultural differences on communications.

41. The existing Rule 3.1-1 includes several components of "competence" that are worth highlighting here as they apply to the acquisition of new knowledge, skills and attributes by legal professionals, such as the significant new responsibilities set out in the proposed amendments. First, clause h) requires the competent legal professional to recognize the limitations in their ability to handle a matter or some aspect of it and to take steps accordingly to ensure the client is appropriately served. Second, in clause j), "competence" includes pursuing appropriate professional development to maintain and enhance legal knowledge and skills. And third, pursuant to clause k), it is part of the competent legal professional's ethical responsibilities to adapt to changing professional requirements, standards, techniques and practices.

[9] For example, regarding the meaning and content of "trauma-informed practices", see the Guide for Lawyers working with Indigenous Peoples, September 2022, pp. 27-38.

Competence, 3.1-2, Performing Legal Services to the Standard of a Competent Lawyer

42. Rule 3.1-2 stipulates that "[a] lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer." This Rule builds on the definition of a "competent lawyer" in Rule 3.1-1 and provides guidance on what the "standard" of a competent lawyer is in the provision of legal services.

43. The Standing Committee proposes the following amendments to the Commentary. The first set of proposed amendments, found in Commentary [2] and the first part of new Commentary [2A], are intended to clarify existing wording unrelated to the issues at hand, which struck the Standing Committee as somewhat confusing as written. The second part of new Commentary [2A] has been added to acknowledge and highlight the potential applicability of Indigenous law, legal processes and legal traditions to a matter. Respect and making space for Indigenous law is consistent with the Federation's Guiding Principles for Fostering Reconciliation[10] and with the input received on this review to date.

> ***Commentary***
>
> ***[1]*** *As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf.*
>
> ***[2]*** *Competence is founded upon both ethical and legal principles. ~~This rule addresses the ethical principles. Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.~~ However, competence involves more than an understanding of principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied.*
>
> ***[2A]*** *The lawyer should keep abreast of developments in all areas of law in which the lawyer practises. A lawyer should seek out any knowledge and advice needed to understand the sources of law, legal processes and legal traditions, including Indigenous law, legal processes and legal traditions, that might apply to a matter.*

44. Commentary [3] to Rule 3.1-2 lists factors to be considered in determining whether a legal professional has the requisite knowledge and skill to competently handle a matter. The Standing Committee proposes adding an additional factor, the "ability to interact effectively with people of various cultures." As Canadian society becomes increasingly diverse, in the Standing Committee's view this ability is an important factor to providing competent service. The proposed clause has general application and is deliberately not limited to Indigenous

[10] *Supra* 1

peoples. It is also supported and complemented by proposed Commentary [4C], below, which elaborates on how legal professionals might develop and exercise this ability to interact effectively with people of various cultures (i.e., by being open to learning about other cultures, and willing to listen, to understand and to apply perspectives other than their own that may be appropriate to a matter).

> ***[3]*** *In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include:*
>
> *a) the complexity and specialized nature of the matter;*
>
> *b) the lawyer's general experience;*
>
> *c) the lawyer's training and experience in the field;*
>
> *d) the preparation and study the lawyer is able to give the matter; ~~and~~*
>
> *e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question; and*
>
> *f) the ability to interact effectively with people of various cultures.*
>
> ***[4]*** *In some circumstances, expertise in a particular field of law may be required; often the necessary degree of proficiency will be that of the general practitioner.*
>
> ***[4A]*** *To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.*
>
> ***[4B]*** *The required level of technological competence will depend on whether the use of understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:*
>
> *a) The lawyer's or law firm's practice areas;*
>
> *b) The geographic locations of the lawyer's or firm's practice; and*
>
> *c) The requirements of clients.*
>
> ***[4C]*** *To provide competent service to clients from various cultures, it is important that a lawyer demonstrate an openness to learning about cultures other than their own, and a willingness to listen, to understand and to apply perspectives other than their own as may be appropriate to a matter.*

45. Paragraphs [5]-[7] of the Commentary to Rule 3.1-2 discourage legal professionals from taking on matters that they do not honestly feel competent to handle and identify the steps to

take in that situation including, among others, seeking out needed expertise or declining to take on the matter. As discussed above, in the Standing Committee's view it is important to make space for Indigenous law and for legal professionals to understand how it may intersect with and be relevant to their areas of practice. However, feedback received during the review process from Indigenous leaders and academics consistently highlighted that "expertise" in Indigenous law (Indigenous legal orders, legal traditions or legal processes) can only be developed through Indigenous-led instruction. The Standing Committee proposes that the Commentary to Rule 3.1-2, which addresses where legal professionals might need to seek out advice and assistance from experts, is an appropriate place to caution legal professionals against holding themselves out as being experts in or practising Indigenous law without expertise obtained through Indigenous-led sources of knowledge and learning.

> ***[5]*** *A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk or expense to the client. The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.*
>
> ***[5A]*** *A lawyer should not hold themselves out as practicing Indigenous law or having expertise in particular Indigenous legal orders, legal traditions or legal processes, unless that lawyer has obtained such expertise through Indigenous-led sources of knowledge and learning.*
>
> ***[6]*** *A lawyer must recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:*
>
> *a) decline to act;*
>
> *b) obtain the client's instructions to retain, consult or collaborate with a lawyer who Is competent for that task; or*
>
> *c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.*
>
> ***[7]*** *A lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting or other non-legal fields and, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.*
>
> [See Appendix for the rest of the Commentary 7A-15]

46. The Standing Committee had in mind throughout the development of these draft amendments the appropriate line between requiring new knowledge, skills and attributes as a part of basic competence and what more might be required to handle a particular matter involving Indigenous law or Indigenous clients. Drawing this line is a common thread throughout the Model Code; it is a difficult challenge but not a new one. The Standing Committee carefully considered the input received when drafting these proposed amendments and (as with all the proposals) looks forward to receiving further feedback on this point.

Competence, New Proposed Provisions 3.1-3 and 3.1-4 related to Indigenous Peoples

47. The Standing Committee proposes two new Rules in Chapter 3 – Competence which pertain specifically to Indigenous peoples:

i) Rule 3.1-3, Competence Informed by Indigenous Perspectives, which sets out a baseline of required knowledge for all legal professionals; and
ii) Rule 3.1-4, Competence – Relationship with Indigenous Clients and Parties, which includes enhanced ethical duties when handling a matter involving Indigenous clients or other parties, appropriate to the circumstances.

48. Proposed Rule 3.1-3, Competence Informed by Indigenous Perspectives, states:

> ***3.1-3*** *To be a competent lawyer in Canada, a lawyer must appreciate the existence of distinct Indigenous perspectives and have a working knowledge of the legacy of Canada's colonial legal systems and the legal profession's role in the enduring harms to Indigenous peoples that resulted from colonization.*

49. The proposed rule contemplates that, to be competent, legal professionals will be responsible for acquiring the knowledge described and implies, correctly, that this is a requirement on entry to practice. The required knowledge might be acquired through law school (which will increasingly be the case)[11], bar admission programs, self-study or resources available through private providers.[12] For practising legal professionals, it might be acquired through continuing professional development ("CPD") programs, self-study or resources through private providers.

50. The details regarding implementation of this Rule will be particularly important. It will be helpful to hear from the law societies on whether the required elements are clear, whether the meaning of the term "working knowledge" can be readily applied, and whether a period of transition upon adoption of the Rule might be necessary to allow for the acquisition of this knowledge by already practising legal professionals.

51. The proposed Commentary to this Rule encourages legal professionals to develop and maintain through their careers a working knowledge of specific subjects relevant to the knowledge required by the Rule. It is not mandatory; it is intended to provide guidance to legal professionals wanting to build on the knowledge required in the Rule. Many law societies already offer or have plans to offer CPD programs that cover these topics. Legal

[11] This knowledge is, increasingly, part of the foundational curriculum in law schools, in response to Call to Action 28. See Council of Canadian Law Deans 2023 Update on Canadian Law Schools Responses to TRC Calls to Action. The National Requirement Review Committee has included in its preliminary proposals for amendments to the National Requirement additional standards pertaining to truth and reconciliation. See National Requirement Review, Discussion Paper, June 26, 2023.
[12] For example, Canadian Bar Association, The Path: Your Journey through Indigenous Canada and University of Alberta, Indigenous Canada

professionals can also acquire the knowledge from the sources referenced above.

Commentary

[1] *The Rule describes the baseline or entry level knowledge that a lawyer in Canada must have. There are three specific requirements described in the Rule.*

[2] *In addition to the required knowledge described in the Rule, and in support of those specific requirements, a lawyer is encouraged to develop and maintain, through their career, a working knowledge of the following:*

a) *the purpose of reconciliation, including the Truth and Reconciliation Commission's Calls to Action;*

b) *the distinction between the terms "Aboriginal" and "Indigenous";*

c) *the distinction between Aboriginal law and Indigenous law;*

d) *the differences between "First Nations", "Inuit", and "Métis";*

e) *the concepts of Indigenous self-government and Indigenous sovereignty;*

f) *legal concepts that underlie the presumption of Crown sovereignty over Indigenous lands and territories, including the Doctrine of Discovery;*

g) *the existence of treaties and treaty relationships in some parts of Canada;*

h) *the existence of self-government agreements and modern land claims agreements in some parts of Canada;*

i) *sources of Aboriginal and Indigenous rights under Canadian and international law, such as ss. 25 and 35 of the Constitution Act, 1982, and the United Nations Declaration on the Rights of Indigenous Peoples;*

j) *the importance of ceremony and protocol to Indigenous worldviews and Indigenous cultures;*

k) *the Indigenous names of places, nations, and communities within a lawyer's geographic area of practice, as well as the existence of protocols that are proper to those places, nations, and communities;*

l) *the historical and ongoing harms suffered by Indigenous peoples as a result of policies and practices of the Canadian state:*

    i. *the history and impact of exploitative treaty negotiations;*
    ii. *the imposition of European-style governance mechanisms;*
    iii. *the residential school system;*
    iv. *the day school system;*
    v. *the 60's Scoop;*
    vi. *the overrepresentation of Indigenous children in child welfare systems;*
    vii. *the disproportionate victimization of Indigenous people (including missing and murdered Indigenous women, girls, and two-spirit folks);*

viii. the overrepresentation of Indigenous people in Canada's criminal justice system;
ix. the Indian Act;
x. the efforts underway to affirm and implement Indigenous legal orders in the practice of law in Canada; and

xi. the role that Canadian law, Canadian legal systems and the legal profession have played in these historical and ongoing harms.

52. The proposed Rule 3.1-4, Competence – Relationship with Indigenous Clients and Parties, states:

> ***3.1-4*** *A lawyer must, when dealing with Indigenous clients and parties, have a working knowledge, appropriate to the circumstances, of:*
>
> *i. Indigenous worldviews;*
> *ii. Indigenous ways of communicating;*
> *iii. Indigenous ways of decision-making;*
> *iv. the diversity among Indigenous communities, especially with respect to worldviews, ceremonies and protocols, ways of communicating, and ways of decision-making;*
> *v. the unique legal contexts of Indigenous peoples, especially with respect to their interactions with the Canadian state, and the mistrust they may feel towards institutions of justice and the legal profession;*
> *vi. the racism, systemic discrimination, trauma and unconscious bias experienced by Indigenous individuals; and*
>
> *vii. regionally significant information and events, including region-specific ceremonies and protocols.*

53. It should be noted that the details of the knowledge required when dealing with Indigenous clients and parties is included in the Rule, not in the Commentary. As such, it is not guidance but part of the mandatory requirement, although the requirement is limited to what is appropriate in the circumstances. In the Standing Committee's view, this level of knowledge and understanding is essential to ethical interactions by legal professionals with Indigenous clients and parties, given the alienation of Indigenous peoples from the justice system for generations.

54. The Commentary to this new Rule expands on these concepts, emphasizing i) the importance of this knowledge to enhance the quality of legal services when dealing with the Indigenous clients and parties, ii) the potential need to seek out advice, and iii) the nexus between strengthening the relationship between the legal profession and Indigenous clients and parties and the overall obligation of legal professionals to seek to improve the administration of justice (Rule 5.6-1). The proposed commentary states:

Commentary

[1] *Acquiring this knowledge will enhance the effectiveness of the lawyer's communications and skill in providing services when dealing with Indigenous clients and parties on a matter, and contribute to the lawyer's overall obligation to seek to improve the administration of justice.*

[2] *A lawyer should be mindful that their actions and practices do not contribute to the harms their Indigenous clients and other parties may experience when engaging with the justice system and that the lawyer may need to seek advice from experts in the Indigenous community in order to provide competent service.*

3.2-1 Quality of Service

55. Rule 3.2-1 describes the duty "to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil."

56. A theme that runs throughout the draft amendments is that effective communication is critical to providing competent legal services and requires an awareness of the client's perspective and cultural background, which might differ from that of the legal professional. The Standing Committee believes this concept is appropriately included in the Commentary to the Rule on Quality of Service, which currently does not reference communication with clients.

57. The Standing Committee proposes an addition to the Commentary under Quality of Service as follows:

Commentary

[1] *This rule should be read and applied in conjunction with section 3.1 regarding competence.*

[2] *A lawyer has a duty to provide a quality of service at least equal to that which lawyers generally expect of a competent lawyer in a like situation. An ordinarily or otherwise competent lawyer may still occasionally fail to provide an adequate quality of service.*

[3] *A lawyer has a duty to communicate effectively with the client. What is effective will vary depending on the nature of the retainer, the needs and sophistication of the client, and the need for the client to make fully informed decisions and provide instructions. An awareness of trauma that may have been suffered by the client and cultural differences between the lawyer and the client will facilitate improved communications with the client.*

[4] *A lawyer should ensure that matters are attended to within a reasonable time frame. If the lawyer can reasonably foresee undue delay in providing advice or services, the lawyer has a duty to so inform the client, so that the client can make an informed choice about his or her options, such as whether*

to retain new counsel.

[See Appendix for the rest of the Commentary 5-6]

58. The first part of the addition to the Commentary is intended to provide guidance on effective communication with clients generally. The second part of the Commentary focuses on the impact of trauma and cultural differences on communication and the importance of being aware of these factors. This amendment complements other related draft amendments, discussed above: i) Rule 3.1-1 l) includes employing trauma-informed and culturally-informed practices as components of competence; ii) Rule 3.1-2 Commentary [3] f) includes as a factor in assessing the ability of a legal professional to take on a matter whether they have the "ability to interact effectively with people of various cultures"; and iii) Rule 3.1-2 Commentary [4C] emphasizes the importance of being open to learning about cultures other than one's own and considering the application of new perspectives.

5.1 The Lawyer as Advocate

59. Rule 5.1-1 states that "[w]hen acting as an advocate, a lawyer must represent the client resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy and respect."

60. The Commentary to this Rule notes the need for legal professionals to be fearless while establishing some necessary limits to the role of the advocate. The Standing Committee proposes an additional caveat to the scope of this role, as follows:

> ***Commentary***
>
> ***[1]*** *Role in Adversarial Proceedings - In adversarial proceedings, the lawyer has a duty to the client to raise fearlessly every issue, advance every argument and ask every question, however distasteful, that the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law. However, in doing so, the lawyer should consider the arguments and questions advanced and be mindful that they are not exploitative and do not reinforce systemic discrimination or stereotypes based on grounds protected by human rights legislation. The lawyer must discharge this duty by fair and honourable means, without illegality and in a manner that is consistent with the lawyer's duty to treat the tribunal with candour, fairness, courtesy and respect and in a way that promotes the parties' right to a fair hearing in which justice can be done. Maintaining dignity, decorum and courtesy in the courtroom is not an empty formality because, unless order is maintained, rights cannot be protected.*
>
> ***[2]*** *This rule applies to the lawyer as advocate, and therefore extends not only to court proceedings but also to appearances and proceedings before boards, administrative tribunals, arbitrators, mediators and others who resolve disputes, regardless of their function or the informality of their*

procedures.

[3] *The lawyer's function as advocate is openly and necessarily partisan. Accordingly, the lawyer is not obliged (except as required by law or under these rules and subject to the duties of a prosecutor set out below) to assist an adversary or advance matters harmful to the client's case.*

[4] *In adversarial proceedings that will likely affect the health, welfare or security of a child, a lawyer should advise the client to take into account the best interests of the child, if this can be done without prejudicing the legitimate interests of the client.*

[See Appendix for the rest of the Commentary 5-6]

61. The duty to advocate zealously is not without constraint. In the Standing Committee's view, the additional guidance proposed is consistent with the Discrimination and Harassment rules in the Model Code, human rights legislation and the goals of reconciliation; it deliberately has general application and is not limited to contexts involving Indigenous parties in a matter.

6.2-2 Duties of Principal

62. The Standing Committee proposes additional Commentary to Rule 6.2-2, Duties of Principal, to ensure that there is appropriate instruction at an early stage to facilitate the acquisition of skills that may be required to work effectively with vulnerable clients or in specialist areas of practice. This may apply in matters related to Indigenous peoples or in other contexts.

6.2-2 *A lawyer acting as a principal to a student must provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession.*

Commentary

[1] *A principal or supervising lawyer is responsible for the actions of students acting under his or her direction.*

[2] *A principal or supervising lawyer is responsible for ensuring that students have the required skills necessary to fulfill their role. This may require additional attention, supervision and training when working with vulnerable clients or in specialist areas of practice.*

6.3-1 Discrimination

63. Amended discrimination and harassment rules were added to the Model Code in October 2022 (Rule 6.3) which include content on the unique experiences of Indigenous peoples in the justice system, and urge legal professionals to be aware of the past and ongoing impacts of colonialism on Indigenous peoples and on guard against their own biases.

64. The Standing Committee proposes a small but significant change to the Commentary to Rule 6.3-1, based on feedback received, changing the statement in Commentary [3] from Indigenous peoples "may" experience unique challenges as a result of colonization to a more definitive and accurate statement that Indigenous peoples experience those unique challenges.

> ***6.3-1*** *A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.*
>
> ***Commentary***
>
> ***[1]*** *Lawyers are uniquely placed to advance the administration of justice, requiring lawyers to commit to equal justice for all within an open and impartial system. Lawyers are expected to respect the dignity and worth of all persons and to treat all persons fairly and without discrimination. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in such laws.*
>
> ***[2]*** *In order to reflect and be responsive to the public they serve, a lawyer must refrain from all forms of discrimination and harassment, which undermine confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful, accessible, and inclusive, and should strive to recognize their own internal biases and take particular care to avoid engaging in practices that would reinforce those biases, when offering services to the public and when organizing their workplace.*
>
> ***[3]*** *Indigenous peoples* ~~***may***~~ *experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being willfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.*
>
> [See Appendix for the rest of the Commentary 4-9]

CONCLUSION

65. The Standing Committee looks forward to receiving comments on any or all of these proposals. Feedback is critical to assist the Standing Committee in determining whether the essential elements have been captured, which are both responsive to Call to Action 27 and appropriate for the Model Code, and to identify potential challenges to implementation.

66. Please submit your comments to consultations@flsc.ca by November 29, 2024. The Standing Committee will carefully consider all input received and will make further changes to the draft amendments as it considers appropriate. The final proposed amendments will then be presented to the Council of the Federation. Once approved by Council, the amendments will be shared with the law societies to consider adoption and implementation in their jurisdictions.

APPENDIX

Only the proposed amendments are included in this Appendix. The full Model Code of Professional Conduct can be found online here.

PREFACE

One of the hallmarks of a free and democratic society is the Rule of Law. Its importance is manifested in every legal activity in which citizens engage, from the sale of real property to the prosecution of murder to international trade. As participants in a justice system that advances the Rule of Law, lawyers hold a unique and privileged position in society. Self-regulatory powers have been granted to the legal profession on the understanding that the profession will exercise those powers in the public interest. Part of that responsibility is ensuring the appropriate regulation of the professional conduct of lawyers. Members of the legal profession who draft, argue, interpret and challenge the law of the land can attest to the robust legal system in Canada. They also acknowledge the public's reliance on the integrity of the people who work within the legal system and the authority exercised by the governing bodies of the profession. While lawyers are consulted for their knowledge and abilities, more is expected of them than forensic acumen. A special ethical responsibility comes with membership in the legal profession. This Code attempts to define and illustrate that responsibility in terms of a lawyer's professional relationships with clients, the Justice system and the profession.

The Code sets out statements of principle followed by exemplary rules and commentaries, which contextualize the principles enunciated. The principles are important statements of the expected standards of ethical conduct for lawyers and inform the more specific guidance in the rules and commentaries. The Code assists in defining ethical practice and in identifying what is questionable ethically. Some sections of the Code are of more general application, and some sections, in addition to providing ethical guidance, may be read as aspirational. The Code in its entirety should be considered a reliable and instructive guide for lawyers that establishes only the minimum standards of professional conduct expected of members of the profession. Some circumstances that raise ethical considerations may be sufficiently unique that the guidance in a rule or commentary may not answer the issue or provide the required direction. In such cases, lawyers should consult with the Law Society, senior practitioners or the courts for guidance.

A breach of the provisions of the Code may or may not be sanctionable. The decision to address a lawyer's conduct through disciplinary action based on a breach of the Code will be made on a case-by-case basis after an assessment of all relevant information. The rules and commentaries are intended to encapsulate the ethical standard for the practice of law in Canada. A failure to meet this standard may result in a finding that the lawyer has engaged in conduct unbecoming or professional misconduct.

The Code of Conduct was drafted as a national code for Canadian lawyers. It is recognized, however, that regional differences will exist in respect of certain applications of the ethical standards. Lawyers who practise outside their home jurisdiction should find the Code useful in identifying these differences.

The practice of law continues to evolve. Advances in technology, changes in the culture of those accessing legal services and the economics associated with practising law will continue to present challenges to lawyers. In addition, lawyers must understand that the legal profession has a role to play in efforts to seek reconciliation with Indigenous peoples.

The ethical guidance provided to lawyers by their regulators should be responsive to this evolution. Rules of conduct should assist, not hinder, lawyers in providing legal services to the public in a way that ensures the public interest is protected. This calls for a framework based on ethical principles that, at the highest level, are immutable, and a profession that dedicates itself to practise according to the standards of competence, honesty and loyalty. The Law Society intends and hopes that this Code will be of assistance in achieving these goals.

[Rule 1.1-1 redacted. Refer to Model Code of Professional Conduct to review redacted provisions.]

CHAPTER 2 – STANDARDS OF THE LEGAL PROFESSION

2.1 INTEGRITY

2.1-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

Commentary

[1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.

[2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, including the confidence, respect and trust of Indigenous peoples, and avoid even the appearance of impropriety.

[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.

[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.

2.1-2 A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.

Commentary

[1] Collectively, lawyers are encouraged to enhance the profession through activities such as:

(a) sharing knowledge and experience with colleagues and students informally in day-to-day practice as well as through contribution to professional journals and publications, support of law school projects and participation in panel discussions, legal education seminars, bar admission courses and university lectures;

(b) participating in legal aid and community legal services programs or providing legal services on a pro bono basis;

(c) filling elected and volunteer positions with the Society;

(d) acting as directors, officers and members of local, provincial, national and international bar associations and their various committees and sections; ~~and~~

(e) acting as directors, officers and members of non-profit or charitable organizations; and

(f) learning about Indigenous peoples within the lawyer's community and sharing that knowledge and experience with colleagues and students.

Chapter 3 – Relationship to Clients

3.1 COMPETENCE

Definitions

3.1-1 In this section,

"Competent lawyer" means a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement, including:

(a) knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the lawyer practises, including the ways in which those areas intersect with the rights, law and legal processes of or applicable to Indigenous peoples;

(b) investigating facts, identifying issues, ascertaining client objectives, considering possible options and developing and advising the client on appropriate courses of action;

(c) implementing as each matter requires, the chosen course of action through the application of appropriate skills, including:

(i) legal research;
(ii) analysis;
(iii) application of the law to the relevant facts;
(iv) writing and drafting;
(v) negotiation;
(vi) alternative dispute resolution;
(vii) advocacy; and
(viii) problem solving.

(d) communicating at all relevant stages of a matter in a timely and effective manner;

(e) performing all functions conscientiously, diligently and in a timely and cost-effective manner;

(f) applying intellectual capacity, judgment and deliberation to all functions;

(g) complying in letter and spirit with all rules pertaining to the appropriate professional conduct of lawyers;

(h) recognizing limitations in one's ability to handle a matter or some aspect of it and taking steps accordingly to ensure the client is appropriately served;

(i) managing one's practice effectively;

(j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills; ~~and~~

(k) otherwise adapting to changing professional requirements, standards, techniques

and practices; and

(l) employing trauma-informed and culturally-informed practices as appropriate.

Commentary

[1] Clients, and others that the lawyer deals with on a matter, may approach situations in ways unexpected by the lawyer as a result of trauma, or because of differences in their cultural background and norms. It is part of the competent lawyer's skill set to develop strategies to respond appropriately and to seek out necessary advice to develop those skills.

[2] Competence can be built through development in law school, bar admission programs, articling, continuing professional development, self-study and experience. It is the lawyer's responsibility to ensure they have the knowledge, skills and attributes to competently undertake a particular matter.

Competence

3.1-2 A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.

Commentary

[1] As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf.

[2] Competence is founded upon both ethical and legal principles. ~~This rule addresses the ethical principles. Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.~~ However, competence involves more than an understanding of principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied.

[2A] The lawyer should keep abreast of developments in all areas of law in which the lawyer practises. A lawyer should seek out any knowledge and advice needed to understand the sources of law, legal processes and legal traditions, including Indigenous law, legal processes and legal traditions, that might apply to a matter.

[3] In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include:

(a) the complexity and specialized nature of the matter;

(b) the lawyer's general experience;

(c) the lawyer's training and experience in the field;
(d) the preparation and study the lawyer is able to give the matter; ~~and~~

(e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question; and

(f) the ability to interact effectively with people of various cultures.

[4] In some circumstances, expertise in a particular field of law may be required; often the necessary degree of proficiency will be that of the general practitioner.

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend on whether the use of understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:

(a) The lawyer's or law firm's practice areas;

(b) The geographic locations of the lawyer's or firm's practice; and

(c) The requirements of clients.

[4C] To provide competent service to clients from various cultures, it is important that a lawyer demonstrate an openness to learning about cultures other than their own, and a willingness to listen, to understand and to apply perspectives other than their own as may be appropriate to a matter.

[5] A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk or expense to the client. The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.

[5A] A lawyer should not hold themselves out as practicing Indigenous law or having expertise in particular Indigenous legal orders, legal traditions or legal processes, unless that lawyer has obtained such expertise through Indigenous-led sources of knowledge and learning.

[6] A lawyer must recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:

(a) decline to act;

(b) obtain the client's instructions to retain, consult or collaborate with a lawyer who is competent for that task; or

(c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.

[7] A lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting or other non-legal fields and, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.

[7A] When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 3.2-1A.

[7B] In providing short-term summary legal services under Rules 3.4-2A – 3.4-2D, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term summary legal services may be required or are advisable, and encourage the client to seek such further assistance.

[8] A lawyer should clearly specify the facts, circumstances and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications. A lawyer should only express his or her legal opinion when it is genuinely held and is provided to the standard of a competent lawyer.

[9] A lawyer should be wary of providing unreasonable or over-confident assurances to the client, especially when the lawyer's employment or retainer may depend upon advising in a particular way.

[10] In addition to opinions on legal questions, a lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, economic, policy or social complications involved in the question or the course the client should choose. In many instances the lawyer's experience will be such that the lawyer's views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

[11] In a multi-discipline practice, a lawyer must ensure that the client is made aware that the legal advice from the lawyer may be supplemented by advice or services from a non-lawyer. Advice or services from non-lawyer members of the firm unrelated to the retainer for legal services must be provided independently of and outside the scope of the legal services retainer and from a location separate from the premises of the multi-discipline practice. The provision of non-legal advice or services unrelated to the legal services retainer will also be subject to the constraints outlined in the rules/by-laws/regulations governing multi-discipline practices.

[12] The requirement of conscientious, diligent and efficient service means that a lawyer should make every effort to provide timely service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[13] The lawyer should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.

[14] A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

[15] Incompetence, Negligence and Mistakes - This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule. However, evidence of gross neglect in a particular matter or a pattern of neglect or mistakes in different matters may be evidence of such a failure, regardless of tort liability. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.

Competence informed by Indigenous Perspectives

3.1-3 To be a competent lawyer in Canada, a lawyer must appreciate the existence of distinct Indigenous perspectives and have a working knowledge of the legacy of Canada's colonial legal systems and the legal profession's role in the enduring harms to Indigenous peoples that resulted from colonization.

Commentary

[1] The Rule describes the baseline or entry level knowledge that a lawyer in Canada must have. There are three specific requirements described in the Rule.

[2] In addition to the required knowledge described in the Rule, and in support of those specific requirements, a lawyer is encouraged to develop and maintain. through

their career, a working knowledge of the following:

(a) the purpose of reconciliation, including the Truth and Reconciliation Commission's Calls to Action;

(b) the distinction between the terms "Aboriginal" and "Indigenous";

(c) the distinction between Aboriginal law and Indigenous law;

(d) the differences between "First Nations", "Inuit", and "Métis";

(e) the concepts of Indigenous self-government and Indigenous sovereignty;

(f) legal concepts that underlie the presumption of Crown sovereignty over Indigenous lands and territories, including the Doctrine of Discovery;

(g) the existence of treaties and treaty relationships in some parts of Canada;

(h) the existence of self-government agreements and modern land claims agreements in some parts of Canada;

(i) sources of Aboriginal and Indigenous rights under Canadian and international law, such as ss. 25 and 35 of the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples*;

(j) the importance of ceremony and protocol to Indigenous worldviews and Indigenous cultures;

(k) the Indigenous names of places, nations, and communities within a lawyer's geographic area of practice, as well as the existence of protocols that are proper to those places, nations, and communities;

(l) the historical and ongoing harms suffered by Indigenous peoples as a result of policies and practices of the Canadian state:

(i) the history and impact of exploitative treaty negotiations;
(ii) the imposition of European-style governance mechanisms;
(iii) the residential school system;
(iv) the day school system;
(v) the 60's Scoop;
(vi) the overrepresentation of Indigenous children in child welfare systems;
(vii) the disproportionate victimization of Indigenous people (including missing and murdered Indigenous women, girls, and two-spirit folks);
(viii) the overrepresentation of Indigenous people in Canada's criminal justice system;
(ix) the *Indian Act*;
(x) the efforts underway to affirm and implement Indigenous legal orders in the practice of law in Canada; and
(xi) the role that Canadian law, Canadian legal systems and the legal profession have played in these historical and ongoing harms.

Competence – Relationship with Indigenous Clients and Parties

3.1-4 A lawyer must, when dealing with Indigenous clients and parties, have a working knowledge, appropriate to the circumstances, of:

(i) Indigenous worldviews;
(ii) Indigenous ways of communicating;
(iii) Indigenous ways of decision-making;
(iv) the diversity among Indigenous communities, especially with respect to worldviews, ceremonies and protocols, ways of communicating, and ways of decision-making;
(v) the unique legal contexts of Indigenous peoples, especially with respect to their interactions with the Canadian state, and the mistrust they may feel towards institutions of justice and the legal profession;
(vi) the racism, systemic discrimination, trauma and unconscious bias experienced by Indigenous individuals; and
(vii) regionally significant information and events, including region-specific ceremonies and protocols.

Commentary

[1] Acquiring this knowledge will enhance the effectiveness of the lawyer's communications and skill in providing services when dealing with Indigenous clients and parties on a matter, and contribute to the lawyer's overall obligation to seek to improve the administration of justice.

[2] A lawyer should be mindful that their actions and practices do not contribute to the harms their Indigenous clients and other parties may experience when engaging with the justice system and that the lawyer may need to seek advice from experts in the Indigenous community in order to provide competent service.

3.2 QUALITY OF SERVICE

Quality of Service

3.2-1 A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.

Commentary

[1] This rule should be read and applied in conjunction with section 3.1 regarding competence.

[2] A lawyer has a duty to provide a quality of service at least equal to that which lawyers generally expect of a competent lawyer in a like situation. An ordinarily or otherwise competent lawyer may still occasionally fail to provide an adequate quality of service.

[3] A lawyer has a duty to communicate effectively with the client. What is effective will vary depending on the nature of the retainer, the needs and sophistication of the client and the need for the client to make fully informed decisions and provide instructions. An awareness of trauma that may have been suffered by the client and cultural differences between the lawyer and the client will facilitate improved communications with the client.

[4] A lawyer should ensure that matters are attended to within a reasonable time frame. If the lawyer can reasonably foresee undue delay in providing advice or services, the lawyer has a duty to so inform the client, so that the client can make an informed choice about his or her options, such as whether to retain new counsel.

Examples of expected practices

[5] The quality of service to a client may be measured by the extent to which a lawyer maintains certain standards in practice. The following list, which is illustrative and not exhaustive, provides key examples of expected practices in this area:

(a) keeping a client reasonably informed;
(b) answering reasonable requests from a client for information;
(c) responding to a client's telephone calls;
(d) keeping appointments with a client, or providing a timely explanation or apology when unable to keep such an appointment;
(e) taking appropriate steps to do something promised to a client, or informing or explaining to the client when it is not possible to do so;
(f) ensuring, where appropriate, that all instructions are in writing or confirmed in writing;

(g) answering, within a reasonable time, any communication that requires a reply;
(h) ensuring that work is done in a timely manner so that its value to the client is maintained;
(i) providing quality work and giving reasonable attention to the review of documentation to avoid delay and unnecessary costs to correct errors or omissions;
(j) maintaining office staff, facilities and equipment adequate to the lawyer's practice;
(k) informing a client of a proposal of settlement, and explaining the proposal properly;
(l) providing a client with complete and accurate relevant information about a matter;
(m) making a prompt and complete report when the work is finished or, if a final report cannot be made, providing an interim report when one might reasonably be expected;
(n) avoiding the use of intoxicants or drugs that interferes with or prejudices the lawyer's services to the client;
(o) being civil.

[6] A lawyer should meet deadlines, unless the lawyer is able to offer a reasonable explanation and ensure that no prejudice to the client will result. Whether or not a specific deadline applies, a lawyer should be prompt in handling a matter, responding to communications and reporting developments to the client. In the absence of developments, contact with the client should be maintained to the extent the client reasonably expects.

[Rules 3.2-1A to 4.3-1 redacted. Refer to Model Code of Professional Conduct to review redacted provisions.]

Chapter 5 – Relationship to the Administration of Justice

5.1 THE LAWYER AS ADVOCATE

Advocacy

5.1-1 When acting as an advocate, a lawyer must represent the client resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy and respect.

Commentary

[1] Role in Adversarial Proceedings - In adversarial proceedings, the lawyer has a duty to the client to raise fearlessly every issue, advance every argument and ask every question, however distasteful, that the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law. However, in doing so, the lawyer should consider the arguments and questions advanced and be mindful that they are not exploitative and do not reinforce systemic discrimination or stereotypes based on grounds protected by human rights legislation. The lawyer must discharge this duty by fair and honourable means, without illegality and in a manner that is consistent with the lawyer's duty to treat the tribunal with candour, fairness, courtesy and respect and in a way that promotes the parties' right to a fair hearing in which justice can be done. Maintaining dignity, decorum and courtesy in the courtroom is not an empty formality because, unless order is maintained, rights cannot be protected.

[2] This rule applies to the lawyer as advocate, and therefore extends not only to court proceedings but also to appearances and proceedings before boards, administrative tribunals, arbitrators, mediators and others who resolve disputes, regardless of their function or the informality of their procedures.

[3] The lawyer's function as advocate is openly and necessarily partisan. Accordingly, the lawyer is not obliged (except as required by law or under these rules and subject to the duties of a prosecutor set out below) to assist an adversary or advance matters harmful to the client's case.

[4] In adversarial proceedings that will likely affect the health, welfare or security of a child, a lawyer should advise the client to take into account the best interests of the child, if this can be done without prejudicing the legitimate interests of the client.

[5] A lawyer should refrain from expressing the lawyer's personal opinions on the merits of a client's case to a court or tribunal.

[6] When opposing interests are not represented, for example, in without notice or uncontested matters or in other situations in which the full proof and argument inherent in the adversarial system cannot be achieved, the lawyer must take particular care to be accurate, candid and comprehensive in presenting the client's case so as to ensure that the tribunal is not misled.

[7] The lawyer should never waive or abandon the client's legal rights, such as an available defence under a statute of limitations, without the client's informed consent.

[8] In civil proceedings, a lawyer should avoid and discourage the client from resorting to frivolous or vexatious objections, attempts to gain advantage from slips or oversights not going to the merits or tactics that will merely delay or harass the other side. Such practices can readily bring the administration of justice and the legal profession into disrepute.

[9] Duty as Defence Counsel - When defending an accused person, a lawyer's duty is to protect the client as far as possible from being convicted, except by a tribunal of competent jurisdiction and upon legal evidence sufficient to support a conviction for the offence with which the client is charged. Accordingly, and notwithstanding the lawyer's private opinion on credibility or the merits, a lawyer may properly rely on any evidence or defences, including so-called technicalities, not known to be false or fraudulent.

[10] Admissions made by the accused to a lawyer may impose strict limitations on the conduct of the defence, and the accused should be made aware of this. For example, if the accused clearly admits to the lawyer the factual and mental elements necessary to constitute the offence, the lawyer, if convinced that the admissions are true and voluntary, may properly take objection to the jurisdiction of the court, the form of the indictment or the admissibility or sufficiency of the evidence, but must not suggest that some other person committed the offence or call any evidence that, by reason of the admissions, the lawyer believes to be false. Nor may the lawyer set up an affirmative case inconsistent with such admissions, for example, by calling evidence in support of an alibi intended to show that the accused could not have done or, in fact, has not done the act. Such admissions will also impose a limit on the extent to which the lawyer may attack the evidence for the prosecution. The lawyer is entitled to test the evidence given by each individual witness for the prosecution and argue that the evidence taken as a whole is insufficient to amount to proof that the accused is guilty of the offence charged, but the lawyer should go no further than that.

[Rules 5.1-2 to 6.1-6 redacted. Refer to Model Code of Professional Conduct to review redacted provisions.]

6.2 STUDENTS

Recruitment and Engagement Procedures

6.2-1 A lawyer must observe any procedures of the Society about the recruitment and engagement of articling or other students.

Duties of Principal

6.2-2 A lawyer acting as a principal to a student must provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession.

Commentary

[1] A principal or supervising lawyer is responsible for the actions of students acting under his or her direction.

[2] A principal or supervising lawyer is responsible for ensuring that students have the required skills necessary to fulfill their role. This may require additional attention, supervision and training when working with vulnerable clients or in specialist areas of practice.

[Rule 6.2-3 redacted. Refer to Model Code of Professional Conduct to review redacted provisions.]

6.3 DISCRIMINATION AND HARASSMENT

Discrimination

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

Commentary

[1] Lawyers are uniquely placed to advance the administration of justice, requiring lawyers to commit to equal justice for all within an open and impartial system. Lawyers are expected to respect the dignity and worth of all persons and to treat all persons fairly and without discrimination. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in such laws.

[2] In order to reflect and be responsive to the public they serve, a lawyer must refrain from all forms of discrimination and harassment, which undermine confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful, accessible, and inclusive, and should strive to recognize their own internal biases and take particular care to avoid engaging in practices that would reinforce those biases, when offering services to the public and when organizing their workplace.

[3] Indigenous peoples ~~**may**~~ experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being willfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.

[4] Lawyers should be aware that discrimination includes adverse effect and systemic discrimination, which arise from organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal treatment of a person or persons. Lawyers should consider the distinct needs and circumstances of their colleagues, employees, and clients, and should be alert to unconscious biases that may inform these relationships and that serve to perpetuate systemic discrimination and harassment. Lawyers should guard against any express or implicit assumption that another person's views, skills, capabilities, and contributions are necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.

[5] Discrimination is a distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, which has the effect of imposing burdens, obligations or disadvantages on the individual or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and advantages that are available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Intersecting grounds of discrimination require consideration of the unique oppressions that result from the interplay of two or more protected grounds in a given context.

[6] The principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this Rule and to Rules 6.3-2 to 6.3-4. A lawyer has a responsibility to stay apprised of developments in the law pertaining to discrimination and harassment, as what constitutes discrimination, harassment, and protected grounds continue to evolve over time and may vary by jurisdiction.

[7] Examples of behaviour that constitute discrimination include, but are not limited to:

(a) harassment (as described in more detail in the Commentary to Rules 6.3-2 and 6.3-3);

(b) refusing to employ or to continue to employ any person on the basis of any personal characteristic protected by applicable law;

(c) refusing to provide legal services to any person on the basis of any personal characteristic protected by applicable law;

(d) charging higher fees on the basis of any personal characteristic protected by applicable law;

(e) assigning lesser work or paying an employee or staff member less on the basis of any personal characteristic protected by applicable law;

(f) using derogatory racial, gendered, or religious language to describe a person or group of persons;

(g) failing to provide reasonable accommodation to the point of undue hardship;

(h) applying policies regarding leave that are facially neutral (i.e. that apply to all employees equally), but which have the effect of penalizing individuals who take parental leave, in terms of seniority, promotion or partnership;

(i) providing training or mentoring opportunities in a manner which has the effect of excluding any person from such opportunities on the basis of any personal characteristic protected by applicable law;

(j) providing unequal opportunity for advancement by evaluating employees on facially neutral criteria that fail to take into account differential needs and needs requiring accommodation;

(k) comments, jokes or innuendos that cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive;

(l) instances when any of the above behaviour is directed toward someone because of their association with a group or individual with certain personal characteristics; or

(m) any other conduct which constitutes discrimination according to any applicable law.

[8] It is not discrimination to establish or provide special programs, services or activities which have the object of ameliorating conditions of disadvantage for individuals or groups who are disadvantaged for reasons related to any characteristic protected by applicable laws.

[9] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

[Rules 6.3-2 to 7.8-5 redacted. Refer to Model Code of Professional Conduct to review redacted provisions.]