

## AMENDMENT PAGES

2023: No. 3 August

### Highlights

**Law Society Rules 2015:**\* The title of Ombudsperson has been changed to Equity Advisor to better align with the scope of the program (definition of “Equity Advisor” and Rules 5-4.6(3) and 10-2.1: pp. 13, 180 and 214).

\**Historical notes are published only in the website version of the Rules.*

**Code of Professional Conduct for British Columbia:** The section on discrimination and harassment has been significantly expanded and now includes a new rule on reprisal and commentary with specific examples (section 6.3: pp. 79-80.5).

**Filing:** File the amended pages in your *Member’s Manual* as follows:

Manual section	Existing pages to be removed	Amendment pages to be inserted
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Code of Professional Conduct for British Columbia	79 – 80	79 – 80, 80.1 – 80.6

After filing, insert this sheet at the front of the *Manual* for reference.

This amendment package updates the *Member’s Manual* to **July 31, 2023**. The previous amendment package was 2023: No. 2 May.

To check that your copy of the Manual is up to date, consult the contents checklist on the next page. To print replacement pages, download the PDFs at [Member’s Manual](#) on the Law Society website.

The Law Society Rules and *Code of Professional Conduct for British Columbia* can be accessed in the [Support & Resources for Lawyers](#) section of the Law Society website at [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca). Refer to the website for the most current versions of the Rules and Code.



## MEMBER'S MANUAL CONTENTS CHECKLIST

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The following list of pages and tabs can be used to verify that your *Member's Manual* is complete and up to date.

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- “enrolment start date”** means the date on which an articulated student’s enrolment in the admission program becomes effective;
- “Equity Advisor”** means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articulated students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers and includes anyone employed to assist the Equity Advisor in that capacity;
- “Executive Committee”** means the Committee elected under Rule 1-41 [*Election of Executive Committee*];
- “Executive Director”** [rescinded]
- “fiduciary property”** means
- (a) funds, other than trust funds, and valuables for which a lawyer is responsible in a representative capacity or as a trustee, if the lawyer’s appointment is derived from a solicitor-client relationship,
- but does not include
- (b) any funds and valuables that are subject to a power of attorney granted to the lawyer if the lawyer has not taken control of or otherwise dealt with the funds or valuables;
- “firm”** [rescinded – see “law firm”]
- “foreign jurisdiction”** means a country other than Canada or an internal jurisdiction of a country other than Canada;
- “Foundation”** means the Law Foundation of British Columbia continued under section 58 (1) [*Law Foundation of British Columbia*];
- “funds”** includes current coin, government or bank notes, bills of exchange, cheques, drafts, money orders, charge card sales slips, credit slips and electronic transfers;
- “general”** in relation to accounts, books, records and transactions means those pertaining to general funds;
- “general funds”** means funds received by a lawyer in relation to the practice of law, but does not include
- (a) trust funds, or
  - (b) fiduciary property;
- “governing body”** means the governing body of the legal profession in another province or territory of Canada;
- “interim action board”** means a board appointed under Rule 3-10 [*Interim suspension or practice conditions*];
- “inter-jurisdictional law firm”** means a firm carrying on the practice of law in British Columbia and in one or more other Canadian or foreign jurisdictions, unless all lawyers in all offices of the firm are practising lawyers;

- “inter-jurisdictional practice”** includes practice by a member of the Society in another Canadian jurisdiction;
- “investigate”** includes authorizing an investigation and continuing an investigation in progress;
- “law clerk”** means a law clerk employed to work for a judge appointed under section 96 of the *Constitution Act, 1867*, or a judge of the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal or the Tax Court of Canada;
- “law firm”** or **“firm”** means a legal entity or combination of legal entities carrying on the practice of law;
- “lawyer”** means a member of the Society;
- “limited liability partnership”** or **“LLP”** means a limited liability partnership under Part 6 of the *Partnership Act*, including an extraprovincial limited liability partnership registered under that Part;
- “metadata”** includes the following information generated in respect of an electronic record:
- (a) creation date;
  - (b) modification dates;
  - (c) printing information;
  - (d) pre-edit data from earlier drafts;
  - (e) identity of an individual responsible for creating, modifying or printing the record;
- “motions adjudicator”** means the Tribunal Chair or a lawyer Bencher designated by the Tribunal Chair to decide a matter or conduct a pre-hearing or pre-review conference under these rules;
- “multi-disciplinary practice”** or **“MDP”** means a partnership, including a limited liability partnership or a partnership of law corporations, that
- (a) is owned by at least one lawyer or law corporation and at least one individual non-lawyer or professional corporation that is not a law corporation, and
  - (b) provides to the public legal services supported or supplemented by the services of another profession, trade or occupation;
- “National Mobility Agreement”** means the National Mobility Agreement, 2013, of the Federation of Law Societies of Canada, as amended from time to time;
- “net interest”** means the total interest earned on a pooled trust account, minus any service charges and transmittal fee that the savings institution charges to that account;
- “officer”** means the Executive Director, a Deputy Executive Director or other person appointed as an officer by the Benchers;
- “Ombudsperson”** [rescinded – see “Equity Advisor”]

**“panel”** means a panel established in accordance with Part 5 [*Tribunal, Hearings and Appeals*];

**“practice management course”** means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study;

**“practice review”** means an investigation into a lawyer’s competence to practise law ordered under Rule 3-17 (3) (d) [*Consideration of complaints*] or 3-18 (1) [*Practice review*];

**“practice year”** means the period beginning on January 1 and ending on December 31 in a year;

**“practitioner of foreign law”** means a person qualified to practise law in a foreign jurisdiction who provides foreign legal services respecting the laws of that foreign jurisdiction;

**“prescribed form”** means a form approved by the Executive Director;

**“principal”** means a lawyer who is qualified to employ and employs an articulated student;

**“pro bono legal services”** means the practice of law not performed for or in the expectation of a fee, gain or reward;

**“professional conduct record”** means a record of all or some of the following information respecting a lawyer:

- (a) an order under Rule 2-57 (5) [*Principals*], prohibiting the lawyer from acting as a principal for an articulated student;
- (b) any conditions or limitations of practice or articles accepted or imposed under the Act or these rules;
- (c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;
- (d) a decision by the Credentials Committee to reject an application for an inter-jurisdictional practice permit;
- (d.1) a consent agreement to resolve a complaint under Rule 3-7.1 [*Resolution by consent agreement*];
- (d.2) an administrative penalty assessed under Rule 4-59 [*Administrative penalty*] unless cancelled under Rule 4-60 [*Review and order*];
- (e) any suspension or disbarment under the Act or these rules, including resignation requiring consent under Rule 4-6 [*Continuation of membership during investigation or disciplinary proceedings*];
- (f) recommendations made by the Practice Standards Committee under Rule 3-19 [*Action by Practice Standards Committee*];
- (g) an admission accepted by the Discipline Committee under Rule 4-29 [*Conditional admission*];

- (h) an admission accepted and disciplinary action imposed by a hearing panel under Rule 5-6.5 [*Admission and consent to disciplinary action*];
- (i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-13 [*Conduct Review Subcommittee report*], and any written dispute of that report considered by the Committee;
- (j) a decision made under section 38 (4) (b) [*Discipline hearings*];
- (k) an action taken under section 38 (5), (6) or (7);
- (l) an action taken by a review board under section 47 [*Review on the record*];
- (m) a payment made from the former special compensation fund on account of misappropriation or wrongful conversion by the lawyer;
- (n) an order for costs made against the lawyer under Part 5 [*Tribunal, Hearings and Appeals*];
- (o) any failure to pay any fine, costs or penalty imposed under the Act or these rules by the time that it is to be paid;
- (p) the outcome of an application made by the lawyer under the *Judicial Review Procedure Act* concerning a decision taken under the Act or these rules, including a predecessor of either;
- (q) the outcome of an appeal under section 48 [*Appeal*];
- (r) any disciplinary or remedial action taken by a governing body or body regulating the legal profession in any other jurisdiction;
- (s) a decision of or action taken by the Benchers on a review of a decision of a hearing panel;

**“professional corporation”** includes a law corporation and means a corporation that is a company, as defined in the *Business Corporations Act*, and that is in good standing under that Act or that is registered under Part 11 [*Extrajurisdictional Companies*] of the *Business Corporations Act*, through which a member of a profession, trade or occupation is authorized under a statute governing the profession, trade or occupation to carry on the business of providing services to the public;

**“Protocol”** means the Inter-Jurisdictional Practice Protocol signed on behalf of the Society on February 18, 1994, as amended from time to time;

**“provide foreign legal services”** means give legal advice in British Columbia respecting the laws of a foreign jurisdiction in which the person giving the advice is qualified;



- (3) A panel appointed under subrule (2) (a) is not seized of the application or any question pertaining to the application other than that referred under that provision.

### **Severance and joinder**

- 5-4.4** (1) Before a hearing begins, any party may apply in writing to the Tribunal for an order that
- (a) one or more allegations in a citation be determined in a separate hearing from other allegations in the same citation, or
  - (b) two or more citations be determined in one hearing.
- (2) An application under subrule (1) must
- (a) be copied to the party not making the application, and
  - (b) state the grounds for the order sought.
- (3) When an application is made under this rule, the Tribunal Chair must designate a motions adjudicator to make a determination.
- (4) The motions adjudicator designated under subrule (3)
- (a) must consider the submissions of the parties,
  - (b) may require a pre-hearing conference before making a determination, and
  - (c) must dismiss the application or allow the application, with or without conditions.

### **Summary hearing**

- 5-4.5** (1) This rule may be applied in respect of the hearing of a citation comprising only allegations that the respondent has done one or more of the following:
- (a) breached a rule;
  - (b) breached an undertaking given to the Society;
  - (c) failed to respond to a communication from the Society;
  - (d) breached an order made under the Act or these rules.
- (2) Unless the panel orders otherwise, the parties may adduce evidence by
- (a) affidavit,
  - (b) an agreed statement of facts, or
  - (c) an admission made or deemed to be made under Rule 5-4.8 [*Notice to admit*].
- (3) Despite Rules 5-6.3 [*Submissions and determination*] and 5-6.4 [*Disciplinary action*], the panel may consider facts, determination, disciplinary action and costs and issue a decision respecting all aspects of the proceeding.

### **Demand for disclosure of evidence**

- 5-4.6** (1) At any time after a citation has been issued and before the hearing begins, a respondent may demand in writing that Law Society counsel disclose the evidence that the Society intends to introduce at the hearing.

- (2) On receipt of a demand for disclosure under subrule (1), Law Society counsel must provide the following to the respondent by a reasonable time before the beginning of the hearing:
  - (a) a copy of every document that the Society intends to tender in evidence;
  - (b) a copy of any statement made by a person whom the Society intends to call as a witness;
  - (c) if documents provided under paragraphs (a) and (b) do not provide enough information, a summary of the evidence that the Society intends to introduce;
  - (d) a summary of any other relevant evidence in Law Society counsel's possession or in a Society file available to counsel, whether or not counsel intends to introduce that evidence at the hearing.
- (3) Despite subrule (2), Law Society counsel must not provide any information or documents about any discussion or other communication with the Equity Advisor in that capacity.

#### **Application for details of the circumstances**

- 5-4.7** (1) Before a hearing begins, the respondent may apply for disclosure of the details of the circumstances of misconduct alleged in a citation by filing with the Tribunal and delivering to Law Society counsel written notice setting out the substance of the application and the grounds for it.
- (2) If a motions adjudicator is satisfied that an allegation in the citation does not contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven and to identify the transaction referred to, the motions adjudicator must order Law Society counsel to disclose further details of the circumstances.
- (3) Details of the circumstances disclosed under subrule (2) must be
  - (a) in writing, and
  - (b) delivered to the respondent or respondent's counsel.

#### **Notice to admit**

- 5-4.8** (1) At any time, but not less than 45 days before a date set for the hearing of a citation, a party may request the other party to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document.
- (2) A request made under subrule (1) must
  - (a) be made in writing in a document clearly marked "Notice to Admit" and served in accordance with Rule 10-1 [*Service and notice*], and
  - (b) include a complete description of the fact, the truth of which is to be admitted, or attach a copy of the document, the authenticity of which is to be admitted.
- (3) A party may make more than one request under subrule (1).

## PART 10 – GENERAL

### Service and notice

**10-1** (0.1) In this rule, “**recipient**” means a lawyer, former lawyer, law firm, articled student or applicant.

- (1) A recipient may be served with a notice or other document by
  - (a) leaving it at the place of business of the recipient,
  - (b) sending it by
    - (i) registered mail, ordinary mail or courier to the last known business or residential address of the recipient,
    - (ii) electronic facsimile to the last known electronic facsimile number of the recipient,
    - (iii) electronic mail to the last known electronic mail address of the recipient, or
    - (iv) any of the means referred to in subparagraphs (i) to (iii) to the place of business of the counsel or personal representative of the recipient or to an address given to Law Society counsel by a respondent for delivery of documents relating to a citation, or
  - (c) posting it to an electronic portal operated by the Society to which the recipient has been given access and notifying the recipient of the posting by a method enumerated in paragraph (b) (ii) or (iii).
- (2) If it is impractical for any reason to serve a notice or other document as set out in subrule (1), a motions adjudicator may order substituted service, whether or not there is evidence that
  - (a) the notice or other document will probably
    - (i) reach the intended recipient, or
    - (ii) come to the intended recipient’s attention, or
  - (b) the intended recipient is evading service.
- (3) [rescinded]
- (4) A document may be served on the Society or on the Benchers by
  - (a) leaving it at or sending it by registered mail or courier to the principal offices of the Society, or
  - (b) personally serving it on an officer of the Society.
- (4.1) A document required under the Act or these rules to be delivered to the President or the Executive Director must be left at or sent by registered mail or courier to the principal offices of the Society.
- (5) A document sent by ordinary mail is deemed to be served 7 days after it is sent.

- (6) A document that is left at a place of business or sent by registered mail or courier is deemed to be served on the next business day after it is left or delivered.
- (7) A document sent by electronic facsimile or electronic mail is deemed to be served on the next business day after it is sent.
- (7.1) A document that is posted to an electronic portal operated by the Society is deemed to be served the next business day after the document is posted and notice is sent to the recipient.
- (8) Any person may be notified of any matter by ordinary mail, registered mail, courier, electronic facsimile or electronic mail to the person's last known address.

### **Duty not to disclose**

- 10-2** A person performing any duty or fulfilling any function under the Act or these rules who receives or becomes privy to any confidential information, including privileged information,
- (a) has the same duty that a lawyer has to a client not to disclose that information, and
  - (b) must not disclose and cannot be required to disclose that information except as authorized by the Act, these rules or an order of a court.

### **Communication with Equity Advisor confidential**

- 10-2.1** (1) This rule must be interpreted in a way that will facilitate the Equity Advisor assisting in the resolution of disputes through communication without prejudice to the rights of any person.
- (2) Communication between the Equity Advisor acting in that capacity and any person receiving or seeking assistance from the Equity Advisor is confidential and must remain confidential in order to foster an effective relationship between the Equity Advisor and that individual.
- (3) The Equity Advisor must hold in strict confidence all information acquired in that capacity from participants.

### **Records**

- 10-3** (1) In this rule, “**storage provider**” means any entity storing or processing records outside of a lawyer's office, whether or not for payment.
- (2) When required under the Act or these rules, a lawyer must, on demand, promptly produce records in any or all of the following forms:
- (a) printed in a comprehensible format;
  - (b) accessed on a read-only basis;
  - (c) exported to an electronic format that allows access to the records in a comprehensible format.

## 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 articulated 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 the principal or supervising lawyer's direction.

[[1] amended 10/2021]

### Duties of articulated student

**6.2-3** An articulated student must act in good faith in fulfilling and discharging all the commitments and obligations arising from the articling experience.

## 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.

[rule rescinded and replaced 07/2023]

#### Commentary

[1] Lawyers are expected to respect the dignity and worth of all persons. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws, and to stay apprised of developments in the law pertaining to discrimination and harassment, applicable to them.

The principles of human rights, workplace health and safety laws, and related case law apply to the interpretation of this Code rule and to Code rules 6.3-2 to 6.3-4. What constitutes discrimination, harassment, and protected grounds continues to evolve over time and may vary by jurisdiction.

[2] A lawyer engaging in discriminatory or harassing behaviour undermines 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 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] As a result of the history of the colonization of Indigenous peoples in Canada, including ongoing repercussions of the colonial legacy, systemic factors, and biases, Indigenous peoples experience unique challenges in relation to discrimination and harassment. Lawyers should guard against engaging in, allowing, or being willfully blind to actions that constitute discrimination or any form of harassment against Indigenous peoples.

[4] Lawyers should be aware that discrimination includes adverse effects and systemic discrimination, that can 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 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 can be defined as the distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, that 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. Harassment may constitute or be linked to discrimination. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Human rights laws recognize some actions based on grounds related to actual or perceived personal characteristics of an individual or group are not discriminatory, including for example, establishing or providing programs, services or activities that have the object of ameliorating conditions of those individuals or groups. It is important to recognize that people are multi-faceted, and the intersection of overlapping and interdependent systems of discrimination they may experience.

[6] Discrimination can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute discrimination. The examples are not exhaustive.

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

## Chapter 6 – Relationship to Students, Employees, and Others

- (c) charging higher fees on the basis of any personal characteristic protected by applicable law;
- (d) assigning lesser work or paying an employee or staff member less on the basis of any personal characteristic protected by applicable law;
- (e) using derogatory racial, gendered, or religious language to describe a person or group of persons;
- (f) failing to provide reasonable accommodation to the point of undue hardship;
- (g) 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;
- (h) providing training or mentoring opportunities in a manner that has the effect of excluding any person from such opportunities on the basis of any personal characteristic protected by applicable law;
- (i) providing unequal opportunity for advancement by evaluating employees on facially neutral criteria that fail to take into account differential needs and needs requiring accommodation;
- (j) 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; or
- (k) instances when any of the above behaviour is directed toward someone because of their association with a group or individual with certain personal characteristics.

[7] Lawyers are expected to not condone or be willfully blind to conduct in their workplaces that constitutes discrimination.

[8] Lawyers are reminded that 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. 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 (see Code rule 2.2-1 commentaries [3] and [4]).

[[1] to [8] added 07/2023]

## Harassment

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

[rule rescinded and replaced 07/2023]

### Commentary

[1] Harassment can be defined as an incident or a series of incidents involving physical, verbal or non-verbal conduct (including electronic communications) that might reasonably be expected to cause humiliation, offence or intimidation to the person who is subjected to the conduct. The intent of the lawyer engaging in the conduct is not determinative. Harassment may constitute or be linked to discrimination.

[2] Harassment can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute harassment. The examples are not exhaustive.

- (a) objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments and displays that demean, belittle, intimidate or cause humiliation or embarrassment;
- (b) behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;
- (c) bullying;
- (d) verbal abuse;
- (e) abuse of authority where a lawyer uses the power inherent in their position to endanger, undermine, intimidate, or threaten a person, or otherwise interfere with another person's career;
- (f) comments, jokes or innuendos that are known or ought reasonably to be known to cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive; or
- (g) assigning work inequitably.

[3] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or non-verbal conduct. It is characterized by conduct that might reasonably be expected to harm or damage the physical or psychological integrity of another person, their reputation or their property. Bullying can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute bullying. The examples are not exhaustive.

- (a) unfair or excessive criticism;
- (b) ridicule;
- (c) humiliation;
- (d) exclusion or isolation;



- (e) constantly changing or setting unrealistic work targets; or
- (f) threats or intimidation.

[4] Lawyers are expected to not condone or be willfully blind to conduct in their workplaces that constitutes harassment.

[5] Lawyers are reminded that 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. 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 (see Code rule 2.2-1 commentaries [3] and [4]).

[[1] to [5] added 07/2023]

### **Sexual harassment**

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

[rule rescinded and replaced 07/2023]

#### **Commentary**

[1] Sexual harassment can be defined as an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. Sexual harassment may occur:

- (a) when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the person who is subjected to the conduct;
- (b) when submission to such conduct is implicitly or explicitly made a condition for the provision of professional services;
- (c) when submission to such conduct is implicitly or explicitly made a condition of employment;
- (d) when submission to or rejection of such conduct is used as a basis for any employment decision, including:
  - (i) loss of opportunity;
  - (ii) the allocation of work;
  - (iii) promotion or demotion;
  - (iv) remuneration or loss of remuneration;

- (v) job security; or
- (vi) benefits affecting the employee;
- (e) when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment;
- (f) when a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees or colleagues; or
- (g) when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[2] Sexual harassment can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute sexual harassment. The examples are not exhaustive.

- (a) displaying sexualized or other demeaning or derogatory images;
- (b) sexually suggestive or intimidating comments, gestures or threats;
- (c) comments, jokes that cause humiliation, embarrassment or offence, or which by their nature, and in their context, are clearly embarrassing, humiliating or offensive;
- (d) innuendoes, leering or comments about a person's dress or appearance;
- (e) gender-based insults or sexist remarks;
- (f) communications with sexual overtones;
- (g) inquiries or comments about a person's sex life;
- (h) sexual flirtations, advances, propositions, invitations or requests;
- (i) unsolicited or unwelcome physical contact or touching;
- (j) sexual violence; or
- (k) unwanted contact or attention, including after the end of a consensual relationship.

[3] Lawyers are expected to not condone or be willfully blind to conduct in their workplaces that constitutes sexual harassment.

[4] Lawyers are reminded that 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. 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 (see Code rule 2.2-1 commentaries [3] and [4]).

[[1] to [4] added 07/2023]

## Reprisal

**6.3-4** A lawyer must not engage or participate in reprisals against a colleague, employee, client or any other person because that person has:

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

[rule rescinded and replaced 07/2023]

### Commentary

[1] The purpose of this Code rule is to enable people to exercise their rights without fear of reprisal. Conduct that is intended to retaliate against a person, or discourage a person from exploring their rights, can constitute reprisal. Reprisals can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that are likely to constitute reprisals. The examples are not exhaustive.

- (a) refusing to employ or to continue to employ any person;
- (b) penalizing any person with respect to that person's employment or changing, in a punitive way, any term, condition or privilege of that person's employment;
- (c) intimidating, retaliating against or coercing any person;
- (d) imposing a pecuniary or any other penalty, loss or disadvantage on any person;
- (e) changing a person's workload in a disadvantageous manner, or withdrawing opportunities from them; or
- (f) threatening to do any of the foregoing.

[[1] added 07/2023]

**6.3-5** [rescinded 07/2023]

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