

**COMMITTEE:** Ethics Committee

**DATE:** June 2013

**BC CODE RULE 7.2-3: WHETHER RULE SHOULD BE EXPANDED**

A lawyer observed that rule 7.2-3 does not contain a specific exemption to permit a lawyer to record the conversation of another lawyer where the lawyer has reasonable grounds to believe the other lawyer will commit or indicate an intention to commit a criminal offence in the way that the old rule, Chapter 11, Rule 14.1 of the *Professional Conduct Handbook* did. The lawyer stated:

Clearly, the intention was to add the prohibition against recording to clients, as well. Although that is a laudable intention, and carries through on the current politically correct ideal of short, simplistic language, it eliminates the saving provision contained in the original.

Now, if I have reasonable cause to believe that other counsel is going to attempt to, for example, suborn perjury or threaten to kill me or someone else, I am prohibited from gathering evidence of that. Apparently, I must now notify the person I have good reason to believe is about to announce the intention to commit a criminal offense or to actually commit it that he should be careful because I will be recording him!

I would have thought that prohibiting an attempt to prevent crime is in itself unethical. I guess that lawyers who are faced with extortion or threats against themselves, their families or their clients must simply accept that now.

Perhaps the ethics committee might reconsider what appears to be a rash and poorly thought out rule.

In the Committee's opinion, ethical rules need not identify every possible exception that might be made to them in unusual circumstances. In an appropriate circumstance, it would be reasonable to imply the exception described in Chapter 11, Rule 14.1 to the new BC Code rule 7.2-3 and it is unnecessary to amend the rule to describe this particular exception expressly.