

Canadian Association for Legal Ethics/Association canadienne pour l'éthique juridique  
c/o Dr. Jula Hughes, Bora Laskin Faculty of Law, Lakehead University  
401 Red River Road, Thunder Bay, Ontario, P7B 1B4

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Federation of Law Societies of Canada  
Constitution Square  
1700 – 340 Albert  
Ottawa, Ontario  
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Sent by e-mail to consultations@flsc.ca

Dear members of the Standing Committee on the Model Code of Professional Conduct,

Re: Consultation Report – Draft Amendments to Duty to Report Rule 7.1-3

The Canadian Association for Legal Ethics/Association canadienne pour l'éthique juridique (CALE/ACEJ) is a federal not-for-profit corporation whose members are academics, lawyers and regulators interested in topics related to ethics and professionalism in the Canadian legal profession. CALE/ACEJ seeks to encourage and facilitate debate on issues of ethics and professionalism in Canada and to increase awareness about those issues in the public, the profession and the judiciary.

In your above-referenced Consultation Report you have asked for feedback on draft amendments to the Model Code. CALE/ACEJ appreciates having been consulted and we are pleased to respond. Overall, we are supportive of the proposed changes relating to the duty to report. We commend you for developing them and we look forward to them being adopted after the consultation period has ended. We appreciate the attention and care given to the important issues of mental health challenges and discrimination and harassment in the profession.

We do have some questions and comments about the proposed changes. We raise these to ensure that, in coming to a final decision, you have had the opportunity to consider these issues.

1. The rationale for imposing a duty on lawyers to report their own violations, such as misappropriation of trust monies or the abandonment of a law practice (para 12), seems unclear. You state that this has been considered “appropriate”. What is the rationale? Is it likely that there will be an appreciable amount of self-reporting, so that this fulfils a notice requirement to the regulator? Is this wholly hortatory? Is this intended as an additional basis for discipline beyond the unreported violation itself?

2. We note that the Committee reviewed the issue of a mandatory duty to report discrimination and harassment and has set out reasons for declining to add a provision on this topic. CALE/ACEJ shares the concern about the potential risk of harm to an affected person and other vulnerable

people in a workplace that could result from such a duty. In particular, we agree that the affected person's agency and control should be prioritized in these circumstances. We also note the Report's reference to the International Bar Association's 2019 report calling for "flexible (rather than strict) reporting models to empower affected persons to report, as well as training, mentorship and other measures to raise awareness and effect cultural change" and the reference to some Canadian law societies actively developing such measures (para 42).

In our view, it is essential that Canadian law societies approach the issue of discrimination and harassment as a regulatory priority and develop a suite of measures, including offering affected persons alternatives outside traditional disciplinary regimes to raise such matters if they wish and ensuring that law society staff are appropriately trained to deal with these issues. We see the FLSC as having an important leadership role in encouraging law societies to study and implement new measures to better address the serious problem of discrimination and harassment. For example, to the extent that some Canadian law societies have done work in this area, we would suggest that it might be helpful for the FLSC to act as a repository for regulatory options and evidence-based best practices and to encourage the adoption of new measures nation-wide.

If it would assist you in your work, we would be pleased to further explain and discuss these submissions.

Yours truly,

Dr. Julia Hughes  
President, CALE/ACEJ