

CBA Model Code of Professional Conduct

BACKGROUND

- The CBA Standing Committee on Ethics and Professional Responsibility was created with a mandate to update the *Code*. Comprehensive amendments were made in 1987.
- Since 1987, CBA Council has passed several resolutions dealing with professional conduct issues. A requirement that lawyers advise clients of all ADR options to the CBA *Code* was passed at the 1999 Annual Meeting. At the 2000 Annual Meeting in Halifax, Council directed the CBA to develop professional conduct rules for multi-disciplinary practices.
- After substantial research on emerging ethical issues, meetings with law societies, and consultation with the profession, the Committee proposed revisions to the *Code* that were adopted unanimously by Council at the 2004 Annual Meeting in Winnipeg.
- Council rejected two resolutions on sexual misconduct with clients. However, general rules guide a lawyer's behaviour in this regard, including:
 - the duty to discharge with integrity all duties owed to clients, the court, other members of the profession and the public
 - not acting for a client where the lawyer's duty to the client and the personal interests of the lawyer are in conflict
 - avoiding questionable conduct
 - the duty not to discriminate, including harassment and sexual harassment
- Council passed a resolution at the 2006 Mid-Winter Meeting in Cancun to amend the Commentary under Chapter IX (The Lawyer as Advocate), "Prohibited Conduct," to reflect the decision of the Supreme Court of Canada in *R. v. Lyttle* [2004] 1 S.C.R. 193.
- The new *Code*, including the 2004 and 2006 amendments, was published in September 2006.

CURRENT STATUS

- The Committee issued guidelines in September 2008 for the use of information technologies, such as e-mail, metadata and electronic storage. Rather than new ethical rules, the [Guidelines for Practicing Ethically with New Information Technologies](#) provide guidance to practitioners on fulfilling their ethical and professional responsibilities in the context of using new information technologies.
- The Committee issued guidelines in September 2009 to address ethical issues with [marketing in new information technologies](#). The guidelines assist practitioners' use of websites, blogs, Facebook, Twitter and other social media.
- At the 2008 Annual Meeting in Quebec City, Council passed a [resolution](#) to amend the Code to include an obligation to know the language rights that apply to the lawyer's areas of practice in order to advise the client of those rights. It also adopted recommendations relating to conflicts of interest.

- At the 2009 Mid Winter Meeting in Lake Louise, CBA Council adopted amendments to the Code flowing from the recommendations flowing from the Conflicts of Interest Task Force.
- New edition of *Code of Professional Conduct*, incorporating the 2008 and 2009 amendments, published on CBA.ORG in January 2010.
- Federation of Law Societies of Canada published much of its Model Code of Professional Conduct in January 2010. The Federation Code is under consideration by provincial and territorial law societies. Rules dealing with conflicts of interest and a future harm exception to the rules on confidentiality are not included.
- Continuing its series of practical guidelines to interpret the *Code*, the Committee released a series of [FAQs on solicitor-client privilege and confidentiality](#) in Fall 2010.
- The Ethics Committee sponsored a debate entitled “Who’s Privilege Is It?” at the Council meeting in Halifax in August 2011, highlighting issues raised by the discussion paper. “Who’s Privilege Is It?” is posted on CBA.org as a free professional development program for CBA members.

NEXT STEPS

- The Committee continues to consider emerging ethical issues relating, for example, to solicitor-client privilege, to assess need for further guidelines or amendments to the *Code*.