



THE CANADIAN  
BAR ASSOCIATION  
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March 8, 2019

Via email: [dswayze@mhlaw.ca](mailto:dswayze@mhlaw.ca)

David Swayze  
Chair, Standing Committee on the Model Code  
Federation of Law Societies of Canada  
World Exchange Plaza  
1810-45 O'Connor Street  
Ottawa, ON K1P 1A4

Dear Mr. Swayze:

**Re: Model Code of Professional Conduct – Rules 6.1-5 and 6.1-6 (Electronic Registration of Documents)**

I write to you on behalf of the Canadian Bar Association's Immigration Law Section (CBA Section) to request clarification on the applicability of Rules 6.1-5 and 6.1-6 of the *Model Code of Professional Conduct*.

The CBA is a national association of 36,000 lawyers, Québec notaries, law teachers and students, with a mandate to promote improvements in the law and the administration of justice. The CBA Section is comprised of over 1,000 lawyers, practicing all aspects of immigration law and delivering professional advice and representation on the Canadian immigration system to clients in Canada and abroad.

Model Code Rules 6.1-5 and 6.1-6 read:

**6.1-5** A lawyer who has personalized encrypted electronic access to any system for the electronic submission or registration of documents must not

- (a) permit others, including a non-lawyer employee, to use such access; or
- (b) disclose his or her password or access phrase or number to others.

**6.1-6** When a non-lawyer employed by a lawyer has a personalized encrypted electronic access to any system for the electronic submission or registration of documents, the lawyer must ensure that the non-lawyer does not

- (a) permit others to use such access; or
- (b) disclose his or her password or access phrase or number to others.

The commentary to the Rules reads:

**[1]** The implementation of systems for the electronic registration of documents imposes special responsibilities on lawyers and others using the system. The integrity and security of the system is achieved, in part, by its maintaining a record of those using the system for any

transactions. Statements professing compliance with law without registration of supporting documents may be made only by lawyers in good standing. It is, therefore, important that lawyers should maintain and ensure the security and the exclusively personal use of the personalized access code, diskettes, etc., used to access the system and the personalized access pass phrase or number.

**[2]** In a real estate practice, when it is permissible for a lawyer to delegate responsibilities to a non-lawyer who has such access, the lawyer should ensure that the non-lawyer maintains and understands the importance of maintaining the security of the system.

Most Canadian law societies have adopted rules and commentary that are identical or nearly identical to the Model Code Rules.<sup>1</sup> Two law societies have rules that differ significantly. Ontario's rule is specific to the real estate context: it outlines requirements relating to the electronic registration of title documents. Quebec's *Code of Professional Conduct of Lawyers* does not mention the electronic registration of documents.

All Immigration, Refugees and Citizenship Canada (IRCC) application processes will soon be online, and to access these processes, support staff need to use the account of a lawyer or other authorized representative under the *Immigration and Refugee Protection Act*.<sup>2</sup> Support staff cannot create an account to the IRCC portal in their own names or in their law firm's name. Given the high volume of communications and submissions through the IRCC portal, it is standard practice for an immigration lawyer to ask supervised staff, such as a legal assistant, to access the lawyer's account to perform routine tasks such as preparing forms, uploading supporting documents or retrieving government communications. The lawyer is responsible for reviewing and verifying the documents before submission.

The CBA Section is concerned about unintended consequences if Rules 6.1-5 and 6.1-6 apply to areas of practice outside of real estate law, like immigration law, with a high volume of applications and communications submitted through a government portal that is restricted to specified authorized representatives. These include the detrimental impact on the legal services delivery model in the affected law firm, and the cost and affordability of those services. Our members also want to ensure that they understand and abide by the Rules of Professional Conduct in their jurisdictions.

If Rules 6.1-5 and 6.1-6 apply to all areas of practice, the CBA Section asks that the Federation create an exemption for immigration law and consider whether these Rules have an adverse impact on lawyers in other areas of practice.

Please let me know if you have any questions. We would be happy to arrange a time to discuss and look forward to hearing from you at your earliest convenience.

Yours truly,

*(original letter signed by Nadia Sayed for Marina Sedai)*

Marina Sedai  
Chair, Immigration Law Section

<sup>1</sup> Two law societies have rules that differ only slightly from the Model Code. In PEI, the rules and commentary are identical but the heading "Electronic Registration of Documents" is absent. In Alberta, Commentary [2] does not explicitly mention real estate, but the rules and commentary are otherwise identical to the Model Code.

<sup>2</sup> Quebec notaries, Ontario paralegals, other members in good standing of a law society and members in good standing of the Immigration Consultants of Canada Regulatory Council are also authorized to open an account to the IRCC portal.