

BACKGROUND TO THE DEVELOPMENT OF THE FLSC MODEL CODE OF PROFESSIONAL CONDUCT

In November 2004, the Federation of Law Societies of Canada (“the Federation”) created the Model Code of Professional Conduct Committee (“the Model Code Committee”). The Model Code Committee was tasked with drafting a Model Code containing, as much as possible, uniform ethical and professional conduct standards for the legal profession in Canada.

The primary impetus for the project was three-fold:

- the increased mobility of lawyers between jurisdictions and an expectation that, with the advent of the Federation’s National Mobility Agreement, that trend would continue;
- a belief that there are national, and international, ethical standards for the practice of law which should be reflected in consistent conduct rules across the country; and
- the presence of a number of external factors (for example, legislation in respect of anti-money laundering) that brought the core values of the profession under scrutiny.

The Federation Committee’s Process

The Model Code Committee was chaired by Allan T. Snell, Q.C., then co-executive director of the Law Society of Saskatchewan. The Model Code Committee brought together a wealth of knowledge and experience with representatives from virtually every law society in the country.¹

¹ The members of the Committee were:
 Allan T. Snell, Chair, Saskatchewan (staff)
 Sylvie Champagne, Barreau du Quebec (staff)
 Claire Moffet, Barreau du Quebec (staff)
 Michael W. Milani, Saskatchewan (volunteer)
 Bradley G. Nemetz, Alberta (volunteer)
 Jack Olsen, British Columbia (staff)
 David A. Zacks, British Columbia (volunteer)
 C. Kristin Dangerfield, Manitoba (staff)
 Marc L. Richard, New Brunswick (staff)
 Phyllis E. Weir, Newfoundland (staff)
 Susanne Boucher, Nunavut (volunteer)
 Susan M. Robinson, PEI (staff)
 Sheldon Toner, NWT (volunteer)

From 2004 to 2007, the Model Code Committee met approximately 25 times.

To ensure that it had a comprehensive understanding of the issues and possible approaches, the Model Code Committee reviewed the rules of professional conduct from the different jurisdictions in Canada, the Canadian Bar Association (CBA) *Code of Professional Conduct* and the American Bar Association *Model Rules of Professional Conduct*.

Early in its deliberations, the Model Code Committee decided to use the Law Society of Upper Canada's *Rules of Professional Conduct* as the basis for the Model Code. The Model Code Committee favoured the Law Society's emphasis on relationships between lawyers and those with whom lawyers deal in their practices and employment.

In drafting the Model Code, the first consideration for Model Code Committee members was what they believed was ethically correct. They also considered what they believed would be acceptable to the law societies as matters of professional regulation.

In the spring of 2007, a draft document was completed. After review by the Federation Council, it was circulated to law societies for comment. In his transmission to law societies with the draft Model Code, the then Federation president, Michael Milani, said:

We believe that the ethical rules for lawyers should be as consistent as possible across the country. There are a number of reasons for this. Members of the public should be able to expect that lawyers serving them will adhere to common ethical standards no matter where they are in the country. Members of the profession, more and more of who practise law in more than one jurisdiction would also benefit from knowing that substantially the same rules of conduct apply regardless of where they practise. We believe that the confidence of both the public and the profession in the law societies as regulators would be enhanced by the adoption of a common set of conduct rules.

Jim Varro, Ontario (staff)
Gary Whittle, Yukon (volunteer)
Victoria Rees, Nova Scotia (staff)

Comments received were then referred to a special implementation committee (“Implementation Committee”) formed by the Federation. The Implementation Committee was chaired by Mona Duckett, a former president of the Law Society of Alberta and included representatives from a number of law societies. Zeynep Onen, Naomi Bussin and Jim Varro from the Law Society participated on this committee. The Implementation Committee, which met from March 2008 to early 2009, carefully considered every comment and recommendation made by member law societies to determine what amendments should be made to the 2007 draft. The Implementation Committee also reviewed the draft for consistency, organization and ease of reading.

The Implementation Committee considered two external reports, a report from the Competition Bureau on regulation of the legal profession and the report of the CBA Task Force on Conflicts of Interest.

The Implementation Committee then made a series of amendments to the Model Code. In considering whether to change, delete or add to the provisions in the draft Model Code, the Implementation Committee was mindful of the goal to create a model of the ethical and professional conduct standards that lawyers in Canada should be expected to meet. As a result, a number of provisions in the 2007 draft were deleted and suggested additions relating to matters unique to a single jurisdiction were not incorporated.

Following detailed review and editing by the rules editor/drafter chosen by the Implementation Committee², a final draft (including a French version) was presented to and adopted by the Federation Council at its November 2009 meeting.

The Model Code Committee prepared a chapter in the Model Code on conflicts of interest, which consolidated all rules dealing with conflicts. It was during the implementation phase that the CBA released its conflicts report (August 2008) mentioned earlier. Although the Implementation Committee considered the report, the Federation Executive decided that a more focused consideration of the differences between the recommendations in the report and the provisions of

² Jeffrey G. Hoskins, General Counsel and Director of Policy and Legal Services for the Law Society of British Columbia.

the Model Code on conflicts was required. The Special Advisory Committee on Conflicts of Interest (“Advisory Committee”) was established for that purpose.

A report from the Advisory Committee was submitted to the March 2011 meeting of the Federation Council. The matter was then referred to the Federation’s Standing Committee on the Model Code³, which revised the rule on conflicts. That rule was approved by the Council in December 2011 and was included in the Model Code.

A revised version of the Model Code with a new numbering scheme was adopted in December 2012.

³ Gavin Hume (British Columbia) was appointed the Chair and Jim Varro was appointed as a member of the Committee. Other committee members are Gérald Tremblay (Barreau), Mona Duckett (Alberta), Susanne Boucher (Nunavut), Darrel Pink (Nova Scotia) and Kristin Dangerfield (Manitoba).