

September 29, 2020

David Swayze
Chair, Standing Committee on the Model Code of Professional Conduct
Federation of Law Societies of Canada
Consultations@flsc.ca

Dear Mr. Swayze,

The Women's Law Association of Ontario (WLAO) is dedicated to empowering women in the legal profession by providing a collective voice and advocating for equality, diversity and change. Since 1919, WLAO has been providing leadership and support to advance the status of women in the legal profession.

WLAO welcomes the opportunity to respond to FLSC's consultation on s. 6.3 of the Model Rules of Conduct. WLAO recommends the following changes to the draft amendments to this section:

6.3 ANTI-HARASSMENT AND ANTI-DISCRIMINATION

6.3-1 ~~The principles of human rights laws and related case law apply to the interpretation of this rule.~~ A lawyer must not **directly or indirectly** discriminate against a colleague, employee, client or any other person. **A lawyer's professional conduct must promote equity, diversity and inclusion.**

At this time, WLAO does not offer an addition to the commentary to the rule.

In addition, to the proposed amendment to Rule 6.3-1, WLAO encourages development of a separate rule setting out lawyers' obligations to develop competencies in indigenous issues. We believe every Canadian lawyer has an obligation to promote a deeper understanding and more meaningful inclusion of Indigenous Peoples of Canada through creating and enhancing cultural competency, achieving and improving access to justice, promoting and supporting knowledge of indigenous legal systems, and taking action on reconciliation.

The Rules of Professional Conduct of provincial law societies are intended to guide the conduct of members, not only in the practice of law, but also in other activities. The Rules of Professional Conduct help to set the high standards that members of the profession must meet. A passive requirement not to discriminate contrary to provincial and federal Human Rights Codes does not meaningfully guide conduct beyond what is already required of all Canadians under the laws and regulations of Canada. This is why WLAO encourages a



more robust amendment to Rule 6.3-1. The proposed amendment ensures members of Canada's law societies are required to meet and uphold a higher ethical standard, which is reflective of the privileged position members of the legal profession hold in Canadian society.

The proposed amendments reflect that systemic discrimination, harassment, and inequality continue to exist within the profession. While these conditions continue to be prevalent in the profession, provincial law societies and individual members of the profession have a responsibility to address and improve these conditions. The legal and ethical obligations of members of the profession must encourage individuals to take a lead in eliminating discrimination and harassment and promoting equity and diversity.

There are manifest benefits to promoting equity and diversity. These benefits include increased morale and job satisfaction, decreased turnover and the decreased loss of high-potential employees, decreased absenteeism, increased productivity, increased ability to work together, enhanced organization reputation with prospective employees and clients, increased client satisfaction, loyalty, retention and growth, and increased long-run profitability and financial health.¹

WLAO believes FLSC has an important role to play in advancing and reenergizing efforts to create a diverse and inclusive legal profession. The proposed amendment to Rule 6.3-1 will serve as a call to action for the provincial law societies and members of the profession. It places the responsibility for promoting diversity and equity on all members of the profession, regardless of their practice setting. It establishes a Canada wide standard which acknowledges that the entire profession owns the problem of the enduring lack of diversity and support for marginalized members of our society. Adopting the proposed amendment is an impactful next step in our ongoing commitment to achieving a diverse and inclusive profession that is consistent with our role in a free and democratic society and the administration of justice.

Sincerely,



Lindsay Woods
Advocacy Committee Chair
Director, Women's Law Association of Ontario



Jennifer Gold
President, Women's Law Association of Ontario

¹ Law Society of Ontario's Bicentennial Report and Recommendation on Equity Issues in the Legal Profession dated May 1997

