

However, a Model Code must be sensitive to and be reflective of local issues. A professional code of conduct for Nunavut must reflect aspects of the northern practice that are unique to it. In this way, the public is protected by a legal profession that continues to provide high-quality and ethical legal services to the citizens of Nunavut.

Many common law jurisdictions have made their own edits to the Federation's Model Code but the Model Code has been adopted in substance in all common law jurisdictions except Nunavut.

II. Factors for Consideration

In advance of the members having the final draft for circulation, I wish to highlight the below issues for your consideration. There have been some edits to the proposed Code. I shall not highlight all changes but only some of the more significant changes. This summary of the changes is not a replacement for the text of the proposed Code. I am not attempting to recreate the nuances in the proposed Code; thus where this summary and the Code diverge, please refer to the proposed Code as authoritative on the issue.

1. Many lawyers in Nunavut practice with government. The Committee has recommended changes to the Model Code to reflect the unique ethical issues that may face lawyers practising "in-house" to government.
 - (a) The proposed amendments (in Rule 3.2-3A) makes it clear that a lawyer in corporate or government service must consider that corporation or government to be the lawyer's client. The commentary to the rule provides, in the case of government practice, the client is the government and not a board, agency minister or government Corporation.
 - (b) Further, the proposed Code provides that it is permissible for a government lawyer to report to a certain person within government and to keep those instructions confidential from others within government or to act for more than one of the components of government. All of these actions could trigger other ethical considerations in non-governmental contexts (e.g. multiple representation and the obligations owed to share information with all clients). Such instructions to keep matters confidential from others in the organization are ethically appropriate until such client instructions are changed.
 - (c) In a situation in which the government lawyer is requested by its client to provide legal services to another employee of that institution (e.g. defense of a criminal charge or purchase of a house), the in-house lawyer must follow the rules of joint retainers and ensure that both government and the individual employee agree that there will be mutual sharing of information. However, if the risk of conflict is high or there is no agreement on mutual sharing of information then that employee must go out and retain his/her own counsel.

- (d) In Rule 3.2-8, the proposed Code provides that an in-house lawyer who knows an organization is acting in a “criminal” manner must take steps to notify people in the hierarchy of that manner. However the Model Code requires that that lawyer withdraw from representing the organization if the organization persists in its criminal conduct. The committee is recommending that this requirement be deleted as withdrawal makes more sense in the context of a private retainer than in a situation in which a person acts in-house for one client. In such a situation, the institutional lawyer may be best simply to withdraw from giving advice on the particular manner.
2. Throughout the Code, references to “dishonesty” have been removed in many instances on the basis that the standard of dishonesty is too general to be of assistance. For example, when acting for client, example, rule 3.2-7 reads in the Model Code, “a lawyer must never knowingly assist in or encourage any dishonesty, fraud, crime or illegal conduct, or instruct the client of how to violate the law and avoid punishment.” The removal of the concept of dishonesty does not affect the overall ethical obligation to prevent lawyers from knowingly assisting in criminal conduct.
 3. In Rule 7.2-10, the rule has been modified to provide that a lawyer who comes into possession of a privileged communication of an opposing party must not make use of it and must immediately advise the opposing party. The ethical obligation not to use the privileged communication is different from the Model Code which merely provides that there is simply an obligation to notify the other party that privileged communication has been received. The commentary refers to the fact that a party may refer to court to resolve any issues about admissibility for the use of the proposed indication.
 4. There have been sundry changes to the Code to ensure that correct references are made to Nunavut law. For example, proposed Rule 3.2-1A deals with limited scope retainers. A new commentary section has been added to remind practitioners that the Rules of Court in Nunavut require a lawyer to inform the tribunal where applicable on a limited scope retainer.

This overview is high level. However, the committee is generally recommending that the Federation’s Model Code be adopted. For those who are interested, you may consult the website of the Federation of Law Societies to see the Model Code and to get a sense of the changes the committee is recommending.

It is the hope of the committee that the proposed Code will be available for consideration and vote a special meeting in the fall of 2016.