

Your duty to report misconduct by a struggling lawyer

Most lawyers are familiar with the obligations placed on them by subrule 6.01(3) of the Rules of Professional Conduct to report to the Law Society the misappropriation or misapplication of trust monies or participation in serious criminal activity by another lawyer.

But, do you have a similar obligation to report a lawyer who has a significant mental health or substance abuse problem?

In some circumstances, which are also outlined in subrule 6.01(3) of the Rules, you have a duty to report a lawyer with these types of problems. Subrule 6.01(3) states:

"A lawyer shall report to the Society, unless to do so would be unlawful or would involve a breach of solicitor-client privilege:

.....
(b) the abandonment of a law practice;

.....
(d) the mental instability of a lawyer of such a serious nature that the lawyer's clients are likely to be severely prejudiced; and

(e) any other situation where a lawyer's clients are likely to be severely prejudiced.

The full text of Rule 6 is available at www.lsuc.on.ca/regulation/a/profconduct/rule6/.

Note that under the Rules a breach of solicitor-client privilege is much narrower than breach of confidentiality. Confidentiality, under the Rules, applies to "all information concerning the business and affairs of the client acquired in the course of the professional relationship." Privilege is a matter of substantive law and applies to communications passing between a lawyer and client for the purpose of obtaining legal advice.

The protection of the public is the primary rational behind the obligation to report lawyer misconduct. The commentary to subrule 6.01(3) states: "Unless a

lawyer who departs from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper ... for a lawyer to report to the Society any instance involving a breach of these rules." Needless to say, many lawyers are reluctant to report a fellow member of the bar. If you are in any doubt whether a report should be made, the Commentary states that you should consider seeking the advice of the Law Society directly or indirectly (e.g. through another lawyer).

The commentary states that the reporting obligation is not meant to interfere with the traditional solicitor-client relationship, and in all cases the report must be made bona fide without malice or ulterior motive.

In some cases you may have a duty to encourage a fellow lawyer to seek help for personal problems. The Commentary to subrule 6.01(3) recognizes that instances of improper conduct may arise from emotional, mental, or family disturbances or substance abuse. It also directs that lawyers who suffer from such problems should be encouraged to seek assistance as early as possible through the Ontario Bar Assistance Program (OBAP) or other similar support or counseling program.

Contact information for these programs, as well as various self-assessment tools and other information on health and balance issues are available at www.practicepro.ca/wellness.

It is clear that there are members of the profession struggling with various personal problems. You are encouraged to be familiar with your duties to report lawyer misconduct, and to encourage a struggling lawyer to seek help where it is appropriate to do so.