

The Duty of Professionals to Report

Lisa C. Fong, Michael Ng and Efrem Swartz*

September 2009

Table of Contents

I.	INTRODUCTION	2
II.	THE DUTY TO REPORT	3
A.	DIFFERENT SOURCES OF DUTY TO REPORT	3
1.	Duties to report concerning persons in need of protection	3
2.	Duties to report drivers who present a danger.....	4
3.	Professional duties to report	5
B.	SUFFICIENCY OF GROUNDS TO REPORT	11
C.	COMMON REASONS FOR NOT REPORTING	14
1.	Not wanting to be known	14
2.	Not wanting to be involved	14
3.	Not wanting a registrant to be published.....	14
4.	Reasoning that other registrants will report	15
5.	Not knowing if off-duty conduct counts	15
III.	CONDUCT UNBECOMING	15
A.	THE REGULATION OF ON-DUTY AND OFF-DUTY CONDUCT.....	15
B.	EXAMPLES OF "CONDUCT UNBECOMING" OR "UNPROFESSIONAL CONDUCT"	18
1.	"Hot spots" in certain professions	18
2.	Sexual, romantic or domestic relations	19
3.	Speech on controversial social issues	23
IV.	THE PRACTICALITIES OF THE DUTY TO REPORT	26
A.	CONSEQUENCES OF REPORTING AND NOT REPORTING.....	26
B.	THE NUTS AND BOLTS OF MAKING A REPORT	27
C.	IN CLOSING	28

** This paper only addresses duties to report generally, and does not constitute legal advice applying to any particular situation.

*Lisa C. Fong and Michael Ng are partners of the law firm Ng, Ariss, Fong, Lawyers. www.ngariss.com
Efrem Swartz is a sole practitioner of Swartz Law Corporation. law.swartz@yahoo.ca

I. INTRODUCTION

As a general rule, the law does not require that a person report the wrongdoing of anyone. This general rule has, however, a number of significant exceptions. These exceptional duties to report are premised on the public interest, and in particular, society's interest in the reporting of concerns where vulnerable individuals may not be in a position to report wrongdoings. The wrongdoings may be of such a nature, or occur in a context, where only skilled professionals will be in a position, whether through knowledge or circumstance, to identify possible misconduct, incompetence, or safety concerns. Professionals are, accordingly, both permitted and required to police themselves, and to a certain extent their clients.

The duty of professionals to report may be broken into three broad categories.

- 1) Generally, the law will require that all persons, professional or not, report safety concerns relating to people who are not, as a class, in a position to make a report themselves, namely children and adults in need of protection.
- 2) The law may require that certain professionals in specific situations report on clients who represent a danger to the public.
- 3) Professional regulatory statutes, or the by-laws and rules which may be enacted pursuant to them, may entitle and sometimes require that professionals report on the possible wrongdoings of fellow professionals, or clients. Sometimes a reporting duty may apply not only to one's own profession, but to members of other professions as well. Indeed, cross-professional reporting applies to all health professionals governed by the Health Professions Act.

The first part of this paper accordingly deals with the entitlements and duties of professionals to file reports about

- children and adults who are in need of protection;
- clients in certain circumstances;
- other registrants or members; and
- registrants or members of other professional bodies.

A professional who fails to comply with a legal reporting duty may be disciplined, or prosecuted for an offence which may lead to a fine, or to imprisonment, or to both.

Various duties to report can deal with specific situations, such as incompetence or sexual misconduct. Duties to report can also encompass much broader classes of conduct. They can apply to all forms of professional misconduct, meaning on-the-job breaches of ethical rules or standards. They can also apply to unprofessional or dishonourable conduct, which can mean acts occurring in the private lives of professionals.

Broad reporting duties can be difficult to apply for both professionals and regulators. Accordingly, the second part of this paper deals with the concept of unprofessional conduct, or conduct unbecoming a member of a profession, or a registrant of a professional college.

II. THE DUTY TO REPORT

All professionals should know the extent to which legal duties to report may be engaged by their practices. Some duties to report apply generally to all individuals. Other duties are specific to particular professions, and may arise from one or more places, most likely the enabling statute for the profession's governing body, or bylaws passed statute which give effect to ethical or conduct rules gathered together in the form of a code or handbook.

In addition to knowing all applicable sources of reporting duties, professionals should know the nature of the source of the duty, as that nature may be relevant to resolving any interpretive difficulties. For example, in the event of conflicting duties, statutes always take precedence over subordinate bylaws or rules.

A. Different Sources of Duty to Report

1. Duties to report concerning persons in need of protection

Certain reporting duties apply to all persons, professional or not. In British Columbia, general reporting duties exist which relate to children and to adults in need of protection.

Child, Family and Community Services Act, RSBC 1996, chapter 46,
sections 13 and 14

Every "person" who has reason to believe a child (meaning a person under 19 years of age) needs protection as defined in the statute (section 13) must promptly report the matter to a "director" under the statute, or to a person designated by a director (section 14).

This reporting duty applies regardless of any confidentiality or privilege, except for solicitor-client privilege. This means that a registrant cannot fail to make a report in order to preserve confidentiality.

A person may not be sued for making such a report unless the person knowingly reported false information (section 14(5)).

Failure to report as required is an offence (section 14(3)), as is knowingly reporting false information (section 14(4)). These offences specifically involve liability of up to a \$10,000 fine or imprisonment of 6 months, or both.

Appropriate contact information for reporting that a child needs protection is available on the Internet website of the Ministry of Children and Family Development at www.mcf.gov.bc.ca, under "Protecting Children".

Adult Guardianship Act, RSBC 1996, chapter 6

"Anyone" who has information "indicating" that an adult is abused or neglected, and is unable to seek support or assistance (e.g., due to physical restraint, physical handicap, or other condition affecting their ability to make decisions about abuse or neglect) may report the circumstances to a designated agency (section 46(1)).

A person may not be sued for making such a report unless the person made the report "falsely and maliciously" (section 46(3)).

Regional health boards are designated agencies under the Designated Agencies Regulation (B.C. Reg. 19/2002). BC Statutes and their related Regulations are currently available on the Internet at www.bclaws.ca.

2. Duties to report drivers who present a danger

Every "legally qualified and registered psychologist, optometrist and medical practitioner" must report to the Superintendent of Motor Vehicles the name, address and medical condition of any patient (of 16 years of age or older) who has, in the opinion of that professional, a medical condition that makes it dangerous for the patient to drive a motor vehicle, and who continues to drive after being warned of the danger by the psychologist. The professional may not be sued for making such a report unless the report is made falsely and maliciously. Failure to report as required is an offence (section 75). Offences generally involve liability of up to a \$2,000 fine or imprisonment of 6 months, or both.

Motor Vehicle Act, RSBC 1996, chapter 318, section 230

3. Professional duties to report

Many professionals are also obligated, under their professional regulatory statutes, or under bylaws or rules passed pursuant to statutes, to report specific kinds of unsatisfactory conduct by colleagues. The content of these obligations will depend on the specific content of the applicable statutes and rules.

Duties to report may be blanket duties, in that they cover most or all prohibited conduct. Professionals are generally, if not always, prohibited from conduct amounting to “professional misconduct” (meaning objectionable on-the-job conduct), and conduct which is “conduct unbecoming a member”, alternatively expressed as “unprofessional conduct” (meaning objectionable off-the-job conduct).

Duties to report may also concentrate on conduct that a particular profession considers especially objectionable, depending on what kinds of misconduct would be most damaging to that particular profession. For example, health and teaching professions have a specific duty to report sexual misconduct. In contrast, the legal profession has a specific duty to report dishonest or untrustworthy conduct.

Examples of duties to report: Here are some examples of reporting duties created by or under statutes. This listing of examples is not comprehensive.

The Teaching Profession Act

Section 27.1 of the Teaching Profession Act (the “TPA”) states that every member of the College of Teachers must make a report in writing to the registrar of the College if the member has reason to believe that another member is guilty of professional misconduct that involves

- (a) physical harm to a student,
- (b) sexual abuse or sexual exploitation of a student, or
- (c) significant emotional harm to a student.

Section 27.1(4) insulates a reporting member from an action for damages unless the person knowingly reported false information, in which case the member is not insulated from damages, and has also committed an offence under section 27.1(3).

As the TPA does not define any specific consequence of an “offence” under section 27.1, the Offence Act applies, and provides for a fine of not more than \$2,000 or imprisonment for not more than 6 months, or both.

The Accountants (Certified General) Act

The Accountants (Certified General) Act does not directly create any reporting duties, but permits the creation of bylaws which establish standards of professional conduct, competency and proficiency (section 11(3)(j)). The bylaws, in turn, include the Code of Ethical Principles and Rules of Conduct (Bylaw 8901), which includes the following provisions:

R.104 Breach of Rules. Except as described in Rules R104.1 and R104.2, a member shall, subject to R105 and R201, notify the Association of any breach of the Code by another member, or any other situation of which the member has sufficient knowledge which appears to put in doubt the competence, reputation or integrity of members.

R.106 Reporting of Acts Detrimental to the Profession. A member shall report to the Association any situation of which the member has sufficient personal knowledge and which the member thinks may be detrimental to the profession.

Notably, while Rule 104 covers breaches of specific ethical rules, Rule 106 covers any conduct that may be “detrimental to the profession”.

Accountants (Chartered) Act

The Rules of Professional Conduct of the Institute of Chartered Accountants of BC, created under the Accountants (Chartered) Act, stipulates an ethical duty of every member of the Institute to report any information about an apparent breach of the rules of professional conduct or which raises doubt about a member’s competence, reputation, or integrity:

Duty to Report Breach of Rules of Professional Conduct

211.1 A member or licensed firm shall promptly report to the Professional Conduct Enquiry Committee any information concerning an apparent breach of these rules of professional conduct or any information raising doubt as to the competence, reputation or integrity of a member, student, or applicant or licensed firm, unless such disclosure would result in

- (a) the breach of a statutory duty not to disclose,
- (b) the reporting of information by a member or licensed firm exempted from this rule for the purposes and to the extent specified by Council,

- (c) the loss of solicitor-client privilege,
- (d) the reporting of a matter that has already been reported, or
- (e) the reporting of a trivial matter. (emphasis added)

This kind of requirement is notable because the duty to report is not confined to breaches of specific ethical rules, but also encompasses any off-duty conduct which may bring the “reputation” or “integrity” of a member into question.

The statute does not specifically insulate reporting members from any sort of legal liability, but does eliminate any action for damages against a person acting “in furtherance of the objects of the institute” for acts done in good faith in the exercise of powers conferred by the Act or the bylaws (section 25).

The Architects Act

The Architects Act does not create a duty to report directly, but permits the Architectural Institute of British Columbia to pass bylaws which in fact impose reporting duties on members of the Architectural Institute of British Columbia:

Bylaw 32.5: An architect who knows of an apparent violation of the Architects Act, Bylaws or Council rulings shall report such knowledge to the Institute.

Bylaw 34.5: An architect shall conduct the architect’s affairs in a professional manner and refrain from any act which would reflect unfavourably on the profession as a whole.

... (e) Dishonourable conduct in the professional or private life of an architect, which reflects adversely on the integrity of the profession, must be avoided.

Notably, these provisions extend into off-duty conduct in two ways. First, an apparent violation of the Architects Act under Bylaw 32.5 would include any instance where a member “has been unprofessional” (section 50(a)) as well as negligent or guilty of misconduct (section 50(c)). Secondly, Bylaw 34.5 specifically covers conduct reflecting unfavourably on the profession, and dishonourable conduct reflecting adversely on the integrity of the profession.

The Legal Profession Act

The Legal Profession Act does not create a duty to report directly, but the statute permits the benchers of the Law Society to set standards of practice for lawyers, which are expressed in the Professional Conduct Handbook. The Handbook stipulates that a member of the Law Society must report any conduct by another lawyer that brings into question that other lawyer's honesty or trustworthiness (Chapter 13 Rule 1):

Chapter 13

Reporting another lawyer to the Law Society

1. Subject to Rule 2, a lawyer must report to the Law Society another lawyer's:

- (a) breach of undertaking that has not been consented to or waived by the recipient of the undertaking,
- (b) shortage of trust funds, and
- (c) other conduct that raises a substantial question as to the other lawyer's honesty or trustworthiness as a lawyer. (emphasis added)

Notably, all branches of the reporting duty concern the trustworthiness of members of the Law Society, both on and off the job. The duty to report covers conduct which is considered the most serious by the legal profession. For example, a breach of an undertaking (which is a form of promise based on one's honour as a professional) has been described by the Law Society as vital to the profession, with its inclusion in the reporting requirement illustrating its importance:

Undertakings are a vital part of the interaction among lawyers in their service of their clients. Breach of undertaking is serious; so serious that breach of undertaking is specifically referred to in our Professional Conduct Handbook as a type of misconduct that a lawyer must report to the Law Society.

Law Society of British Columbia v. Kruse, 2001 LSBC 32 at paragraph 13

The focus of the reporting duty on honesty echos the general duty of all lawyers to refrain from any conduct, whether on-the-job or in private, that casts doubt on the "integrity" of the lawyer or of the profession (Chapter 2, Rule 1):

Dishonourable conduct

1. A lawyer must not, in private life, extra-professional activities or professional practice, engage in dishonourable or questionable conduct that casts doubt on the lawyer's professional integrity or competence, or reflects adversely on the integrity of the legal profession or the administration of justice.

Interestingly, the Professional Conduct Handbook specifically prohibits a lawyer from threatening to report unprofessional conduct (Chapter 11, Rule 15), in order to prevent any actual or perceived "extortion" using the discipline process.

The Engineers and Geoscientists Act

This statute permits the passing of bylaws of the Association of Professional Engineers and Geoscientists of BC, which bylaws in fact include a Code of Ethics embodied in Bylaw 14(a). The Code includes paragraph 9 which states that members shall

(9) report to their association or other appropriate agencies any hazardous, illegal or unethical professional decisions or practices by members, licensees or others...

This reporting duty is notable because it appears confined to "professional decisions or practices" as opposed to off-duty conduct.

The Health Professions Act

The Health Professions Act (the "HPA"), which currently governs 21 different professions (including physicians, psychologists, dentists and nurses, to name but a few), and sets out certain reporting duties of registrants (as well as reporting duties of some non-registrants). These reporting duties are mandatory. Registrants may be disciplined for failing to comply with the Act.

HPA Provisions: Two reporting situations under the HPA are of particular concern to health professionals.

- Dangerous practice (HPA s. 32.2): A registrant must report another registrant of any College, where he or she believes, on reasonable and probable grounds, that the other registrant's continuing practice might constitute a danger to the public (section 32.2(1)). This duty also applies to anyone who is a partner, business associate, employer or person granting privileges to a registrant, who has taken action based on a belief of a possible danger to the public (e.g., by ending the relationship or by cancelling privileges), or would have taken action but for the other registrant breaking off the relationship first.

- Sexual misconduct (HPA s. 32.4): Additionally, a registrant must report another registrant of any College, where he or she believes, on reasonable and probable grounds, that the other registrant has engaged in sexual misconduct (section 32.4(1)). If this belief is based on information from a patient, the registrant must first obtain the patient's consent (or the consent of the patient's guardian or committee) before making a report (section 32.4(2)).

A registrant may not be sued for making a report under either of these provisions if the report is made in good faith (section 32.5). Where either provision requires a report, a registrant must report, and may be disciplined for not making a report.

NB: The HPA also imposes certain reporting requirements on hospital administrators and medical practitioners, where a registrant is admitted to hospital for psychiatric care or treatment, or for treatment for addiction to alcohol or drugs, and is unable to practice (section 32.3).

Bylaw-based provisions: The HPA also permits the passing of bylaws by each health professions college which may include duties to report within specific professions.

PSYCHOLOGISTS: For example, Bylaw 62 of the College of Psychologists requires registrants to comply with the College's Code of Conduct.

- Reporting other registrants of the College of Psychologists: The Code stipulates (in Code section 7.14) that a registrant must inform the College in writing if the registrant has reasonable and probable grounds to believe that another registrant has violated the Code.

Notably, the Code generally prohibits conduct that would be regarded by registrants as unbecoming, disgraceful, dishonourable or unprofessional (Code section 7.8).

If a violation is disclosed by a client of the registrant, the registrant must attempt to obtain the client's consent to report the violation, but must report in any event if a report is in the best interests of the client or necessary for public protection (Code section 7.15).

Registrants who fail to comply with the Code may be investigated and disciplined for contravening the Bylaws, as well as for professional misconduct and unprofessional conduct.

- Reporting a client who presents a risk of serious harm: The Code also stipulates (Code section 6.7) that if a registrant determines that disclosure of confidential information is necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by a client, the

registrant may disclose confidential information without the informed consent of the client (subject to requirements in Code section 6.8).

With respect to reporting duties created by other laws, the Code recognizes the obligation of every registrant to make any report required by law (Code section 7.17).

PHYSICIANS: As another example, the College of Physicians and Surgeons has adopted the Code of Conduct of the Canadian Medical Association which stipulates that physicians shall,

48. Avoid impugning the reputation of colleagues for personal motives; however, report to the appropriate authority any unprofessional conduct by colleagues. (emphasis added)

DENTAL SURGEONS: As a further example, the College of Dental Surgeons of BC creates a reporting duty in its Code of Ethics (section 5(e)) which clearly covers both competence, and any other breaches of any specific provisions of the Code of Ethics:

5. Duties to the public. Registrants owe a duty of service to the public, and, in rendering that service, must strive to maintain high standards of integrity and ethical behaviour. Service to the public includes, but is not limited to, the following:

...

(e) Reporting requirements. A registrant must report to the Registrar, without delay, any conduct or practice of a registrant which raises a substantial question as to a violation of the Code of Ethics, or as to whether the registrant has provided, is providing, or will provide competent, safe and appropriate dental care to patients. (emphasis added)

Notably, the Code of Ethics, in turn, imposes (through section 3) a general obligation: "Every registrant has a duty to uphold the honour and dignity of the profession of dentistry...."

B. Sufficiency of grounds to report

A registrant need not be certain of impropriety, danger or abuse before a duty or power to report is engaged. Professionals are not legally required to be certain of impropriety, danger or abuse; duties to report are, generally speaking, triggered by situations which give rise to legitimate concerns. For example:

- the Child, Family and Community Services Act refers to a “reason to believe” a child needs protection;
- the Adult Guardianship Act refers to information “indicating” abuse or neglect;
- the Motor Vehicle Act refers to “the opinion” of the psychologist or other professional;
- Professional reporting duties refer to a “reason to believe” (teachers), situations which “put in doubt” the integrity of members (CGAs), “apparent” violations (architects), a “substantial question” as to trustworthiness (lawyers) and “reasonable and probable grounds” (health professionals).

A situation where a professional may be required to report a matter, even in the absence of certainty, is illustrated by *Law Society of British Columbia v. A Lawyer*, [2001] L.S.D.D. No. 33, a case where a solicitor, V, received a corporate file that had previously been the file of lawyer R. On her review of the file, she noticed numerous shortcomings in R’s legal services and observed that the signature on a Share Certificate did not appear to be in the client’s handwriting. Her client confirmed that the signature was not his, stating to her that “this is not my signature”. Lawyer V asked lawyer R about the signature. Lawyer R denied that he had forged the client’s signature, but Lawyer V was not persuaded, and she accordingly reported Lawyer R, pursuant to her ethical duty to report.

The Panel ultimately found that the signature was not forged, due the client changing his position and saying later on that he did sign the document, albeit in an awkward fashion since the document was still in a binder. The Discipline Panel did, however, confirm the reasonableness of the professional’s decision to report the matter:

[25] While R was extremely persistent at this meeting, his persistence was in indicating to [V] that she, in his opinion, did not have a duty to report this. If R were truthful (as it now appears he was), and he could persuade her of this, then this was so. [V] followed an appropriate course, relying upon her client’s statements. There was circumstantial evidence which supported what her client had to say. R was able to do nothing but protest his innocence, and [V] did not believe him. She saw little room for mistake.

26 It was clear from [V]’s evidence that she held no animus towards R. She said that she liked him, and that she felt very badly that she was testifying. She took quite proper steps before reporting R, including agonizing over it personally, and consulting both with a colleague and a

person at the Law Society. All others advised her that she had a duty to report, and as a result she did. I have no doubt that she was sincere in her testimony, well motivated, and that she was properly fulfilling her duties as a member of the Law Society, on the facts as she believed them to be. She had done R the courtesy of raising it with him and saw no reason to change her opinion after he responded. [Emphasis added]

Incidentally, Lawyer R faced charges not only of forging a signature (which the Panel found was actually signed by the client), but also offering \$10,000 to Lawyer V, which, for reasons both subtle and complex, the Panel did not find to be an offer of a bribe to Lawyer V.

Professionals may weigh and balance several factors when deciding if sufficient grounds exist to warrant or demand reporting:

- Nature of the conduct at issue. Knowledge of what is believed to be serious misconduct weighs towards reporting.
- Quality of the source of the information. Direct knowledge such as witnessing the conduct or being told about the conduct by the registrant to be reported increases the reliability of the information. Indirect knowledge such as hearsay (i.e. someone told someone who then told you) may be less reliable depending on the persons who are engaged in the chain of knowledge and the circumstances in which the information is relayed.
- Circumstances of receiving the information. Receiving information in a sombre or confidential situation lends to the reliability of the information in comparison to receiving information in a purely social setting such as a party.
- Other available information. Documentary, audio or photographic information may add to the reliability of any oral information.
- How much information is available. Is there sufficient information to make a report such as the name of the registrant, the description of the conduct, and the identity of any victims?

While the thresholds of reporting fall well short of certainty, duties to report are not triggered by mere gossip, innuendo or suspicion. A report should be honestly made and based on grounds from which a reasonable person could conclude that a situation of concern probably exists. Furthermore, registrants may never make knowingly false reports, i.e., dishonest or fraudulent reports. In addition to such reports being unethical, anyone making a dishonest report will likely fall outside of provisions which provide legal immunity to persons making reports in good faith.

C. Common Reasons for not reporting

1. Not wanting to be known

Some registrants do not make reports because they do not want the registrant being reported to know it is they who made the report. Except in extraordinary circumstances (such as physical danger), procedural fairness requires that a registrant who is the subject of a complaint be notified of the person who reported them and the information provided.

From a regulatory and professional perspective, while registrants may be uncomfortable with making reports which may cause tension in a professional relationship, that is not a reason not to report. The obligation to report exists to protect the public, and public protection is paramount to any personal discomfort which may result from reporting a colleague. Registrants who make reports and registrants who are reported on, are expected to behave professionally and not to engage in any negative interactions over the subject conduct issues while the regulatory body conducts its processes. It is the regulatory body's role is to consider the report, investigate the issues if appropriate, and discipline if appropriate.

2. Not wanting to be involved

Registrants who make reports become complainants and may be asked for additional information during the investigation, or may be witnesses in any disciplinary hearing that ensues. Not reporting potential misconduct because of the inconvenience of participating in the investigation or hearing process is not a reason to refrain from reporting a matter.

3. Not wanting a registrant to be published

Registrants frequently report that they do not wish to make a report against another registrant for fear that the conduct at issue will be reported to the public, resulting in disproportionate damage to the reported registrant's reputation and practice. This is a natural concern. From the perspective of professionals being disciplined, public notice is often as great a concern as any penalty a regulatory body might impose. From a regulatory and professional duty perspective, the prospect of public notice is one that has no bearing on a professional's duty to report. Publication is simply a consequence of a public regulatory process.

Indeed, the trend in professional regulation has been towards mandatory publication, with reduced or limited anonymity for professionals. For example, the Teaching Profession Act no longer permits professional anonymity where a teacher has been disciplined, apart from where there is "significant hardship to a person who was harmed, abused or exploited by the member" (s. 27.2). Similarly, the Health Professions

Act has been amended to add mandatory public notice of the name of a respondent, except where anonymity is necessary to protect someone other than the professional (HPA section 39.3(3)), or where the professional is found to suffer from an ailment, emotional disturbance or addiction (HPA section 39.3(4)).

4. Reasoning that other registrants will report

Professionals who work in groups often advise that they did not make a report because they anticipated that another registrant would make a report. The duty to report is, however, an individual duty, and not reporting because one anticipates that another registrant will make a report is not a good reason. Moreover, often one registrant's knowledge or view of the subject conduct is different from another's knowledge, and may prove valuable to a regulatory body determining the facts of what occurred or the reliability of information.

5. Not knowing if off-duty conduct counts

While what amounts to professional misconduct may be clear, professionals may be less inclined to report objectionable conduct that appears to be private in nature. Professions are, however, regulated to a degree with respect to their private lives. Professionals may be disciplined for off-duty conduct, and accordingly, colleagues may have a professional duty to report off-duty conduct that may impact on the integrity of the profession.

III. CONDUCT UNBECOMING

A. The regulation of on-duty and off-duty conduct

Professional self-regulation invariably involves a power of the profession, as represented by a regulatory body, to discipline its members or registrants for misconduct. The range of regulated misconduct may range from misconduct done in the course of carrying out one's professional work, to misconduct that is removed from professional practice, yet of an immoral, disgraceful or outrageous character that may impact on the profession's public reputation of a profession, or said another way, the public's confidence in the profession.

The terminology which covers this range of conduct is not fixed, and the precise wording can vary between statutes. For example, the Teaching Profession Act authorizes the discipline committee of the College of Teachers to determine if a member has been guilty of "professional misconduct" as distinct from "other conduct unbecoming a member of the college," or incompetence. The Legal Profession Act uses similar language (see s. 38(4)(b) of the Legal Profession Act). In contrast, the Health Professions Act refers to a registrant committing "professional misconduct" as distinct from "unprofessional conduct". The Engineers and Geoscientists Act illustrates a third approach by

using a single phrase, “unprofessional conduct” to cover both on-the-job and off-the-job conduct.

Whatever the precise language, the law permits discipline for conduct that occurs during professional work, conduct that relates to professional work and conduct that occurs “off-duty” but which still bears on the profession generally. For example, the Legal Profession Act actually defines “conduct unbecoming a lawyer” to mean any conduct that is “contrary to the best interests of the public or of the legal profession,” or which harms the “standing of the legal profession”. The Law Society has accepted that conduct unbecoming refers to conduct in a lawyer’s private life. (Law Society of BC v. Power, 2009 LSBC 23.)

The range of disciplinable conduct was usefully explained by the United Kingdom Privy Council in describing the meaning of the phrase, “serious professional misconduct” in *Royland v. General Medical Council*, [2000] 1 A.C. 311:

...it is not simply misconduct in the carrying out of medical work which may qualify as professional misconduct. But there must be a link with the profession of medicine. Precisely what that link may be and how it may occur is a matter of circumstances. The closest link is where the practitioner is actually engaged on his practice with a patient.

...

...certain behaviour may constitute professional misconduct even although it does not occur within the actual course of the carrying on of the person's professional practice, such as the abuse of a patient's confidence or the making of some dishonest private financial gain. In *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750 at 761, [1891-4] 1 All ER Rep 768 at 772, infamous conduct in a professional respect was held to be established where a doctor by public advertisement had warned the public to avoid other practitioners and recommended them to apply to himself.

...

To take the point a stage further, serious professional misconduct may arise where the conduct is quite removed from the practice of medicine, but is of a sufficiently immoral or outrageous or disgraceful character. An example can be found in *A County Council v. W (Disclosure)* [1997] 1 FLR 574, where a question arose whether the alleged sexual abuse by a father of his daughter, the father being a medical practitioner, could constitute serious professional misconduct. It was argued that any

sexual abuse was too remote from the father's occupation as a doctor, since it was outwith any medical treatment of a child. But Cazalet J held (at 581) that:

'it seems to me that this doctor can be said, if he has sexually abused his daughter, to have demonstrated conduct disgraceful to him as reflecting on his profession and/or indeed conduct disgraceful to him as a practising doctor.'

What is important here is not only the fact that disgraceful behaviour remote from the carrying on of a professional practice may constitute serious professional misconduct, but also that the duty of a doctor to himself, if not to his profession, exists outwith the course of his professional practice. One particular concern in such cases of moral turpitude is that the public reputation of the profession may suffer and public confidence in it may be prejudiced. (emphasis added)

Royland v. General Medical Council, [2000] 1 A.C. 311

In the context of the teaching profession, Canadian courts have confirmed that off-duty conduct may give rise to discipline if it has a negative impact on a teacher's ability to carry out his obligations as a teacher, or may have a negative impact on the school system: *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825. On the other hand, misconduct cannot attract discipline if it does not impair a member's ability to act in his professional capacity, and does not negatively affect the reputation of the profession: *Fountain v. British Columbia College of Teachers*, 2007 BCSC 830.

The difficulty with the idea of conduct unbecoming, or unprofessional conduct, is determining if particular conduct outside the scope of professional practice may violate a statute or an ethical requirement, and therefore should, or must, be reported. Further, different professions may take different views of what conduct may amount to conduct unbecoming a member of the profession. Some professions may, for example, focus on scientific or mathematical processes, whereas other professions may involve different social roles (e.g., lawyers), or vulnerable clients susceptible to abuse (e.g., health professionals). Thus, one profession might view some private conduct as completely uneventful, whereas that same conduct might be viewed as especially damaging within another profession. Furthermore, some professions, such as the teaching profession, may treat their members as "role models", which may in turn lead to particular scrutiny by the profession into the private lives of members. Different regulatory bodies may thus intrude into the "private" lives of their professionals in different ways and to different degrees.

B. Examples of “conduct unbecoming” or “unprofessional conduct”

1. “Hot spots” in certain professions

In theory, conduct unbecoming may be alleged whenever conduct may reflect adversely on one’s profession and is not limited to any particular sphere of private life. For example:

- In 2000, a physician had limits and conditions put on his practice as a result of being convicted for indecent assault involving a minor, where those events dated back to 1969 and 1970, before the professional entered medical school.
- In 2000, a pharmacist was suspended for three weeks after being convicted for tax evasion under the Income Tax Act. (Mr. D.T., October 5, 2000, Reported in the College of Pharmacists of BC Bulletin, Vol. 25, No. 6 (Nov/Dec 2000))
- In 2001, an engineer agreed to have his membership revoked following conviction for tax evasion under the Income Tax Act, and for making false or deceptive statements in GST returns contrary to the Excise Tax Act. (APEGBC, May 2, 2001, reported in Innovation, June 2001, page 32)
- In 2006, a lawyer was found guilty for willfully neglecting creditors and becoming bankrupt due to personal extravagance. (Mr. R, November 17, 2006)
- In 2007, a CGA registrant was found guilty of conduct unbecoming for guaranteeing the truth of information in another person’s application for permanent residence which he knew to be false. (Mr. C, November 27, 2007)
- In 2007 or 2008, a massage therapist agreed he was guilty of unprofessional conduct for using unprofessional language in the context of a commercial tenancy dispute (resulting in an undertaking that he take private counselling sessions). (Mr. B.B. referred to in the CMTBC’s 2008 Annual Report).

Certain professions do, however, focus on certain values, as may be expressed in the duty to report that applies to each profession; these paramount values may indicate the kinds of off-duty conduct that may be of particular concern both on and off the job.

For example, the Health Professions Act focuses on both sexual misconduct and conditions giving rise to a danger to the public. The concern about sexual misconduct corresponds to a number of physician discipline cases involving inappropriate client

relationships. The concern of danger to the public corresponds to a number of nursing cases involving drug addiction.

In contrast, the Law Society of BC clearly values trustworthiness and honesty as a paramount professional value. Thus, members of the Law Society can be assured that dishonesty will result in discipline for either professional misconduct or conduct unbecoming:

- LSBC v. Mr. B, 2005 LSBC 28, reviewed 2007 LSBC 07 (lawyer involved in car accident attempting to dispose of open beer can, and using mouthwash to mask the smell of alcohol; finding of conduct unbecoming)
- LSBC v. Mr. P, 2009 LSBC 23 (lying about prior convictions on his application to the Law Society in 1998, and lying to Law Society staff)
- LSBC v. Mr. K, 2009 LSBC 03 (lying about prior criminal charges when applying for membership)

The next sections explore two controversial areas of “private” activity (namely domestic relations and free speech) and how different professions have acted to discipline members for private conduct in these areas.

2. Sexual, romantic or domestic relations

Different professions take different approaches to the sexual and romantic or domestic lives of professionals. This can be seen, for example, from how different professions treat sexual relations between professionals and clients or former clients:

- The Association of Professional Engineers and Geoscientists of BC does not provide any specific prohibitions concerning intimate relations with present or former clients.
- Similarly, the Law Society of British Columbia does not address sexual relationships with current or former clients. The Professional Conduct Handbook notes, however, that a lawyer must not exploit a relationship between solicitor and client to the lawyer’s own advantage, and this may include an intimate relationship. The question is one of power imbalance and exploitation.

NB: An affair with a client may, however, amount to professional misconduct where the professional has been jointly retained by a husband and wife, and the professional has an affair with the husband without advising the client-wife of the conflict of interest arising from her affair (Ms. J, July 26, 2006).

- More stringent measures apply to physicians, who must not engage in sexual behaviour with current clients under any circumstance. Physicians may, however, engage in sexual relationships with former patients on a case-by-case basis, depending on such factors as whether the physician is exploiting the trust, knowledge, and dependence that developed during the professional relationship: CMA Policy PD-01-08, "The patient-physician relationship and the sexual abuse of patients (Update 2000)".

NB: The potential abuses which may arise where a physician pursues a relationship with a former patient may be heightened where, as in the case of psychologists (below), a psychiatrist pursues a personal relationship with a former patient after having carried on a psychotherapeutic relationship with that patient. (Dr. C.E.D., April 18, 2007, which gave rise to a formal reprimand, assessments, and practice monitoring). Indeed, a psychiatrist has been disciplined for hiring two former patients as employees. (Dr. A.B., June 8, 2007, which also gave rise to a formal reprimand, assessments, and practice monitoring)

- Psychologists must refrain not only from any sexual relationship with a current client, but with any former client to whom the registrant has provided psychological services at any time within the previous two years (Code section 5.14).

Where a relationship does not involve a former client, the question of when sexual or other intimate conduct becomes disgraceful can be more difficult to determine.

Some instances of off-duty conduct are obviously disgraceful. For example, in *Cwinn v. Law Society of Upper Canada*, (1980), 108 D.L.R. (3d) 381 (Ont. Div. Ct.) a lawyer that operated a horse stable would take his horses to horse shows in the U.S. He would also take young teen-aged women to assist as grooms and riders, and seduce them. He was convicted under U.S. law for the offence of knowingly transporting women or girls interstate for purposes of prostitution, debauchery or any other immoral purpose. The Law Society found that his conduct seriously reflected on his professional integrity.

Similarly, assaulting a romantic partner will constitute conduct unbecoming. (Mr. S., 2006 LSBC 29, July 15, 2005).

More difficulties can arise, however, where situations involve conduct that is either not illegal, or illegal but subject to mitigating circumstances.

For example, we can examine the matter of *B.C. College of Teachers v. Mr. Y* (2002) [we use a pseudonym as this matter appears removed from the College of Teachers'

website]. In that case, during a very heated domestic fight between a teacher, Mr. Y, and his common law spouse, Mr. Y slapped his partner across the cheek and said, "I could kill you right now, I could ram your head through the wall and then I could call your mother and tell her I killed you." Mr. Y pleaded guilty to knowingly uttering a threat to cause death or bodily harm, but received an absolute discharge, on the condition that he keep the peace and have no contact with his (former) partner for 12 months.

The matter was criminal conduct by virtue of Mr. Y's admission. Mr. Y was subsequently found guilty of "conduct unbecoming" on the basis of a danger that students might be influenced by "inappropriate role models". Mr. Y received a reprimand for his conduct.

A finding of conduct unbecoming in a domestic situation like this highlights the question of when private words will negatively impact public confidence or the reputation of one's profession. (This issue will be addressed further below in the context of freedom of speech and deeply-held political or moral views.)

Moving to purely legal conduct in the private realm, another interesting example of the tension between "conduct unbecoming" and the private lives of professionals is the matter of *BC College of Teachers v. Respondent N-03* (2004). That case involved a teacher dealing with a divorce. The teacher attended a course for people transitioning to single life, where he met a woman, (Ms. X), also going through a divorce. The teacher and Ms. X became friends, and would go for walks, see movies and have long talks. The teacher eventually developed romantic feelings for Ms. X. The woman eventually told the teacher that she wanted to go back to being just friends. The teacher experienced feelings of abandonment and rejection, but eventually realized he would have to give up his hope of having a romantic relationship.

To symbolically end the prospect of a romantic relationship, he went to a craft store to buy a small pirate chest. He also bought several craft items, including a wooden heart, and a wooden flower, which he then painted, broke in half, and placed them in the chest, along with mementos of their relationship, like photos and poetry. To symbolize the ending of the relationship, he painted the chest black and painted the letters "R.I.P."

Difficulties arose when the professional presented the chest to his female friend. She did not open it, and he did not have opportunity to explain the meaning behind what appeared to be a coffin-like black box painted with the abbreviation for "Rest in Peace".

Events took a further turn for the worse when the teacher expressed to a counselor that he was feeling abandoned, and that he had feelings of wanting to hurt Ms. X to keep her from leaving him. Subsequent assessments by registered professionals showed the teacher had no intention of acting on his thoughts, and he presented no danger whatsoever – but not before the counselor called Ms. X warning her that her life was in

danger, which in turn led to the teacher being arrested and charged criminally, although the charge was later stayed by the Crown.

The professional was disciplined for “conduct unbecoming a member” based on the pirate chest, the giving of which was determined to be “intimidating and emotionally abusive behaviour”. The end result was a reprimand, which was a negotiated result accepted by the panel (although the College initially demanded a much more severe penalty). To be clear, the case did not involve any conviction for a crime, or any illegal conduct.

Purely legal conduct which nonetheless reveals very private details of one’s life which colleagues may deem inconsistent with one’s professional role may give rise to a charge of conduct unbecoming. For example, in terms of the relevance of the personal lives of teaching professionals, one need not go very far to find instances reported on the Internet of teachers (in the U.S. and elsewhere) facing employer discipline for posting racy or sexually suggestive photographs, or reporting intimate personal behaviours (like drinking or partying) on Myspace, Facebook or other websites. Most recently, in March 2009, a P.E. teacher at Manor Community college in the United Kingdom, Ms. Natasha Gray, received a well-publicized disciplinary reprimand for her posting pictures of herself on a website for glamour models. Ms. Gray was previously awarded the title of “Britain’s sexiest teacher” in 2002 by ITV, a UK television network.

Making a private matter public is not isolated to teachers. For example, a lawyer was disciplined for conduct unbecoming after he was reported to the police by four teenaged females when he drove past them while sexually pleasuring himself in his car. (Mr. T, undated admission, Law Society of BC).

Finally, conduct unbecoming may even extend to one’s domestic arrangements, such as the division of labour between spouses. This is illustrated by *Law Society of BC v. Stevens*, [2001] L.S.D.D. No. 19, [2001] LSBC 12, where a lawyer co-owned a dairy farm with her husband. The husband had primary responsibility for the operation of the farm, which included caring for the cows. The wife worked as Crown Counsel and otherwise cared for their one-year-old son. As the son had asthma and was allergic to animal dander, she could not visit the barn with her son. As a result, the lawyer did not detect that her husband, who was suffering from clinical depression, had been neglecting and starving the cattle.

When a search by the SPCA revealed dead and dying cattle, the professional was charged and convicted of permitting animals to be in distress under the Prevention to Cruelty to Animals Act, on the basis that she was a co-owner responsible for taking steps to find out if the animals were in distress. She was also fined. In turn, the Law Society also found her guilty of conduct unbecoming a member of the Law Society. Although

her discipline was limited to a reprimand, the discipline panel could, on a finding of conduct unbecoming, have exercised its discretion to impose a range of reasonable penalties.

3. Speech on controversial social issues

Another fertile area for generating liability for conduct unbecoming is public speech by professionals. Two key authorities in this area arise, once again, from the teaching profession. One is the Ross case, which involved anti-Semitic speech, and the Kempling case, which involved speech concerning homosexuality.

In *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, a teacher published pamphlets, wrote letters and gave interviews in his off-duty time which were racist and discriminatory against Jews. He incited contempt and attacked the integrity and motives of Jewish persons as part of an international conspiracy. A Jewish parent filed a complaint with the New Brunswick Human Rights Commission against the School Board, alleging discrimination by the Board in failing to discipline the teacher for his off-duty conduct. The legal question was the jurisdiction of the School Board to discipline the teacher for off-duty conduct.

While Ross was not a professional discipline case, the Supreme Court of Canada articulated the link between off-duty conduct of teachers and the integrity of the school system – a link which may also be expressed with respect to other professions and the public systems to which they relate. In Ross, the court expressed the relationship between the teacher's conduct both on and off duty and the integrity of the school system:

43 ... The conduct of a teacher bears directly upon the community's perception of the ability of the teacher to fulfil such a position of trust and influence, and upon the community's confidence in the public school system as a whole.

...

44 By their conduct, teachers as "medium" must be perceived to uphold the values, beliefs and knowledge sought to be transmitted by the school system. The conduct of a teacher is evaluated on the basis of his or her position, rather than whether the conduct occurs within the classroom or beyond. Teachers are seen by the community to be the medium for the educational message and because of the community position they occupy, they are not able to "choose which hat they will wear on what occasion" (see *Re Cromer and British Columbia Teachers' Federation* (1986), 29 D.L.R. (4th) 641 (B.C.C.A.), at p. 660); teachers do

not necessarily check their teaching hats at the school yard gate and may be perceived to be wearing their teaching hats even off duty.

On that basis, the court affirmed teachers being held to high standards “both on and off duty”. The court set out a significant caution, however, about the balance between privacy and moral standards:

45 ... I do not wish to be understood as advocating an approach that subjects the entire lives of teachers to inordinate scrutiny on the basis of more onerous moral standards of behaviour. This could lead to a substantial invasion of the privacy rights and fundamental freedoms of teachers. However, where a “poisoned” environment within the school system is traceable to the off-duty conduct of a teacher that is likely to produce a corresponding loss of confidence in the teacher and the system as a whole, then the off-duty conduct of the teacher is relevant. (emphasis added)

The principles in Ross found expression again, but in a professional discipline case, in the matter of B.C. College of Teachers v. Kempling, 2005 BCCA 327. That matter involved a secondary school teacher and counselor in a small rural town in BC. Over a period of 3 years, he wrote and published in the local newspaper an article and a series of letters expressing his views on homosexuals. He tied homosexuality with immorality and promiscuity. He also made explicit links to his being a teacher. He was found guilty of conduct unbecoming, and suspended for one month. The member appealed on the basis of freedom of speech. On that round of cases, he did not raise a question of religious freedom. His appeals were dismissed by both the BC Supreme Court and the Court of Appeal. The Court of Appeal expressed that Mr. Kempling could continue to express his views, but that he could not advance discriminatory views that could be tied to those of a teacher and counselor:

82 ... Mr. Kempling can remain a BCCT member and continue while off duty to express his views on homosexuality by way of reasoned discourse befitting a teacher and counsellor. What he cannot do is to advance such views in a discriminatory manner that will be seen publicly to be those of a teacher and counsellor in the public school system.

The problem, however, was that Mr. Kempling was known to be a teacher in a small community regardless of what he said.

The connection between speech and one’s profession may, however, be open to dispute. A significant contrast to the findings in Ross and Kempling can be found in

Whatcott v. Saskatchewan Association of licensed Practical Nurses, 2008 SKCA 6, where a registered licensed practical nurse picketed in front of Planned Parenthood, carrying signs or pictures of fetuses, and shouting comments claiming that Planned Parenthood provided abortions, murdered babies, and could give people AIDs. The registrant also shouted other statements which the Association found to be false. Planned Parenthood obtained an injunction against the nurse who then violated the injunction. The Association fined the nurse \$15,000 and then suspended his membership until he paid the fine.

The nurse's appeal to the Court of Queen's Bench was dismissed, but his appeal to the Saskatchewan Court of Appeal was allowed. The Court of Appeal found that the decision of the discipline committee infringed Whatcott's freedom of expression (s.2(b) of the Charter) and found that the law of professional misconduct, which the Association had extended to cover the nurse's speech, was not justifiable in a free and democratic society.

The court reasoned that the suspension was not rationally connected to upholding the standing of the profession because Mr. Whatcott did not hold himself out as a licensed practical nurse, and "few persons would have known that he held a licence as a practical nurse" (para. 66). Thus, the only link to the profession could be the fact of abortions being medical procedures, but the court found no evidence that any member of the public would think less of nurses because of Mr. Whatcott's behaviour (paragraph 68). The court also found the suspension to be disproportionate where the statements were not true or false, but expressions linked to belief and opinion which were debatable (paragraphs 73 and 74).

The Whatcott case illustrates a professional being afforded leeway in terms of harsh and controversial speech that is not discriminatory, at least in an obvious sense. The question arises, however, if the speech would clearly be misconduct if said by a member of another profession. This question arises in the context of a current controversy involving Dr. Heilman, a physician (and thus a registrant of the College of Physicians and Surgeons in both BC and Saskatchewan).

Earlier this year, Dr. Heilman decided to post, on the Internet, details concerning several psychological tests employed within the profession of psychology, including the actual inkblot plates from the Rorschach inkblot test. These postings raised a furor among professionals including psychologists, who have a common professional obligation to refrain from making psychological test materials public, in order to protect the validity of the assessments.

Dr. Heilman has defended his conduct on the basis that the test is not protected by copyright; that it is publically available in larger libraries and; that he is, in essence,

performing a public service by demystifying the psychological profession. Dr. Heilman is quoted as saying in the New York Times (August 23, 2009), "They don't want anybody other than themselves involved in a discussion about what they do."

For clarity, one counterpoint would be that while the inkblot test is in the public domain, the utility of the test is not from secrecy per se, but from a measure of how subjects react to ambiguous and unknown images – a utility which is undermined by ease of access. Unlike medical testing, psychological testing (and for that matter any kind of academic testing) can be rendered invalid by the test subject being given advance knowledge of the test.

The Dr. Heilman situation highlights one important issue: namely, the higher standard of conduct required of professionals. An ordinary citizen might not be doing anything illegal by publishing psychological testing material he has acquired from public sources, but the question here is whether Dr. Heilman, as a professional, can, in his private life, publish information that the members of another profession universally regard as a matter where confidentiality must be preserved.

IV. The practicalities of the Duty to Report

A. Consequences of reporting and not reporting

As a rule of thumb, a professional should be aware if he or she receives information that discloses

- a possible safety concern relating to a child or an adult in need of protection,
- that a client presents a possible danger to the public, or
- reasonable and probable grounds to believe that a fellow registrant or member, or another professional, has engaged in objectionable conduct, including conduct which may bring the profession into disrepute.

In any of these cases, a professional should seek to ascertain if the circumstances fall within an express right to report a matter, or trigger a mandatory duty to report the matter. A mandatory duty to report may arise under a regulatory statute, under the bylaws of his or her regulatory body, or under an applicable ethical code.

Generally, a registrant who makes a report in good faith, which he or she may or must make under a statute, will be insulated from any legal liability arising from the report:

- (a) generally, a professional will not be in breach of any confidentiality by acting in accordance with statute (although the statute itself may set out conditions that

- need to be satisfied before a report is made, as in the case of the Health Professions Act);
- (b) a professional may have the benefit of a legal provision prohibiting any damage claim against those who report in good faith; and
 - (c) a professional will be protected under defamation law by the doctrine of privilege when reporting a registrant to the appropriate disciplinary body (e.g., *Schut v. Magee*, 2003 BCCA 417).

In contrast, a professional who fails to report a matter he or she is required to report may be committing an offence, may be subject to discipline, or both.

B. The nuts and bolts of making a report

The following is a list of practical issues to consider when making a report:

- Before making a report, consider if you have an obligation to discuss the matter with the registrant you are reporting. For example, for teachers who are members of the BC Teachers Federation (the "BCTF"), the BCTF Code of Ethics requires that issues be raised with the other teacher before a complaint is made against that teacher.
- Obtain a copy of the regulatory bodies' complaint form. Most regulatory bodies have their complaint forms online for downloading and printing. If a complaint form is not available online, then contact the regulatory body to obtain a copy of the form. Read the form carefully to understand the information to be included and any waivers to be signed.
- Write down the "who, what, when, and where" of your complaint. Try to present the information in chronological order. Sign the complaint, and ensure contact information has been provided.
- Attach any documents, tapes, or photos which may be relevant. Make a copy for yourself and provide the regulatory body with the original. Note that making a complaint is not grounds for taking documents, tapes or photos which do not belong to you. If you are aware of items which exist that may be relevant to the complaint, then advise the regulatory body in your complaint form. Regulatory bodies have statutory means to obtain disclosure of items containing relevant information.
- Take a copy of the complaint and any attachments for your own records. Secure this information in a safe place. Keep your complaint confidential.

C. In closing

Finally, where reporting is concerned, professionals may be in the most difficult position when in a grey zone, meaning a position where they have limited information about what happened, or do not know if conduct is of a kind which ought to be reported. In this sort of circumstance, professionals should always keep two points in mind.

First, a professional who is in doubt about whether a matter warrants a report can consult with his or her regulatory body, as well as his or her colleagues. While regulatory bodies are very unlikely to provide any sort of legal advice, they can certainly provide guidance with respect to ethical issues.

Secondly, whatever confusion may arise from a situation, the fact remains that the question of a report will arise in the mind of a professional because a situation involves some form of objectionable conduct, or some potential for harm. Although this paper deals with the specific duties of professionals to report, which duties may result in sanctions if not fulfilled, professionals are often in the best position to determine if a colleague has acted in an objectionable manner. All professional regulatory bodies will have processes which screen out matters which prove not of interest to the regulator, but a regulatory body cannot assess a matter which is not reported at all. If a matter raises a serious concern in the mind of a professional, that serious concern is a good indication the matter should be reported, whether or not it comes within a mandatory duty to report.