



### **What are my ethical obligations relating to disclosure if I test positive for COVID -19 or am being treated as presumptively positive?**

You may be required to provide information to a provincial health officer or their designate, pursuant to the relevant provincial public health act and regulations. The information sought might include the names and contact information of individuals with whom you have had recent contact. This may include the names of and contact information for clients. Under some circumstances, health authorities may also seek more detailed information such as the nature of your recent encounters with individuals or their duration. Such information is confidential and, in some circumstances, may be privileged.

The *Code of Professional Conduct* provides an exception to the duty of confidentiality in order to protect public safety or prevent future harm. This particular mandatory disclosure obligation is set out in Rule 3.3-3A which states:

3.3-3A A lawyer must disclose confidential information, but only to the extent necessary:

- (a) if the lawyer has reasonable grounds for believing that an identifiable person or group is in imminent danger of death or serious bodily harm and believes disclosure is necessary to prevent the death or harm; and
- (b) the lawyer does not reasonably believe that such disclosure will cause harm to the lawyer or to the lawyer's family or to the lawyer's associates.

Commentaries associated with Rule 3.3-3A are contained within the *Code* to provide some guidance to lawyers in such circumstances.

The Supreme Court of Canada has recognized an equivalent exception to privilege if a serious and imminent threat to public safety exists to an identifiable person or group of persons (*Smith v. Jones*, [1999] 1 SCR 455).

#### **Extent of Information Communicated:**

In providing recent contact information to health authorities you may disclose the names and contact information of clients with whom you have been in recent contact. However, you must not disclose more information about those individuals than is required. In particular, you should take care not to identify as clients any individuals included in the

disclosure or make any unnecessary reference to the purpose or circumstances of the contact.

Where the health authority asks about additional circumstances, such as the recency, proximity, location and duration of the contact, you should provide information only to the extent necessary to answer the related inquiry.

**Steps to Take:**

If you believe that disclosure may be warranted you should, if able, contact the law society for ethical advice or refer to existing guidance from the law society regarding disclosure in these circumstances.

Client consent in advance to the disclosure of information is not required; however notice of the disclosure to any affected clients should be provided within a reasonable time.

**Record-Keeping:**

If confidential client information is disclosed, you should record details relating to this disclosure as soon as possible.

The law society is available to answer questions about practice and professional obligations.