

CHAPTER 6 – RELATIONSHIP TO STUDENTS, EMPLOYEES AND OTHERS

6.1 SUPERVISION

Direct Supervision Required

6.1-1 A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

Commentary

[1] A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion.

[2] A lawyer who practises alone or operates a branch or part-time office should ensure that:

- (a) all matters requiring a lawyer's professional skill and judgment are dealt with by a lawyer qualified to do the work; and
- (b) no unauthorized persons give legal advice, whether in the lawyer's name or otherwise.

[3] If a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

[4] A lawyer in private practice may permit a non-lawyer to perform tasks delegated and supervised by a lawyer so long as the lawyer maintains a direct relationship with the client. A lawyer in a community legal clinic funded by Legal Aid Manitoba may do so, so long as the lawyer maintains direct supervision of the client's case in accordance with the supervision requirements of the legal aid plan and assumes full professional responsibility for the work.

[5] Subject to the provisions of any statute, rule, or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer turns on the distinction between any special knowledge of the non-lawyer and the professional

and legal judgment of the lawyer, which in the public interest, must be exercised by the lawyer whenever it is required.

Application

6.1-2 In this rule, a non-lawyer does not include a student-at-law.

Delegation

6.1-3 Subject to any statutory exception, a lawyer must not permit a non-lawyer to:

- (a) accept cases on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;
- (b) give legal advice;
- (c) give or accept undertakings or accept trust conditions, except at the direction of, and under the supervision of a lawyer responsible for the legal matter, providing that in any communications the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated, and the lawyer who is responsible for the legal matter is identified;
- (d) act finally without reference to the lawyer in matters involving professional legal judgment;
- (e) be held out as a lawyer;
- (f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a support role to the lawyer appearing in such proceedings;
- (g) be named in association with the lawyer in any pleading, written argument or other like document submitted to a court;
- (h) be remunerated on a sliding scale related to the earnings of the lawyer, unless the non-lawyer is an employee of the lawyer;

- (i) conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;
- (j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;
- (k) sign correspondence containing a legal opinion;
- (l) sign correspondence, unless
 - i. it is of a routine administrative nature,
 - ii. the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,
 - iii. the fact the person is a non-lawyer is disclosed, and
 - iv. the capacity in which the person signs the correspondence is indicated;
- (m) forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction;
- (n) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or
- (o) determine fees.

Commentary

[1] A lawyer is responsible for any undertaking given or accepted and any trust condition accepted by a non-lawyer acting under his or her supervision.

[2] A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers, public officials or with the public generally, whether within or outside the offices of the law firm of employment.

[3] In real estate transactions using a system for the electronic submission or registration of documents, a lawyer who approves the electronic registration of

documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

Suspended or Disbarred Lawyers

6.1-4 Without the express approval of the Society, a lawyer must not retain, occupy office space with, use the services of, partner or associate with or employ in any capacity having to do with the practice of law any person who, in any jurisdiction, has been disbarred and struck off the Rolls, suspended, undertaken not to practise or who has been involved in disciplinary action and been permitted to resign and has not been reinstated or readmitted.

Electronic Registration of Documents

6.1-5 A lawyer who has personalized encrypted electronic access to any system for the electronic submission or registration of documents must not:

- (a) permit others, including a non-lawyer employee, to use such access; or
- (b) disclose his or her password or access phrase or number to others.

6.1-6 When a non-lawyer employed by a lawyer has a personalized encrypted electronic access to any system for the electronic submission or registration of documents, the lawyer must ensure that the non-lawyer does not:

- (a) permit others to use such access; or
- (b) disclose his or her password or access phrase or number to others.

Commentary

[1] The implementation of systems for the electronic registration of documents imposes special responsibilities on lawyers and others using the system. The integrity and security of the system is achieved, in part, by its maintaining a record of those using the system for any transactions. Statements professing compliance with law without registration of supporting documents may be made only by lawyers in good standing. It is, therefore, important that lawyers should maintain and ensure the security and the exclusively personal use of the personalized access code, diskettes, etc., used to access the system and the personalized access pass phrase or number.

[2] In a real estate practice, when it is permissible for a lawyer to delegate responsibilities to a non-lawyer who has such access, the lawyer should ensure that

the non-lawyer maintains and understands the importance of maintaining the security of the system.

6.2 STUDENTS

Recruitment and Engagement Procedures

6.2-1 A lawyer must observe any procedures of the Society about the recruitment and engagement of articling or other students.

Duties of Principal

6.2-2 A lawyer acting as a principal to a student must provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession.

Duties of Articling Student

6.2-3 An articling student must act in good faith in fulfilling and discharging all the commitments and obligations arising from the articling experience.

6.3 HARASSMENT AND DISCRIMINATION

6.3-1 The principles of human rights laws and related case law apply to the interpretation of this rule.

6.3-2 A term used in this rule that is defined in human rights legislation has the same meaning as in the legislation.

Commentary

[1] A lawyer has a special responsibility to respect the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws including *The Human Rights Code*, C.C.S.M. c. H175.

6.3-3 A lawyer must not, in a professional context, sexually harass any person.

6.3-4 A lawyer must not, in a professional context, engage in any other form of harassment of any person.

Commentary

[1] Harassment means abusive and unwelcome comment or conduct undertaken or made on the basis of an individual's actual or perceived ancestry, colour, race, nationality, national origin, ethnic background or origin, religion, creed or religious belief, religious association or activities, age, sex, gender, physical characteristics, pregnancy, sexual orientation, marital or family status, source of income, political belief, association or activity, physical or mental disability. Harassment includes all conduct that erodes the dignity and equality of opportunity of the victim. Conduct that may constitute harassment under this rule includes:

- (a) derogatory remarks concerning a characteristic listed above;
- (b) remarks concerning capabilities based upon the perceived group to which the person belongs e.g. women can't do this; s/he is too old;
- (c) assignment of work, etc. that could be considered humiliating;
- (d) jokes of a racist, sexist, ageist, etc. nature;
- (e) displaying or distributing derogatory or demeaning pictures, posters,

calendars, cartoons, drawings or jokes;

- (f) unwelcome invitations or requests, particularly based on intimidation;
- (g) verbal abuse or threats;
- (h) inappropriate or offensive gestures;
- (i) physical assault;
- (j) name calling;
- (k) condescension undermining self-respect; or
- (l) a reprisal or threat of reprisal for rejecting a sexual solicitation or advance.

[2] Sexual harassment means one or a series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature:

- (a) when such conduct might reasonably be expected to cause insecurity, discomfort, offence or humiliation to another person or group;
- (b) when submission to such conduct is made implicitly or explicitly a condition for the provision of professional services;
- (c) when submission to such conduct is made implicitly or explicitly a condition of employment;
- (d) when submission to or rejection of such conduct is used as a basis for any employment decision, including, but not limited to, matters of promotion, raise in salary, job security and benefits affecting the employee;
- (e) where such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile or offensive work environment;
- (f) when the use of a position of power is used to import sexual requirements into the workplace thereby negatively altering the working conditions of employees; and/or

- (g) a sexual solicitation or advance made by a person who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[3] Conduct that may constitute sexual harassment under this rule includes:

- (a) sexist jokes causing embarrassment or offense, told or carried out after the joker has been told that they are embarrassing or offensive, or that are by their nature clearly embarrassing or offensive;
- (b) leering;
- (c) the display of sexually offensive material;
- (d) sexually degrading words used to describe a person;
- (e) derogatory or degrading remarks directed towards members of one sex or one sexual orientation;
- (f) sexually obscene comments or gestures;
- (g) unwelcome inquiries or comments about a person's sex life;
- (h) unwelcome sexual flirtations, advances, propositions;
- (i) persistent unwanted contact or attention after the end of a consensual relationship;
- (j) requests for sexual favours;
- (k) unwanted touching;
- (l) verbal abuse or threats; or
- (m) sexual assault.

[4] Harassment includes failure by a lawyer who knew, or ought reasonably to have known of the harassment, to take reasonable steps to prevent or stop the harassment by the lawyer's partner or by any employee or associate or agent who is subject to the lawyer's direction or control.

6.3-5 A lawyer must not, in a professional context, discriminate against any person.

Commentary

[1] With respect to the employment of others in relation to the practice of law or in any professional dealings with others, the lawyer must not discriminate on the basis of any of the following grounds, rather than on the basis of personal merit, save and except where differential treatment is permitted by law:

- (a) ancestry;
- (b) colour, race, nationality, national origin, ethnic background or origin;
- (c) religion, creed or religious belief, religious association or activities;
- (d) age;
- (e) sex;
- (f) gender and other gendered determined characteristics, physical characteristics;
- (g) pregnancy, the possibility of pregnancy or circumstances related to pregnancy;
- (h) sexual orientation;
- (i) marital or family status;
- (j) source of income;
- (k) political belief, association or activity; or
- (l) physical or mental disability or any other related characteristic or circumstances, including reliance on a guide dog or other animal assistant, a wheelchair or any other remedial appliance or device.

[2] These grounds apply regardless of whether they actually exist or are presumed to exist.

[3] For the purpose of this rule, discrimination includes:

- (a) any act or omission which disproportionately and negatively impacts on an individual or group identifiable by the grounds listed above in a way that does not impact on others;
- (b) maintenance of requirements, rules, qualifications or considerations which, while they may appear to be neutral, and may be applied uniformly, have an adverse effect on an individual or group on the basis of any of the grounds noted. Such requirements, rules, qualifications, or considerations will be acceptable only if they are reasonable and bona fide and accommodation of the affected individual or group is not reasonable without undue hardship to the lawyer;
- (c) harassment, including sexual harassment; or
- (d) failure by a lawyer who knew, or ought reasonably to have known of the discrimination, to take reasonable steps to prevent or stop discrimination by the lawyer's partner or by any employee or associate or agent who is subject to the lawyer's direction or control.

[4] Discrimination can be constituted by the effect of action or omission. Furthermore, intent to discriminate is not a prerequisite to a finding of discrimination. Discrimination may be inadvertent or unintended. The following are examples of practices that may be discriminatory in effect unless it can be demonstrated that they are reasonable and bona fide and that those affected cannot be accommodated without undue hardship to the lawyer:

- (a) setting unnecessary hiring criteria that effectively exclude some job applicants on prohibited grounds (e.g. requiring a driver's license could exclude persons with disabilities that prevent them from obtaining a licence);
- (b) asking irrelevant questions in an employment or promotion interview (e.g., asking questions about marital status or whether a candidate intends to have children may discriminate on the basis of family status, sex or sexual orientation);
- (c) failing to provide reasonable maternity and parental leave;
- (d) failing to accommodate religious holidays or practices;
- (e) denying employment on the basis of an accent even though the applicant's language skills are adequate for the work required to be performed;

- (f) assigning work or denying work on the basis of factors or assumptions other than individual ability; or
- (g) setting workload expectations which may exclude those with childcare responsibilities or attributes that may restrict their ability to work the expected hours or to produce the required amount of work.

[5] The elimination or avoidance of discrimination requires the accommodation of diversity, unless it would cause undue hardship to the lawyer. Examples of accommodation that may be required are:

- (a) provision of flexible work hours to accommodate family responsibilities or to accommodate transportation difficulties for persons with disabilities;
- (b) modification of the physical workplace to accommodate wheelchair access, modified furniture and assistive devices;
- (c) an appropriate policy for health related absences from work;
- (d) a benefits policy that encompasses same sex couples;
- (e) accommodation of religious holidays or religious practices;
- (f) extending equal courtesy to all persons without regard to accent or other characteristics related to any of the listed grounds; or
- (g) adjusting the billable hour or workload expectations to accommodate family responsibilities.

[6] Nothing in this rule affects a lawyer's right to refuse a retainer in circumstances where the lawyer is unable to represent a client in a competent or diligent manner and to the best of the lawyer's ability.