

## **CHAPTER 6 – RELATIONSHIP TO STUDENTS, EMPLOYEES AND OTHERS**

## 6.1 SUPERVISION

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### 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 or 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**

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### **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 DISCRIMINATION AND HARASSMENT

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### Discrimination

**6.3-1** A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.

#### Commentary

[1] Lawyers are uniquely placed to advance the administration of justice, requiring lawyers to commit to equal justice for all within an open and impartial system. Lawyers are expected to respect the dignity and worth of all persons and to treat all persons fairly and without discrimination. A lawyer has a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in such laws.

[2] In order to reflect and be responsive to the public they serve, a lawyer must refrain from all forms of discrimination and harassment, which undermine confidence in the legal profession and our legal system. A lawyer should foster a professional environment that is respectful, accessible, and inclusive, and should strive to recognize their own internal biases and take particular care to avoid engaging in practices that would reinforce those biases, when offering services to the public and when organizing their workplace.

[3] Indigenous peoples may experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being willfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.

[4] Lawyers should be aware that discrimination includes adverse effect and systemic discrimination, which arise from organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal treatment of a person or persons. Lawyers should consider the distinct needs and circumstances of their colleagues, employees, and clients, and should be alert to unconscious biases that may inform these relationships and that serve to perpetuate systemic discrimination and harassment. Lawyers should guard against any express or implicit assumption that another person's views, skills, capabilities, and contributions are necessarily shaped or constrained by their gender, race, Indigeneity, disability or other personal characteristic.



[5] Discrimination is a distinction, intentional or not, based on grounds related to actual or perceived personal characteristics of an individual or group, which has the effect of imposing burdens, obligations or disadvantages on the individual or group that are not imposed on others, or which withhold or limit access to opportunities, benefits and advantages that are available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will typically constitute discrimination. Intersecting grounds of discrimination require consideration of the unique oppressions that result from the interplay of two or more protected grounds in a given context.

[6] The principles of human rights and workplace health and safety laws and related case law apply to the interpretation of this Rule and to Rules 6.3-2 to 6.3-4. A lawyer has a responsibility to stay apprised of developments in the law pertaining to discrimination and harassment, as what constitutes discrimination, harassment, and protected grounds continue to evolve over time and may vary by jurisdiction.

[7] Examples of behaviour that constitute discrimination include, but are not limited to:

- (a) harassment (as described in more detail in the Commentary to Rules 6.3-2 and 6.3-3);
- (b) refusing to employ or to continue to employ any person on the basis of any personal characteristic protected by applicable law;
- (c) refusing to provide legal services to any person on the basis of any personal characteristic protected by applicable law;
- (d) charging higher fees on the basis of any personal characteristic protected by applicable law;
- (e) assigning lesser work or paying an employee or staff member less on the basis of any personal characteristic protected by applicable law;
- (f) using derogatory racial, gendered, or religious language to describe a person or group of persons;
- (g) failing to provide reasonable accommodation to the point of undue hardship;
- (h) applying policies regarding leave that are facially neutral (i.e. that apply to all employees equally), but which have the effect of penalizing individuals who take parental leave, in terms of seniority, promotion or

partnership;

- (i) providing training or mentoring opportunities in a manner which has the effect of excluding any person from such opportunities on the basis of any personal characteristic protected by applicable law;
- (j) providing unequal opportunity for advancement by evaluating employees on facially neutral criteria that fail to take into account differential needs and needs requiring accommodation;
- (k) comments, jokes or innuendos that cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive;
- (l) instances when any of the above behaviour is directed toward someone because of their association with a group or individual with certain personal characteristics; or
- (m) any other conduct which constitutes discrimination according to any applicable law.

[8] It is not discrimination to establish or provide special programs, services or activities which have the object of ameliorating conditions of disadvantage for individuals or groups who are disadvantaged for reasons related to any characteristic protected by applicable laws.

[9] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

## **Harassment**

**6.3-2** A lawyer must not harass a colleague, employee, client or any other person.

### **Commentary**

[1] Harassment includes an incident or a series of incidents involving physical, verbal or non-verbal conduct (including electronic communications) that might reasonably be expected to cause humiliation, offence or intimidation to the person who is subjected to the conduct. The intent of the lawyer engaging in the conduct is not determinative. It is harassment if the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation. Harassment may constitute or be linked to discrimination.

[2] Examples of behaviour that constitute harassment include, but are not limited to:

- (a) objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including comments and displays that demean, belittle, intimidate or cause humiliation or embarrassment;
- (b) behaviour that is degrading, threatening or abusive, whether physically, mentally or emotionally;
- (c) bullying;
- (d) verbal abuse;
- (e) abuse of authority where a lawyer uses the power inherent in their position to endanger, undermine, intimidate, or threaten a person, or otherwise interfere with another person's career;
- (f) comments, jokes or innuendos that are known or ought reasonably to be known to cause humiliation, embarrassment or offence, or that by their nature, and in their context, are clearly embarrassing, humiliating or offensive; or
- (g) assigning work inequitably.

[3] Bullying, including cyberbullying, is a form of harassment. It may involve physical, verbal or non-verbal conduct. It is characterized by conduct that might reasonably be expected to harm or damage the physical or psychological integrity of another person, their reputation or their property. Bullying includes, but is not limited to:

- (a) unfair or excessive criticism;
- (b) ridicule;
- (c) humiliation;
- (d) exclusion or isolation;
- (e) constantly changing or setting unrealistic work targets; or
- (f) threats or intimidation.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

## **Sexual Harassment**

**6.3-3** A lawyer must not sexually harass a colleague, employee, client or any other person.

### **Commentary**

[1] Sexual harassment is an incident or series of incidents involving unsolicited or unwelcome sexual advances or requests, or other unwelcome physical, verbal, or nonverbal conduct (including electronic communications) of a sexual nature. Sexual harassment can be directed at others based on their gender, gender identity, gender expression, or sexual orientation. The intent of the lawyer engaging in the conduct is not determinative. It is sexual harassment if the lawyer knew or ought to have known that the conduct would be unwelcome. Sexual harassment may occur:

- (a) when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the person who is subjected to the conduct;
- (b) when submission to such conduct is implicitly or explicitly made a condition for the provision of professional services;
- (c) when submission to such conduct is implicitly or explicitly made a condition of employment;
- (d) when submission to or rejection of such conduct is used as a basis for any employment decision, including:
  - i. Loss of opportunity;
  - ii. The allocation of work;
  - iii. Promotion or demotion;
  - iv. Remuneration or loss of remuneration;
  - v. Job security; or
  - vi. Benefits affecting the employee;
- (e) when 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 a position of power is used to import sexual requirements into the workplace and negatively alter the working conditions of employees or colleagues; or
- (g) when a sexual solicitation or advance is made by a lawyer who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the lawyer making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[2] Examples of behaviour that constitute sexual harassment include, but are not limited to:

- (a) displaying sexualized or other demeaning or derogatory images;
- (b) sexually suggestive or intimidating comments, gestures or threats;
- (c) comments, jokes that cause humiliation, embarrassment or offence, or which by their nature, and in their context, are clearly embarrassing, humiliating or offensive;
- (d) innuendoes, leering or comments about a person's dress or appearance;
- (e) gender-based insults or sexist remarks;
- (f) communications with sexual overtones;
- (g) inquiries or comments about a person's sex life;
- (h) sexual flirtations, advances, propositions, invitations or requests;
- (i) unsolicited or unwelcome physical contact or touching;
- (j) sexual violence; or
- (k) unwanted contact or attention, including after the end of a consensual relationship.

[3] Lawyers should avoid condoning or being willfully blind to conduct in their workplaces that constitutes sexual harassment.

[4] Lawyers are reminded that the provisions of this Rule do not only apply to conduct related to, or performed in, the lawyer's office or in legal practice.

## Reprisal

**6.3-4** A lawyer must not engage or participate in reprisals against a colleague, employee, client or any other person because that person has:

- (a) inquired about their rights or the rights of others;
- (b) made or contemplated making a complaint of discrimination, harassment or sexual harassment;
- (c) witnessed discrimination, harassment or sexual harassment; or
- (d) assisted or contemplated assisting in any investigation or proceeding related to a complaint of discrimination, harassment or sexual harassment.

### Commentary

[1] The purpose of this Rule is to enable people to exercise their rights without fear of reprisal. Conduct which is intended to retaliate against a person, or discourage a person from exploring their rights, can constitute reprisal. Examples of such behaviour include, but are not limited to:

- (a) refusing to employ or to continue to employ any person;
- (b) penalizing any person with respect to that person's employment or changing, in a punitive way, any term, condition or privilege of that person's employment;
- (c) intimidating, retaliating against or coercing any person;
- (d) imposing a pecuniary or any other penalty, loss or disadvantage on any person;
- (e) changing a person's workload in a disadvantageous manner, or withdrawing opportunities from them; or
- (f) threatening to do any of the foregoing.