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- (iv) appear before a panel of examiners appointed by the Chairperson;
 - (v) implement measures to reduce the risk of liability insurance claims;
 - (vi) obtain a psychiatric or psychological assessment or counselling, or both, and if the Chairperson requests, provide a report on that assessment or counselling to the Chairperson;
 - (vii) obtain a medical assessment or assistance, or both, and if the Chairperson requests, provide a report of that assessment or assistance to the Chairperson;
 - (viii) practise in a setting approved by the Chairperson;
 - (ix) take such other steps as the Chairperson directs which are intended to improve the knowledge or skill of the member in carrying on his or her practice of law.
- (2) When making requests under subrule (1)(e), the Chairperson may:
- (a) receive, on behalf of the Society, undertakings given by the member; and
 - (b) set one or more dates by which the member shall complete the requests; and
 - (c) request that the member pay part or all of the cost of the matters described in subrule (1)(e).
- (3) The Chairperson may, on application by the member or by the Society, extend the date by which a request shall be completed.
- (4) The Chairperson shall advise the member of his or her decision under subrule (1) and may request that the member meet with the Committee where it has made a request under subrule (1)(e), deliver a copy of that request to the member.
- (5) Complaints counsel shall advise the complainant in writing of the Chairperson's decision under subrule (1), but shall not deliver to the complainant a copy of the Chairperson's request under subrule (1)(e).

[Rule 323(2) amended February 4 & 5, 1993 and June 10, 1999]

[Rule 323 Law Office Management and File Reviews header deleted; amended Rule in its entirety December 3, 2009]

[Rule 323 number (1) inserted, 323(1)(a) through (d) amended; 323(e)(i) through (ix), (2), (3), (4) and (5) added June 17, 2010]

[Rule 323(1)(d) – new (d) added, changing alphabetical sequence from (a) – (e) to (a) – (f) April 14, 2011]

[Rule 324 amended February 4 & 5, 1993]

[Rule 324 (1) amended; 324 (2) (a) through (f) added December 3, 2009]

[Rule 324 Report to the Professional Standards Committee deleted June 17, 2010]

[Rule 325 amended February 4 & 5, 1993; March 27, 1992 and June 10, 1999]

[Rule 325 heading amended; Rule 325 (1)(i)(A) to (E), (iii), (iv), (vi) to (ix) amended; (2) and (2)(c) amended;

(3), (4) and (5) amended December 3, 2009]

[Rule 325 Action by the Chairperson of the Professional Standards Committee deleted and a portion moved to become part of Rule 323 June 17, 2010]

Confidentiality of Competence Matters

326. (1) Any:

- (a) information and documents which form part of a Professional Standards complaint, review or investigation.
- (b) any action taken or decision made respecting a Professional Standards complaint, review or investigation; and

any report prepared for a Professional Standards Committee Chairperson or

- (c) by a practice advisor shall be treated confidentially and, unless otherwise ordered by the Professional Standards Committee, shall not be disclosed except for the purpose of complying with the objects of the *Act* or in responding to an enquiry made for the purpose of a potential judicial appointment.

[Rule 326(1) amended February 4 & 5, 1993]

[Rule 326 (1)(a) and (b) amended December 3, 2009]

[Rule 326(1)(a), (b) and (c) amended June 17, 2010]

[next rule is Rule 400]

D. Discipline

Review by Conduct Investigation Committee

400. (1) The Conduct Investigation Committee:
- (a) shall promptly review any complaint submitted to it by complaints counsel, by the Chairperson of the Professional Standards Committee, by the Complainants' Review Committee or by the Ethics Committee; and
 - (b) may investigate any conduct of a member that may constitute conduct unbecoming, and may make or authorize whatever inquiries and investigations it considers desirable.
 - (c) may investigate any other matter that comes to its attention during the course of an investigation, that could potentially constitute conduct unbecoming.
 - (d) shall complete an inquiry or investigation under this rule as soon as practicable.
- (2) Upon completion of the review or investigation, the Conduct Investigation Committee shall provide a report:
- (a) directing that no further action be taken, if it is of the opinion that the complaint does not constitute conduct unbecoming;
 - (b) inviting the member to meet with a Conduct Review Committee under Rule 401;
 - (c) referring the complaint to the Ethics Committee or the Professional Standards Committee;
 - (d) directing the Chair of Discipline to appoint a Hearing Committee under 47(1) of the *Act*, to hear and determine a formal complaint.
- (3) The Conduct Investigation Committee shall advise the member and the complainant, in writing, of the action taken under subrule (2).
- (3.1) In accordance with its authority to direct the prosecution under section 49(1) of the *Act*, the Conduct Investigation Committee may amend the recommendation set out in its report made pursuant to (2)(d) at any time before the hearing.
- (3.2) Amendments pursuant to (3.1) will form part of the formal complaint and may include, but are not limited to, the addition, removal or revision of allegations set out in the original report.
- (3.3) Notice of any amendments made pursuant to this rule shall be served on the member not less than 30 days before the commencement of the hearing, unless the member consents in writing to a shorter period.

[Rule 400(3.1), (3.2) and (3.3) added November 28, 2013]

Resignation in the Face of Discipline

- (4) A member may apply to the Conduct Investigation Committee to resign in the face of discipline deemed equivalent to disbarment
- (a) with consent of Counsel for the Conduct Investigation Committee;
 - (b) at any stage of the investigation by a Conduct Investigation Committee prior to formal charges, or;
 - (c) at any time after the formal charges, prior to the commencement of the Hearing.
- (5) The Conduct Investigation Committee may hear an application to resign in the face of discipline, deemed equivalent to disbarment, as follows:
- (a) in order to make an application to resign, the member must make admissions with respect to the conduct under investigation and enter into an Agreed Statement of Facts;
 - (b) the Conduct Investigation Committee may reject the application pending the completion of the discipline process;
 - (c) The Conduct Investigation Committee may grant the application and accept the member's resignation in the face of discipline, deemed equivalent to disbarment, and may impose conditions on the acceptance of same;
 - (d) conditions imposed by the Conduct Investigation Committee may include a time period of up to 5 years during which the member will not re-apply and further include that, upon any application for re-admission, the Agreed Statement of Facts will be considered;

- (e) The Conduct Investigation Committee may require the member to provide particular Undertakings which shall remain on the member's file and be reviewed and considered upon any future application for readmission; such Undertakings may provide that the member will:
 - (i) complete a remedial educational program;
 - (ii) restrict voluntarily his or her practice to specified areas of law;
 - (iii) obtain a psychiatric and/or psychological and/or addictions assessment or counselling, or both;
 - (iv) obtain a medical examination and/or opinion as to the member's capability to practice law;
 - (v) provide any other Undertakings the Conduct Investigation Committee deems appropriate.
- (f) any application for readmission for a member whose application for resignation in the face of discipline equivalent to disbarment shall be under section 211 of the Rules, the same as a disbarred member;
- (g) if the Conduct Investigation Committee accepts a resignation in the face of discipline equivalent to disbarment, pursuant to this sub clause, the Agreed Statement of Facts shall be published in the same manner and to the same persons as the Notice required by Rule 495;
- (h) nothing in this Rule affects the ability of the Hearing Committee to permit a member to resign as a penalty pursuant to section 53(3)(a)(vii) of *The Legal Profession Act, 1990*.

[Rule 400(1)(a) amended September 17, 1993; Rule 400(2) amended December 4, 1992; Rule 400(2)(d) amended February 4 & 5, 1993]

[Rule 400 heading amended, 400(1)(a) and (b), (2)(a) through (d), and (3) amended; 400(1)(c) and (d) and (3)(a) through (f) added; (2)(e) deleted June 17, 2010]

[Rule 400(3) amended to delete items (a) – (f); Resignation in the Face of Discipline items (4) and (5) added April 14, 2011]

[Rule 400(2)(b) amended October 21, 2011]

Resignation Instead of Continued Proceedings

- 400.1 (1) A member may make an application to resign instead of continued proceedings to:
- (a) a Conduct Investigation Committee in the early stage of an investigation or after formal charges but before commencement of a hearing;
 - (b) the Chair of the Professional Standards Committee at any time during a review pursuant to Rule 323;
- (2) The Conduct Investigation Committee, or Chair of the Professional Standards Committee, may hear the application to resign instead of continued proceedings, as follows:
- (a) by consent of Counsel for the Law Society;
 - (b) the member must make admissions and enter into an Agreed Statement of Facts;
- (3) The Conduct Investigation Committee, or Chair of the Professional Standards Committee, may:
- (a) accept the resignation instead of continued proceedings;
 - (b) impose conditions which include a time period of up to 5 years during which the member will not re-apply and further include that upon any application for re-admission, the Agreed Statement of Facts will be considered;
 - (c) require the member to provide particular Undertakings which shall remain on the member's file and be considered upon any future application for readmission; such Undertakings may include but are not limited to clauses which provide that the member will:
 - (i) complete a remedial educational program;
 - (ii) restrict voluntarily his or her practice to specified areas of law;
 - (iii) obtain a psychiatric and/or psychological and/or addictions assessment or counselling, or both;
 - (iv) obtain a medical examination and/or opinion as to the member's capability to practice law;

- (v) provide any other Undertakings the Conduct Investigation Committee deems appropriate;
- (d) reject the application pending completion of the respective discipline or professional standards processes.
- (4) If the Conduct Investigation Committee accepts a resignation pursuant to this sub clause, the Agreed Statement of Facts and any decision rendered by the Conduct Investigation Committee shall be published in the same manner and to the same persons as the Notice required by Rule 495;
- (5) If the Professional Standards Committee Chair accepts a resignation pursuant to this Rule, the Agreed Statement of Facts shall remain on the member's file to be reviewed and considered at any future reinstatement proceedings, but not published as per Rule 326 regarding confidentiality of Professional Standards matters;
 - (a) the Conduct Investigation Committee may reject the application pending the completion of the discipline process;
 - (b) the Chair of the Professional Standards Committee may reject the application pending the completion of the Professional Standards Investigation and Law Office Management Review.

[Rule 400.1 Resignation Instead of Continued Proceedings added April 14, 2011]

Conduct Review Committee

401. (1) The Conduct Investigation Committee may appoint one or more persons as a Conduct Review Committee, to make an informal investigation of a matter referred to it under Rule 400(2)(b), and to counsel the member.

- (2) At a Conduct Review:
 - (a) the member shall appear personally;
 - (b) the meeting shall be private; and
 - (c) the proceedings shall be informal.
- (3) Following the meeting under subrule (2) the Conduct Review Committee shall advise the Conduct Investigation Committee in writing that the review has been completed.
 - (a) Conduct Review Reports will be summarized and published anonymously.
- (4) When a hearing is held under Rule 450 in respect of a matter investigated under this Rule:
 - (a) any report prepared by the Conduct Review Committee may not be admitted at the hearing; and
 - (b) a member of the Conduct Review Committee shall not, except in response to a question by the member, testify as to any statement made by the member during the conduct review.

[Rule 401(1) amended December 12, 1997 and April, 2002]

[Rule 401(1), (3) and (4)(a) amended June 17, 2010]

[Rule 401(1), (2), (3), (4)(a) and (b) amended; (3)(a) added October 21, 2011]

[Rule 402(3) added October, 2003]

[Rule 402 Investigation Committee deleted June 17, 2010]

Action by the Chairperson of the Discipline Committee

403. The Chairperson of the Discipline Committee shall, after receiving a report from the Conduct Investigation Committee, under Section 46(1) of the *Act* and Rule 400(2)(d), appoint a Hearing Committee to hear and determine a formal complaint.

[Rule 403 amended; 403 (a) and (b) deleted June 17, 2010]

Notification of Parties

404. The Chairperson of the Discipline Committee shall promptly notify the member and the complainant, in writing, of the appointment of a Hearing Committee under Rule 403.

[Rule 404 amended June 17, 2010]

Confidentiality

405. (1) Any:
- (a) information and documents considered;
 - (b) decisions made or action taken; and
 - (c) reports prepared, other than publication of anonymous Conduct Review Reports as per 401(3)(a)

prior to the appointment of a Hearing Committee under Rule 403 and service of a formal complaint on the member under Rule 430(1) shall be kept confidential and, unless otherwise ordered by the Chairperson of the Discipline Committee, or otherwise set out in the Rules, shall not be disclosed except for the purpose of complying with the objects of the *Act* or in responding to an enquiry made for the purpose of a potential judicial appointment.

(2) A discipline matter shall be public as soon as a Hearing Committee is appointed under Rule 403 and a formal complaint has been served on the member under Rule 430(1).

[Rule 405 amended April 14, 2011]

[Rule 405(c) amended October 21, 2011]

[Rule 405 amended and also re-numbered to read 405.(1); 405(2) added September 28, 2012]

[next rule is Rule 420]

Interim Suspension

420. (1) Subject to subrule (2), a Conduct Investigation Committee shall, before suspending a member under section 45 of the *Act*:

- (a) notify the member that consideration is being given to his or her suspension, for the reasons specified in the notice; and
- (b) give the member a reasonable opportunity to make representations to the Conduct Investigation Committee respecting the suspension.

(2) A Conduct Investigation Committee may act under section 45(1) of the *Act* without complying with subrule (1) if it is satisfied that such action is necessary to protect the public or the member's clients, or both.

(3) If a Conduct Investigation Committee orders an oral hearing:

- (a) the hearing shall be in private, unless the Committee orders otherwise; and
- (b) the proceedings shall be recorded by a court reporter and any person may obtain, at his or her expense, a transcript of any part of the hearing which he or she was entitled to attend.

(4) If a Conduct Investigation Committee concludes that a member should be suspended under section 45(1) of the *Act*, the Committee shall promptly advise:

- (a) the member in writing that he or she is suspended and the reasons for it, and that the member has the right to request a review of the suspension under section 45(3) of the *Act*; and
- (b) the Deputy Minister of Justice under section 54(1) of the *Act*.

[Rule 420(1), 420(1)(b), (2), (3) and (3)(b) and (4) amended; (4)(a) and (b) added; (5) and (6) deleted June 17, 2010]

Review of Interim Suspension

421.(1) A notice under section 45(3) of the *Act* requesting a review of a suspension shall be in writing, addressed to the Chairperson of the Discipline Committee.

(2) A review hearing shall be conducted:

- (a) by one or more Benchers appointed as Review Committee by the Chairperson of the Discipline Committee, none of whom are under subrule (3), disqualified from hearing the review; and
- (b) as soon as practicable and in any event not later than 7 days after the date on which the request was received by the Chairperson of the Discipline Committee, unless the member consents to a longer time.

- (3) The Chairperson of the Discipline Committee, and any other Benchers who was:
- (a) a member of the Conduct Investigation Committee which suspended the member under section 45(1) of the *Act*;
 - (b) a member of a Conduct Review Committee which reviewed the matter; or
 - (c) a member of a Complainants' Review Committee which reviewed the matter

shall not participate as a panelist in a review under this Rule.

(4) A review of the suspension under this Rule shall be conducted in private, unless the Review Committee orders otherwise.

(5) All proceedings at a review under this Rule shall be recorded by a court reporter and any person may obtain, at his or her expense, a transcript of any part of the hearing which he or she was entitled to attend.

(6) The Review Committee appointed under subsection 2(a) shall determine the practice and procedure to be followed at the hearing.

[Rule 421(2)(a), (3)(a), (4) (5) and (6) amended June 17, 2010]
 [Rule 421(3)(b) amended October 21, 2011]

[next rule is Rule 430]

Formal Complaint

430. (1) Where a Hearing Committee is appointed under Rule 403, a formal complaint shall be served on the member:

- (a) in accordance with section 46 of the *Act*;
- (b) not more than 90 days after the Chairperson of the Discipline Committee appointed the Hearing Committee; and
- (c) not less than 30 days before the date set for commencement of the hearing, unless the member consents in writing to a shorter period.

(2) The Society shall publish the formal complaint on the Law Society website after the formal complaint has been served on the member under Rule 430(1).

[Rule 430 amended September 15, 1995]
 [Rule 430(a) amended June 17, 2010]
 [Rule 430 amended to read 430.(1); 430(2) added September 28, 2012]

Fixing a Date for Hearing

431. (1) The date, time and place of the hearing shall be fixed by the Chairperson of the Hearing Committee.

(2) Counsel to the Conduct Investigation Committee shall notify the member and the complainant, in writing, of the date, time and place of the hearing.

(3) The Society shall publish the date, time and place of the hearing on the Law Society website.

[Rule 431(2) amended June 17, 2010]
 [Rule 431(3) added September 28, 2012]

Disclosure of Evidence

432. (1) As soon as practicable after a formal complaint is served, Counsel to the Conduct Investigation Committee shall disclose to the member a copy of all relevant documents in the possession of the Society or under its control or power, except to the extent that the documents are privileged.

(2) Not less than two weeks prior to the date set for the commencement of a hearing before the Hearing Committee, the member and Counsel to the Conduct Investigation Committee shall provide to each other the following:

- (a) the names of each of the witnesses which that party intends to call to give evidence at the hearing;

- (b) copies of any written statements, or where no written statements exist, a summary of the evidence which that party expects will be given by that witness;
- (c) if a witness will be called to give expert evidence, a summary of the qualifications of that witness; and
- (d) copies of all documents which the party intends to introduce into evidence at the hearing unless those documents have already been provided pursuant to (1).

(3) The Hearing Committee appointed to hear the formal complaint may, if it determines that Counsel to the Conduct Investigation Committee has not complied with subrule (1) or subrule (2), extend the time for making full disclosure and make any other order it considers necessary for the effective conduct of the hearing.

(4) A member may, at any time before the hearing commences, apply for disclosure of the circumstances of the alleged misconduct.

(5) An application under subrule (4) shall be made:

- (a) to the Chairperson of the Hearing Committee which has been appointed to hear the formal complaint; and
- (b) in writing or, with the approval of the Chairperson of the Hearing Committee, in person or by telephone.

(6) The Chairperson of the Hearing Committee shall, if satisfied that an allegation in the formal complaint does not contain sufficient detail of the circumstances of the alleged unbecoming conduct to give the member reasonable information with respect to the act or omission to be proved, and to identify the transaction referred to, order Counsel to the Conduct Investigation Committee to disclose further details of the circumstances.

(7) Details of the circumstances disclosed under subrule (6) shall:

- (a) be in writing; and
- (b) be delivered to the member or his or her counsel.

(8) If, as a result of the information disclosed by the other party under subrule (1) or (2), a party intends to introduce evidence at the hearing in addition to the evidence which it has disclosed, that party shall provide the information referred to in subrule (1) or (2) with respect to that additional evidence.

(9) The Hearing Committee shall not permit a witness to testify unless the name of that witness, a summary of that witness' evidence, and, if the witness is called to give expert evidence, a summary of that witness' qualifications has been disclosed in accordance with subrule (2) or (8) of this Rule. The Hearing Committee shall not permit a document to be entered into evidence unless the information respecting that document has been disclosed in accordance with subrule (1) or (8).

(10) Notwithstanding subrules (1) and (2), if the Hearing Committee is satisfied that the failure to disclose the required information arose through inadvertence, or that the information was not in the possession of the party at the time that disclosure was required, or that for any other compelling reason it would be manifestly unfair to exclude evidence or documents not disclosed as required, or if the opposing party consents, the Hearing Committee may permit such evidence to be given, or such documents to be introduced into evidence. This may be done on such terms or conditions as the Hearing Committee may determine, including the following:

- (a) the Committee may adjourn the hearing for such time as the Committee considers reasonable to permit the other party the opportunity to respond to such evidence;
- (b) the Committee may require the party who requests the introduction of such evidence to agree to pay an amount of costs, as estimated by the Committee, which may be incurred by the member or the Society as a result of the failure to disclose such evidence in accordance with subrule (1) or (2) or (8).

[Rule 432(1), (a) & (b), (2), (4)(a) & (b) and (5) amended June 17, 2010]

[Rule 432 amended; new (2) inserted, changing the numbering up to and including item (7); items (8), (9) and (10)(a) & (b) added September 28, 2012]

[next rule is Rule 450]

Hearing of the Formal Complaint

Disqualification

450. (1) A Bencher who was a member of:
- (a) a Complainants' Review Committee which reviewed the matter;
 - (b) a Professional Standards Committee or Practice Advisor which reviewed the matter or a Practice Advisor who conducted an investigation or review;
 - (c) a Conduct Review Committee which reviewed the matter;
 - (d) the Conduct Investigation Committee which inquired into the matter under section 44 of the *Act*, or suspended the member under section 46(1) of the *Act*; or
 - (e) a Committee appointed under section 45(4) of the *Act* to review the member's interim suspension

shall not participate as a panelist in the hearing of a formal complaint against the member under this Rule.

Adjournment

- (2) The Chairperson of the Hearing Committee may from time to time adjourn the hearing.

Transcript

(3) All proceedings at a hearing shall be recorded by a court reporter and any person may obtain, at his or her expense, a transcript of any part of the hearing which he or she was entitled to attend.

Multiple Allegations

(4) A Hearing Committee may consider at one hearing one or more formal complaints, each of which may contain one or more allegations.

(5) The Hearing Committee shall, where it is satisfied that the interests of justice so require, order that one or more allegations in a formal complaint be heard at a separate hearing before a differently constituted Hearing Committee.

Amendment of the Formal Complaint

(6) A formal complaint may, subject to section 48 of the *Act*, be amended by the Hearing Committee appointed under Rule 403 to hear the complaint.

Procedure

(7) The Hearing Committee shall determine the practice and procedure to be followed at the hearing.

(8) Counsel to the Conduct Investigation Committee and the member may deliver to the Chairperson of the Hearing Committee, at least 7 days before the date set for the hearing, written submissions and supporting documentation respecting the issues to be considered by the Hearing Committee.

(9) Counsel to the Conduct Investigation Committee shall ensure delivery to the member and to every member of the Hearing Committee, a copy of the formal complaint against the member, as amended.

Hearing Committee Decision

(10) The Hearing Committee shall, following completion of the evidence and submissions from counsel for the Society and the member, by majority decision:

- (a) make its findings as to the facts in issue;
- (b) make its decision as to whether each allegation in the formal complaint is well-founded;
- (c) determine whether the member may be guilty of a criminal offence related to his or her practice, in which case section 54(2) of the *Act* applies.

Imposition of Penalty by Hearing Committee

(11) Following the decision of the Hearing Committee, if the Hearing Committee finds that the formal complaint is well founded it:

- (b) does not mislead clients in any way with respect to the services covered by the agreement;
- (c) subject to subsection (3) below, specifies that money received by the member under the terms of the retainer agreement becomes the property of the member immediately upon receipt.

(3) A member may agree with the client as part of a retainer agreement that money paid to the member pursuant to the agreement will be repaid under specified circumstances.

[Rule 1504 amended April 15, 1994]

Application of this Part

1505. This Part applies only to agreements entered into on or after the date on which the individual sections come into effect.

[Rule 1505 added April 15, 1994]

[next rule is Rule 1600]

Part 19

Marketing of Legal Services

Definitions

1600. In this Part, “**weakened state**” means a physical, emotional or mental condition which may render a prospective client unduly vulnerable to persuasion or importuning by a lawyer and shall, without limiting the generality of the foregoing, be deemed to include the state of any prospective client who is an alleged victim of physical and/or sexual abuse.

[Rule 1600 “weakened state” added June 10, 1999]

Specific Prohibitions

1602.1 (1) No member shall initiate contact with a prospective client who is in a weakened state for the purpose of soliciting the prospective client’s legal work except by mail or advertisement.

(2) Any correspondence, brochure or informational package sent to or intended to be provided to prospective clients shall state in bold letters at the bottom of every page “Advertising material. This is a commercial solicitation”.

(3) Any correspondence sent to a named prospective client in physical and sexual abuse cases must be marked personal and confidential and state how the member obtained the identity of the prospective client.

(4) A member may only attend a meeting held to provide information to a group of prospective clients who are in a weakened state if:

- (a) the meeting is arranged by the prospective clients or other non-members who are not connected to the member; and
- (b) the member has been invited by the prospective clients or non-members who are arranging the meeting.

[Rule 1602.1 added June 10, 1999]

[Rule 1602.1(1) and (4)(a)(b) amended November 28, 2013]

[This section of the Rules have been repealed in their entirety, with the exception of Rules 1600 and 1602.1. Marketing of Legal Services is regulated by the *Code of Professional Conduct*. Sharing Premises with Non Lawyers has been moved to Forms of Practice, and inserted as Rule 1458 June 21, 2012]

[next rule is Rule 1650]