



THE OFFICE OF THE
LEGAL SERVICES COMMISSIONER

RECEIVED

26 APR 2016

The Hon Greg Donnelly MLC
Committee Chair
General Purpose Standing
Committee No 2
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

File Ref: JM
Contact: John McKenzie
Your Ref: D16/09505

21 April 2016

Dear Mr Donnelly MLC

Inquiry Into Elder Abuse

I refer to your letter dated 4 April 2016.

Enclosed is a copy of my submissions to your above letter.

Please do not hesitate to contact me if you have any further enquiries.

Yours sincerely

John McKenzie
Commissioner

Encl.

Submissions of the Office of the Legal Services Commissioner together with annexures.

Office of the Legal Services Commissioner Submissions to the Inquiry into Elder Abuse

1. **Could you please explain the framework for oversight of legal practitioners in NSW including the avenues for complaint and the responses that currently exist for unsatisfactory professional conduct.**

My comments

Legislation

1. Legal Profession Act 2004 (now repealed)

- 1.1 Prior to 1 July 2015 the Legal Profession Act, 2004 (the LPA) was the Act that governed the complaint handling system relating to solicitors and barristers in NSW. It came into force on 1 October 2005. Its predecessor was the Legal Profession Act 1987.
- 1.2. In 1994 the LPA introduced a co-regulatory regime in NSW namely whilst all complaints against barristers and solicitors in NSW have to come to this Office, we can refer complaints to either the Law Society of NSW or the NSW Bar Association for their investigation.
- 1.3. Prior to 1994, all complaints against solicitors were handled by the Law Society of NSW and all complaints against barristers by the NSW Bar Association.

2. The Legal Profession Uniform Law (the LPUL)

- 2.1. On 1 July 2015 the Legal Profession Uniform Law (NSW) (2014) (the LPUL), the Legal Profession Uniform Application Act 2014 and the Regulations and Rules made under these came into force. The LPA was repealed. However there are transitional provisions dealing with complaints about conduct that occurred before 1 July 2015.
- 2.2. The LPUL now regulates the legal profession in New South Wales and Victoria.
- 2.3. Under the LPUL the Uniform Legal Services Commissioner, Mr Dale Boucher has overarching oversight of the implementation and operation of the Uniform Law in NSW and Victoria along with the Legal Services Council that has the power to make Rules that govern the legal profession in NSW and Victoria.
- 2.4. Under the LPUL the regime in NSW is still co-regulatory with the Law Society of NSW and the NSW Bar association as my delegates to investigate complaints that I refer to them.

3. Categories of complaints

- 3.1. The LPUL categorises complaints into two categories namely:
- 3.1.1. **Consumer matters** are complaints that relate to the provision of legal services to the complainant by the lawyer (see s.269 of the LPUL attached). Included in this definition are costs disputes involving dispute about legal costs payable by the client to the solicitor.
 - 3.1.2. **Disciplinary matters** are complaints about a lawyer or a law practice that raise concerns about conduct that would amount to unsatisfactory professional conduct or professional misconduct (see s.270 of the LPUL attached).
 - 3.1.3. Disciplinary matters can cover complaints by third parties against a practitioner. For example, a complaint by an aggrieved sibling that the practitioner has prepared an Enduring Power of Attorney for his aged mother at the request of his other sibling would come under this category.
- 3.2. Complaints can be mixed, involving both a consumer matter and a disciplinary matter.

4. Categories of conduct under the LPUL

- 4.1. **Unsatisfactory professional conduct** is defined in the LPUL as conduct that includes conduct occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent practitioner (see s.296 of the LPUL attached).
- 4.2. **Professional misconduct** is defined as unsatisfactory professional conduct where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence, and conduct whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice (see s.297 of the LPUL attached).
- 4.3. The Courts and the Tribunal (referring to NCAT, Occupational Division and its predecessors) have also held, following a decision in England, that professional misconduct is conduct that would be regarded as disgraceful and dishonourable by the practitioner's brethren of good repute and competency. – see Allinson v General Council of Medical Education and Registration [1894] 1KB 759. This is commonly referred to as common law professional misconduct.

5. Procedures of this Office

Consumer matters

- 5.1. If a complaint is assessed as a consumer matter, my Office must first attempt to resolve the dispute by informal means as soon as practicable (see s.287 of the LPUL).
- 5.2. This involves the officer notifying the lawyer of the concerns raised and following up by phone or in writing to discuss the complaint. The lawyer may be requested to provide a written response.
- 5.3. The response of the lawyer is provided to the complainant who is given an opportunity to comment.
- 5.4. Where appropriate, after gathering information, we attempt to negotiate a solution. That solution can involve whatever the parties agree upon. If a suitable resolution is agreed the file is closed.
- 5.5. If the concerns raised by the complainant cannot be resolved, then I can decide to take no further action. In this case the lawyer and complainant are informed in writing of the decision and the reasons for the decision.
- 5.6. If it is warranted, I can make a determination in consumer matters. A wide array of orders are available as set out in s290 of the LPUL (see attached), including, amongst other things, waiving a bill, ordering work to be redone and compelling a lawyer to complete further education and training. A compensation order up to a maximum of \$25,000 is available
- 5.7. I can also make binding determinations in costs disputes subject to various limits (S292 of the LPUL attached).
- 5.8. When complaints about capacity issues are raised, some complainants erroneously believe that we can determine the capacity of clients. Whilst this Office will investigate the conduct of the practitioner complained about, capacity is dealt with by the Guardianship Division of NCAT. Generally we will await NCAT's decision before making a final determination in the matter.

6. Action in disciplinary matters

- 6.1. Before disciplinary action of any sort can be considered I must extend procedural fairness, or natural justice, to any lawyer against whom allegations have been made. This is a rigorous process that demands that all lawyers be fully informed of the claims made against them and given the opportunity to respond to each issue.

- 6.2. Due to these requirements, and the limited resources of the Office, the investigative process can involve an extensive exchange of correspondence and, depending on the case, go on for many months.
- 6.3. In some circumstances, I can take disciplinary action in relation to conduct that amounts to unsatisfactory professional conduct (s299 of the LPUL attached) or at my discretion refer a matter to the Occupational Division of NCAT. However, for professional misconduct I must refer the matter to NCAT. That means very careful consideration of the case, legal precedents and the case might involve a barrister's opinion. This process too, can take time.
- 6.4. The lawyer can apply to the Tribunal to review my determination in relation to a compensation order for a consumer matter and in relation to any determination under s.299.

7. Register of Disciplinary Action

- 7.1. My Office keeps a Register of Disciplinary Action that is available to the public on my Office's website - www.olsc.nsw.gov.au
- 7.2. This is a public record of reprimands and decisions of this office, the Professional Standards Department of the Law Society, the Tribunal and the Supreme Court made against solicitors and barristers in NSW with effect from 4 October 2002. Cautions are not recorded on this Register.

2. Various inquiry participants have made a number of recommendations for the committee's consideration. Could you please comment on the following suggestions:

- **That the Law Society's Capacity Guidelines for Lawyers be made mandatory in all cases where capacity is in question or when certain "red flags" arise. In particular that lawyers document the questions they ask in interviews to consider capacity and to establish that the donor understood the ramifications of appointing an attorney or guardian.**

8. My comments

- 8.1. It is unclear whether the Inquiry is referring the "Guidelines for Solicitors Preparing an Enduring Power of Attorney" issued in December 2003 or another document on the Law Society website relating to capacity: "Client Capacity Guidelines: Civil and family law matters" issued in September 2003. Also on the website is "When a client's capacity is in doubt – A practical guide for solicitors", issued in 2009.

- 8.2. The Law Society is to be commended for acknowledging the importance of these issues long before the issue of elder abuse came to be the subject of formal inquiries by this Parliament and by the Australian Law Reform Commission (Cth).
- 8.3. In addition, in 2005 the Department of Justice (then known as the Attorney General's Department) issued a Capacity Toolkit which also provided useful guidance for practitioners. This toolkit is available on the website of the Department of Justice.
- 8.4. These are useful tools to assist practitioners in attempting to assess whether a client has capacity or not. The "red flags" that should cause a practitioner to consider making appropriate enquiries as to the capacity of the client are clearly set out at page 4 of the 2009 article mentioned above.
- 8.5. I am not in favour of any of these Guidelines being made mandatory in all cases where capacity is in question.
- 8.6. Making any set of Guidelines mandatory makes it too prescriptive. Each situation must be assessed on its individual circumstances.
- 8.7. I am also concerned that practitioners who may have an interest in this area but who are not necessarily accredited specialists may abandon this area of law altogether on the basis that it is simply too difficult. This would be a great disservice to people, particularly in regional areas where there are fewer lawyers.
- 8.8. I agree that as matter of course lawyers should record the questions they ask and the responses they receive in interviews where they are attempting to satisfy themselves of a client's capacity. However, I do not agree that this should be made mandatory on the basis that a failure to make file notes would generally not result in disciplinary action in NSW.
- 8.9. In any event, the making of any Guidelines mandatory with respect to this, or any other issue, is something that must be raised with the Uniform Commissioner, Legal Services Council and my Victorian counterpart. I cannot speak for the Uniform Commissioner or his Council with respect to these issues. I will raise such issues with them should this Inquiry's report recommend making Guidelines mandatory.

9. Statistics

- 9.1. In October 2012 my Office started collecting statistics directly relating to issues of capacity as we saw this as an emerging trend within the broader area of Wills and Probate complaints.
- 9.2. Up to 30 June 2015 we have received a total of 98 such complaints out of a total of 7117.

- 9.3. No disciplinary action was taken against any of the solicitors who were the subject of the complaints. However, the vast majority of the complaints were difficult, often long running, matters that often turned on contradictory evidence, medical assessments and determinations by the Guardianship Division of NCAT.
- 9.4. We have retained a record of letters sent to practitioners who have taken instructions from clients whose capacity was in question. To date, there have been no instances of further capacity complaints against the practitioners who have been sent letters which remind them of the Law Society Guidelines.
- 9.5. It is my view that further education of the profession would be of greater benefit to both the profession and the public than the imposition of mandatory guidelines.
- **That non-compliance with the above guidelines be grounds for unsatisfactory professional conduct, subject to sanction by the Office of the Legal Services Commission**

10. My comments

- 10.1. As it is my personal view that the Guidelines should not be made mandatory, it follows that in my view, mere non-compliance with them should not raise conduct issues.
- 10.2. In making a determination as to whether a particular conduct amounts to either unsatisfactory professional conduct or professional misconduct, I have to take into account all the facts and circumstances of each case, not just one aspect of it.
- **That a medical certificate verifying a person's decision making capacity be required for applications and/or revocations of power of attorney**
- 10.3. In Victoria two witnesses are required to witness an enduring POA, one of whom must be a medical practitioner. Whilst there is much to commend this process, I am concerned that such a requirement would make it unnecessarily difficult and expensive for clients who may not be able to afford this.
- 10.4. My personal view is that the present requirements in NSW are sufficient and that the need to obtain a medical certificate from an appropriate medical practitioner be confined only to matters where the practitioner has reasonable grounds to suspect that the client lacks capacity.

- 10.5 The circumstances in which those “reasonable grounds” might exist should be subject of close examination by the profession, the further assessment of existing guidelines and education of the profession.
- **That lawyers be required to declare any conflict of interest in respect of an application for power of attorney.**
- 10.6. The existing Rule 12.1 and 12.2 of the Legal Profession Uniform Australian Solicitors’ Conduct Rules 2015 (see attached), adequately cover this situation.
- **That an attorney’s acceptance of their appointment involve a certificate of explanation by a lawyer as to the basic powers and obligations of any attorney (as for appointment of enduring guardian)**
- 10.7. I support this. If the attorney is advised at appointment of his/her powers and obligations, and applicable criminal sanctions, it may deter a potential rogue attorney from breaching his/her duties under the Enduring Power of Attorney.
- **Mandatory registration of all grants and revocations of powers of attorney**
- 10.8. I do not support this. Legal costs will increase if practitioners are required to register these documents. In addition the client will also have to pay the registration fees. I am concerned at the costs burden faced by people in the lower social-economic stratum of society should this be implemented. In my view the registration of POAs in relation to transactions involving land is sufficient.
- **Greater education of lawyers in relation to capacity matters including in interview techniques to inform decisions about a person’s capacity and in identifying elder abuse in its different manifestations**
- 10.9. I support this wholeheartedly. In addition to the Guidelines issued by the Law Society, greater education of legal practitioners by way of seminars and talks would be of great value. LawCover which is the insurer for solicitors in NSW could be asked to include this topic in their excellent risk management talks that they give to the profession.
- 10.10. Given Succession Law is no longer compulsory in university legal education the profession needs to consider new ways to ensure graduate lawyers have the required skills.
- **That the complaints handling process in respect of lawyers, which some complainants find burdensome and time consuming be streamlined.**
- 10.11. I refer to my comments in relation to question 1 above. In view of our obligations under the LPUL, the principles of administrative law, and

the constraints on our resources our procedures are as streamlined as we can make them.

3. Have you any comments on the potential value of the various provisions in the Victorian Powers of Attorney Act 2014 for New South Wales

11. My comments

- 11.1. The Victorian Powers of Attorney Act, 2014 contain a number of provisions that NSW should consider incorporating in our legislation.
- 11.2. The prescribed form for the Enduring POA provides on the very first page an option to revoke previous POAs. This is an excellent provision that will immediately draw the attention of the principal and the attorney to the possibility of, or the need to, revoke previous POAs.
- 11.3. In the Victorian provisions the witnesses also declare that they are not relatives of the principal or the attorney and they are not care workers or accommodation providers for the principal. They also attest that if appointed for financial matters, the attorney must also declare in the POA whether he/she has been convicted or found guilty of an offence involving dishonesty.
- 11.4. The provisions in paragraphs 11.3 are safeguards Parliament should consider incorporating in NSW legislation.

4. Have you any further suggestions as to how prevention and accountability can be improved in relation to financial abuse of older people.

12. My comments

- 12.1. At the moment the public can contact the Elder Abuse Helpline. Land and Property Information also has excellent fact sheets on their website about Enduring Powers Of Attorney. The public can also ring LawAccess for assistance. The Capacity Toolkit is also available on the website of the Department of Justice. However these excellent resources are not consolidated or publicised in a way that the public is fully aware of them.
- 12.2. It seems to me that it would help the public if they could access a central body/agency that can assist them in relation to all enquiries about Enduring Powers Of Attorney and Appointment of Enduring Guardian. An agency similar to that of the Victorian Office of the Public Advocate would be of great assistance to the public.

- 12.3. NCAT should be the forum for civil sanctions rather the Courts due to the formality and costs involved in court proceedings.
- 12.4. This area calls out for uniform legislation in all States. In this respect I note that in February 2016 the Commonwealth Attorney General announced a new inquiry to be conducted by the Australian Law Reform Commission on Protecting the Rights of Older Australians From Abuse. The ALRC is to report in May 2017.

John McKenzie
Commissioner
21 April 2016



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LEGAL PROFESSION UNIFORM LAW (NSW) - SECT 269

Consumer matters (including costs disputes)

269 Consumer matters (including costs disputes)

(1) A

"**consumer matter**" is so much of a complaint about a lawyer or a law practice as relates to the provision of legal services to the complainant by the lawyer or law practice and as the designated local regulatory authority determines should be resolved by the exercise of functions relating to consumer matters.

Note: A determination of the designated local regulatory authority under subsection (1) does not prevent the dispute or issue also being dealt with as a disciplinary matter-see section 268(2).

(2) A

"**costs dispute**" is a consumer matter involving a dispute about legal costs payable on a solicitor-client basis where the dispute is between a lawyer or law practice and a person who is charged with those legal costs or is liable to pay those legal costs (other than under a court or tribunal order for costs), whether as a client of the lawyer or law practice or as a third party payer.

Note: Section 291 enables the designated local regulatory authority to deal with costs disputes within certain monetary limits.

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LEGAL PROFESSION UNIFORM LAW (NSW) - SECT 270

Disciplinary matters

270 Disciplinary matters

A

"**disciplinary matter**" is so much of a complaint about a lawyer or a law practice as would, if the conduct concerned were established, amount to unsatisfactory professional conduct or professional misconduct.

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LEGAL PROFESSION UNIFORM LAW (NSW) - SECT 287

Informal resolution of consumer matters

287 Informal resolution of consumer matters

The designated local regulatory authority must attempt to resolve a consumer matter by informal means as soon as practicable.

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LEGAL PROFESSION UNIFORM LAW (NSW) - SECT 290

Determination of consumer matters by local regulatory authority

290 Determination of consumer matters by local regulatory authority

(1) The designated local regulatory authority may resolve a consumer matter by making a determination that, in the designated local regulatory authority's view, is fair and reasonable in all the circumstances.

(2) In determining a consumer matter, the designated local regulatory authority may make any of the following orders-

(a) an order cautioning the respondent or a legal practitioner associate of the respondent law practice;

(b) an order requiring an apology from the respondent or a legal practitioner associate of the respondent law practice;

(c) an order requiring the respondent to redo the work that is the subject of the complaint at no cost or to waive or reduce the fees for the work;

(d) an order requiring-

(i) the respondent Australian legal practitioner; or

(ii) the respondent law practice to arrange for a legal practitioner associate of the law practice-

to undertake training, education, counselling or be supervised;

(e) a compensation order against the respondent in accordance with Part 5.5.

(3) A failure to comply with an order under this section is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of-

(a) any principal of a respondent law practice; and

(b) any lawyer involved in the contravention.

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LEGAL PROFESSION UNIFORM LAW (NSW) - SECT 292

Binding determinations in costs disputes

292 Binding determinations in costs disputes

- (1) The designated local regulatory authority may make a binding determination about costs in the circumstances referred to in subsection (2).
- (2) The determination may be made in circumstances where-
 - (a) the designated local regulatory authority is unable to resolve a costs dispute referred to in section 291(1) (whether wholly or partly); and
 - (b) the total amount of legal costs still in dispute is less than \$10 000 (indexed).
- (3) The determination must specify the amount payable as legal costs (including a nil amount). The amount ordered as payable must be less than \$10 000 (indexed).
- (4) A determination is to be based on the designated local regulatory authority's assessment of what is fair and reasonable in all the circumstances.
- (5) In considering what is fair and reasonable in all the circumstances, the designated local regulatory authority must have regard to section 200.

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LEGAL PROFESSION UNIFORM LAW (NSW) - SECT 296

Unsatisfactory professional conduct

296 Unsatisfactory professional conduct

For the purposes of this Law,

"**unsatisfactory professional conduct**" includes conduct of a lawyer occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.

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LEGAL PROFESSION UNIFORM LAW (NSW) - SECT 297

Professional misconduct

297 Professional misconduct

(1) For the purposes of this Law,
"professional misconduct" includes-

(a) unsatisfactory professional conduct of a lawyer, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and

(b) conduct of a lawyer whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the lawyer is not a fit and proper person to engage in legal practice.

(2) For the purpose of deciding whether a lawyer is or is not a fit and proper person to engage in legal practice as referred to in subsection (1)(b), regard may be had to the matters that would be considered if the lawyer were an applicant for admission to the Australian legal profession or for the grant or renewal of an Australian practising certificate and any other relevant matters.

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LEGAL PROFESSION UNIFORM LAW (NSW) - SECT 299

Determination by local regulatory authority-unsatisfactory professional conduct

299 Determination by local regulatory authority-unsatisfactory professional conduct

(1) The designated local regulatory authority may, in relation to a disciplinary matter, find that the respondent lawyer or a legal practitioner associate of the respondent law practice has engaged in unsatisfactory professional conduct and may determine the disciplinary matter by making any of the following orders-

(a) an order cautioning the respondent or a legal practitioner associate of the respondent law practice;

(b) an order reprimanding the respondent or a legal practitioner associate of the respondent law practice;

(c) an order requiring an apology from the respondent or a legal practitioner associate of the respondent law practice;

(d) an order requiring the respondent or a legal practitioner associate of the respondent law practice to redo the work that is the subject of the complaint at no cost or to waive or reduce the fees for the work;

(e) an order requiring-

(i) the respondent lawyer; or

(ii) the respondent law practice to arrange for a legal practitioner associate of the law practice-

to undertake training, education or counselling or be supervised;

(f) an order requiring the respondent or a legal practitioner associate of the respondent law practice to pay a fine of a specified amount (not exceeding \$25 000) to the fund referred to in section 456;

(g) an order recommending the imposition of a specified condition on the Australian practising certificate or Australian registration certificate of the respondent lawyer or a legal practitioner associate of the respondent law practice.

(2) If the designated local regulatory authority proposes to determine a disciplinary matter under this section-

(a) the designated local regulatory authority must provide the respondent or associate and the complainant with details of the proposed determination

and invite them to make written submissions to the designated local regulatory authority within a specified period; and

(b) the designated local regulatory authority must take into consideration any written submissions made to the designated local regulatory authority within the specified period, and may, but need not, consider submissions received afterwards; and

(c) the designated local regulatory authority is not required to repeat the process if the designated local regulatory authority decides to make a determination in different terms after taking into account any written submissions received during the specified period; and

(d) the rules of procedural fairness are not breached merely because no submissions are received within the specified period and the designated local regulatory authority makes a determination in relation to the complaint, even if submissions are received afterwards.

(3) If the designated local regulatory authority determines a disciplinary matter under this section, no further action is to be taken under this Chapter with respect to the complaint.

(4) If a complaint contains both a consumer matter and a disciplinary matter and the designated local regulatory authority has already made a determination of the consumer matter under section 290, the designated local regulatory authority may, in subsequently making a determination about the disciplinary matter, take into account the determination already made about the consumer matter, but not so as to make further orders under that section.



LEGAL PROFESSION UNIFORM LAW AUSTRALIAN SOLICITORS' CONDUCT RULES 2015 - REG 12

Conflict concerning a solicitor's own interests

12 Conflict concerning a solicitor's own interests

12.1 A solicitor must not act for a client where there is a conflict between the duty to serve the best interests of a client and the interests of the solicitor or an associate of the solicitor, except as permitted by this Rule.

12.2 A solicitor must not exercise any undue influence intended to dispose the client to benefit the solicitor in excess of the solicitor's fair remuneration for legal services provided to the client.

12.3 A solicitor must not borrow any money, nor assist an associate to borrow money, from:

12.3.1 a client of the solicitor or of the solicitor's law practice, or

12.3.2 a former client of the solicitor or of the solicitor's law practice who has indicated a continuing reliance upon the advice of the solicitor or of the solicitor's law practice in relation to the investment of money,

UNLESS the client is:

(i) an Authorised Deposit-taking Institution,

(ii) a trustee company,

(iii) the responsible entity of a managed investment scheme registered under Chapter 5C of the Corporations Act 2001 (Cth) or a custodian for such a scheme,

(iv) an associate of the solicitor and the solicitor is able to discharge the onus of proving that a full written disclosure was made to the client and that the client's interests are protected in the circumstances, whether by legal representation or otherwise, or

(v) the employer of the solicitor.

12.4 A solicitor will not have breached this Rule merely by:

12.4.1 drawing a Will appointing the solicitor or an associate of the solicitor as executor, provided the solicitor informs the client in writing before the client signs the Will:

(i) of any entitlement of the solicitor, or the solicitor's law practice or associate, to claim executor's commission,

(ii) of the inclusion in the Will of any provision entitling the solicitor, or the solicitor's law practice or associate, to charge legal costs in relation to the administration of the estate, and

(iii) if the solicitor or the solicitor's law practice or associate has an entitlement to claim commission, that the client could appoint as executor a person who might make no claim for executor's commission,

12.4.2 drawing a Will or other instrument under which the solicitor (or the solicitor's law practice or associate) will or may receive a substantial benefit other than any proper entitlement to executor's commission and proper fees, provided the person instructing the solicitor is either:

(i) a member of the solicitor's immediate family, or

(ii) a solicitor, or a member of the immediate family of a solicitor, who is a partner, employer, or employee, of the solicitor,

12.4.3 receiving a financial benefit from a third party in relation to any dealing where the solicitor represents a client, or from another service provider to whom a client has been referred by the solicitor, provided the solicitor advises the client:

(i) that a commission or benefit is or may be payable to the solicitor in respect of the dealing or referral and the nature of that commission or benefit,

(ii) that the client may refuse any referral, and

the client has given informed consent to the commission or benefit received or which may be received,

12.4.4 acting for a client in any dealing in which a financial benefit may be payable to a third party for referring the client, provided the solicitor has first disclosed the payment or financial benefit to the client.