



The Law Society of  
Upper Canada | Barreau  
du Haut-Canada

## Report to Convocation September 25<sup>th</sup>, 2008

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### Paralegal Standing Committee

*Note: the first two items are deferred from the June Report to Convocation*

#### Committee Members

**Paul Dray, Chair**  
**Susan McGrath, Vice-Chair**  
**Marion Boyd**  
**James R. Caskey**  
**Seymour Epstein**  
**Michelle L. Haigh**  
**Glenn Hainey**  
**Paul Henderson**  
**Brian Lawrie**  
**Douglas Lewis**  
**Margaret Louter**  
**Stephen Parker**  
**Cathy Strosberg**

**Purpose of Report: Decision  
Information**

**Prepared by the Policy Secretariat  
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## **COMMITTEE PROCESS**

1. The Committee met on September 11<sup>th</sup>, 2008. Committee members present were Paul Dray (Chair), Susan McGrath (Vice-chair), Marion Boyd, James Caskey, Seymour Epstein, Glenn Hainey, Paul Henderson, Brian Lawrie, Doug Lewis, Margaret Louter, Stephen Parker and Cathy Strosberg. Staff members in attendance were Katherine Corrick, Terry Knott, Naomi Bussin, Diana Miles, Sheena Weir, Lisa Mallia, Jim Varro and Julia Bass.

## FOR DECISION

### PARALEGAL PROFESSIONAL CONDUCT GUIDELINES

#### Motion

2. **That Convocation authorize the Paralegal Standing Committee to approve and publish *Paralegal Professional Conduct Guidelines* and to amend them as required.**

#### Background – the *Paralegal Rules and Guidelines*

3. The *Paralegal Rules of Conduct* (the “*Paralegal Rules*”) were considered by the Committee on March 8, 2007 and approved by Convocation on March 29, 2007. At that time, the materials presented to the Committee and Convocation indicated as follows:  
*Since the draft reflects the Task Force Report on Paralegal Regulation approved by Convocation, the rules are not identical to those for lawyers, and there are some format differences. Based on responses from the consultations, some of the information found in commentaries in the lawyer rules have been integrated into the paralegal rules. Where the purpose of the commentary in the lawyer rules is educational, practice Guidelines to the paralegal rules will be developed as an explanatory aid. These Guidelines will be developed after the paralegal rules have received preliminary approval.*
4. The *Paralegal Rules* were drafted to be,
  - a. consistent with the *Rules of Professional Conduct* for lawyers,
  - b. focused on the ethical and professional obligations of paralegals,
  - c. clear and accessible for paralegals and the public; and
  - d. enforceable in a fair and transparent process.
5. The *Paralegal Rules* are compatible with and conform to the obligations of lawyers contained in the *Rules of Professional Conduct* to the extent possible. However, in order to achieve the four goals set out above, the format of the *Paralegal Rules* is different from the format of the *Rules of Professional Conduct*; in particular, the *Paralegal Rules* do not contain any commentary.

6. As reported to the Committee and Convocation in March 2007, in preparation for the development of the *Paralegal Rules*, Law Society staff met informally with a number of stakeholders in order to understand the context in which the rules would be used. The consultations included meetings with representatives of four large Ontario tribunals before which a number of paralegals appear – the Financial Services Commission of Ontario, the Ontario Rental Housing Tribunal, the Assessment Review Board and the Workplace Safety & Insurance Appeals Tribunal. In addition, staff met with representatives of Ontario colleges and some paralegal representatives. Codes of Conduct developed by Ontario agencies and paralegal organizations were also reviewed.
7. The information gathered through these meetings was extremely valuable, and may be summarized as follows:
  - a. Agencies generally have positive experiences with the paralegal representatives who appear before them, and believe that paralegals have an important role to play in providing legal services to the public and in increasing access to justice.
  - b. Many paralegals have a good sense of their obligations to their clients and the tribunal before which they are appearing. Many paralegals have significant expertise in their area of focus, understand the law, rules and procedures of the tribunal, act in the best interests of their client and respect the tribunal and the administration of justice.
  - c. Paralegals currently in practice have diverse backgrounds, often without formal academic education in legal subjects, and it would be important to have a clear, focused and accessible code of conduct, both for the paralegals and the agencies in their area of practice.
8. The draft *Guidelines* considered by the Committee are attached at **Appendix 1**. They were created on the same basis as the *Paralegal Rules*, and with the same objectives. To make the *Guidelines* as complete as possible, they were developed using information in the Paralegal Licensing Materials, information from the Commentaries in the *Rules of Professional Conduct* and advice from Law Society staff based on Hearing Panel and common law jurisprudence developed for lawyers. References to jurisprudence

developed for lawyers are contained at various points in the *Guidelines*, for example regarding the client file as well as obligations to prospective clients.

9. The *Guidelines* have been created to generally mirror the *Paralegal Rules*. The document has the following headings:

Introduction to the *Guidelines*

1. Professionalism
2. Outside interests
3. Undertakings
4. Harassment & Discrimination
5. Clients
6. Competence
7. Advising clients
8. Confidentiality
9. Conflicts of interest
10. Client property
11. Withdrawal from representation
12. Advocacy
13. Fees
14. Retainers
15. Trust accounts
16. Duty to the administration of justice
17. Duty to paralegals, lawyers and others
18. Supervision
19. Advertising, firm names & letterhead
20. Insurance
21. Duty to the Law Society
22. The Law Society's disciplinary authority

**Use of the *Guidelines***

10. The *Guidelines* are intended as an educational tool for paralegals to use in interpreting and applying their professional obligations and responsibilities under the *Law Society Act*, its by-laws, and the *Paralegal Rules*. The *Guidelines* should be considered by paralegals along with the *Paralegal Rules*, the *Act*, the by-laws and any other relevant case law or legislation. Neither the *Paralegal Rules* nor the *Guidelines* can cover every situation; they should be interpreted and applied with common sense and in a manner consistent with the public interest and the integrity of the paralegal profession. Paralegals will be expected to exercise their professional judgment in interpreting the

*Guidelines*, keeping in mind their obligations to the client, the court or tribunal and the Law Society.

11. The *Guidelines* do not create mandatory obligations for paralegals. Only the *Paralegal Rules*, the *Act* and the by-laws are mandatory.

### ***Guidelines* and Commentaries: Similarities and Differences**

12. Some of the information in the *Guidelines* is derived from the Commentaries in the *Rules of Professional Conduct*. The Commentaries are a rich and complex source of information and guidance for lawyers and contain information that could be useful to paralegals. They are based in part on the jurisprudence that has developed over the many years that lawyers have been regulated. Since paralegal regulation is new, there is no comparable jurisprudence to refer to. Accordingly, information was extracted from the Commentaries where it was within the paralegal scope of practice and where it could provide helpful guidance to paralegals. For example, information from the Commentaries was included regarding steps to take where there are warning signs of dishonesty, fraud or crime by a client (*Guideline on Advising Clients, Paralegal Rule 3.02(3) & (4)*), dealing with admissions by a client (*Guideline on Advocacy, Paralegal Rule 4.01(5)(b), (c) & (f)*) and understanding the potential for conflicts of interest arising out of personal relationships (*Guideline on Conflicts of Interest, Paralegal Rule 3.04(1)*).
13. The *Guidelines* differ from the Commentaries in several respects. The *Guidelines* are more comprehensive, because the information in them has been extracted from a number of sources to address the perceived needs of paralegals, and to ensure that they are as complete as possible. Also, the *Guidelines* are not embedded in the rules in the same manner as the Commentaries, to avoid confusion about what is an enforceable obligation, and what is a guide to assist in the interpretation of the obligation.
14. As noted above, this structure responds to the information received by the Society during the 2006 consultation process. There was general agreement that a newly regulated

profession requires a clear distinction between the enforceable rules and guides, and this is reflected in the structure of the *Paralegal Rules and Guidelines*.

15. Lawyers and licensed paralegals are both regulated under the *Law Society Act*, but there are necessarily differences between them, including the more limited scope of practice for paralegals set out in By-law 4. Other important differences include the fact that paralegals are new to regulation, and that paralegals' backgrounds and training are currently quite diverse as a result of the grandparent admission process.
16. There is general consensus that licensed paralegals should be held to the same standard of professional conduct as lawyers. While the standards must be comparable, the ways in which they are regulated may necessarily vary in order to address differences, including in scope of practice and training.

### **The Committee's Deliberations**

17. The draft *Guidelines* were approved by the Committee on May 8, 2008.
18. Although the Commentaries to the *Rules of Professional Conduct* for lawyers are approved by Convocation, the Committee recommends that the *Paralegal Professional Conduct Guidelines* be approved by the Committee and provided to Convocation for information. This will give the *Guidelines* increased flexibility at the beginning of regulation, to permit faster response to emerging issues, gaps and any guidance provided by Tribunal decisions as they are released. Any necessary amendments would be presented to the Committee for approval and to Convocation at its next meeting for information, reducing the time required for implementation.
19. Previous examples of guidelines approved by a committee and forwarded to Convocation for information include the Guideline on Ethics and the New Technology, found at <http://rc.lsuc.on.ca/jsp/pmg/technology.jsp> and the guidelines for suspended members found at [http://www.lsuc.on.ca/media/convjan08\\_prc.pdf](http://www.lsuc.on.ca/media/convjan08_prc.pdf) (at page 22).



## **INTRODUCTION TO THE PARALEGAL PROFESSIONAL CONDUCT GUIDELINES**

### **Purpose**

1. Under the *Law Society Act*, the Law Society has the right to make rules and regulations to govern the professional conduct of lawyers and paralegals. The *Act* also gives the Society the ability to discipline those lawyers or paralegals who do not adhere to the rules. Regulations include the By-Laws under the *Act* and the *Paralegal Rules of Conduct*, which were adopted to govern the professional conduct of licensed paralegals.
2. The *Paralegal Professional Conduct Guidelines* (“Guidelines”) have been created to assist paralegals with the interpretation and application of the *Paralegal Rules of Conduct* (“Rules”). The Guidelines should be considered along with the *Rules*, the *Law Society Act* (the “*Act*”), the By-Laws made under the *Act* and any other relevant case law or legislation. Neither the *Rules* nor the Guidelines can cover every situation; they should be interpreted and applied with common sense and in a manner consistent with the public interest and the integrity of the profession. It is expected that a paralegal will exercise his or her professional judgment in interpreting the Guidelines, keeping in mind the paralegal’s obligations to the client, the court or tribunal and the Law Society.

### **Accessing the Guidelines**

3. The Guidelines are available in electronic form. They are cross-referenced to the *Rules* and are linked directly to the *Rules* on the Law Society’s website.

### **Terminology**

4. For the purposes of these Guidelines, the word
  - “*Act*” refers to the *Law Society Act*,
  - “Guidelines” refers to the *Paralegal Professional Conduct Guidelines*,
  - “*Rules*” refers to the *Paralegal Rules of Conduct*,
  - “paralegal” refers to paralegals licensed to provide legal services by the Law Society of Upper Canada, and
  - “lawyer” refers to lawyers licensed to practise law by the Law Society of Upper Canada.
5. The following may be of assistance in interpreting the Guidelines:
  - The terms “shall” or “must” are used in those instances where compliance is mandated by either the by-laws made pursuant to the *Law Society Act* or the *Rules*.
  - The term “should” and the phrase “should consider” indicate a recommendation. These terms refer to those practices or policies that are considered by the Law Society to be a reasonable goal for maintaining or enhancing professional conduct.

- The term “may” and the phrase “may consider” convey discretion. After considering suggested policies or procedures preceded by “may” or “may consider”, a paralegal has discretion whether or not to follow the suggestions, depending upon the paralegal’s particular circumstances, areas of professional business or clientele, or the circumstances of a particular client or matter.

## GUIDELINE 1: PROFESSIONALISM – INTEGRITY & CIVILITY

### General

**Rule Reference: Rule 1.03**

**Rule 2.01 (1) & (2)**

1. A paralegal should inspire the respect and confidence of Ontarians. Even the appearance of inappropriate conduct should be avoided.

### Integrity and Civility

**Rule Reference: Rule 2.01(1), (2) & (3)**

2. Acting with *integrity* means that a paralegal will be honest and will act with high ethical and moral principles. If integrity is lacking, the paralegal's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the paralegal may be.
3. Acting with *civility* means that a paralegal will communicate politely and respectfully and act in a manner that does not cause unnecessary difficulty or harm to another.
4. The obligation to show courtesy and good faith extends to clients, opposing parties, other paralegals and lawyers, support staff, adjudicators, court and tribunal officers and staff and representatives of the Law Society. This obligation applies regardless of where the paralegal may be appearing or at what stage of the process the matter may be. Public confidence in the administration of justice and in the paralegal profession may be eroded by a paralegal's unprofessional conduct.

## **GUIDELINE 2: OUTSIDE INTERESTS**

### **General**

#### **Rule Reference: Rule 2.01(4) & (5)**

1. The term “outside interest” covers the widest range of activities. It includes activities that may overlap or be connected with provision of legal services, for example, acting as a director of a corporation or writing on legal subjects, as well as activities less connected such as, for example, a career in business, politics, broadcasting or the performing arts.
2. It is the paralegal’s responsibility to consider whether the outside interest may impair his or her ability to act in the best interest of his or her client(s). If so, the paralegal must withdraw, either from representation of the client or from the outside interest.
3. When acting in another role, the paralegal must continue to fulfill his or her obligations under the *Rules*, for example, to
  - act with integrity,
  - be civil and courteous,
  - be competent in providing legal services,
  - avoid conflicts of interest, and
  - maintain confidentiality.

### **Acting as a Mediator**

#### **Rule Reference: Rule 2.01(6)**

4. A mediator works with disputing parties to help them resolve their dispute. A paralegal acting as a mediator is not providing legal services to either party – the relationship is not a paralegal-client relationship.
5. When acting as a mediator, the paralegal should guard against potential conflicts of interest. For example, neither the paralegal nor the paralegal’s partners or associates should provide legal services to the parties. Further, a paralegal-mediator should suggest and encourage the parties to seek the advice of a qualified paralegal or a lawyer before and during the mediation process if they have not already done so. Refer to Guideline 9: Conflicts of Interest for more information on how a paralegal’s outside interests may conflict with the paralegal’s duty to his or her clients.

## GUIDELINE 3: UNDERTAKINGS

### General

#### Rule Reference: Rule 2.02

1. An *undertaking* is a *personal promise*. Rule 2.02 sets out a paralegal's obligations in relation to undertakings.
2. A paralegal could, for example, give an undertaking to complete a task or provide a document. Fulfilling that promise is the responsibility of the paralegal giving the undertaking.
3. The person who accepts the paralegal's undertaking is entitled to expect the paralegal to carry it out personally. Using the phrase "on behalf of my client," even in the undertaking itself, may not release the paralegal from the obligation to honour the undertaking. If a paralegal does not intend to take personal responsibility, this should be clearly outlined in the written undertaking. In those circumstances, it may only be possible for the paralegal to personally undertake to make "best efforts."
4. A court or a tribunal may enforce an undertaking. The paralegal may be brought before a court or tribunal to explain why the undertaking was not fulfilled. The court or tribunal may order the paralegal to take steps to fulfill the undertaking and/or pay damages caused by the failure to fulfill the undertaking.
5. To avoid misunderstandings and miscommunication, a paralegal should remember the following points about undertakings. A paralegal
  - should ensure that the wording of the undertaking is clear. If a paralegal is the recipient of an undertaking given by another paralegal or a lawyer, the paralegal should ensure that the wording is clear and consistent with his or her understanding of the undertaking. The paralegal should contact the other paralegal or lawyer to clarify the issue as soon as possible if this is not the case.
  - should consider specifying a deadline for fulfilling the undertaking.
  - should ensure that the undertaking provides for contingencies (e.g. if the obligations in the undertaking rely on certain events occurring, the paralegal should indicate what will happen if these events do not occur).
  - should confirm whether or not the individual providing the undertaking is a paralegal or a lawyer.

## GUIDELINE 4: HARASSMENT AND DISCRIMINATION

### The Human Rights Code

**Rule Reference: Rule 1.03(1)(b)**

**Rule 2.03**

1. A paralegal's obligations regarding harassment and discrimination are outlined in the *Rules*, the *Human Rights Code* and related case law.
2. The *Human Rights Code* gives everyone equal rights and opportunities without discrimination relating to matters such as employment, housing and services. The purpose of the Code is to prevent discrimination or harassment on the grounds of
  - race or colour,
  - citizenship, ancestry, place of origin or ethnic origin,
  - creed,
  - sex (including pregnancy),
  - sexual orientation,
  - age (means an age that is 18 or more),
  - record of offences (in the context of employment only),
  - marital or family status,
  - disability, or
  - the receipt of public assistance (in the context of housing only).
3. More information about obligations under the *Human Rights Code* may be found at <http://www.ohrc.on.ca/>.

### Discrimination

**Rule Reference: Rule 2.03(4) & (5)**

4. **Discrimination** means treating another person in the context, for example, of employment, services or housing, differently and less than others, because of any of the Code's prohibited grounds.
5. A paralegal should review and become familiar with human rights laws to ensure that the paralegal is meeting his or her legal and ethical obligations to others.

## Harassment

### Rule Reference: Rule 2.03(3)

6. **Harassment** is a form of discrimination. Harassment means vexatious comments or actions that are unwelcome to the person receiving the comments or actions, or comments or actions that ought reasonably be known to be unwelcome. Generally speaking, harassment is a “course of conduct” or a pattern of behaviour where more than one incident has occurred. Even one incident however, may constitute harassment if the incident is serious in nature.
7. **Sexual harassment** is defined in the *Human Rights Code* as an incident or series of incidents involving unwelcome sexual advances, requests for sexual favours or other verbal or physical conduct of a sexual nature when one or more of the following circumstances are present:
  - such conduct might reasonably be expected to cause insecurity, discomfort, offence or humiliation to the recipient(s) of the conduct,
  - giving in to such conduct is a condition for the supply of legal services by the paralegal, whether this condition was spoken or unspoken by the paralegal,
  - giving in to such conduct is a condition of employment by the paralegal, whether this condition was spoken or unspoken by the paralegal,
  - giving in to or rejecting such conduct affects the paralegal’s employment decisions regarding his or her employee (which may include assigning file work to the employee, matters of promotion, raise in salary, job security, and employee benefits, among other things),
  - such conduct is intended to or results in interfering with an employee’s work performance, or
  - such conduct creates an uncomfortable, unfriendly or unpleasant work environment.
8. Examples of behaviour considered as harassment include, but are not limited to
  - sexist jokes causing embarrassment or offence,
  - the display of offensive material, such as racial graffiti,
  - the use of sexually degrading words to describe a person,
  - the use of derogatory or degrading remarks directed at one’s sex or one’s sexual orientation,
  - the use of sexually suggestive or obscene comments or gestures,
  - unwelcome comments or inquiries about one’s sex life,
  - repeated racial slurs directed at language or accent of a particular group,
  - unwelcome sexual flirtations, advances or propositions,
  - leering,
  - persistent unwanted contact or attention after the end of a consensual relationship,
  - requests for sexual favours,
  - unwanted touching,
  - verbal abuse or threats, or
  - sexual assault.

### Promoting Equity and Diversity

9. The Law Society's Equity Initiatives department has developed a series of best practices and model policies to guide paralegals and lawyers in promoting equity and diversity in all areas of their professional business. All paralegals should consider adopting model policies to assist them in meeting their legal and professional conduct responsibilities. Model policies cover practices relating to employment and the provision of services to clients and include
  - preventing and responding to workplace harassment and discrimination,
  - promoting equity in the workplace,
  - parental and pregnancy leaves and benefits,
  - accommodation in the workplace, flexible work arrangements, and
  - issues relating to creed and religious beliefs, to gender and sexual orientation, and to individuals with disabilities.
10. Equity Initiatives has also developed a professional development program to design and deliver education and training to legal service providers regarding these equity and diversity issues. A paralegal may contact the Law Society to discuss available training sessions, which may be offered as seminars, workshops or informal meetings. Full information regarding these initiatives is available on the Equity section of the Law Society website at [www.lsuc.on.ca](http://www.lsuc.on.ca).

### Discrimination and Harassment Counsel

11. The Law Society provides the services of ***Discrimination and Harassment Counsel*** to anyone who may have experienced discrimination by a paralegal or a lawyer, or within a paralegal or lawyer's professional business. This service is funded by the Society but is completely independent of the Society. The service is free to the Ontario public, including paralegals and lawyers, and is strictly confidential.
12. The Discrimination and Harassment Counsel can provide advice and support and will review options with the individual using the service, which may include
  - filing a complaint with the Law Society,
  - filing a complaint with the Ontario Human Rights Commission, and
  - allowing the Discrimination and Harassment Counsel to mediate a resolution if all parties agree.
13. More information is available at [www.dhcounsel.on.ca/](http://www.dhcounsel.on.ca/).



## GUIDELINE 5: CLIENTS

### General

#### Rule Reference: Rule 1.02 Rule 3

1. One of the most important duties of a paralegal is the duty of service to his or her *client*. This duty includes obligations to be competent, maintain confidentiality, avoid conflicts of interest and continue to represent the client unless the paralegal has good reason for withdrawing. As a result, it is important for the paralegal to know exactly who is a client because it is to the client that most of the duties outlined in the *Rules* are owed. *Client* is defined in Rule 1.02.
2. The courts have made a distinction between a solicitor-client relationship and a solicitor-client retainer. This jurisprudence may be used by the courts to define the paralegal-client relationship and paralegal-client retainer in future. The *relationship* is established when the prospective client has his or her first consultation with the lawyer or law firm about retaining services. The relationship is often established without formality. The *retainer* is established once the lawyer agrees (expressly or implied by the lawyer's conduct) to provide legal services. The solicitor-client relationship, with all of its important duties, for example, confidentiality, continues after the retainer is established.
3. In most cases, it is clear who is the *client*. However, there may be situations where it is difficult to determine who is the client from whom the paralegal should be receiving instructions. Problems may develop in situations involving *joint clients*, *authorized representatives*, *organizations*, *"phantom" clients* or *unrepresented opposing parties*.

### Joint Clients

#### Rule Reference: Rule 3.04(8) – (14)

4. A *joint retainer* occurs where a paralegal agrees to represent two or more clients in the same matter. As with any retainer, the paralegal should clearly identify the clients to whom legal services will be provided, to ensure that the paralegal fulfills his or her duties to those clients.

### Authorized Representatives

#### Rule Reference: Rule 3.02(7) & (8) Rule 3.04(8) – (14)

5. Identifying who is the client and whose instructions should be followed can be difficult where a client representative is involved. The paralegal should consider, determine and clearly outline these matters at the start of the relationship. If a paralegal is acting for both the individual and the individual's authorized representative, the paralegal must comply with the rules regarding joint retainers.

### Acting for an Organization

#### Rule Reference: Rule 3.04(8) – (14)

6. When acting for a client that is an organization, it is in the paralegal's interests to clarify which officers, employees or agents of the organization may properly give instructions on the organization's behalf. The paralegal should confirm with those individuals that the paralegal acts for the organization and not for the individuals who act as its instructing agents.
7. If a paralegal is retained by both the organization and one or more of its officers, employees, or agents in the same matter, the paralegal must comply with Rule 3.04 (8) – (14) regarding joint retainers.

#### “Phantom” Clients

8. An individual may believe that he or she is represented by a paralegal, though he or she has not formally retained or hired the paralegal. In these cases, the paralegal may be unaware that the individual considers himself or herself the paralegal's client. These types of individuals are sometimes referred to as “phantom” clients.
9. Phantom clients are problematic because they may in fact be clients or prospective clients to whom the paralegal owes duties, yet they are phantoms that the paralegal does not see. This situation may arise when something the paralegal has done or a conversation the paralegal has had, had led a person to believe that the paralegal represents that person. One of the common ways in which phantom clients are created is through a person who consults with the paralegal on a matter but does not clearly indicate whether he or she wants to hire the paralegal or pursue the matter.
10. To avoid the problem of phantom clients, it is helpful for the paralegal to clearly identify who is the client, what is the client's matter, and who is to provide instructions. To avoid collecting phantom clients, a paralegal should also clearly communicate his or her role with anyone the paralegal deals with as a paralegal. It may be helpful for the paralegal to
  - confirm in writing whether or not the paralegal will provide legal services for a person who has consulted with him or her and refer to any limitation periods (i.e. retainer agreement, engagement or non-engagement letter),
  - inform third party individuals who attend meetings with a client that the paralegal represents the client only, and not the third party,
  - discourage clients from relaying legal advice to third parties, and
  - avoid discussing legal matters outside the working environment or a working relationship.

## **GUIDELINE 6: COMPETENCE**

### **General**

1. A licensed paralegal is held out to be knowledgeable, skilled and capable in his or her permissible area of practice. A client hires a legal service provider because the client does not have the knowledge and skill to deal with the legal system on his or her own. When a client hires a paralegal, the client expects that the paralegal is competent and has the ability to properly deal with the client's case.

### **The Required Standard of Competence**

**Rule Reference: Rule 3.01(1)  
Rule 3.01(4)**

### **Knowledge**

**Rule Reference: Rule 3.01(4)(a) & (b)**

2. The competent paralegal will ensure that only after all necessary information has been gathered, reviewed and considered does he or she advise the client as to the course(s) of action that will most likely meet the client's goals, taking care to ensure that the client is made aware of all foreseeable risks and/or costs associated with the course(s) of action.

### **Client Service and Communication**

**Rule Reference: Rule 3.01(4)(d), (e), (f) & (g)**

3. Client service is an important part of competence. Most of the complaints received by the Law Society relate to client service, such as not communicating with a client, delay, not following client instructions and not doing what the paralegal or lawyer was retained to do.
4. Rule 3.01(4) contains important requirements for paralegal-client communication and service. In addition to those requirements, a paralegal can provide more effective client service by
  - keeping the client informed regarding his or her matter, through all stages of the matter and concerning all aspects of the matter,
  - managing client expectations by clearly establishing with the client what the paralegal will do or accomplish and at what cost, and
  - being clear about what the client expects, both at the beginning of the retainer and throughout the retainer.

### Practice Management

**Rule Reference: Rule 3.01(4)(h)  
By-Law 9**

5. In a busy office, practice management includes ensuring that there is sufficient staff to assist the paralegal in fulfilling his or her professional responsibilities, for example, ensuring that communications from clients, other paralegals or lawyers are responded to and that financial records are kept in accordance with the requirements of By-Law 9.
6. Competent practice management requires that the paralegal effectively manage his or her staff, time, finances and client information. A paralegal should consider the following practice management tools:
  - workplace policies and business procedures for staff,
  - planning and reminder systems, and time docketing systems for time management, and
  - filing, organizational and storage systems for management of client information and a system for effectively identifying and avoiding conflicts.

### Applying Skills & Judgment

**Rule Reference: Rule 3.01(4)(c), (i) & (l)**

7. When serving clients, or otherwise acting in a professional capacity, a competent paralegal should understand the legal concepts, issues and facts, give careful consideration to the matters he or she handles and make decisions that are reasoned and make sense in the client's circumstances.
8. A competent paralegal knows the *Rules* and understands why each *Rule* is important. The paralegal uses this knowledge and understanding to guide his or her own conduct.

### Continuing Education / Professional Development

**Rule Reference: Rule 3.01(4)(j) & (k)**

9. A paralegal is responsible to remain competent throughout his or her career. A competent paralegal understands that maintaining competence is an ongoing professional commitment that requires the paralegal to constantly assess his or her knowledge and skills.

### Failing to be Competent

**Rule Reference: Rule 3.01**

10. The *Rules* do not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a breach of Rule 3.01. Conversely, incompetent professional practice may constitute professional misconduct whether or not the error or omission is actionable through the courts for professional negligence.

## **GUIDELINE 7: ADVISING CLIENTS**

### **General**

#### **Rule Reference: 3.02(1) & (2)**

1. A paralegal must honestly and candidly advise the client regarding the law and the client's options, possible outcomes and risks of his or her matter, so that the client is able to make informed decisions and give the paralegal appropriate instructions regarding the case. Fulfillment of this professional responsibility may require a difficult but necessary conversation with a client and/or delivery of bad news. It can be helpful for advice that is not well-received by the client to be given or confirmed by the paralegal in writing.

When advising a client, a paralegal

- should explain to and obtain agreement from the client about what legal services the paralegal will provide and at what cost. Subject to any specific instructions or agreement, the client does not direct every step taken in a matter. Many decisions made in carrying out the delivery of legal services are the responsibility of the paralegal, not the client, as they require the exercise of professional judgment. However, the paralegal and the client should agree on the specific client goals to be met as a result of the retainer.
- should explain to the client under what circumstances he or she may not be able to follow the client's instructions (for example, where the instructions would cause the paralegal to violate the *Rules*).
- should ensure that clients understand that the paralegal is not a lawyer and should take steps to correct any misapprehension on the part of a client, or prospective client.

### **Dishonesty, Fraud or Crime by Client**

#### **Rule Reference: Rule 3.02(3) & (4)**

#### **By-Law 9**

2. A paralegal must be alert to the warning signs that may indicate dishonesty or illegal conduct by a client. The paralegal may need to, or be forced to, withdraw from representing the client where the client takes part in this type of dishonourable conduct.
3. Before accepting a retainer or during a retainer, if a paralegal has suspicions or doubts about whether he or she might be assisting a client in dishonesty, fraud, crime or illegal conduct, the paralegal should make reasonable inquiries to obtain information about the client and about the purpose of the retainer. For example, if a paralegal is consulted by a prospective client who requests the paralegal to deposit an amount of cash into the paralegal's trust account but is vague about the purpose of the retainer, the paralegal has an obligation to make further inquiries about the retainer. (The paralegal should also have regard to the provisions of By-Law 9 regarding cash transactions). The paralegal should make a record of the results of these inquiries.

### **Dispute Resolution**

#### **Rule Reference: Rule 3.02(5), (6)**

4. A paralegal has an important role to play in both commencing and settling legal proceedings.
5. The paralegal should assist the client in his or her decision about commencing legal proceedings by reviewing the reasons for and against starting the proceeding, and explaining the potential consequences of a decision to commence litigation.
6. In the course of the proceedings, the paralegal should seek the client's instructions to make an offer of settlement to the other party as soon as reasonably possible. As soon as possible after receipt of an offer of settlement from the other party, the paralegal must explain to the client the terms of the offer, the implications of accepting the offer and the possibility of making a counter-offer. When making an offer of settlement, a paralegal should allow the other party reasonable time for review and acceptance of the offer. The paralegal should not make, accept or reject an offer of settlement without the client's clear and informed instructions. To avoid any misunderstandings, the paralegal should confirm the client's instructions in writing.

### **Client Under a Disability**

#### **Rule Reference: Rule 3.02(7), (8)**

#### **Rule 2.03**

7. A paralegal must be particularly sensitive to the individual needs of a client under a disability. The paralegal should maintain a good professional relationship with the client, even if the client's ability to make decisions is impaired because of minority, mental disability or some other reason. The paralegal should also be aware of his or her duty to accommodate a client with a disability.

### **Medical-Legal Reports**

#### **Rule Reference: Rule 3.02 (9), (10), (11)**

8. On occasion, in the course of representing and advising a client, a paralegal may need to obtain a report from an expert to help the client's case. Since a medical-legal report may contain information sensitive to the client, a paralegal has special responsibilities where such reports are concerned.
9. After an expert has been hired, but before the report has been prepared, the paralegal should speak to the expert to see if the findings in the report will advance the client's cause. If the findings do not, and subject to any legal requirements, the paralegal may decide not to obtain a *written* report.

### Official Language Rights

#### Rule Reference: Rule 3.02(14)

10. When advising French-speaking clients, a paralegal should advise a client of his or her French language rights under each of the following (where appropriate):
  - Subsection 19(1) of the *Constitution Act, 1982* on the use of French or English in any court established by Parliament,
  - Section 530 of the *Criminal Code* (Canada) on an accused's right to a trial before a court that speaks the official language of Canada that is the language of the accused,
  - Section 126 of the *Courts of Justice Act* that requires that a proceeding in which the client is a party be conducted as a bilingual (English and French) proceeding, and
  - Subsection 5(1) of the *French Language Services Act* for services in French from Ontario government agencies and legislative institutions.

### Errors

#### Rule Reference: Rule 3.02(12), (13)

11. When providing legal services, the paralegal may make a mistake or fail to do something he or she should have done. When the paralegal realizes this has happened, he or she must fulfill specific duties to the client.

## **GUIDELINE 8: CONFIDENTIALITY**

### **General**

#### **Rule Reference: Rule 3.03 (1)**

1. A paralegal cannot render effective professional service to a client, unless there is full and unreserved communication between them. The client must feel completely secure that all matters discussed with the paralegal will be held in strict confidence. The client is entitled to proceed on this basis, without any express request or stipulation.
2. A paralegal's duty of loyalty to a client prohibits the paralegal from using any client information for a purpose other than serving the client in accordance with the terms of the retainer. A paralegal cannot disclose client information to serve another client or for his or her own benefit.

### **What Information Must be Protected?**

#### **Rule Reference: Rule 3.03(1)**

3. The obligation to protect client information extends to information that is either relevant or irrelevant to the matter for which the paralegal is retained. The source of the information does not matter. The information could be received from the client or from others. The information may come in any form – the spoken word, paper, computer documents, e-mails, audio or video recordings. The obligation also extends to the client's papers and property, the client's identity and the facts the client has consulted or retained the paralegal.

### **How Long Does the Duty Last?**

#### **Rule Reference: Rule 3.03(2)**

4. The Rules provide that the duty of confidentiality lasts indefinitely. The duty continues, even after the client or former client dies.
5. Problems can arise when information is provided to a paralegal or a paralegal firm by a prospective client. For lawyers, the duty to protect confidential information begins when a prospective client first contacts the lawyer or law firm. The courts may determine that a paralegal also owes a duty of confidentiality to prospective clients, even if the paralegal is never actually retained by the prospective client.



### Who Owes the Duty?

**Rule Reference: Rule 3.03(1) & (3)  
Rule 8.01(1)**

6. The paralegal, and all other employees of the paralegal firm, owe the duty of confidentiality to every client. A paralegal must ensure that his or her employees, and anyone involved with the client's matter, understand the duty of confidentiality as set out in the *Rules*. The paralegal is ultimately responsible, if someone employed by the paralegal discloses confidential information without client authorization or as permitted by the *Rules*.

### When, If Ever, is Disclosure of Confidential Information Permitted?

#### Disclosure With Client Authority

**Rule Reference: Rule 3.03(1)**

7. Disclosure of confidential information may be authorized by the client. This authorization may be express or implied. For example, where a paralegal is retained to represent a client in a Small Claims Court matter, the paralegal has the client's implied authority to disclose enough information to complete the necessary forms.
8. When disclosing confidential information on the express authority of the client, the paralegal should consider
  - whether the client understands his or her right to confidentiality,
  - whether the client understands the potential implications of disclosure,
  - whether the client has shown a clear, informed and voluntary intention to forego the right to confidentiality, and
  - whether, in the particular circumstances, it would be prudent to obtain the client's written authorization to disclose.

#### Disclosure Without Client Authority

**Rule Reference: Rule 3.03(4), (5), (6), (7) & (8)**

9. Rule 3.03 identifies a number of situations in which a paralegal *must* or *may* disclose confidential client information, whether or not the client consents to the disclosure.
10. This rule does not permit the paralegal to reveal confidential information about past criminal conduct, or to prevent future illegal or criminal conduct that does not involve death or serious bodily or psychological harm.
11. If a paralegal wishes to use a collection agency for an outstanding account, the information provided to the collection agency should be limited to that necessary to collect the fees. Information contained in documents that is not necessary to enforce payment should either be deleted or blocked out.

**Other Obligations Relating to Confidential Information – Security of Court Facilities and Misconduct**

**Rule Reference: Rule 3.03**

**Rule 6.01(3)**

**Rule 9.01(2)**

12. The *Rules* require a paralegal to disclose confidential client information in other circumstances – for the security of court facilities, and to report certain acts of misconduct to the Law Society.
13. Where a paralegal discloses confidential information to prevent a dangerous situation from developing at a court facility, the paralegal should consider providing this information to the court facility anonymously or through another paralegal or a lawyer.

**Avoiding Inadvertent Disclosure**

**Rule Reference: Rule 3.03(1)**

14. The following steps may assist a paralegal in meeting his or her obligation to protect confidential client information:
  - not disclosing having been consulted or retained by a particular person unless the nature of the matter requires disclosure,
  - taking care not to disclose to one client confidential information about another client and declining any retainer that might require such disclosure,
  - avoiding indiscreet conversations about a client’s affairs, even with the paralegal’s spouse or family,
  - shunning any gossip about a client’s affairs, even though the client is not named or otherwise identified,
  - not repeating any gossip or information about a client’s business or affairs that is overheard or recounted to the paralegal, and
  - avoiding indiscreet shop-talk between colleagues that may be overheard by third parties.

**Office Procedures**

**Rule Reference: Rule 3.03(1) & (3)**

**Rule 8.01(1)**

15. A paralegal should establish office procedures to ensure that the confidentiality of client information is protected. These procedures could include the following:
  - recording the identity and particulars of every client or potential client,
  - screening for conflicts of interest when a potential client first contacts the firm, and prior to his or her disclosure of confidential information to the paralegal,
  - establishing a communication policy with each client outlining how communications between the client and firm will be conducted,

- keeping file cabinets away from the reception area, placing computer screens so they cannot be viewed by people not in the firm, keeping client files out of sight, locking file cabinets when no one is in the office, limiting access to client files only to staff who work on the matter, shredding confidential information before discarding, ensuring appropriate security for off-site storage of files,
- taking steps to protect confidential information obtained and sent in an electronic form,
- ensuring that all staff understand their obligations with respect to confidentiality and,
- limiting access to confidential information by outside service providers.

## **GUIDELINE 9: CONFLICTS OF INTEREST**

### **GENERAL**

#### **Definition**

**Rule Reference: Rule 3.04(1)**

1. Conflicts of interest are defined in Rule 3.04(1).

### **DUTY TO AVOID CONFLICTS OF INTEREST**

#### **The Duty**

**Rule Reference: Rule 3.04 (2) & (3)**

2. The duty to avoid conflicts of interest is found in Rule 3.04 (2) and (3).

#### **To Whom is the Duty Owed – Current Clients and Prospective Clients**

**Rule Reference: Rule 3.04(1) & (3)**

3. A paralegal owes the duty of avoiding conflicts of interest to all clients, including prospective clients. A paralegal should identify potential conflicts of interest at the first contact with a prospective client. A *prospective client* can be described as one who has consulted with a paralegal or paralegal firm to see if the firm will take on his or her matter or to see if he or she would like to hire the paralegal or firm.
4. Conflicts of interest may arise at any time. A paralegal should use a conflicts checking system to assist in managing conflicts of interest. The paralegal should examine whether a conflict of interest exists not only at the outset, but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest.
5. At the time that a paralegal becomes aware of a conflict, or potential conflict, the paralegal should consider whether to accept the retainer, or to continue to act. This applies even where the client consents or where the retainer would not, in the paralegal's opinion, breach the *Rules*. The paralegal should consider the delay, expense and inconvenience that would arise for the client and/or the paralegal, should the paralegal be required to withdraw from the matter at a later stage in the proceedings.

#### **To Whom is the Duty Owed – the Firm's Clients**

**Rule Reference: Rule 1.02 definition of "client"**

6. Since every client of a paralegal firm is also the client of every other paralegal employed at the firm, if one paralegal in the firm has a conflict of interest in a matter, then all paralegals in the firm have a conflict in that matter. As a result, when checking for conflicts, the paralegal should review the names of all current and former clients of the firm and not just the clients personally served by the individual paralegal.

### To Whom is the Duty Owed – Persons Involved or Associated with Clients

#### Rule Reference: Rule 3.04(4)

7. Sometimes there will be others who are involved or associated with the client in the client's matter. Persons *involved or associated with clients* may include the client's spouse, family members, business associates or employees of any related companies. The duty to avoid conflicts of interest may require a paralegal to avoid acting against those individuals as well.

### DEALING WITH A CONFLICT OF INTEREST

#### Disclosing All Information

#### Rule Reference: Rule 3.04(3)

8. The client needs to know of anything that may influence the paralegal's judgment or loyalty. Once the paralegal has provided the client with all the details, the paralegal must allow the client time to consider them or to ask for further clarification.
9. There may be situations where it is impossible for a paralegal to give a client or prospective client all necessary information. This may happen when the details about the conflict involve another client or a former client. Since a paralegal cannot reveal confidential information regarding another client, the paralegal may only say that there is a conflict and that he or she cannot continue with or accept the retainer.

#### Obtaining Consent

#### Rule Reference: Rule 1.02 definition of "consent"

#### Rule 3.04(3)

10. The client may only consent after being given all information required to make an informed decision. This is called *informed consent*.
11. Where any other relevant persons must consent, the paralegal must make sure that their consent is also informed consent.

#### Independent Legal Advice/Legal Representation

#### Rule Reference: Rules 3.04(9), 3.06(1)(b) and 3.06(5)(b), 3.06(7)(c)

12. There are situations where the client's informed and written consent is not enough to allow the paralegal to accept or continue with a matter. In some circumstances, the client must receive advice from an independent legal advisor regarding the matter or transaction before the paralegal may take any further steps in the client's matter.
13. An independent legal advisor is another paralegal or lawyer, who can provide the client with *independent legal advice*. This advisor is unrelated to the client's matter, associated parties or the paralegal. He or she is unbiased and objective and does not have a conflict of interest.

14. In circumstances where the paralegal is prohibited from acting for a client or prospective client, the paralegal must suggest that the individual obtain his or her own independent legal representation. ***Independent legal representation*** means that the individual has retained a legal representative, either a paralegal or lawyer, to act as his or her own representative in the matter. This retained representative is objective and does not have any conflicting interest with regards to the matter.

**Refusal to Act, Withdrawal of Services**

**Rule Reference: Rules 3.04(2) and 3.08**

15. In some cases, the only way to deal with the conflict is to refuse to act. The paralegal may have to decline the retainer at the outset or may have to terminate the retainer and withdraw from representing the client at a later time. A paralegal may need to take this step even where the client wants the paralegal to accept the retainer, or to continue to act.

**JOINT CLIENTS**

**General**

**Rule Reference: Rule 3.04(8) – (14)**

16. A paralegal may be asked to represent more than one client in a matter or transaction. This is referred to as a ***joint retainer***.
17. Acting in a joint retainer places the paralegal in a potential conflict of interest. A paralegal has an obligation to all clients and in a joint retainer, the paralegal must remain loyal and devoted to all clients equally – the paralegal cannot choose to serve one client more carefully or resolutely than any other. If the interests of one client change during the course of the retainer, the paralegal may be in a conflict of interest.

**Before Accepting the Joint Retainer**

**Rule Reference: Rule 3.04(8) – (11)  
Rule 3.02(7) & (8)**

18. In cases where one of the joint clients is not sophisticated or is vulnerable, the paralegal should consider the provisions of Rule 3.02(7) & (8) regarding clients under a disability. The paralegal may want to recommend that the client obtain independent legal advice prior to agreeing to the joint retainer. This will ensure that the client's consent to the joint retainer is informed, genuine and uncoerced.

**If a Conflict Develops Between Joint Clients**

**Rule Reference: Rule 3.04(12) – (14)**

19. Subrules 3.04(12) – (14) set out the steps a paralegal must take in the event that a conflict develops between joint clients.

## **ACTING AGAINST CLIENTS**

### **Acting Against Clients or Former Clients in the Same or Related Matters**

**Rule Reference: Rule 3.04(2), (3), (4)(a) & (b)**

20. A paralegal is not permitted to act against clients or former clients in the same or related matters, except in accordance with subrules 3.04(2), (3), (4)(a) and (b).

### **Acting Against Clients or Former Clients in New Matters**

**Rule Reference: Rule 3.04(3), (4)(c), (5), (6) & (7)**

21. A paralegal is permitted to act against a client or former client in a fresh, independent and unrelated matter, in certain circumstances.
22. Even where the *Rules* do not prohibit a paralegal from acting against a client or former client, the paralegal should consider whether to accept the retainer (or continue acting). To act against a client or former client may damage the paralegal-client relationship, may result in court proceedings or a complaint to the Law Society.

## **PARALEGAL TRANSFER BETWEEN FIRMS**

### **General**

**Rule Reference: Rule 3.05**

23. Problems concerning confidential information may arise when a paralegal changes firms and both firms act for opposing clients in the same or a related matter. The potential risk is that confidential information about the client from the paralegal's former office may be revealed to the members of the new firm and used against that client. A paralegal should carefully review the *Rules* when transferring to a new office or when a new paralegal is about to join the paralegal firm.

## **DEALING WITH UNREPRESENTED PERSONS**

### **General**

**Rule Reference: Rule 4.05**

**Rule 3.04(2), (8) – (14)**

24. In the course of providing legal services, a paralegal may have to deal with opposite parties or other individuals with an interest in the matter who are not represented by a paralegal or a lawyer. The potential danger to the paralegal in this situation is that the unrepresented person may think that the paralegal is looking after his or her interests.
25. If an unrepresented person who is the opposite party requests the paralegal to advise or act in the matter, the paralegal is not permitted to accept the retainer. If the unrepresented party otherwise has an interest in the matter, such as a co-accused, the paralegal may be permitted to act, but should be governed by the considerations outlined in Rule 3.04(8) – (14) about joint retainers.

## FINANCIAL INTERESTS

### Doing Business With a Client

#### Rule Reference: Rule 3.06(1) – (4)

26. A paralegal should be cautious about entering into a business arrangement with his or her client(s) that is unrelated to the provision of paralegal services. Since the paralegal is or was the client's advisor, the paralegal may have a conflict of interest. The paralegal may unknowingly influence the client to agree to an arrangement that may be unfair or unreasonable to the client. This danger is present when the client wants to invest with the paralegal.

### Borrowing From Clients

#### Rule Reference: Rule 3.06(5)

27. A paralegal must not borrow from clients except in accordance with Rule 3.06(5).

### Guaranteeing Client Debts

#### Rule Reference: Rule 3.06(6) – (7)

28. A paralegal must not guarantee client debts except in accordance with Rule 3.06(6).

## PERSONAL INTERESTS

### Conflicts of Interest Arising From Personal Relationships

#### Rule Reference: Rule 3.04(1)

29. The *Rules* do not prohibit a paralegal from providing legal services to friends or family members, but they do require the paralegal to avoid existing or potential conflicts of interest.
30. A conflict of interest may arise when a paralegal provides legal services to a friend or family member, or when the client and the paralegal have a sexual or intimate personal relationship. In these circumstances, the paralegal's personal feelings for the client may impede the paralegal's ability to provide objective, disinterested professional advice to the client. Before accepting a retainer from or continuing a retainer with a person with whom the paralegal has a sexual or intimate personal relationship, a paralegal should consider the following factors:
- The vulnerability of the client, both emotional and economic;
  - The fact that the paralegal and client relationship may create a power imbalance in favour of the paralegal or, in some circumstances, in favour of the client;
  - Whether the sexual or intimate personal relationship may jeopardize the client's right to have all information concerning the client's business and affairs held in strict confidence. For example, the existence of the personal relationship may obscure whether certain information was acquired by the paralegal in the course of the paralegal and client relationship;



- Whether such a relationship may require the paralegal to act as a witness in the proceedings;
  - Whether such a relationship may interfere with the paralegal's fiduciary obligations to the client, including his or her ability to exercise independent professional judgment and his or her ability to fulfill obligations owed as an officer of the court and to the administration of justice.
31. Generally speaking, there is no conflict of interest if another paralegal or lawyer at the firm who does not have a sexual or intimate personal relationship with the client, handles the client's matter.

**Conflicts of Interest Arising From a Paralegal's Outside Interests**

**Rule Reference: Rule 3.04(1)**

**Rule 2.01(4) & (5)**

32. A conflict of interest may arise from the paralegal's outside interests. Outside interests covers the widest possible range of activities and includes those that may overlap with the business of providing legal services, as well as activities that have no connection to the law or working as a paralegal. If a paralegal has other businesses or interests separate from his or her paralegal firm, those interests may influence the way the paralegal serves clients. Whatever the outside interest, a paralegal must guard against allowing those outside interests to interfere or conflict with his or her duties to clients. (Also refer to Guideline 2: Outside Interests).
33. If a paralegal is in public office while still providing legal services to clients, the paralegal must not allow his or her duties as a public official to conflict with his or her duties as a paralegal. If there is a possibility of a conflict of interest, the paralegal should avoid it either by removing himself or herself from the discussion and voting in the public capacity or by withdrawing from representation of the client.

## **GUIDELINE 10: DEALING WITH CLIENT PROPERTY**

### **General**

**Rule Reference: Rule 3.07  
By-Law 9**

1. The term *client property* covers a wide range of items such as money or other valuables, physical items and information. For proper receipt, handling and disbursement of monies received from or on behalf of a client, refer to By-Law 9 and Guideline 15: Trust Accounts.

### **The Valuable Property Record**

**Rule Reference: By-Law 9, section 18.9**

2. The valuable property record documents the paralegal's receipt, storage and delivery of client property. Client property may include, for example:
  - stocks, bonds or other securities in bearer form,
  - jewelry, paintings, furs, collector's items or any saleable valuables, and
  - any property that a paralegal can convert to cash on his or her own authority.
3. The valuable property record should not include items that cannot be sold or negotiated by the paralegal, for example, wills, securities registered in the client's name, corporate records or seals. A paralegal should maintain a list of these items, but that list should be separate from the valuable property record.

### **The Client File**

**Rule Reference: Rule 3.07  
Rule 3.03(3)**

4. The duty to preserve client property also applies to the documents that a client may give to the paralegal at the beginning of the paralegal-client relationship and documents that are created or collected by the paralegal for the client's benefit during the relationship.
5. The courts have developed law on the issue of the client file as between lawyers and clients. This jurisprudence may be applied to define the paralegal's client file in future. Generally, documents provided to a lawyer at the start of the retainer and those created during the retainer as part of the services provided, would belong to the client. These include
  - originals of all documents prepared for the client,
  - all copies of documents for which copies the client has paid,
  - a copy of letters from a lawyer to third parties or from a lawyer to third parties,
  - originals of letters from a lawyer to the client (presumably these would have already been sent to the client in the course of the retainer),

- copies of case law,
  - briefs,
  - memoranda of law, where the client paid for preparation of the memoranda,
  - notes or memoranda of meetings with opposing parties or their representatives, court or tribunal conferences, interviews of witnesses, etc.,
  - trial preparation documents, trial briefs, document briefs, trial books,
  - copies of vouchers and receipts for disbursements a lawyer made on the client's behalf,
  - experts' reports,
  - photographs, and
  - electronic media such as computer discs.
6. Documents belonging to a lawyer (for example, notes or memoranda of meetings or telephone calls with the client) would not need to be provided to the client.
7. A paralegal should consider retaining copies of client documents, at his or her own cost, to defend against complaints or claims that may be made against the paralegal in future.

## GUIDELINE 11: WITHDRAWAL FROM REPRESENTATION

### General

#### Rule Reference: Rule 3.08

1. A client may end the paralegal-client relationship at any time and for any reason. A paralegal is subject to certain restrictions in ending the paralegal-client relationship. Whether the paralegal has good cause for withdrawal will depend on many factors, including
  - the nature and stage of the matter,
  - the relationship with the client,
  - the paralegal's expertise and experience, and
  - any harm or prejudice to the client that may result from the withdrawal.
2. Rule 3.08 specifies a paralegal's obligations when withdrawing legal services. It sets out situations in which the paralegal
  - may choose to withdraw (*optional withdrawal*),
  - must withdraw (*mandatory withdrawal*), and
  - must comply with special rules (*withdrawal from quasi-criminal and criminal cases*).
3. To avoid misunderstandings, it will be helpful for the paralegal to explain to the client, at the beginning of the relationship
  - that all documents to which the client is entitled be provided will be returned to the client when their relationship ends or the matter concludes, and
  - which documents in the file will belong to the paralegal, so that they will be kept by the paralegal when their relationship ends or the matter is finished.
4. To ensure that the client understands these details, the paralegal should consider including them in his or her engagement letter or retainer agreement.
5. When the paralegal withdraws, he or she is subject to restrictions relating to the disclosure of client information. This would restrict the paralegal from revealing the reason for withdrawing to a *successor* (a paralegal or lawyer who accepts the client's matter after the original paralegal has withdrawn). Refer to Guideline 8: Confidentiality for further information on this subject.

### Optional Withdrawal

#### Rule Reference: Rule 3.08(2), (3), (4), (6), (7), (8) & (9)

6. During a retainer, a situation may arise that will allow the paralegal to withdraw from representing the client.
7. A *serious loss of confidence* means that the paralegal and the client can no longer trust and rely on each other, making it impossible to have a normal paralegal-client relationship. An example would be where the client deceives or lies to the paralegal. Another example would be where the client refuses unreasonably to accept and act on the paralegal's advice on an important point.
8. If the retainer relates to a criminal or quasi-criminal matter, the paralegal must ensure that he or she complies with the special rules relating to withdrawal in those types of cases (refer to section entitled "Withdrawal From Quasi-Criminal and Criminal Cases" at (iv)).

### Mandatory Withdrawal

#### Rule Reference: Rule 3.08(5), (7), (8) & (9)

9. In certain situations, a paralegal is required to withdraw from representing a client, even if the paralegal or the client wishes to continue with the retainer.

### Withdrawal From Criminal or Quasi-Criminal Matters

#### Rule Reference: Rule 3.08(7), (8) & (9)

10. Whether a paralegal may withdraw in these types of matters, has to do with the amount of time between *the withdrawal* (the date and time the paralegal intends to stop representing the client) and *the trial* (the date and time the client's trial begins).
11. Generally, the amount of time between the withdrawal and trial must be sufficient to allow the client to hire another representative and the new representative to prepare properly for trial.
12. While the *Rules* do not require the paralegal to make an application to the court to be removed as the client's representative, most rules of court do. Therefore, the paralegal should consult the rules of the court to determine what process is to be followed. The paralegal must not tell the court or the prosecutor the reasons for withdrawal, unless disclosure is justified in accordance with the *Rules*.
13. The paralegal may seek to adjourn the trial to give the client or the new representative more time to prepare, as long as the adjournment does not prejudice the client.

### **Manner of Withdrawal**

#### **Rule Reference: Rules 3.08 (10) and (11)**

14. Where a paralegal withdraws from representation of a client, the required manner of withdrawal is set out in subrules 3.08(10 and (11).

### **Duties of the Successor Paralegal**

#### **Rule Reference: Rule 3.08 (12)**

15. If a client who was represented by another paralegal or a lawyer contacts a paralegal, that paralegal has obligations as the *successor paralegal*.

### **Written Confirmation**

16. If a paralegal's services are terminated while the client's matter is ongoing and the client requests that the matter be transferred to a new paralegal or lawyer, the paralegal should confirm, in writing, the termination of the retainer. The paralegal should also obtain a *direction*, signed by the client, for release of the client's file to a successor paralegal or lawyer. A *direction* is a written document instructing the paralegal to release the file to the successor paralegal or lawyer. If the file will be collected by the client personally, the paralegal should obtain a written acknowledgement signed by the client, confirming that the client has received the file.

## GUIDELINE 12: ADVOCACY

### Definitions

#### Rule Reference: Rule 4

#### Rule 1.02 definition of “tribunal”

1. An *advocate* is someone who speaks and acts on behalf of others. Rule 4 outlines a paralegal’s duties when appearing as an advocate before a tribunal. Rule 4 applies to all appearances and all proceedings before all tribunals. A *tribunal* can be either an administrative board or a court of law. An *adjudicator* is any person who hears or considers any type of proceeding before a tribunal and renders a decision with respect to that proceeding.

### General

#### Rule Reference: Rule 4

2. The paralegal has a duty to represent his or her client diligently and fearlessly. Generally, the paralegal has no obligation to assist an opposing party, or to advance matters harmful to the client’s case. However, these general principles do not mean that, when acting as advocate for a client before a tribunal, the paralegal can behave as he or she likes or, in some cases, as his or her client may instruct. Rule 4 describes the professional obligations that a paralegal owes to opposing parties, other paralegals and lawyers, the tribunal and the administration of justice. These obligations are paramount, and must be met by the paralegal in each and every tribunal proceeding in which the paralegal acts as advocate for a client.

### Candour, Fairness, Courtesy and Respect

#### Rule Reference: Rule 4.01(1), 4.01(4)(d)

#### Rule 7.01(3)

3. A paralegal should not engage in rude and disruptive behaviour before a tribunal, or uncivil correspondence, language or behaviour towards opposing parties or their advocates.

### Malicious Proceedings

#### Rule Reference: Rule 4.01(5)(a)

4. A paralegal should not help a client to bring proceedings that have no merit. Claims that have no merit waste the time of the tribunal and its officers, and do not further the cause of justice.

### **Misleading the Tribunal**

#### **Rule Reference: Rule 4.01(5)(c), (d) & (h)**

5. A paralegal must ensure that neither the paralegal nor his or her client(s) misleads the tribunal. For a tribunal to decide a matter effectively and appropriately, the tribunal must have access to everything that is relevant to the issues to be decided.

### **Improperly Influencing the Tribunal**

#### **Rule Reference: Rule 4.01(5)(e) & (g)**

6. For the public to have respect for the administration of justice, tribunals must be fair, objective, independent and neutral. There should be no personal connection between an adjudicator and any of the parties to a proceeding or their advocates.
7. The only appropriate way to influence the tribunal's decision is through open persuasion as an advocate. This is done by making submissions based on legal principles and offering appropriate evidence before the tribunal in the presence of, or on notice to, all parties to the proceeding, or as otherwise permitted or required by the tribunal's rules of procedure. A paralegal should not communicate directly with the adjudicator in the absence of the other parties, unless permitted to do so by the tribunal's rules of procedure.

### **Dishonest Conduct**

#### **Rule Reference: Rule 4.01(5)(b), (c) & (f)**

8. Acting with integrity before a tribunal means being honest and acting with high ethical principles.

### **Admissions by the Client**

#### **Rule Reference: Rule 4.01(5)(b), (c) & (f)**

9. When defending an accused person, a paralegal's duty is to protect the client from being convicted, except by a tribunal of competent jurisdiction and upon legal evidence sufficient to support a conviction for the offence with which the client is charged. Accordingly, a paralegal may properly rely on any evidence or defences, including "technicalities", as long as they are not known to be false or fraudulent.
10. However, admissions made by a client to a paralegal may impose strict limitations on the paralegal's conduct of the client's defence. The client should be made aware of this by the paralegal. Where the client has admitted to the paralegal any or all of the elements of the offence with which the client is charged, a paralegal must not do or say anything before the tribunal, including calling any evidence, that would contradict the facts admitted by the client to the paralegal. This would be misleading the court.
11. Where the client has admitted to the paralegal all the elements of the offence, and the paralegal is convinced that the admissions are true and voluntary, the paralegal may



properly take objection to the jurisdiction of the tribunal, or to the form, admissibility or sufficiency of the evidence. The paralegal could not suggest that someone else committed the offence, try to establish an alibi or call any evidence which, by reason of the admissions, the paralegal believes to be false. Admission by the client to the paralegal of all of the elements of the offence with which the paralegal is charged also limits the extent to which the paralegal may attack the evidence for the prosecution. The paralegal may test the evidence given by each witness for the prosecution and may argue that the evidence, as a whole, is not enough to prove the client guilty. The paralegal should go no further than that.

### **Witnesses**

**Rule Reference: Rule 4.01(5)(i), (j), (k) & (m)**

**Rule 4.02**

**Rule 4.03**

**Rule 7.01(6)**

12. As an advocate, a paralegal may contact all possible witnesses for both sides of a matter, but the paralegal must be fair and honest when dealing with them. This includes the paralegal speaking to the opposing party or co-accused. The paralegal must make it clear to the witness who is the paralegal's client(s) and that the paralegal is acting only in the interests of his or her client(s). As part of this disclosure, the paralegal should give the witness his or her name, tell the witness that he or she is a paralegal, the name of the client(s) he or she represents in the matter, and his or her status in the proceeding. A paralegal should make an extra effort to be clear when the witness does not have legal representation. Note that, although a paralegal may ask to speak to a potential witness, the witness does not have to speak to the paralegal.
13. During a hearing, a paralegal's ability to speak with a witness giving testimony is limited. This ensures that the paralegal does not influence the evidence the witness will give. A comment made by the paralegal to the paralegal's own witness during court recess, for example, may result in a breach of the *Rules*. The witness may return to the witness box and, as a result of the communication with the paralegal, offer evidence that is slanted to benefit the paralegal's client. Such evidence is no longer neutral and could mislead the tribunal.

### **Disclosure of Documents**

**Rule Reference: Rule 4.01(6)**

14. The rules of procedure of the tribunal may require parties to produce documents and information to the tribunal or to the other parties in the matter. Timely, complete and accurate disclosure helps settlement efforts and makes the hearing process more effective and fair.

### **Agreement on Guilty Pleas**

#### **Rule Reference: Rule 4.01(8) & (9)**

15. As an advocate for a person accused in a criminal or quasi-criminal matter, the paralegal should take steps reasonable in the circumstances to satisfy himself or herself that the client's instructions to enter into the agreement on a guilty plea is informed and voluntary. The paralegal should ensure the client's instructions to enter into an agreement on a guilty plea are in writing.

### **The Paralegal as Witness**

#### **Rule Reference: Rule 4.04**

16. As an advocate, the paralegal's role is to further the client's case within the limits of the law. The role of a witness is to give evidence of facts that may or may not assist in furthering the case of any of the parties to a proceeding. Because these roles are different, a person may not be able to carry out the functions of both advocate and witness at the same time.
17. When acting as an advocate for his or her client before a tribunal, the paralegal should not appear to be giving unsworn testimony. This is improper and may put the paralegal's own credibility in issue. A paralegal who has appeared as a witness on a matter should not act as an advocate or legal representative in any appeal of that matter.

### **Dealing With Unrepresented Persons**

#### **Rule Reference: Rule 4.05**

18. The paralegal has a special duty when representing a client and an opposing party is not represented by a paralegal or a lawyer.
19. To avoid misunderstandings, it will helpful for the paralegal to confirm in writing the steps he or she takes to fulfill the requirements of Rule 4.05.

### **Withdrawal and Disclosure Obligations**

#### **Rule Reference: Rule 4.01(7)**

#### **Rule 3.08**

20. If, after explanation and advice from the paralegal, the client persists in instructing the paralegal to engage in or continue a type of conduct prohibited by Rule 4, the paralegal must withdraw from representing the client in the matter. (See Guideline 11: Withdrawal of Representation).

## GUIDELINE 13: FEES

### Introduction

#### Rule Reference: Rule 5.01 (1)

1. Too often, misunderstandings about fees and disbursements result in disputes over legal bills and complaints from unhappy clients. Since these disputes reflect badly on the paralegal profession and the administration of justice, it is important that a paralegal discuss with his or her client(s) the amount of fees and disbursements that will likely be charged. It will be to the benefit of all concerned if the paralegal ensures that the client has a clear understanding not only of what legal services the paralegal will provide, but how much those services are likely to cost.

### Fees and Disbursements

2. Generally, a *fee* refers to the paralegal's wage. Clients pay fees for the legal services provided by the paralegal. Fees may be billed in a variety of ways, including:
  - An *hourly rate*, charging for the actual time spent on the client matter,
  - A *block, fixed or flat fee*, charging a fixed amount for performing a particular task,
  - *Fees by stages*, charging for a matter which is broken down into stages, and an estimate is given as to the fee for each stage or step in the matter, or
  - *Contingency fees*, where part or all of the paralegal's fee depends on the successful completion of the matter, and the amount may be expressed as a percentage of the client's recovery in the matter.
3. The paralegal should consider which method best suits the circumstances and the client.
4. A *disbursement* refers to any expense that the paralegal pays on behalf of the client for which the paralegal is entitled to be reimbursed by the client. Common disbursements include charges for
  - research, such as Quicklaw charges or research conducted by third party professionals,
  - mileage,
  - postage, photocopying, faxing documents or sending documents by courier,
  - long-distance phone calls,
  - expert reports,
  - transcripts or certified documents, and/or
  - tribunal or court filing fees related to the client matter.
5. A paralegal cannot charge more than the actual cost of the disbursement. A paralegal cannot make a profit from disbursements at the client's expense.

**Discussing Fees and Disbursements****Rule Reference: Rule 5.01(1)**

6. A paralegal should discuss charges for fees and disbursements at the outset of the retainer. To ensure there is no misunderstanding, this information should be provided or confirmed in writing.
7. The following are steps that will assist a paralegal in meeting his or her obligations under Rule 5.01(1). Whenever possible, a paralegal should provide the client with an estimate of the amount of fees the paralegal expects to charge to complete the matter, or to bring the matter to a certain stage. A paralegal should openly disclose and discuss with clients all items that will be charged as disbursements and how those amounts will be calculated. If an administrative charge forms part of the amount charged as a disbursement, disclosure of such charge should be made to the client(s) in advance. Once disclosure is made, the clients are able to make an informed decision as to whether or not they will accept such an arrangement.
8. In discussing fees and disbursements with clients, it is appropriate for a paralegal to
  - provide a reasonable estimate of the total cost as opposed to an unreasonable estimate designed to garner the client's business, and
  - not manipulate fees and disbursements in a manner as to provide a lower fee estimate.
9. When something happens in the matter that the paralegal or client did not expect, resulting in costs that are higher than the paralegal's original estimate, the paralegal should immediately give the client a revised estimate of cost, and an explanation of why the original estimate has changed. The client can then instruct the paralegal based on the new information. The new understanding should be confirmed in writing.

**Fair and Reasonable Fees****Rule Reference: Rule 5.01(2)**

10. In determining the fee to charge a client, a paralegal is encouraged, in appropriate cases, to provide legal services *pro bono* (for the greater good), i.e. for no fee or for a fee that has been reduced. When a client or prospective client of limited means is unable to obtain legal services, a paralegal should consider reducing or waiving the fees he or she would normally charge.

**Hidden Fees****Rule Reference: Rule 5.01(3)**

11. The relationship between paralegal and client is based on trust. The client must be able to rely on the paralegal's honesty and ability to act in the client's best interests. This means that the paralegal cannot hide from the client any financial dealings in his or her matter.

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### Fee Splitting and Referral Fees

#### Rule Reference: Rule 5.01(11) & (12)

12. *Fee splitting* occurs when a paralegal shares or divides his or her fee with another person. Where a client consents, a paralegal and another paralegal or lawyer who are not at the same firm may divide between them the fees for a matter, so long as the fees are split relative to the work done and the responsibility assumed by each paralegal and/or lawyer.
13. A *referral fee* is
  - a fee paid by a paralegal to another paralegal or lawyer for referring a client to the paralegal, or
  - a fee paid to the paralegal by another paralegal or lawyer for his or her referral of a person to another paralegal or lawyer.

### The Statement of Account

#### Rule Reference: Rule 5.01(4)

14. In addition to detailing fees and disbursements, the *statement of account* or bill delivered to the client by the paralegal should detail clearly and separately the amount the paralegal has charged for Goods and Services Tax (GST). The GST applies to fees and some disbursements, as outlined by the Canada Revenue Agency (CRA) guidelines. The paralegal should review and sign the statement of account before it is sent to the client.
15. Should a dispute arise about the statement of account, the paralegal should discuss the matter openly and calmly with the client in an effort to resolve the matter. Civility and professionalism must govern all discussions, including discussions relating to fee disputes with clients.

### Contingency Fees

#### Rule Reference: Rule 5.01(6) – (8)

16. A *contingency fee* is a fee that is paid when and if a particular result is achieved in a client's matter.
17. Rule 5.01(7) outlines the factors to be considered in determining the appropriate percentage (or other basis) of the contingency fee agreement. Regardless of which factors are used to determine the fee and the other terms of the contingency fee agreement, the ultimate fee must still be fair and reasonable.
18. The contingency fee agreement should be clear about how the fee will be calculated.
19. It may be helpful for a paralegal to refer to *Regulation 195/04 to the Solicitor's Act* (which applies to contingency fees for lawyers) for guidance as to what terms should be included in a paralegal contingency fee agreement.

## GUIDELINE 14: RETAINERS

### General

1. In the context of providing legal services, the word *retainer* may mean any or all of the following:
  - the client's act of hiring the paralegal to provide legal services (i.e., a *retainer*),
  - the contract that outlines the legal services the paralegal will provide to the client and the fees and disbursements and GST to be paid by the client (i.e., a *retainer agreement*), or
  - monies paid by the client to the paralegal in advance to secure his or her services in the near future and against which future fees will be charged (i.e., a *money retainer*).

### The Retainer Agreement

#### Rule Reference: Rule 5.01(1)

2. Once the paralegal has been hired by a client for a particular matter, it is advisable that the paralegal discuss with the client two essential terms of the paralegal's retainer by the client: the scope of the legal services to be provided and the anticipated cost of those services. The paralegal should ensure that the client clearly understands what legal services the paralegal is undertaking to provide. It is helpful for both the paralegal and client to confirm this understanding in writing by
  - a written retainer agreement signed by the client,
  - an engagement letter from the paralegal, or
  - a confirming memo to the client (sent by mail, e-mail or fax).
3. This written confirmation should set out the scope of legal services to be provided and describe how fees, disbursements and GST will be charged (see Guideline 13: Fees).

### The Money Retainer

#### Rule Reference: By-Law 9, part IV Rule 5.01

4. If practical, the paralegal should obtain a money retainer from the client at the beginning of the relationship. When determining the amount of the money retainer, the paralegal should consider the circumstances of each case, the circumstances of the client and the anticipated fees, disbursements and GST. Many of the factors are the same as those used in deciding if a fee is fair and reasonable.
5. The client should be advised at the outset if and when further retainers will be required. There may also be circumstances where a money retainer is not appropriate, for example, when a client and the paralegal have entered into a contingency fee agreement.

6. A money retainer must be deposited into a paralegal's trust account. After the paralegal has delivered to the client a statement of account or bill, the paralegal pays the amount of his or her statement of account from the money retainer held in trust. Disbursements and expenses paid on behalf of the client to others may be paid directly from the money retainer in the paralegal's trust account. To avoid disagreements in circumstances where a disbursement will be particularly substantial, a paralegal may want to obtain the client's approval prior to the expense being incurred.

## **GUIDELINE 15: TRUST ACCOUNTS**

### **General**

#### **Rule Reference: By-Law 9**

1. A paralegal has special obligations when handling client funds. When a paralegal receives money that belongs to a client or is to be held on behalf of a client, the funds must be deposited to a *trust account*. Because client funds must be held in trust by the paralegal, they are also known as *trust funds*.
2. By-Law 9 outlines a paralegal's responsibilities regarding financial transactions and record-keeping, including the operation of a trust account.

### **Authorization to Withdraw From Trust**

#### **Rule Reference: By-Law 9**

3. A paralegal must be in control of his or her trust account. Although a person who is not a licensed paralegal or lawyer may be permitted to disburse trust funds alone in exceptional circumstances, the Law Society has found appropriate exceptional circumstances to be very rare.
4. If there is only one paralegal with signing authority on the trust account(s) it would be prudent to make arrangements for another paralegal or a lawyer to have signing authority on the trust account(s) in case of an unexpected emergency (i.e. illness or accident) or planned absence (i.e. vacation). The paralegal may arrange this through his or her financial institution through a power of attorney. The chosen paralegal or lawyer must be insured and entitled to provide legal services or to practise law.
5. To ensure that no unauthorized withdrawals from trust are being made, the paralegal should limit access to blank trust account cheques and electronic banking software. A paralegal should never sign blank trust cheques. The paralegal should use pre-numbered trust cheques and keep them locked up when not in use.



**GUIDELINE 16:  
DUTY TO THE ADMINISTRATION OF JUSTICE**

**General**

**Rule Reference: Rule 6.01(1)  
Rule 7.01(4)**

1. An important part of a paralegal's duty to act with integrity is his or her obligation to the administration of justice detailed in Rule 6. The obligation includes a paralegal's duty to assist in maintaining the security of court facilities, to refrain from inappropriate public statements, and the obligation to prevent unauthorized practice.

**Security of Court Facilities**

**Rule Reference: Rule 6.01(3)  
Rule 3.03**

2. An aspect of supporting the justice system is ensuring that its facilities remain safe. Where appropriate, a paralegal in the situation covered by Rule 6.01(3) should consider requesting additional security at the facility and notifying other paralegals or lawyers who may be affected. In considering what, if any, action to take with respect to this obligation, the paralegal must consider his or her obligations under Rule 3.03.

**Public Appearances and Statements**

**Rule Reference: Rule 6.01(1), (2) & (4)  
Rule 3.03, 3.04  
Rule 4.01(1)  
Rule 7.01(4)**

3. When making statements to the media with, or on behalf of, a client, a paralegal must be mindful of his or her obligations to act in the client's best interests and within the scope of his or her instructions from the client.

**Provision of Legal Services without a Licence / Practice of Law without a Licence**

**Rule Reference: Rule 6.01(5) & (6)**

4. The obligations found in subrules 6.01(5) & (6) stem from a paralegal's obligation to the administration of justice and from the regulatory scheme for paralegals and lawyers set out in the *Act* and discussed below.
5. Under the *Act*, anyone who provides legal services or practices law must be licensed by the Law Society, unless they are exempt from this requirement, or deemed not to be providing legal services or practicing law. A person who is not a lawyer or a licensed paralegal is subject neither to a professional code of conduct nor the Law Society's jurisdiction, which exist to protect the public. Only clients of regulated service providers have important protections, such as the following:

- adherence to a mandatory code of professional conduct,
- maintenance and operation of a trust account in accordance with strict mandatory guidelines,
- mandatory professional liability insurance coverage, and
- the Law Society's Compensation Funds.

**GUIDELINE 17:  
DUTY TO PARALEGALS, LAWYERS AND OTHERS**

**General**

**Rule Reference: Rule 2.01(3)**

**Rule 7.01**

1. Discourteous and uncivil behaviour between paralegals or between a paralegal and a lawyer will lessen the public's respect for the administration of justice and may harm the clients' interests. Any ill feeling that may exist between parties, particularly during adversarial proceedings, should never be allowed to influence paralegals or lawyers in their conduct and demeanour toward each other or the parties. Hostility or conflict between representatives may impair their ability to focus on their respective clients' interests and to have matters resolved without undue delay or cost.

**Prohibited Conduct**

**Rule Reference: Rule 7.01**

2. The presence of personal animosity between paralegals or between a paralegal and a lawyer involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. To that end, Rule 7.01 outlines various types of conduct that are specifically prohibited.
3. One of the prohibitions in Rule 7.01(1) refers to sharp practice. Sharp practice occurs when a paralegal obtains, or tries to obtain, an advantage for the paralegal or client(s), by using dishonourable means. This would include, for example, lying to another paralegal or a lawyer, trying to trick another paralegal or a lawyer into doing something or making an oral promise to another paralegal or lawyer with the intention of renegeing on the promise later. As another example, if an opposing paralegal were under a mistaken belief about the date of an upcoming trial, a paralegal would be obligated to tell the opposing representative about the error, rather than ignoring the matter in the hope the opposing representative would not appear at the trial.

## **GUIDELINE 18: SUPERVISION OF STAFF**

### **General**

#### **Rule Reference: By-Law 7.1**

#### **Rule 8.01(1), (3) & (4)**

1. A paralegal may, in appropriate circumstances, provide services with the assistance of persons of whose competence the paralegal is satisfied. Proper use of support staff allows the paralegal to make efficient use of the time he or she has for providing legal services, and may result in savings to the client. Under By-Law 7.1, some tasks may be delegated to persons who are not licensed and other tasks may not. Though certain tasks may be delegated, the paralegal remains responsible for all services rendered and all communications by and prepared by his or her employees.
2. The extent of supervision required will depend on the task, including the degree of standardization and repetitiveness of the task and the experience of the employee. Extra supervisory care may be needed if there is something different or unusual in the task. The burden rests on the paralegal to educate the employee concerning the tasks that may be assigned and then to supervise the manner in which these tasks are completed.
3. A paralegal should ensure that employees who are not licensed clearly identify themselves as such when communicating with clients, prospective clients, courts or tribunals, or the public. This includes both written and verbal communications.

### **Hiring & Training Staff**

#### **Rule Reference: Rule 8.01(1)**

#### **Rule 3.01(4)(c)(h)**

4. In order to fulfill his or her responsibilities to clients under the *Rules* and By-Laws, a paralegal should take care to properly hire and train staff. A paralegal should obtain information about a potential employee to inform himself or herself about the employee's competence and trustworthiness. If the position involves handling money, the paralegal may ask for the applicant's consent to check his or her criminal record and credit reports. A paralegal must comply with privacy legislation and should refer to the *Rules* to review questions that can and cannot be asked of an applicant, as outlined in the *Human Rights Code*. A paralegal should confirm the information contained in a candidate's resume, consult references and verify previous employment experiences before offering employment to a candidate.
5. Proper hiring and training of persons who are not licensed will assist the paralegal in managing his or her practice effectively, as required by Rule 3.01(4)(c)(h). Since the paralegal is responsible for the professional business, it will assist the paralegal in fulfilling this responsibility if the paralegal educates staff regarding
  - the types of tasks which will and will not be delegated,
  - the need to act with courtesy and professionalism,

- the definition of discrimination and harassment, and the prohibition against any conduct that amounts to discrimination and harassment,
- the duty to maintain client confidentiality and methods used to protect, confidential client information (e.g. avoiding gossip inside and outside of the office),
- the definition of a conflict of interest, the duty to avoid conflicts and how to use a conflict checking system,
- proper handling of client property, including money, and
- proper record keeping.

## GUIDELINE 19: ADVERTISING, FIRM NAMES, LETTERHEAD & SIGNS

### General

#### Rule References: Rule 2.01(2)

#### Rule 8.02

#### Rule 8.03

1. In presenting and promoting a paralegal practice, a paralegal must comply with the *Rules* relating to the name of the practice, firm letterhead and sign, and the manner in which the paralegal advertises to the public. The *Rules* help to ensure that a paralegal does not mislead clients or the public while still permitting the paralegal to differentiate himself or herself and his or her services from those of lawyers or other paralegals. A paralegal should ensure that his or her firm name, letterhead and advertising does not suggest that the paralegal is a lawyer and should take steps to correct any misapprehension on the part of a client or prospective client in that respect.
2. For example, the use of a geographical area in the firm's name (e.g. "Hamilton Paralegal Services") would be inappropriate as it may mislead the public to assume that it is the only paralegal firm in the area. Similarly, a paralegal firm cannot imply a connection with any other entity, organization or public agency. As such, the names "Legal Aid Paralegals" or "Ontario Labour Relations Bureau" would be inappropriate as they may mislead a reasonable person to believe that the firm is associated with Legal Aid Ontario or the Ontario Labour Relations Board.
3. A paralegal should also keep in mind that access to websites is not restricted by geographical area. When the paralegal's advertising appears on the internet, the paralegal should clearly indicate the jurisdiction where the paralegal or paralegal firm operates.

## **GUIDELINE 20: INSURANCE**

### **General**

#### **Rule Reference: Rule 8.04(1) – (3)**

1. As soon as a paralegal discovers an error or omission that is or may reasonably be expected to involve liability to his or her client, the paralegal should take the following steps, in addition to those required by Rule 8.04:
  - immediately arrange an interview with the client and advise the client that an error or omission may have occurred that may form the basis of a claim against the paralegal by the client;
  - advise the client to obtain an opinion from an independent paralegal or lawyer and that, in the circumstances, the paralegal may not be able to continue acting for the client; and
  - subject to the rules about confidentiality, inform the insurer of the facts of the situation.
  
2. While the introduction of compulsory insurance imposes additional obligations upon a paralegal, those obligations must not impair the relationship between the paralegal and client or the duties owed to the client.

## **GUIDELINE 21: DUTY TO THE LAW SOCIETY**

### **General**

#### **Rule Reference: Rule 9**

1. All paralegals and lawyers owe a duty to their governing body, the Law Society, so that it can effectively and efficiently carry out its mandate to govern the legal professions in the public interest. Rule 9 details various obligations owed to the Law Society, many of which focus on measures to protect the public from inappropriate paralegal or lawyer conduct.

### **Duty to Respond Promptly and to Co-operate With an Investigation**

#### **Rule Reference: Rule 9.01(1)**

2. In addition to the obligation to reply promptly to communication from the Law Society which is set out in Rule 9.01(1), a paralegal also has a duty to cooperate with a person conducting an investigation under the *Act*. A paralegal who fails to respond promptly and completely to a Law Society inquiry about a complaint, or who fails to cooperate with a Law Society investigation, may be disciplined on that issue, regardless of the merits or outcome of the original complaint.

### **Duty to Report Misconduct**

#### **Rule Reference: Rule 9.01(2) – (8)**

3. Unless a paralegal or lawyer who departs from proper professional conduct is checked at an early stage, loss or damage to clients and others may ensue. As such, a paralegal must assist the Law Society in upholding the integrity of the profession by reporting professional misconduct of the type outlined in Rule 9.01(2).
4. Evidence of seemingly isolated events, or “less serious” breaches of the *Rules*, may, under investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is proper therefore (unless it is confidential or otherwise unlawful) for a paralegal to report to the Law Society any instance involving a breach of the *Rules* or the *Rules of Professional Conduct*.
5. The obligation to report misconduct applies to the paralegal’s own conduct, as well as that of other paralegals and lawyers.
6. The onus is on the paralegal to take the necessary steps to carry out his or her obligations to the Law Society and to protect both himself or herself and his or her client. If a paralegal is unsure as to whether to report another paralegal’s or lawyer’s conduct, the paralegal should consider seeking the advice of the Law Society directly (through the Practice Management Helpline at 416-947-3315 or 1-800-668-7380 extension 3315) or indirectly (through another paralegal or lawyer).



**Duty to Report Criminal Charges or Convictions**

**Rule Reference: By-Law 8, subsection 3**

**Rule 9.01(9)**

7. All paralegals have a duty to report themselves to the Law Society if certain charges (identified in By-Law 8, subsection 3) have been laid against them.
8. The By-Law only requires the paralegal to self-report the above-mentioned criminal charges or convictions. A paralegal is only required to report another paralegal or lawyer who is involved in criminal activity in certain circumstances.

**GUIDELINE 22:  
THE LAW SOCIETY AND ITS DISCIPLINARY AUTHORITY**

**General**

**Rule Reference: Rule 9.01 (10) – (13)  
Rule 1.03(f)**

1. A paralegal may be disciplined by the Law Society for either professional misconduct or for conduct unbecoming a paralegal.
2. Examples of conduct unbecoming a paralegal include a paralegal's conviction of a criminal offence or a finding or sanction imposed on the paralegal by a tribunal or licensing body.
3. The *Rules* cannot address every situation. As such, a paralegal is required to follow both the "letter" and the "spirit" of the *Rules*. The "letter" of the rule is the meaning of the rule as it is written. The "spirit" of the rule is the sense of the rule or the meaning or importance of the rule, even though it may not be explicit or stated in the written version of the *Rule*.

## REQUEST FOR EXEMPTION – CSPDM

### Motion

20. **That Convocation approve an exemption for members of the Canadian Society of Professionals in Disability Management who are Certified Disability Management Professionals (CDMP) or Certified Return to Work Coordinators (CRTWC).**

### Background

21. The Law Society has received a request for exemption from Canadian Society of Professional Disability Managers (CSPDM). The CSPDM is a national body with approximately 100 members in Ontario. A copy of the materials submitted by Executive Director Wolfgang Zimmerman is attached at **Appendix 2**.
22. The core expertise of CSPDM members is to “minimize the socio-economic impact of disabling injuries and illnesses” through “consensus based disability management.”
23. The CSPDM is similar to the Board of Canadian Registered Safety Professionals (BCRSP), which was provided with a partial exemption in June 2007 (By-law 4, section 30, sub-paragraph (1) 7 iv. C), as part of the list of bodies under the heading “Other profession or occupation.”
24. Members of the CSPDM must meet eligibility requirements, including education and work experience, and pass a 7-hour examination. To maintain their membership they must file an annual report with proof of continuing education, proof of work in the field and commitment to the Ethical Standards and Professional Conduct.
25. Most members of the CSPDM provide services that do not require a P1 licence. However, Mr Zimmerman states that a number of their Ontario members occasionally represent employers and workers with regard to workers compensation claims.
26. The rationale for the partial exemption in section 30 (1) 7 was that members of these groups were considered to provide services that would fall within the definition of ‘legal

services' only very occasionally, while normally providing specific other professional services. The exemption granted was partial, in that only occasional services would be permitted, and the exemptions are to be reviewed after two years. In this sense, the exemptions can be regarded as somewhat transitional in nature, giving the professionals concerned time to decide whether to obtain a licence or refocus their practice away from the provision of legal services.

27. The exemption for the Board of Canadian Registered Safety Professionals is among those that must be reviewed by May 1, 2009.

#### **The Committee's Deliberations**

28. The Committee was of the view that a partial exemption should be granted, on the same basis as the exemption for the Board of Canadian Registered Safety Professionals, i.e.,
  - a. the exemption will be monitored, and
  - b. it will be reviewed by May 2009.



February 15, 2008

**RECEIVED**

FEB 19 2008

**LAW SOCIETY OF UPPER CANADA  
CHIEF EXECUTIVE OFFICER**

Malcolm L. Heins  
Chief Executive Officer  
The Law Society of Upper Canada  
Osgoode Hall, 130 Queen Street West  
Toronto, ON  
M5H 2N6

Dear Mr. Heins:

It was recently brought to our attention by a member located in Ontario that with the introduction of Bill 14, there is a requirement for paralegals to register with your organization.

We would like to bring to your attention the Canadian Society of Professionals in Disability Management (CSPDM), whose Mission Statement is as follows:

*The Canadian Society of Professionals in Disability Management seeks to minimize the socio-economic impact of disabling injuries and illnesses on employees and employers by establishing and supporting the practice of consensus based disability management through professional standards of quality, innovation and leadership in the field.*

The Mandate of the CSPDM is:

- Raising the profile of professionals in the disability management field, ensuring their value is understood and appreciated.
- Ensuring and improving professional standards of quality, innovation and leadership in the disability management field.
- Providing and promoting educational opportunities in the disability management field.
- Ensuring ongoing opportunities for networking and sharing ideas.
- Being a national advocate for disability management and return to work, addressing emerging issues in legislative and social arenas.
- Collaborating nationally and internationally, sharing best practices and the latest research.
- Ensuring ongoing commitment and innovation in the advancement of global disability management policies and practices.

The Occupational Standards that were created for the professionals working in the field of disability management and return to work have been adopted not only across Canada but in 13 countries around the world and therefore the letterhead above identifies the International Association of Professionals in Disability Management of which the Canadian Society is but one participating country.

The members of the CSPDM are comprised of individuals across Canada who have achieved the following professional designations:

- Certified Disability Management Professional (CDMP)  
(Although they may provide direct services to workers with disabilities, they often perform executive functions which may include but are not limited to administration of disability management services, development of policies and procedures, promotion of return to work concepts through education and training, consulting to joint labour-management committees, program evaluation, etc.)
- Certified Return to Work Coordinator (CRTWC)  
(Responsibilities include, but are not limited to expediting, coordinating and facilitating the return to work of persons with injuries, illnesses and disabilities in a range of settings.)

These members are employed in a variety of workplaces across Canada and therefore may carry out the above responsibilities in a range of settings, i.e. as an employee of a company, as an employee of a workers compensation board, as an employee of a private insurance company providing non-occupational benefits or as an employee of a service provider assisting workplaces from an external perspective.

Their responsibilities may include representing employers and workers with regard to workers compensation claims up to and including claims appeals, however, their job responsibilities include multiple legislated areas, e.g. the Ministry of Labour, the Workers Compensation Act on Return to Work, Human Rights legislation, etc.

In order to be eligible to become a member of the Canadian Society of Professionals in Disability Management, individuals must meet certain educational and work experience eligibility requirements and pass a 7-hour professional certification examination administered by a test agency, which process has been determined meets or exceeds the international professional certification standard ISO 17024. And, in order to maintain their designation in good standing, members must make annual submissions including proof of ongoing continuing education, proof of continuing to work in the field, and sign off on the Ethical Standards and Professional Conduct.

Malcolm L. Heins  
February 15, 2008  
Page 3

Under By-law 4, you have provided an exemption clause for, "...an individual whose profession is not the provision of legal services or the practice of law, who provides legal services only occasionally, who provides legal services as ancillary to the carrying on of her or his profession or occupation."

We feel that this description also applies to the members of the Canadian Society of Professional in Disability Management (those professionals who have achieved the designations of CDMP and CRTWC) – please refer to the listing of core skills and competencies for these professionals which is attached to this letter and can also be found on the website at: [www.cspdm.ca](http://www.cspdm.ca).

We also note that under By-law 4, you have identified other groups/individuals who are exempt, and we request that the members of the Canadian Society of Professionals in Disability Management be considered as exempt as a voluntary standard-setting association.

If you require a copy of the Occupational Standards in Disability Management, the detailed Code of Ethics for professionals, the eligibility qualifications, etc., please feel free to contact us. We would be more than happy to submit further documentation as required.

We look forward to hearing from you in this regard.

Sincerely,



Wolfgang Zimmermann  
Executive Director

Enclosure



## **Certified Disability Management Professional**

Certified Disability Management Professionals may work internally within their own organization or externally as a provider. Although they may provide direct services to workers with disabilities, they often perform executive functions which may include but are not limited to administration of DM services, development of policies and procedures, promotion of RTW concepts through education and training, consulting to joint labour-management committees, program evaluation, etc.

Specifically, they may:

- Develop policies and procedures in conjunction with a joint worker-management committee and others.
- Maintain records and computer-based tracking of absences, costs and outcomes.
- Track and analyze the costs and benefits of the disability management program.
- Liaise with the employer, human resources department, occupational health and safety program, and wellness promotion programs.
- Plan and implement internal communication and education about the disability management program for all stakeholders.
- Maintain current information on service providers and community resources such as vocational rehabilitation counselors, substance abuse programs and other support groups.
- Evaluate service providers and community resources including physiotherapists, pain clinics, ergonomists and podiatrists.
- Track changes in relevant legislation, collective agreements, employment contracts and benefit programs, and ensure that these changes are reflected in program practices.





## **Certified Return To Work Coordinator**

Certified Return to Work Coordinators may work internally within their own organization or externally as a provider. Responsibilities include, but are not limited to expediting, coordinating and facilitating the return to work of persons with injuries, illnesses and disabilities in a range of settings.

Specifically, they may:

- Develop and maintain an atmosphere of trust and mutual support with workers.
- Advise the worker about benefits and entitlements, including the services of the disability management program.
- Provide information and support to family members as needed.
- Arrange appropriate medical, vocational and work capacity assessments.
- Collect information and suggestions from the worker, all stakeholder groups, health providers and community resources to identify how the work environment can be adopted to fit the capacity of the worker with a temporary or permanent impairment.
- Use the information and suggestions to develop an effective return-to-work plan in consultation with the worker.
- Ensure suitable medical treatment and rehabilitation are provided.
- Identify other support services that might assist the worker, including self-help groups, counseling and support from community organizations.
- Provide advice on government programs available to the worker to cover equipment needs, training or required alterations to the workplace or home.
- Ensure that all elements of the return-to-work plan are in place, from equipment and services to assistive technology and job modifications.
- Monitor return-to-work progress, making changes as required.
- Assist workers who cannot return to their previous jobs in obtaining career counseling, training and job search or entrepreneurial skills.
- Evaluate the success and cost of the completed return-to-work plan, assess the satisfaction of workers and their supervisors and determine whether follow-up is needed.
- Inform benefit providers when the return-to-work program has concluded.



## Domain Areas

The Occupational Standards identified nine domain areas as core skills and competencies for effective Disability Management practice with sub-domains as listed below:

### 1. Demonstrate Knowledge of Disability Management Theory and Practice

- Identify and define key components of effective disability management.
- State the rationale and objectives for disability management practice.
- Identify the economic and social benefits of disability management in the workplace.
- Describe the principles of effective disability management programs.
- Describe the disability management service delivery process (model programs) for large and small work sites.
- Describe the roles and functions of professionals involved in disability management.
- Describe the scope of a disability manager's caseload.
- Develop strategic planning approaches to disability management.
- Develop and utilize an informational network with other disability management professionals through professional associations and attendance at educational conferences and seminars.

### 2. Apply Legislation and Benefit Programs

- Utilize employment and disability legislation and regulations, including Duty to Accommodate, Employment Equity Act, Workers' Compensation Act, and Human Rights Legislation in disability management planning.
- Explain eligibility and entitlement of benefit and compensation systems to workers and their families or refer individual to appropriate resource persons for benefit information.
- Demonstrate knowledge of public and private disability benefit schemes related to return-to-work.
- Interpret health and safety regulations.
- Communicate implication of medical review/plateau decisions.
- Apply policy and legislation in arriving at decisions.

### 3. Labour/Management Relations

- Analyze workplace disability experience.
- Understand differences and similarities between union and non-union work sites with respect to disability management program implementation.
- Demonstrate knowledge of inter-related workplace systems, i.e. union, employer, human resources, benefit carrier, health care systems, etc.
- Collaborate in the development of a joint labour/management disability management committee.
- Establish workplace-oriented disability management mission and goal statements.
- Collaborate with labour and management programs in non-union workplaces.
- Demonstrate knowledge of employment standards legislation entitlements for non-union workers/managers.

- Describe impact of collective agreements or terms and conditions of employment.
- Apply knowledge of arbitration and grievance procedures.
- Negotiate with labour and management to develop policy, structure, and strategies to resolve conflicts and disputes related to disability management.

#### **4. Utilize Communication and Problem-Solving Skills**

- Apply conflict resolution skills in interactions with various stakeholders.
- Negotiate/facilitate return-to-work agreements.
- Demonstrate logical thinking and problem-solving skills.
- Utilize leadership strategies to influence organizational change including workplace communication, team building, and conflict or dispute resolution.
- Communicate understanding of disability management interventions (e.g. job accommodation, ergonomics, early intervention) to labour/management committee.
- Intervene effectively in crises.
- Provide leadership to return-to-work team at the workplace.
- Demonstrate effective team meeting leadership skills.
- Promote active participation in the disability management program.
- Establish rapport with workers and families.
- Communicate and relate to persons from different ethnic and cultural backgrounds.
- Demonstrate tact and empathy with others.
- Demonstrate sensitivity to family coping strategies.
- Assist worker in adjusting to the impact of injury or disability.
- Demonstrate ability to lead groups, to understand group dynamics.
- Prepare written reports.
- Make oral presentations.
- Educate stakeholders on importance of disability management principles.
- Present disability management process and accomplishments to the broader community.
- Promote the disability management program utilizing varied presentation formats.
- Promote disability management programs and best practices to worker and employer representatives as well as to external providers.
- Utilize adult learning strategies in developing an oral presentation.

#### **5. Disability Case Management**

- Understand the roles and functions of multidisciplinary health care providers in diagnosing and treating injury or impairment.
- Utilize early timed intervention for return to work.
- Apply physical and functional (work) capacity evaluations.
- Evaluate worker adjustment to disability.
- Assess return-to-work needs of the worker.
- Assess workplace factors that impact disability management outcomes.
- Assess factors that contribute to motivation and readiness to participate in disability management program.
- Identify incentives and disincentives to involvement in disability management planning.
- Develop goals and plans with the worker.

- Coordinate internal and external resources to implement disability management plans.
- Consider positive and negative characteristics of "outsourcing" case management services when developing disability management programs.
- Establish collaborative relationships with multidisciplinary health care providers.
- Develop criteria to assess effectiveness and quality of provider services.
- Describe assistive technology options and typical costs.
- Identify and access funding programs.
- Build and maintain local community resource network.
- Establish relationships with advocacy organizations.
- Utilize cost containment strategies.
- Manage time effectively:
- Plan and organize a schedule.
- Establish priorities within caseload.

## **6. Return-to-Work Coordination**

- Assess personal and work adjustment needs.
- Coordinate assessment of functional capacity of worker.
- Analyze job duties and requirements.
- Conduct detailed functional job analyses.
- Demonstrate working knowledge of functional ergonomics.
- Develop capacity within the workplace to provide early intervention with the worker with a disability, the worker representative, the supervisor, and health care providers.
- Facilitate rehabilitation interventions and return-to-work coordination with short-term and long-term disability insurance representatives.
- Develop methods to ensure accountability among supervisors and managers with respect to return-to-work practices.
- Identify systemic barriers to return to work or employment.
- Develop guidelines and procedures for transitional work program.
- Facilitate job modification, accommodation, workplace redesign and assistive technology.
- Provide information to health care providers on transitional work or modified work opportunities to gain their "buy-in" to the process.
- Facilitate ongoing contact between the employee and other support systems.
- Develop return-to-work plan with the worker, worker representative, manager, and health care providers.
- Implement return-to-work plan.
- Monitor and adjust individual return-to-work plan.
- Understand alternative dispute resolution (ADR) principles and how to utilize resources to resolve return-to-work issues.
- Maintain case management records.
- Assess service providers, e.g. rehabilitation facilities, physiotherapy services, and EFAP.
- Develop disability management consultation skills.

## **7. Health, Psycho-social, Prevention, and Functional Aspects of Disability**

- Utilize medical, physical, and functional capacity evaluations in disability management planning.
- Demonstrate understanding of cultural issues to injury, disability, and work.

- Demonstrate understanding of prominent causes of disability including repetitive strain injuries and workplace stress.
- Relate medical and physical information or acute and chronic illness and disability to functional demands of job.
- Utilize information from medical examinations to coordinate treatment plan.
- Evaluate worker's adjustment to disability.
- Assess personal and work adjustment needs.
- Promote worker health and wellness.
- Analyze home and work environments.
- Demonstrate a sound understanding of accident prevention processes and practices.

## **8. Development of Program Management and Evaluation Activities**

- Perform evaluations to measure disability management program outcomes.
- Track costs of disability management programs.
- Identify and implement realistic cost containment strategies.
- Conduct qualitative evaluations.
- Conduct quantitative evaluations.
- Evaluate worker/supervisor satisfaction with program.
- Assess effectiveness of health care provider services and resources.
- Identify key elements of an effective data management/program management system.
- Demonstrate basic computer literacy.
- Implement confidentiality safeguards around disability management data storage.
- Incorporate accident and illness reporting system into disability management information system.

## **9. Demonstrate Ethical and Professional Conduct**

- Develop and implement a plan to maintain own wellness.
- Participate in ongoing professional development activities to upgrade competencies.
- Demonstrate ethical and professional conduct to workers, employers, health care providers and other stakeholders.
- Contribute to the development and ongoing quality improvement of the disability management process.
- Promote equitable access to services.
- Respect confidentiality of information under the guidelines of ethical code, laws, and regulations.
- Understand reasonable course of action when confronted with ethical dilemmas.

**REQUEST FOR EXEMPTION –  
TRADE UNION REPRESENTATIVES IN SMALL CLAIMS COURT**

**Motion**

- 29. That Convocation approve an exemption for trade union representatives appearing in Small Claims Court to enforce benefits payable under a collective agreement.**

**Background**

30. The Law Society has received an exemption request from the Ontario Public Service Employees Union, (OPSEU), regarding cases where the union is assisting members to enforce benefits payable under a collective agreement in Small Claims Court. The letter from Roman Stoykewych, General Counsel for OPSEU, is attached at **Appendix 3**.

31. There are already two exemptions applying to trade union representatives. Paragraph 1 (8) 4 of the *Law Society Act* exempts,

*An employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union in connection with a grievance, a labour negotiation, an arbitration proceeding or a proceeding before an administrative tribunal.*

32. In addition, By-law 4, subsection 32 (2) provides as follows:

*(2) An employee of a trade union, a volunteer representative of a trade union or an individual designated by the Ontario Federation of Labour may, without a licence, provide the following legal services to the union, a member of the union, a former member of the union or a survivor:*

- 1. Give the person advice on her, his or its legal interests, rights or responsibilities in connection with a workplace issue or dispute.*
- 2. Act on behalf of the person in connection with a workplace issue or dispute or a related proceeding before an adjudicative body other than a federal or provincial court.*

33. The trade union representatives in question are thus already exempt when they appear before grievance arbitrations and labour relations tribunals. However, the OPSEU request indicates that there are some benefits payable under collective agreements that are not “arbitrable” and can only be enforced in Small Claims Court. The exemption

request is for the appearances to enforce collective agreement benefits only, and not any other Small Claims Court proceedings.

### **The Committee's Deliberations**

34. The Committee was of the view that the narrow additional exemption requested falls within the rationale for the trade union exemptions in the Act and by-laws and recommends the exemption to Convocation.

"Stoykewych, Roman"  
<rstoykew@opseu.org>

07/14/2008 05:08 PM

To <sweir@lsuc.on.ca>  
cc "Turtle, Paula" <pturtle@usw.ca>, "Lavigne, Ron" <rlavigne@opseu.org>, "Dileo, Lori" <ldileo@opseu.org>  
Subject **Exemption from Paralegal Regulation for Trade Union Representatives in Insurance Cases**

Dear Ms Weir:

Further to our conversation today, I ask that the Law Society consider the granting of an exemption for non-lawyer trade union representatives, including both staff and elected officials, from regulation as paralegals when they appear in the Small Claims Court of the Superior Court of Justice.

As you are of course of aware, trade union officials are not subject to the provisions of the *Law Society Act* when they are appearing before administrative tribunals. Together with the various exemptions to coverage that have been developed in the Rules, the vast majority of trade union representative functions may be handled by persons who are neither lawyers nor are registered as paralegals. These exceptions and exemptions are critical to trade unions ability to function in a cost-effective manner, providing a broad range of representational services to our members. It is also facilitates the central idea of member empowerment within trade unionism.

OPSEU, together with a number of other unions which I have informally canvassed, have experienced an anomaly in this regard in instances in which unions are required to represent their members in insurance matters that require attendance at the Small Claims Court of the Superior Court. As you may be aware, many collective agreements provide for health, dental, disability, and similar benefits and insurance. In some cases, the receipt of these benefits are directly "arbitrable" pursuant to the provisions of the grievance and arbitration process of the various collective agreements, in which case no problem is presented from a Law Society's regulatory perspective. However, many other collective agreements include an obligation to provide coverage only, leaving the issue of compliance with the terms of the insurance contract outside the scope of the collective agreement. It is left to the member to enforce outside the scope of the collective agreement. Although there may well have been some doubt on this point previously, in those latter instances, employees do not have access to the grievance processes of the collective agreements. Instead, disputes concerning compliance with the terms of the insurance contract must be adjudicated in the Small Claims Court (in instances in which the policy does not include an internal arbitration clause). These cases include such matters as claims for prosthetic devices, benefits for a period of illness, and other similar matters, all of which fall under the current monetary limit of the Small Claims Court.

In the past, trade union representatives have represented our members in Small Claims Court. Usually, the same staff members or elected officials who represent employees at arbitrations, workers compensation proceedings and other administrative proceedings served as their representatives. We are not aware of any difficulties that were experienced in their so doing since for the most part they were trained and experienced representatives. However, with the advent of paralegal regulation, this practice is now no longer possible, since the exception in the statute deals only with trade union representatives' appearance at *administrative* tribunals, and the existing exemptions do not appear to include this particular activity. We would ask that you consider further exempting trade union officials to permit this practice to continue.

To be clear, we are not seeking a broad exemption for trade union representatives at the Small Claims Court. Rather, the exemption that we seek could be limited to **those cases in which trade union representatives are seeking to enforce an insurance benefit that arises out of a collective agreement to which the trade union is a party.**



As noted, I have informally canvassed a number of trade union lawyers, and have already obtained the support of the United Steelworkers in this endeavour. I have copied Ms. Paula Turtle, the head of the USW Canadian Legal Department on this email. If you would think it useful, it is likely that additional trade unions would be prepared to similarly support this request and I would be happy to bring this issue to their attention.

Thank you very much for your help in this matter. If you have any questions or comments, please do not hesitate to contact me.

Roman Stoykewych

General Counsel

Ontario Public Service Employees Union

416.443-8888 (ext. 8230)

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## AMENDMENTS TO BY-LAW 11 RE: PRACTICE REVIEWS

### **Motion**

35. That Convocation approve the amendment to By-law 11 respecting practice reviews for paralegals, attached at **Appendix 5**.

### **Background**

36. On February 21<sup>st</sup> Convocation approved the per-claimant limit, audit programme and annual Compensation Fund levy for paralegals.
37. The authority to conduct practice reviews and audits of both lawyers and paralegals is found in the *Law Society Act*, in sections 42 and 49.2. However, in order to commence the audit programme approved by Convocation, amendments to By-law 11 are required, to extend to paralegals the procedural provisions applicable to lawyers. The current by-law wording is attached at **Appendix 4**. The required wording for paralegals is attached at **Appendix 5**.

## **BY-LAW 11 - EXCERPT**

### **PRACTICE REVIEWS**

#### ***Reviews***

27. (1) A review of a licensee's professional business may be conducted if,

(a) an employee of the Society holding the office of Director, Professional Development and Competence is satisfied that there are reasonable grounds for believing that the licensee may be failing or may have failed to meet standards of professional competence; or

(b) the licensee has held a Class L1 licence for not more than eight years.

#### ***Determination of reasonable grounds***

(2) For the purposes of clause (1) (a), in determining that there are reasonable grounds for believing that the licensee may be failing or may have failed to meet standards of professional competence, the following may be considered:

1. The nature, number and type of complaints made to the Society in respect of the conduct and competence of the licensee.
2. Any order made against the licensee under section 35, 40, 44 or 47 or subsection 49.35 (2) of the Act.
3. Any undertaking given to the Society by the licensee.
4. Any information that comes to the knowledge of an officer, employee, agent or representative of the Society in the course of or as a result of considering a complaint which suggests that the licensee may be failing or may have failed to meet standards of professional competence.
5. Any information that comes to the knowledge of an officer, employee, agent or representative of the Society in the course of or as a result of an investigation which suggests that the licensee may be failing or may have failed to meet standards of professional competence.
6. Any information that comes to the knowledge of an officer, employee, agent or representative of the Society in the course of or as a result of a proceeding which suggests that the licensee may be failing or may have failed to meet standards of professional competence.
7. The result of an audit where the result suggests that,
  - (a) the licensee is in default of the requirements of By-Law 9 [Financial Transactions and Records];
  - (b) the licensee is in default of the requirements of the rules of professional conduct for licensees with respect to conflicts of interest;
  - (c) there are deficiencies in the records, systems or procedures of the licensee's professional business; or
  - (d) there are deficiencies in the administration of the licensee's professional business.

#### ***Review of licensee's professional business***

28. (1) The Society shall assign one or more persons to conduct a review of a licensee's professional business.

***Assignment of additional persons to review***

(2) At any time after a review has commenced, the Society may assign one or more persons to assist or replace the person or persons originally assigned to conduct the review.

***Review of professional business is not public information***

(3) The fact that a review of a licensee's professional business is being or has been conducted shall not be made public, except as required in connection with a proceeding under the Act.

***Final report***

29. (1) On completion of a review of a licensee's professional business, the person or persons who conducted the review shall submit to the Society a final report on the review.

***Contents of final report***

(2) The final report on a review of a licensee's professional business shall contain,

(a) the opinion of the person or persons who conducted the review as to whether the licensee who was the subject of the review is failing or has failed to meet standards of professional competence; and

(b) if the person or persons who conducted the review are of the opinion that the licensee who was the subject of the review is failing or has failed to meet standards of professional competence, the recommendations of the person or persons.

***Final report***

(3) The Society shall provide to the licensee who is the subject of the final report a copy thereof.

***Recommendations***

30. (1) If on completion of a review of a licensee's professional business and receipt of the final report on the review, the Society decides to make recommendations to the licensee under subsection 42 (3) of the Act, but not to include the recommendations in a proposal for an order under subsection 42 (4) of the Act, the Society shall so notify the licensee in writing.

***Same***

(2) The Society may make recommendations to the licensee at the same time as the Society notifies the licensee under subsection (1) or within a reasonable period of time after the Society notifies the licensee under subsection (1).

***Proposal for order***

31. (1) If on completion of a review of a licensee's professional business and receipt of the final report on the review, the Society decides to make recommendations to the licensee under subsection 42 (3) of the Act and to include the recommendations in a proposal for an order under subsection 42 (4) of the Act, the Society shall so notify the licensee in writing.

***Same***

(2) The notice under subsection (1) shall be accompanied by the proposal for an order.

***Form of proposal for an order***

(3) A proposal for an order shall, as far as possible, be in the form of an order made under subsection 42 (7) of the Act.

***Time for responding to proposal***

(4) A licensee who receives a proposal for an order shall, not later than thirty days after the date specified on the notice given to the licensee under subsection (1), notify the Society in writing as to whether the licensee accepts the proposal.

***Extension of time for responding to proposal***

(5) Despite subsection (4), on the request of the licensee, or on its own initiative, the Society may extend the time within which the licensee is to respond to the proposal.

***Request for extension of time***

(6) A request to the Society to extend time under subsection (5) shall be made by the licensee in writing and not later than the day on which the licensee is required under subsection (4) to respond to the proposal.

***Modifying proposal for order***

(7) Before the time for responding to a proposal for an order has expired, the Society may modify the proposal if the licensee consents to the modification, and the modified proposal shall be deemed to be the proposal to which the licensee is required to respond under subsection (4).

***Failure to respond***

(8) A licensee who fails to respond in writing to a proposal for an order within the thirty day period specified in subsection (4), or within the extended time period specified by the Society under subsection (5), the licensee shall be deemed to have refused to accept the proposal.

***Review of proposal by panelist: materials***

32. The Society shall provide to the panelist the following materials:

1. The final report on the review of the licensee's professional business.
2. The licensee's written response, if any, to the final report, including the licensee's written response, if any, to the recommendations of the person or persons who conducted the review.
3. The proposal for an order made to the licensee.
4. The licensee's written response, if any, to the proposal.

***Review of proposal by panelist: refusal to make order***

33. The panelist may refuse to make an order giving effect to the proposal only after a meeting with the licensee and the Society.

***Review of proposal by panelist: modifications***

34. The panelist may make an order that includes modifications to the proposal only after a meeting with the licensee and the Society.

***Communications with licensee and Society prohibited***

35. The panelist shall not communicate with the licensee or the Society with respect to the proposal except in accordance with section 36.

***Meeting with licensee and Society***

36. (1) The panelist may meet with the licensee and the Society by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

***Both parties to be present***

(2) Subject to subsection (3), the panelist shall not meet with the licensee alone or with the Society alone to discuss the proposal, but nothing in this subsection is intended to deny to the licensee the right to counsel.

***Exception***

(3) The panelist may meet with the Society alone to discuss the proposal if,

(a) the meeting is not held under section 34; and

(b) notice of the meeting has been given to the licensee in accordance with subsections (4) and (5) and the licensee fails to attend at the meeting.

***Notice***

(4) The Society shall give to a licensee reasonable notice of a meeting with the panelist.

***Same***

(5) A notice of a meeting shall be in writing and shall include,

(a) a statement of the time, place and purpose of the meeting; and

(b) a statement that if the licensee does not attend at the meeting, the panelist may meet with the Society alone to discuss the proposal.

***Order***

37. (1) An order made under subsection 42 (7) of the Act shall be in Form 11A and shall contain,

(a) the name of the panelist who made it;

(b) the date on which it was made; and

(c) a recital of the particulars necessary to understand the order, including the date of any meeting and the persons who attended at the meeting.

***Same***

(2) The operative parts of an order made under subsection 42 (7) of the Act shall be divided into paragraphs, numbered consecutively.

**Notice of order**

(3) The Society shall send to the licensee who is the subject of an order made under subsection 42 (7) of the Act a copy of the order by any of the following methods:

1. Personal delivery to the licensee.
2. Regular lettermail to the last known address of the licensee.
3. Fax to the last known fax number of the licensee.
4. E-mail to the last known e-mail address of the licensee.

**Date of receipt: mail**

(4) If the copy of the order is sent by regular lettermail, it shall be deemed to be received by the licensee on the fifth day after the day it is mailed, unless the day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday.

**Date of receipt: fax or e-mail**

(5) If the copy of the order is sent by fax or e-mail, it shall be deemed to be received by the licensee on the day after it was sent, unless the day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday.

**Effective date of order**

(6) Unless otherwise provided in the order, an order made under subsection 42 (7) of the Act is effective from the date on which it is made.

**Order is not public information**

(7) An order made under subsection 42 (7) of the Act shall not be made public.

**Order making licence subject to terms, etc., is public information**

(8) Despite subsection (7), an order made under subsection 42 (7) of the Act that imposes terms, conditions, limitations or restrictions on the licensee or the licensee's licence is a matter of public record.

**PART V**

**PAYMENT OF COSTS**

**AUDIT**

**Payment of costs**

38. On application by the Society, a bencher appointed for the purpose by Convocation may make an order requiring a licensee who was the subject of an audit under section 49.2 of the Act to pay the cost or a portion of the cost of the audit if the bencher is satisfied that,

(a) the audit was required because the licensee had failed to submit to the Society the report required under section 4 of By-Law 8 [Reporting and Filing Requirements];

(b) at the time arranged between the Society and the licensee, the person conducting the audit could not gain entry to the business premises of the licensee;

(c) at any time during the audit, the licensee failed to produce to the person conducting the audit the financial records and other documents that the licensee prior to a specified time had been requested to make available to the person at that time;

(d) at any time during the audit, the licensee failed to produce to the person conducting the audit financial records that were up to date and the failure to produce financial records that were up to date increased significantly the amount of time required to complete the audit; or

(e) at any time during the audit, the licensee produced financial records that were not in compliance with the requirements of By-Law 9 [Financial Transactions and Records] and the production of financial records that were not in compliance with the requirements of By-Law 9 [Financial Transactions and Records] increased the amount of time required to complete the audit.

***Notice of application***

39. (1) An application for payment of the cost or a portion of the cost of an audit shall be commenced by the Society notifying the licensee in writing of the application.

***Method of giving notice***

(2) Notice under subsection (1) is sufficiently given if,

(a) it is delivered personally;

(b) it is sent by regular lettermail addressed to the licensee at the latest address for the licensee appearing on the records of the Society; or

(c) it is faxed to the licensee at the latest fax number for the licensee appearing on the records of the Society.

***Receipt of notice***

(3) Notice under subsection (1) shall be deemed to have been received by the licensee,

(a) if it was sent by regular lettermail, on the fifth day after it was mailed; and

(b) if it was faxed, on the first day after it was faxed.

***Bill of costs***

40. (1) Where the Society is applying for payment of the cost or a portion of the cost of an audit, the Society shall send to the licensee at least ten days before the date fixed for consideration of the application a bill of costs setting out the expenses, fees, disbursements and other charges incurred by the Society to conduct the audit.

***Tariff***

(2) The bill of costs prepared by the Society shall, as far as possible, be in accordance with a tariff established by Convocation from time to time.

***Application of certain sections***



(3) Subsections 39 (2) and (3) apply, with necessary modifications, to the delivery of the bill of costs under subsection (1).

***Consideration of application: procedure***

41. (1) Subject to sections 39 and 40 and subsections (2), (3), (5) and (6), the procedure applicable to the consideration of an application for the payment of the cost or a portion of the cost of an audit shall be determined by the bencher and, without limiting the generality of the foregoing, the bencher may decide who may make submissions to him or her, when and in what manner.

***Submissions by licensee and Society***

(2) The licensee and the Society are entitled to make submissions to the bencher when he or she is considering an application for the payment of the cost or a portion of the cost of an audit.

***Ability to pay***

(3) In considering an application for the payment of the cost or a portion of the cost of an audit, the bencher shall take into account, among other relevant factors, the licensee's ability to pay.

***Authority of bencher***

(4) After considering an application for payment of the cost or a portion of the cost of an audit, the bencher shall,

(a) dismiss the application and declare that the licensee is not required to pay the cost or any portion of the cost of the audit; or

(b) order that the licensee pay the cost or a portion of the cost of the audit, as requested by the Society in the application or as determined by the bencher, and set the due date for payment.

***Tariff***

(5) Where the bencher determines under clause (4) (b) that the licensee is to pay the cost or a portion of the cost of the audit other than as requested by the Society in the application, the bencher's determination as to the amount payable by the licensee shall, as far as possible, be in accordance with a tariff established by Convocation from time to time.

***Reasons for decision***

(6) If requested by the licensee or the Society, the bencher shall state in writing the reasons for his or her decision on the application.

***Appeal***

42. (1) The licensee or the Society if dissatisfied with the bencher's decision under subsection 41 (4) may appeal the decision to a panel of three benchers appointed for the purpose by Convocation.

***Time for appeal***

(2) An appeal under subsection (1) shall be commenced,

(a) if the licensee is appealing, by the licensee notifying the Society in writing of the appeal within thirty days after the day the bencher delivers his or her decision; or

(b) if the Society is appealing, by the Society notifying the licensee in writing of the appeal within thirty days after the day the bencher delivers his or her decision.

***Procedure***

(3) The rules of practice and procedure apply, with necessary modifications, to the consideration by the panel of three benchers of an appeal under subsection (1) as if the consideration of the appeal were the hearing of an appeal under subsection 49.32 (2) of the Act.

***Same***

(4) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the panel of three benchers of an appeal under subsection (1).

***Payment of cost of audit***

(5) Where a licensee or the Society appeals under subsection (1), payment of the cost or a portion of the cost of an audit, as ordered by the bencher under subsection 41 (4), is postponed until the appeal is disposed of by the panel of three benchers.

***Decision on appeal***

(6) After considering an appeal made under subsection (1), the panel of three benchers shall,

(a) confirm the bencher's decision; or

(b) strike out the bencher's decision and substitute its own decision.

***Decision final***

(7) The decision of the panel of three benchers on an appeal made under subsection (1) is final.

THE LAW SOCIETY OF UPPER CANADA

**BY-LAWS MADE UNDER  
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT***

**BY-LAW 11  
[REGULATION OF CONDUCT, CAPACITY AND PROFESSIONAL COMPETENCE]**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON SEPTEMBER 25,  
2008

MOVED BY

SECONDED BY

THAT By-Law 11 [Regulation of Conduct, Capacity and Professional Competence], made by Convocation on May 1, 2007 and amended by Convocation on February 21, 2008 and April 24, 2008, be further amended as follows:

- 1. The definition of “licensee” in section 24 of the By-Law is deleted.**
- 2. Subsection 27 (1) of the By-Law is deleted and the following substituted:**

**Reviews**

27. (1) A review of a licensee’s professional business may be conducted if,
  - (a) an employee of the Society holding the office of Director, Professional Development and Competence is satisfied that there are reasonable grounds for believing that the licensee may be failing or may have failed to meet standards of professional competence;
  - (b) the licensee has held a Class L1 licence for not more that eight years; or
  - (c) the licensee holds a Class P1 licence.

## **REPORTING REQUIREMENTS: PARALEGAL ANNUAL REPORT (PAR)**

### **Motion**

38. **That Convocation approve the amendment to By-law 8 respecting annual reporting requirements for paralegals, attached at Appendix 7.**

### **Background**

39. To ensure that the Law Society has the correct address and practice information for all lawyers, the Law Society currently requires lawyers to file an Annual Report with basic information about the lawyer's practice. This also permits the Law Society to verify compliance with the trust account rules and to compile basic statistics about such matters as age, areas of practice, and geographic location.
40. The Law Society's legal authority to require lawyers to file an annual report is found in Part II of By-law 8, attached at **Appendix 6**.

### **The Committee's Deliberations**

41. The Committee recommends extending these reporting requirements to paralegals. The proposed wording is attached at **Appendix 7**
42. A draft Paralegal Annual Report ('PAR') has been prepared, based on the existing Members' Annual Report (MAR) filed by lawyers, and is attached at **Appendix 8** for information.

## **By-Law 8**

Made:	May 1, 2007
Amended:	June 28, 2007
	April 24, 2008
	June 26, 2008

### **REPORTING AND FILING REQUIREMENTS**

#### **PART II**

#### **FILING REQUIREMENTS**

##### **ANNUAL REPORT**

###### ***Requirement to submit annual report***

4. (1) Every licensee who holds a Class L1 licence shall submit a report to the Society, by March 31 of each year, in respect of,

- (a) the licensee's professional business during the preceding year; and
- (b) the licensee's other activities during the preceding year related to the licensee's practice of law.

###### ***Annual Report***

(2) The report required under subsection (1) shall be in a form provided by the Society.

###### ***Exemption from requirement to submit annual report***

(3) The following licensees may apply to the Society for an exemption from the requirement to submit a report under subsection (1):

1. A licensee who is over sixty-five years of age and who,
  - i. does not practise law in Ontario,
  - ii. is not an estate trustee,
  - iii. is not a trustee of an inter vivos trust; and
  - iv. does not act as an attorney under a power of attorney for property given by a client or former client.
2. A licensee who is incapacitated within the meaning of the Act.

###### ***Application by licensee's representative***

(4) The Society may permit any person on behalf of a licensee to make an application under subsection (3).

###### ***Application form***

(5) An application under subsection (3) shall be in a form provided by the Society.

### ***Documents and explanations***

(6) For the purposes of assisting the Society to consider an application under subsection (3), the licensee or the person applying on behalf of the licensee shall provide to the Society such documents and explanations as the may be required.

### ***Consideration of application***

(7) The Society shall consider every application made under subsection (3) and if satisfied that the licensee is eligible for an exemption under paragraph 1 or 2 of subsection (3), the Society shall approve the application.

### ***Duration of exemption***

(8) A licensee whose application is approved is exempt from the requirement to submit a report under subsection (1) in respect of the year in which the application is approved and in respect of every year thereafter if the licensee remains eligible for the exemption throughout the entire year.

### ***Period of default***

5. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file a report required under section 4 is 120 days after the day the report is required to be submitted.

### ***Reinstatement of licence***

(2) If a licensee's licence has been suspended under clause 47 (1) (a) of the Act for failure to complete or file a report required under section 4, for the purpose of subsection 47 (2) of the Act, the licensee shall complete and file the report in a form provided by the Society.

### ***Requirement to submit public accountant's report***

6. (1) The Society may require any licensee who is required to submit a report under subsection 4 (1) to submit, in addition to the report required under that subsection, a report of a public accountant relating to the matters in respect of which the licensee is required to submit a report to the Society under subsection 4 (1).

### ***Contents of report and time for filing***

(2) The Society shall specify the matters to be included in the report and the time within which it must be submitted to the Society.

### ***Licensee's obligation to provide access to files, etc.***

(3) For the purpose of permitting the public accountant to complete the report, the licensee shall,

(a) grant to the public accountant full access, without restriction, to all files maintained by the licensee;

(b) produce to the public accountant all financial records and other evidence and documents which the public accountant may require; and

(c) provide to the public accountant such explanations as the public accountant may require.

### ***Authority to confirm independently particulars of transactions***

(4) For the purpose of permitting the public accountant to complete the report, the public accountant may confirm independently the particulars of any transaction recorded in the files.

### **Cost**

(5) The cost of preparing the report required under subsection (1), including the cost of retaining a public accountant, shall be paid for by the licensee.

### ***Public accountant's duty of confidentiality***

(6) When retaining a public accountant to complete a report required under this section, a licensee shall ensure that the public accountant is bound not to disclose any information that comes to his or her knowledge as a result of activities undertaken to complete the report, but the public accountant shall not be prohibited from disclosing information to the Society as required under this Part.

### ***Period of default***

7. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to file a report of a public accountant in accordance with section 6 is 60 days after the day the report is required to be submitted.

### ***Reinstatement of licensee***

(2) If a licensee's licence has been suspended under clause 47 (1) (a) of the Act for failure to file a report of a public accountant in accordance with section 6, for the purpose of subsection 47 (2) of the Act, the licensee shall file the report.

### ***Failure to submit public accountant's report: investigation***

8. (1) If a licensee fails to submit the report of a public accountant in accordance with section 4, the Society may require an investigation of the licensee's financial records to be made by a person designated by it, who need not be a public accountant, for the purpose of obtaining the information that would have been provided in the report.

### ***Investigation: application of subss. 6 (3) and (4)***

(2) Subsections 6 (3) and (4) apply with necessary modifications to the investigation under this section.

### ***Confidentiality***

(3) A person designated to investigate a licensee's financial records under this section shall not disclose any information that comes to his or her knowledge as a result of the investigation except as required in connection with the administration of the Act or the by-laws.

### **Cost**

(3) The cost of the investigation under this section shall be paid for by the licensee.

THE LAW SOCIETY OF UPPER CANADA  
**BY-LAWS MADE UNDER  
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT***

**BY-LAW 8  
[REPORTING AND FILING REQUIREMENTS]**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON SEPTEMBER 25, 2008

MOVED BY

SECONDED BY

THAT By-Law 8 [Reporting and Filing Requirements], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, April 24, 2008 and June 26, 2008, be further amended as follows:

**1. Subsection 4 (1) of the By-Law is deleted and the following substituted:**

**Requirement to submit annual report**

4. (1) Every licensee shall submit a report to the Society, by March 31 of each year, in respect of,
- (a) the licensee's professional business during the preceding year; and
  - (b) the licensee's other activities during the preceding year related to the licensee's practice of law or provision of legal services.

**3. Subsection 4 (3) of the By-Law is deleted and the following substituted:**

**Exemption from requirement to submit annual report**



(3) The following licensees may apply to the Society for an exemption from the requirement to submit a report under subsection (1):

1. A licensee who holds a Class L1 licence who is over sixty-five years of age and who,
  - i. does not practise law in Ontario,
  - ii. is not an estate trustee,
  - iii. is not a trustee of an *inter vivos* trust, and
  - iv. does not act as an attorney under a power of attorney for property given by a client or former client.
2. A licensee who holds a Class P1 licence who is over sixty-five years of age and who does not provide legal services in Ontario.
3. A licensee who is incapacitated within the meaning of the Act.



# 2008

## PARALEGAL'S ANNUAL REPORT

**DUE  
MARCH 31, 2009**

**PLEASE FILE THIS REPORT ONLINE AT: <https://eforms.lsuc.on.ca>**

See the enclosed **Guide to the 2008 Paralegal's Annual Report** for assistance in completing this report. A French version of this report is also available (aussi disponible en français). For further assistance in the completion of Sections D and E, refer to **The Bookkeeping Guide** available on our website at [www.lsuc.on.ca](http://www.lsuc.on.ca). Click on the "Resource Centre" tab and select "Practice Resources" to download a copy.

**THIS REPORT IS BASED ON THE CALENDAR YEAR ENDING DECEMBER 31, 2008 AND IS DUE BY MARCH 31, 2009. FAILURE TO COMPLETE AND FILE THIS REPORT WITHIN 120 DAYS OF THE DUE DATE WILL RESULT IN A SUMMARY ORDER SUSPENDING YOUR LICENCE UNTIL SUCH TIME AS THIS REPORT IS COMPLETED AND FILED. (Currently no filing By-law for paralegals)**

**A IDENTIFICATION** To be reviewed by all licensed paralegals.  
See page \*\* of the enclosed "Guide" for assistance in the review of this section.

THIS REPORT relates to the following licensed paralegal of **The Law Society of Upper Canada**:

[Licensed Paralegal Name  
[Firm Name  
[Street Address  
[City, Province  
[Postal Code

[Licensed Paralegal Number  
[Year Licence Obtained  
[E-mail address  
[Status

### NOTES ABOUT THIS SECTION:

If any of this information, including your e-mail address, is incorrect or missing, **complete the enclosed Notice of Change of Information** form and return it with this report. Alternatively, you may notify the Law Society's Resource Centre at (416) 947-3315 or Toll-Free (outside local calling area) at 1-800-668-7380 ext. 3315.

The identification information to the left reflects your mailing information as at November 2008 from the Law Society's records. If you have contacted the Resource Centre to have your information updated since November 2008 it will not be reflected on this form.

**DO NOT MAKE ANY  
CHANGES ON THIS PAGE**

#### MARKING INSTRUCTIONS

Use black ink or HB pencil.  
Use correction fluid to make changes.  
Make dark marks that fill the oval completely.

CORRECT



INCORRECT



#### Privacy Option

On occasion, the Law Society may provide licensed paralegals' names, business addresses and e-mail addresses to professional associations, organizations and institutions (e.g. Paralegal Society of Ontario, Ontario Colleges) without charge, to facilitate the maintenance of mailing lists, and enhance communications with the profession, including information about programs, initiatives, products and services.

You have the option of instructing the Law Society not to provide your name, business address and/or e-mail address to any professional association, organization or institution.

**Fill in the oval if you do not wish the Law Society to provide your name, business address and/or e-mail address to any professional association, organization or institution:**

**The questions on this page are not mandatory**

<b>1</b>	<b>Paralegal Standing Committee Election Privacy Option</b>	
	During the upcoming election for the members of the Paralegal Standing Committee, candidates may want to communicate with voters by e-mail. <b>Fill in the oval if you give the Law Society permission to allow the use of your e-mail address for election campaigning purposes:</b> <input type="radio"/>	

<b>2</b>	<b>Provision of Legal Services in French</b>	
a)	Can you communicate with your clients and provide legal services to them in the French language?	Yes <input type="radio"/> No <input type="radio"/>
b)	Can you communicate with your clients, provide legal services to them, and represent them in the French language?	Yes <input type="radio"/> No <input type="radio"/>

<b>3</b>	<b>Other Languages Spoken</b>							
	Arabic	<input type="radio"/>	French	<input type="radio"/>	Korean	<input type="radio"/>	Russian	<input type="radio"/>
	Bulgarian	<input type="radio"/>	German	<input type="radio"/>	Latvian	<input type="radio"/>	Serbo-Croatian	<input type="radio"/>
	Cantonese	<input type="radio"/>	Greek	<input type="radio"/>	Lithuanian	<input type="radio"/>	Slovak	<input type="radio"/>
	Czech	<input type="radio"/>	Gujarati	<input type="radio"/>	Mandarin	<input type="radio"/>	Slovene	<input type="radio"/>
	Danish	<input type="radio"/>	Hebrew	<input type="radio"/>	Macedonian	<input type="radio"/>	Spanish	<input type="radio"/>
	Dutch	<input type="radio"/>	Hindi	<input type="radio"/>	Norwegian	<input type="radio"/>	Swedish	<input type="radio"/>
	English	<input type="radio"/>	Hindustani	<input type="radio"/>	Polish	<input type="radio"/>	Ukrainian	<input type="radio"/>
	Estonian	<input type="radio"/>	Hungarian	<input type="radio"/>	Portuguese	<input type="radio"/>	Urdu	<input type="radio"/>
	Finnish	<input type="radio"/>	Italian	<input type="radio"/>	Punjabi	<input type="radio"/>	Yiddish	<input type="radio"/>
	Farsi	<input type="radio"/>	Japanese	<input type="radio"/>	Romanian	<input type="radio"/>	Other – Please Specify	
							_____	

<b>4</b>	<b>Survey Questions</b>																	
a)	Which of the following Continuing Legal Education (CLE) topics would you find most useful? <b>(Select all that apply)</b>																	
	<table border="1" style="margin: auto; border-collapse: collapse;"> <tr style="background-color: #e0e0e0;"> <th colspan="4">TOPICS</th> </tr> <tr> <td style="width: 30%;">Trust Accounting</td> <td style="width: 5%; text-align: center;"><input type="radio"/></td> <td style="width: 30%;">File Management</td> <td style="width: 5%; text-align: center;"><input type="radio"/></td> </tr> <tr> <td>Client Management</td> <td style="text-align: center;"><input type="radio"/></td> <td>Ethical Practices</td> <td style="text-align: center;"><input type="radio"/></td> </tr> <tr> <td>Law Society practice requirements</td> <td style="text-align: center;"><input type="radio"/></td> <td></td> <td></td> </tr> </table>		TOPICS				Trust Accounting	<input type="radio"/>	File Management	<input type="radio"/>	Client Management	<input type="radio"/>	Ethical Practices	<input type="radio"/>	Law Society practice requirements	<input type="radio"/>		
TOPICS																		
Trust Accounting	<input type="radio"/>	File Management	<input type="radio"/>															
Client Management	<input type="radio"/>	Ethical Practices	<input type="radio"/>															
Law Society practice requirements	<input type="radio"/>																	
b)	Are you satisfied with the response time to your e-mails or questions to the Law Society?	Yes <input type="radio"/> No <input type="radio"/>																
c)	Do you find the paralegal information posted on our website useful?	Yes <input type="radio"/> No <input type="radio"/>																

<b>B</b>	<b>YEAR END STATUS</b>	<b>To be completed by all licensed paralegals.</b> <b>See page ** of the enclosed "Guide" for assistance in the completion of this section.</b>
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**NOTES ABOUT THIS SECTION:**

1. Choose only one status ( your status on December 31, 2008 ) regardless of changes in employment during the 2008 calendar year.
2. Details on changes to your employment status that occurred during 2008 should be provided on the enclosed Notice of Change of Information form.

December 31, 2008 Status (Select only ONE)		Mandatory Sections	Complete if Applicable
A sole practitioner, providing legal services, alone (with no other paralegals)	<input type="radio"/>	C, D, E, F	
A sole practitioner, providing legal services with one or more paralegals as employees	<input type="radio"/>	C, D, E, F	
A sole practitioner, providing legal services with one or more paralegals and/or lawyers in shared facilities	<input type="radio"/>	C, D, E, F	
A partner with one or more paralegals only, in a paralegal firm providing legal services	<input type="radio"/>	C, D, E, F	
A partner with a lawyer providing legal services for the law firm	<input type="radio"/>	C, D, E, F	
An employee/associate in a paralegal firm	<input type="radio"/>	C, D, E, F	
An employee in a law firm	<input type="radio"/>	C, D, E, F	
Employed by Legal Aid Ontario or a community legal clinic	<input type="radio"/>	D, F	C, E
Employed in government in Ontario	<input type="radio"/>	D, F	C, E
Employed in education in Ontario	<input type="radio"/>	D, F	C, E
Employed other, in Ontario	<input type="radio"/>	D, F	C, E
A paralegal providing legal services outside of Ontario	<input type="radio"/>	D, F	C, E
Employed other, outside of Ontario	<input type="radio"/>	D, F	C, E
Not working or on parental leave or unemployed	<input type="radio"/>	D, F	C, E
Suspended	<input type="radio"/>	D, F	C, E
In a situation not covered above (specify your status in the area below)	<input type="radio"/>	D, F	C, E

If required, use the area below to provide further information on your year end status:

<b>C</b>	<b>AREAS OF LEGAL SERVICES</b>	To be completed by all licensed paralegals providing legal services in Ontario. See page ** of the enclosed "Guide" for assistance in the completion of this section.
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**NOTES ABOUT THIS SECTION:**

1. Where exact information is not available to respond to the questions under this heading, provide your **best approximation**.
2. \* Refer to the enclosed "Guide" for definitions.

<b>1</b>	<b>Indicate the approximate percentage of time you devoted in 2008 to each area of legal services listed below.</b>
Ontario Court of Justice <i>Provincial Offences Act</i> matters	□ □ □
Ontario Court of Justice - Summary Conviction matters	□ □ □
Worker's Compensation	□ □ □
Small Claims Court matters	□ □ □
Property Tax Assessment	□ □ □
Statutory Accident Benefits Schedule matters (SABS)	□ □ □
Human Rights	□ □ □
Landlord and Tenant	□ □ □
Other – Please specify in the area below	□ □ □
<b>Total 100 %</b>	

<b>2</b>	<b>In what primary area do you provide legal services? Choose only one.</b>
Ontario Court of Justice <i>Provincial Offences Act</i> matters	□
Ontario Court of Justice - Summary Conviction matters	□
Worker's Compensation	□
Small Claims Court matters	□
Property Tax Assessment	□
Statutory Accident Benefits Schedule matters (SABS)	□
Human Rights	□
Landlord and Tenant	□
Other – Please specify in the area below	□

<b>3</b>	<b>Lawyer Supervision</b>	
a)	Do you work under the supervision of a lawyer? <b>If "Yes" to a):</b>	Yes <input type="radio"/> No <input type="radio"/>
b)	Indicate the percentage of time you spend in the following areas: Advocacy* Non-advocacy*	□ □ □ % □ □ □ %

<b>D</b>	<b>INDIVIDUAL LICENSEE QUESTIONS</b>	<b>To be completed by <u>all licensed paralegals regardless of status.</u> Questions 1 through 3 inclusive must be answered. See page **of the enclosed “Guide” for assistance in the completion of this section.</b>
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**NOTES ABOUT THIS SECTION:**

1. For further assistance in the completion of this section, refer to **The Bookkeeping Guide** available on our website at www.lsuc.on.ca. Click on the “Resource Centre” tab and select “Practice Resources” to download a copy.
2. \* Refer to the enclosed “**Guide**” for definitions.

<b>1</b>	<b>Cash Transactions – All licensed paralegals must report on large cash transactions regardless of jurisdiction where legal services were provided.</b>	
a)	Did you receive cash* in an aggregate amount equivalent to \$7,500 CDN or more in respect of any one client file since the date you were licensed in 2008? <b>If “Yes” to a):</b>	Yes <input type="radio"/> No <input type="radio"/>
b)	Was the cash solely for legal services fees and/or client disbursements? <b>If “No” to b),</b> provide full particulars below with respect to compliance with By-Law 9, Part III (Cash Transactions).	Yes <input type="radio"/> No <input type="radio"/>

<b>2</b>	<b>Trust Property – <u>2 responses required:</u> Answer 2a) and 2b). Then proceed to question 3.</b>	
a)	After being licensed in 2008, did you receive trust* funds (money for deposit into your trust account) from or on behalf of a client for legal services that you provided?	Yes <input type="radio"/> No <input type="radio"/>
b)	After being licensed in 2008, did you pay out client trust* funds (money paid out from your trust account) or did you have signing authority on a client trust account?	Yes <input type="radio"/> No <input type="radio"/>

<b>3</b>	<b>Borrowing from Clients</b>	
<p><b>Note:</b> If your borrowing was/is from a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, answer “<b>No</b>” to a). See subrules 3.06(5) (a) (b) of the Paralegal Rules of Conduct.</p>		
a)	Since the date you were licensed in 2008, were you personally indebted to a client or person who at the time of borrowing was or had been your client or a client of a firm of which you were then providing legal services? <b>If “Yes” to a):</b>	Yes <input type="radio"/> No <input type="radio"/>
b)	Was the client or person a related* person as defined in the <i>Income Tax Act (Canada)</i> ?  <b>If “Yes” to b),</b> provide full particulars below. Include the name of the lender and of the borrower, the amount of the loan, the security provided, and particulars of independent legal advice or independent legal representation obtained by the lender.	Yes <input type="radio"/> No <input type="radio"/>

If required, use the area below to provide further information on your Individual Licensee Questions:

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<b>E</b>	<b>FINANCIAL REPORTING</b>	<b>To be completed by:</b> -All paralegal sole practitioners -Paralegals who are partners/employees of either a paralegal firm, or a law firm -All other paralegals who held or continued to hold client monies or property from a former legal services practice in Ontario as at December 31, 2008
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**NOTES ABOUT THIS SECTION:**

- For further assistance in the completion of this section, refer to **The Bookkeeping Guide** available on our website at [www.lsuc.on.ca](http://www.lsuc.on.ca). Click on the "Resource Centre" tab and select "Practice Resources" to download a copy.
- \* Refer to the enclosed "Guide" for definitions.

<b>1</b>	<b>Trust and General Accounts</b>			
As at December 31, 2008, did either you or your firm operate a trust and/or general account in Ontario?				
<b>a)</b>	<table border="1" style="width: 100%;"> <tr> <td style="text-align: center;"><b>Trust Account(s)</b></td> </tr> <tr> <td style="text-align: center;">Yes <input type="radio"/> No <input type="radio"/></td> </tr> </table>	<b>Trust Account(s)</b>	Yes <input type="radio"/> No <input type="radio"/>	<b>b)</b>
<b>Trust Account(s)</b>				
Yes <input type="radio"/> No <input type="radio"/>				
	<table border="1" style="width: 100%;"> <tr> <td style="text-align: center;"><b>General Account(s)</b></td> </tr> <tr> <td style="text-align: center;">Yes <input type="radio"/> No <input type="radio"/></td> </tr> </table>	<b>General Account(s)</b>	Yes <input type="radio"/> No <input type="radio"/>	
<b>General Account(s)</b>				
Yes <input type="radio"/> No <input type="radio"/>				
<p>If "Yes" to a), proceed to question 2; <b>OR</b></p> <p>If "No" to a) and "Yes" to b) proceed to complete question 4 (page ?), and then proceed to Section F (page ?) <b>OR</b></p> <p>If "No" to both a) and b) proceed to Section F (page ?).</p>				

<b>2</b>	As at December 31, 2008, were you a sole practitioner, or were you the licensed paralegal responsible for filing the trust account information on behalf of your paralegal firm in Ontario?	Yes <input type="radio"/> No <input type="radio"/>
<p>If "Yes" to 2, proceed to complete questions 4 through 9 (pages ? to ?).</p> <p><b>NOTE: If you are reporting financial information on behalf of other paralegals in your firm, you must also submit a Financial Filing Declaration</b> (the declaration is enclosed with your Paralegal's Annual Report package). Your report is not considered complete without the submission of the Financial Filing Declaration.</p> <p>If "No" to 2, complete the "Designated Financial Filing Option" (question 3) below.</p>		

<b>3</b>	<b>Designated Financial Filing Option</b> This option is available to you if you are not responsible for filing trust account information.
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<p>Were books and records for all your firm's <b>general</b> and/or <b>trust</b> accounts (mixed, separate*, and other interest generating investments*) maintained since the date you were licensed in 2008, on a current basis, in accordance with all applicable sections in By-Law 9 (enclosed) made under the <i>Law Society Act</i>?</p> <p><b>If "No" to 4,</b> indicate below which areas were deficient and provide an explanation for each.  <b>If "Yes" to 4,</b> leave the following schedule blank and proceed to question 5 to report on trust accounts.</p>	Yes <input type="radio"/> No <input type="radio"/>
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**COMPLETE THIS CHART ONLY IF YOU ANSWERED "NO" TO QUESTION 4.  
 COMPLETE ONLY THOSE AREAS WHERE YOU WERE DEFICIENT.**

By-Law 9: Financial Transactions and Records	By-Law 9 Sections 18 & 19 (Maintain)	By-Law 9 Section 22 (Current)	Explanation for Deficiency
1. <b>Trust Receipts Journal</b> <i>Section 18(1)</i>	<input type="radio"/>	<input type="radio"/>	
2. <b>Trust Disbursements Journal</b> <i>Section 18(2)</i>	<input type="radio"/>	<input type="radio"/>	
3. <b>Clients' Trust Ledger</b> <i>Section 18(3)</i>	<input type="radio"/>	<input type="radio"/>	
4. <b>Trust Transfer Journal</b> <i>Section 18(4)</i>	<input type="radio"/>	<input type="radio"/>	
5. <b>General Receipts Journal</b> <i>Section 18(5)</i>	<input type="radio"/>	<input type="radio"/>	
6. <b>General Disbursements Journal</b> <i>Section 18(6)</i>	<input type="radio"/>	<input type="radio"/>	
7. <b>Fees Book or Chronological Billing File</b> <i>Section 18(7)</i>	<input type="radio"/>	<input type="radio"/>	
8. <b>Trust Bank Comparison ♦</b> <i>Section 18(8)</i>	<input type="radio"/>	<input type="radio"/>	
9. <b>Valuable Property Record</b> <i>Section 18(9)</i>	<input type="radio"/>	<input type="radio"/>	
10. <b>Source documents including deposit slips, bank statements and cashed cheques</b> <i>Section 18(10)</i>	<input type="radio"/>	<input type="radio"/>	
11. <b>Electronic Trust Transfer Requisitions and Confirmations</b> <i>Section 18(11)</i> (Form 9A)	<input type="radio"/>	<input type="radio"/>	
12. <b>Duplicate Cash Receipts Book for all cash received</b> <i>Section 19</i>	<input type="radio"/>	<input type="radio"/>	

♦ Trust comparisons are to be completed within 25 days of the effective date of the monthly trust reconciliation.

Name and address of financial institution(s) where trust account(s) is (are) held and account number(s):		
<b>FINANCIAL INSTITUTION NAME:</b>	<b>ADDRESS:</b>	<b>TRANSIT/ACCOU NT NUMBER:</b>
<hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/>
<b>Reconciliation</b>		<b>December 31, 2008 Balances</b>
Refer to the sample reconciliation found on Page * of the enclosed "Guide".		
a) The total dollar value of mixed trust bank accounts		\$□□□,□□□,□□□.□□
b) The total dollar value of separate* interest bearing trust accounts or income generating trust accounts/investments*	+	\$□□□,□□□,□□□.□□
c) <b>TOTAL</b> of a) and b)	=	\$□□□,□□□,□□□.□□
d) Total outstanding deposits (if any)	+	\$□□□,□□□,□□□.□□
e) Total bank/posting errors (if any)	+/-	\$□□□,□□□,□□□.□□
f) Total outstanding cheques (if any)	-	\$□□□,□□□,□□□.□□
g) <b>Reconciled Bank Balance</b>	=	\$□□□,□□□,□□□.□□
h) <b>Total Client Trust Liabilities</b> (Client Trust Listing)	-	\$□□□,□□□,□□□.□□
i) <b>Difference between Reconciled Bank Balance and Total Client Trust Liabilities</b>	=	\$□□□,□□□,□□□.□□
<p><u>If there is no difference</u> enter "0.00".</p> <p><u>If there is a difference</u> between the Reconciled Bank Balance (g) and the Total Client Trust Liabilities (h), provide a written explanation below.</p>		
<b>6 Answer all questions as at December 31, 2008</b>		
a) What is the total number of mixed trust bank accounts? (referred to in 5a )		□□□□
b) What is the total number of separate* interest bearing trust accounts or income generating trust accounts/investments*? (referred to in 5b)		□□□□

<p>a) Since the date you were licensed in 2008, did your records <u>at any month end</u> disclose <b>overdrawn</b> clients' trust ledger account(s)?  <b>If "Yes" to a):</b></p> <p>b) Were the account(s) corrected by December 31, 2008?  <b>If "No" to b):</b></p> <p>c) The total <b>dollar value</b> of overdrawn clients' trust ledger account(s) as at December 31, 2008 was:</p> <p>d) The total <b>number</b> of overdrawn clients' trust ledger account(s) as at December 31, 2008 was:</p>		<p>Yes <input type="radio"/> No <input type="radio"/></p> <p>Yes <input type="radio"/> No <input type="radio"/></p> <p>\$□□□,□□□,□□□.□□</p> <p>□□□□</p>
<b>8 Outstanding Deposits</b>		
<p>a) Since the date you were licensed in 2008, did your records <u>at any month end</u> disclose <b>outstanding</b> trust account deposits, not deposited the following business day?  <b>If "Yes" to a):</b></p> <p>b) Were the account(s) corrected by December 31, 2008?  <b>If "No" to b):</b></p> <p>c) The total <b>dollar value</b> of outstanding trust account deposits as at December 31, 2008 was:</p> <p>d) The total <b>number</b> of outstanding trust account deposits as at December 31, 2008 was:</p>		<p>Yes <input type="radio"/> No <input type="radio"/></p> <p>Yes <input type="radio"/> No <input type="radio"/></p> <p>\$□□□,□□□,□□□.□□</p> <p>□□□□</p>
<b>9 Unchanged* Client Trust Ledger Account Balances</b>		
<p>a) Were there client trust ledger account balances that were <b>unchanged* (i.e. had no activity)</b> since the date you were licensed?  <b>If "Yes" to a):</b></p> <p>b) The total <b>dollar value</b> of these account balances as at December 31, 2008 was:</p> <p>c) The total <b>number</b> of client trust ledger accounts that remained unchanged* for the entire year as at December 31, 2008 was:</p>		<p>Yes <input type="radio"/> No <input type="radio"/></p> <p>\$□□□,□□□,□□□.□□</p> <p>□□□□</p>

If required, use the area below to provide further information on your Financial Reporting:

**Proceed to Section F on page ? (back cover page) for your Certification and Signature.**

<b>F</b>	<b>CERTIFICATION AND SIGNATURE</b>	<b>To be completed by all licensed paralegals.</b>
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I am the licensed paralegal filing this 2008 Paralegal's Annual Report. I have reviewed the matters reported, and the information contained herein is complete, true and accurate. I acknowledge that it is professional misconduct to make a false or misleading reporting to The Law Society of Upper Canada.

Licensed Paralegal's Signature  
(In ink)

Date

**THIS FULL REPORT AND ANY REQUIRED ENCLOSURES ARE DUE BY MARCH 31, 2009.**

**Ensure the following before mailing your report:**

- All relevant sections are complete.
- Pages ?-? are included.
- Your full name and paralegal Law Society number appear on all enclosures.

**Mail to:**  
Administrative Compliance  
The Law Society of Upper Canada  
Osgoode Hall  
130 Queen Street West  
Toronto ON M5H 2N6

**ON-LINE FILING IS AVAILABLE AT OUR WEBSITE  
AT:  
<https://eforms.lsuc.on.ca>**

Assistance with the completion of this report and definitions can be found in the enclosed **Guide to the 2008 Paralegal's Annual Report**.

For further assistance in the completion of Sections D and E, refer to **The Bookkeeping Guide** available on our website at [www.lsuc.on.ca](http://www.lsuc.on.ca). Click on the "Resource Centre" tab and select "Practice Resources" to download a copy. Licenced paralegals may also call (416) 947-3315 or 1-800-668-7380 ext. 3315 and ask to speak with the Practice Management Helpline.

Questions regarding Sections A, B, C and F can be directed to [lsforms@lsuc.on.ca](mailto:lsforms@lsuc.on.ca), or call (416) 947-3315 or 1-800-668-7380 ext. 3315 and ask to speak with the Administrative Compliance department.



The Law Society of Upper Canada | Barreau du Haut-Canada

## AMENDMENTS TO THE *PARALEGAL RULES OF CONDUCT*

### **Motion**

43. **That Convocation approve the amendments to the *Paralegal Rules of Conduct* shown in the chart at Appendix 9.**

### **Issue**

44. The Committee considered a group of proposed amendments to the *Paralegal Rules of Conduct*. Most of the changes are required to provide guidance on matters related to affiliations and MDP's, which are now permitted business structures for paralegals under the By-laws. These amendments are based on the business structure provisions in the lawyers' *Rules of Professional Conduct*. The other proposed changes are designed to mirror provisions in the lawyers' rules governing situations where paralegals may face similar practice issues.
45. The chart attached at **Appendix 9** sets out the reason for the change, the lawyer rule reference and the new proposed paralegal rule. The chart also shows reference points that would be added to the *Paralegal Guidelines* that are currently before Convocation.
46. Examples of the changes shown are:
- a. Defining the terms "associate," "affiliation" and "affiliated entity";
  - b. Addition to the definition of "professional misconduct" to include assisting or inducing a partner or associate in an MDP in violating the rules;
  - c. Requiring a paralegal to ensure partners and associates in an MDP observe the conflict of interest rules;
  - d. Prohibiting communication with the media where it would prejudice a fair trial.

### **The Committee's Deliberations**

47. The Committee considered the proposed changes and recommends them to Convocation.

## PROPOSED HOUSEKEEPING AMENDMENTS TO THE *PARALEGAL RULES OF CONDUCT*

September 2, 2008

ISSUE	<i>RULE OF PROFESSIONAL CONDUCT</i> REFERENCE	PROPOSED NEW PARALEGAL RULE
<b>1. MULTI-DISCIPLINE PRACTICES (applicable to paralegals under By-Law 7)</b>		
The definition of “associate” in the lawyer rules includes a non-lawyer employee of a multi-disciplinary practice. “Associate” is not defined in the <i>Paralegal Rules of Conduct</i> .	Rule 1.02 definition of “associate”	“associate” includes:  (a) a paralegal who is an employee of the paralegal firm in which the paralegal provides legal services; and (b) a non-licensee employee of a multi-discipline practice providing services that support or supplement the practice of law or provision of legal services in which the non-licensee provides his or her services.
The definition of “professional misconduct” includes “knowingly assisting or inducing a non-lawyer partner or associate of a multi-discipline practice to violate or attempt to violate the rules or a requirement of the Act, its regulations or by-laws. There is no similar reference in the definition of professional misconduct in the <i>Paralegal Rules of</i>	Rule 1.02 definition of “professional misconduct”	Rule 9.01(13)  " professional misconduct" means conduct by a paralegal that tends to bring discredit upon the paralegal profession including

<i>Conduct.</i>		(c) knowingly assisting or inducing a non-licensee partner or associate of a multi-discipline practice to violate or attempt to violate the rules in the <i>Paralegal Rules of Conduct</i> or a requirement of the <i>Law Society Act</i> or its regulations or by-laws,
The commentary in the lawyer rules raises awareness of the potential for confusion on the part of clients of a lawyer in a multi-disciplinary practice.	Commentary to Rule 2.01(1)	This point is covered in By-Law 7 but should be elaborated in the Guideline on Advising Clients.
The lawyer rules require a lawyer in an MDP to ensure that non-lawyer partners and associates observe the conflict of interest rule. There is no similar requirement in the <i>Paralegal Rules of Conduct</i> .	Rule 2.04(13)	<b>3.04 (15)</b> A paralegal in a multi-discipline practice shall ensure that non-licensee partners and associates observe this rule for the provision of legal services and for any other business or professional undertaking carried on by them outside the professional business.
The lawyer rules provide an exception to the requirement around division of fees for lawyers in multi-discipline practices. Under the <i>Paralegal Rules of Conduct</i> , a paralegal is currently prohibited from directly or indirectly sharing, splitting or dividing fees with someone who is not a licensee; there is no exception for MDPs.	Rule 2.08(8) & (9)	<p><b>5.01 (11)</b> A paralegal shall not</p> <p>(a) directly or indirectly share, split, or divide his or her fees with any person who is not a licensee, or</p> <p>(b) give any financial or other reward to any person who is not a licensee for the referral of clients or client matters.</p> <p><b>5.01 (12)</b> Subrule (11) does not apply to multi-</p>

		discipline practices of paralegal and non-licensure partners where the partnership agreement provides for the sharing of fees, cash flows or profits among members of the firm.
There is a general requirement in the lawyer rules on a lawyer in a multi-discipline practice to ensure that non-lawyer partners and associates comply with the Rules and all ethical principles that govern a lawyer in the discharge of his or her professional obligations. There is no similar provision in the <i>Paralegal Rules of Conduct</i> .	Rule 6.10	<b>8.01(5)</b> A paralegal in a multi-discipline practice shall ensure that non-licensure partners and associates comply with these rules and all ethical principles that govern a paralegal in the discharge of his or her professional obligations.
<b>2. AFFILIATIONS</b>		
The terms “affiliation” and “affiliated entity” are defined in the lawyer rules but not defined in the <i>Paralegal Rules of Conduct</i> .	Rule 1.02	<b>1.02</b> In these rules, " affiliated entity" means any person or group of persons other than a person or group authorized to provide legal services in Ontario;  " affiliation" means the joining on a regular basis of a paralegal or group of paralegals with an affiliated entity in the delivery or promotion and delivery of the legal services of the paralegal or group of paralegals and the non-legal services of the affiliated entity;



<p>The lawyer rules and commentary require a lawyer in an affiliation to make certain disclosure to a client in respect of conflicts of interest. There is no similar requirement in the <i>Paralegal Rules of Conduct</i>.</p>	<p>Commentary to Rule 2.04(1) Rule 2.04 (10.1), (10.2), (10.3)</p>	<p><b>3.04 (15)</b> Where there is an affiliation, before accepting a retainer to provide legal services to a client jointly with non-legal services of an affiliated entity, a paralegal shall disclose to the client</p> <p>(a) any possible loss of confidentiality because of the involvement of the affiliated entity, including circumstances where a non-licensee or staff of the affiliated entity provide services, including support services, in the paralegal’s office,</p> <p>(b) the paralegal’s role in providing legal services and in providing non-legal services or in providing both legal and non-legal services, as the case may be,</p> <p>(c) any financial, economic or other arrangements between the paralegal and the affiliated entity that may affect the independence of the paralegal’s representation of the client, including whether the paralegal shares in the revenues, profits or cash flows of the affiliated entity; and</p>
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		<p>(d) agreements between the paralegal and the affiliated entity, such as agreements with respect to referral of clients between the paralegal and the affiliated entity, that may affect the independence of the paralegal's representation of the client.</p> <p><b>3.04 (16)</b> Where there is an affiliation, after making the disclosure as required by subrule (15), a paralegal shall obtain the client's consent before accepting a retainer under subrule (15).</p> <p><b>3.04 (17)</b> Where there is an affiliation, a paralegal shall establish a system to search for conflicts of interest of the affiliation.</p>
<p>The commentary to the lawyer rules discusses the applicability of the fee-splitting rule to affiliations. There is no comment about affiliations in the <i>Paralegal Rules of Conduct</i>.</p>	<p>Commentary to Rule 2.08(9)</p>	<p><b>5.01 (11)</b> A paralegal shall not</p> <p>(a) directly or indirectly share, split, or divide his or her fees with any person who is not a licensee, including an affiliated entity, or</p> <p>(b) give any financial or other reward to any person who is not a licensee, including an affiliated entity, for the referral of clients or client matters.</p>

<b>3. GENERAL</b>		
Consent: lawyers must confirm oral consent in writing whether from one or multiple parties; paralegals must only confirm oral consent in writing if provided by multiple parties	Rule 1.02	<b>Rule 1.02(3)</b>  " consent" means:  (a) a consent in writing, provided that where more than one person consents, each may sign a separate document recording his or her consent, or (b) an oral consent, provided that each person giving the oral consent receives a separate letter recording his or her consent;
The lawyer rules impose reporting and withdrawal requirements when a lawyer is acting for an organization and knows that the organization intends to act dishonestly, fraudulently, criminally or illegally with respect to that matter. There is no specific parallel obligation in the <i>Paralegal Rules of Conduct</i> .	Rule 2.02(5.1), 2.05(5.2)	<b>3.02 (4.1)</b> When a paralegal is employed or retained by an organization to act in a matter and the paralegal knows that the organization intends to act dishonestly, fraudulently, criminally, or illegally with respect to that matter, then in addition to his or her obligations under subrules (3) and (4), the paralegal shall (a) advise the person from whom the paralegal takes instructions that the proposed conduct would be dishonest, fraudulent, criminal, or illegal, (b) if necessary, because that person refuses to cause the proposed wrongful conduct to be

		<p>abandoned, advise the organization's chief legal officer, or both the chief legal officer and the chief executive officer, that the proposed conduct would be dishonest, fraudulent, criminal or illegal,</p> <p>(c) if necessary because the chief legal officer or the chief executive officer of the organization refuses to cause the proposed conduct to be abandoned, advise progressively the next highest persons or groups, including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the proposed conduct would be dishonest, fraudulent, criminal, or illegal, and</p> <p>(d) if the organization, despite the paralegal's advice, intends to pursue the proposed course of conduct, withdraw from acting in the matter in accordance with rule 3.08.</p> <p><b>3.02 (4.2)</b> When a paralegal is employed or retained by an organization to act in a matter and the paralegal knows that the organization has acted or is acting dishonestly, fraudulently, criminally, or illegally with respect to that matter, then in addition to his or her obligations under subrules (3) and (4), the paralegal shall</p> <p>(a) advise the person from whom the paralegal takes instructions and the chief legal officer, or both the chief legal officer and the chief executive officer, that the conduct was or is</p>
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		<p>dishonest, fraudulent, criminal, or illegal and should be stopped,  (b) if necessary because that person, the chief legal officer, or the chief executive officer refuses to cause the wrongful conduct to be stopped, advise progressively the next highest persons or groups, including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the conduct was or is dishonest, fraudulent, criminal, or illegal and should be stopped, and  (c) if the organization, despite the paralegal’s advice, continues with the wrongful conduct, withdraw from acting in the matter in accordance with rule 3.08.</p>
<p>The commentary in the lawyer rules regarding division of fees / referral fees explain that the rules do not prohibit an arrangement respecting the purchase and sale of a law practice when the consideration payable includes a percentage of revenues from the practice sold. There is no mention of this exception in the <i>Paralegal Rules of Conduct</i> or Guidelines.</p>	<p>Commentary to Rule 2.08(8)</p>	<p>This discussion should be added to the Guidelines on Fees.</p>
<p>New By-Law 7.1 was created to more specifically address delegation and supervision issues. Rule 5.01(2) refers to By-Law 7.1 but there is no reference to the By-Law in the <i>Paralegal Rules of Conduct</i>.</p>	<p>Rule 5.01(2)</p>	<p><b>8.01 (1)</b> A paralegal shall, in accordance with the By-Laws, assume complete professional responsibility for all business entrusted to him or her.  <b>8.01(3)</b> A paralegal shall, in accordance with the By-Laws, directly supervise staff and assistants to whom particular tasks and</p>

<p>The lawyer rules prohibit lawyers from making public statements or communicating with the media if they know or ought to know that it will have a substantial likelihood of materially prejudicing a party's right to a fair trial. There is no parallel prohibition in the <i>Paralegal Rules of Conduct</i>.</p>	<p>Rule 6.06(2)</p>	<p>functions are delegated.</p> <p><b>6.01 (4.1)</b> A paralegal shall not communicate information to the media or make public statements about a matter before a tribunal if the paralegal knows or ought to know that the information or statement will have a substantial likelihood of materially prejudicing a party's right to a fair trial or hearing.</p>
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**PROPOSED REVISIONS TO RULE 8 OF THE *PARALEGAL RULES OF CONDUCT*  
REGARDING ADVERTISING & MARKETING**

**Motion**

48. **That Convocation approve the amendments to the *Paralegal Rules of Conduct* shown at Appendix 10.**
49. It is proposed to simplify the rules governing firm names, advertising and marketing, for both lawyers and paralegals. With regard to the *Paralegal Rules*, this involves primarily changes to Rule 8. (There is also a small change to Rule 2, whereby a subsection of Rule 2 is moved to Rule 8). A clean copy of the proposed provisions for the *Paralegal Rules* is attached at **Appendix 10**, followed by a red-lined version showing the changes.
50. The Professional Regulation Committee is recommending to Convocation the equivalent proposals for lawyers.

**Background: the Lawyers' Rules**

51. The initiative to amend the marketing and advertising rules was prompted by the need identified by staff in the Professional Regulation Division to reconsider the scope and detail of Rule 3 of the *Rules of Professional Conduct* for lawyers, for a number of reasons, including the following:
- a. Some of the rules deal with matters more properly characterized as lawyer to lawyer relationships, rather than regulation for public protection;
  - b. Few complaints about these issues arise, fewer are referred to the Proceedings Authorization Committee, which in turn rarely authorizes action against the lawyer in question;
  - c. A number of other law societies in Canada are examining these rules, or their equivalent, with a view to simplifying and rationalizing the rules;
  - d. The recent Competition Bureau report on the self-regulated professions recommended that law societies should lift any unnecessary restrictions on advertising unless they can be justified;

- e. The Federation of Law Societies of Canada, in its Model Rules initiative, has identified this topic as a rule that should be reduced in its scale and rationalized around a small number of key concepts.
52. While this initiative originated with concerns about the lawyers' Rule 3, it is appropriate to consider parallel revisions to the *Paralegal Rules of Conduct*, as the same rationale for simple, clear rules applies, and it is desirable to have a consistent approach to the rules for both paralegals and lawyers.

### **Key Concepts**

53. The rules governing advertising, marketing of legal services and making legal services available involve a small number of key concepts, namely:
- a. ensuring advertising or marketing is not false;
  - b. ensuring that advertising or marketing is not misleading or deceptive, and
  - c. ensuring that the ways legal services are marketed are in the best interests of the public and consistent with lawyers' and paralegals' duties of professionalism.
54. The objective is to rationalize the Rules to create a clearer, more straightforward statement on this aspect of professional regulation.

### **Principal changes**

55. The principal proposed changes to the *Paralegal Rules* would be the removal of,
- a. the prohibition on a paralegal's name appearing on advertising material offering goods/services to the public other than legal services,
  - b. the prohibition on comparison of services or charges with other paralegals or with lawyers,
  - c. the prohibition on the use of the words "from...minimum...and up" in fee advertisements, and
  - d. many of the detailed restrictions on firm names.



### **The Committee's Deliberations**

56. The Committee considered the proposed changes and recommends them to Convocation.

### **Drafting Process**

57. The Legal Services department of the Law Society advises that once the rule amendments are considered by Convocation, the Society's drafter can review the proposed amendments and provide a final version for adoption. This would also permit the Legal Department to prepare consequential amendments to By-Law 7, which governs the permitted names of Professional Corporations. The matter would return to October or November Convocation for approval of the final wording

## **PROPOSED NEW WORDING OF RULE 8**

### **Rule 8 – Practice Management**

#### **Making Legal Services Available**

**8.02** (1) A paralegal shall make legal services available to the public in an efficient and convenient way.

#### **Restrictions**

- (2) In offering legal services, a paralegal shall not use means
  - (a) that are false or misleading,
  - (b) that amount to coercion, duress or harassment,
  - (c) that take advantage of a person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover,
  - (d) that are intended to influence a person who has retained another paralegal or a lawyer for a particular matter to change his or her representative for that matter, unless the change is initiated by the person or the other representative, or
  - (e) that otherwise bring the paralegal profession or the administration of justice into disrepute.

(3) A paralegal or paralegal firm shall not advertise services that are beyond the permissible scope of practice of a paralegal.

#### **Marketing**

**8.03** (1) In this Rule, marketing includes not only advertisements and other similar communications in various media but also firm names, which may include trade names, letterhead, business cards and logos.

- (2) A paralegal may market professional services provided that the marketing
  - (a) is demonstrably true, accurate and verifiable,
  - (b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive, and

- (c) is in the best interests of the public and is consistent with a high standard of professionalism.

### **Advertising of Fees**

(3) A paralegal or paralegal firm may advertise fees charged for their services provided that

- (a) the advertising is reasonably precise as to the services offered for each fee quoted,
- (b) the advertising states whether other amounts, such as disbursements and taxes will be charged in addition to the fee, and
- (c) the paralegal adheres to the advertised fee.

## RED-LINE VERSION – PROPOSED CHANGES TO RULES 2 & 8

### 2.01 Integrity and Civility

#### Integrity

2.01 (1) A paralegal shall conduct himself or herself in such a way as to maintain the integrity of the paralegal profession.

~~(2) Paralegals shall make legal services available to the public in an efficient and convenient way that commands respect and confidence and is compatible with the integrity and independence of the paralegal profession. (Rule 3.01)~~

### 8.02 Advertising

#### Permitted Advertising

#### Making Legal Services Available

8.02 (1) A paralegal shall make legal services available to the public in an efficient and convenient manner. and, subject to rule 8.02(2), may offer legal services to a prospective client by any means.

#### Restrictions

8.02 (1) Subject to subrules (2) through (5), A paralegal or a paralegal firm may advertise their services or fees in any medium including the use of brochures and similar documents, if the advertising, In offering legal services, a paralegal shall not use means

(a) that are is not false or misleading;

(b) that amount to coercion, duress or harassment.

(c) that take advantage of a person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover.

~~(b)~~(d) that are intended to influence a person who has retained another paralegal or a lawyer for a particular matter to change his or her representative for that matter, unless the change is initiated by the person or the other representative, or

(e) ~~(b) is in good taste and is not such as to~~ that otherwise bring the paralegal profession or the administration of justice into disrepute; ~~and~~

~~(e)~~

~~(e) does not compare services or charges with other firms.~~

## **Restrictions on Advertising**

(23) A paralegal or paralegal firm shall not advertise services that are beyond the permissible scope of practice of a paralegal.

~~—(3) The means by which it is sought to make legal services more readily available to the public, shall be consistent with the public interest and shall not detract from the integrity, independence, or effectiveness of the paralegal profession.~~

## **Marketing**

~~8.03—(41) In this Rule, marketing includes not only advertisements and other similar communications in various media but also firm names, which may include trade names, letterhead, business cards and logos.~~

~~(2) A paralegal may market professional services provided that the marketing~~

~~(a) is demonstrably true, accurate and verifiable,~~

~~(b) is neither misleading, confusing or deceptive, nor likely to mislead, confuse or deceive, and~~

~~(c) is in the best interests of the public and is consistent with a high standard of professionalism.~~

## **Advertising of Fees**

~~(3) A paralegal or paralegal firm may advertise fees charged for their services provided that~~

~~(a) In addition to the requirements of subrule (1), the following conditions apply to an advertisement of fees:~~

~~(a)—1.(a) the advertising is reasonably precise as to the services offered for each fee quoted, —An advertisement of fees for consultation or for specific services shall contain an accurate statement of the services provided for the fee and the circumstances, if any, in which higher fees may be charged.~~

~~(a)(b) the advertising states whether other amounts, such as disbursements and taxes will be charged in addition to the fee, and 2.—The fact that disbursements are an additional cost shall be made clear in the advertisement.~~

(c) the paralegal adheres to the advertised fee.-

~~3. An advertisement shall not use words or expressions such as "from..." , "minimum" or "... and up", or the like in referring to the fees to be charged.~~

~~4. Services covered by advertised fees shall be provided at the advertised rate to all clients who retain the advertising paralegal or paralegal firm during the 30-day period following the last publication of the fees unless there are special circumstances that could not reasonably have been foreseen, the burden of proving which rests upon the paralegal.~~

~~(5) A paralegal shall not,~~

~~(a) permit the paralegal's name to appear as representative on any advertising material,~~

~~(i) offering goods, other than legal publications, to the public, or~~

~~(ii) offering services, other than legal services, to the public; and~~

~~(b) while in private practice, permit the paralegal's name to appear on the letterhead of a company as being its representative, other than an honorary designation on the letterhead of a nonprofit or philanthropic organization.~~

### ~~8.03 Paralegal Firm Names, Letterheads and Signs~~

#### ~~Paralegal Firm Names~~

~~8.03 (1) The name of a paralegal firm shall not include any name that is not,~~

~~(a) a name of a current, a retired from practice, or a deceased member of the paralegal firm who is or was qualified to provide legal services in Ontario; or~~

~~(b) a descriptive or trade name that is in keeping with the dignity, integrity, independence and the role of the paralegal profession.~~

~~(2) A paralegal who purchases a practice may, for a reasonable length of time, use the words "Successor to \_\_\_\_\_" in small print under the paralegal's own name.~~

~~(3) A paralegal firm name shall not include a descriptive or trade name that is misleading about,~~

~~(a) the identities, responsibilities, or relationships of the paralegals practising under the paralegal firm name; or~~

~~(b) the association or relationship of the paralegal firm with other licensees or with non-licensees.~~

~~—(4) The name of a paralegal firm shall not include the use of phrases such as " John Doe and Associates", "John Doe and Company" or "John Doe and Partners" unless there are in fact, respectively, two or more other paralegals employed by John Doe in the paralegal firm or two or more partners of John Doe in the paralegal firm.~~

#### ~~Letterheads and Signs~~

~~—(5) The letterhead and the signs identifying the office of a paralegal firm may only include,~~

~~—(a) the name of the paralegal firm;~~

~~—(b) a list of paralegals who are partners or employees of the paralegal firm;~~

~~—(c) the words "licensed paralegal" or " licensed paralegals" , as the case may be;~~

~~—(d) the words "notary" or "commissioner for oaths" or both, if applicable;~~

~~—(e) the words "patent and trade mark agent" if applicable;~~

~~—(f) the addresses, telephone numbers, office hours, and the languages in which the paralegal firm is competent and capable of conducting a practice;~~

~~—(g) a logo; and~~

~~—(h) advertising permitted under these Rules.~~

~~—(6) A paralegal or paralegal firm may place, after the names on its letterhead, degrees from bona fide universities and postsecondary institutions including honorary degrees, professional qualifications such as the designations of P. Eng., C.A. and M.D. and recognized civil and military decorations and awards.~~

## **FOR INFORMATION**

### **LAWSUIT AGAINST CANADIAN SOCIETY OF IMMIGRATION CONSULTANTS**

58. The Canadian Association of Professional Immigration Consultants has filed a lawsuit against the Canadian Society of Immigration Consultants (CSIC). A media report on the lawsuit is attached at **Appendix 11**. The association claims that CSIC has launched regulatory complaints against members who have criticized CSIC, on the grounds that they have breached the CSIC Code of Ethics by drawing “discredit on the society and the profession”.

### **AMENDMENTS TO BY-LAW 7 RESPECTING LAWYER AND PARALEGAL MDPs**

59. The Committee considered and approved the amendments to By-law 7 being proposed by the Professional Regulation Committee governing lawyer and paralegal MDP’s.

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# Immigration consultants suing watchdog

**Regulator doesn't have right to discipline members for expressing their views, association claims**

August 22, 2008

**NICHOLAS KEUNG**

IMMIGRATION/DIVERSITY REPORTER

In a public showdown between immigration consultants and their regulators, an industry advocacy group is suing the Canadian Society of Immigration Consultants challenging the gag order that it imposes on its members.

The lawsuit, filed this week by the 600-member Canadian Association of Professional Immigration Consultants, came after its board members endorsed the sweeping changes recommended by a parliamentary committee in June to revamp the self-regulatory body.

On June 24, the regulator launched complaints against the association and each of its dozen board members for allegedly breaching its code of ethics by drawing "discredit on the society and the profession."

"In ordering the investigation, (the regulator) is causing a chilling effect among persons who wish to comment publicly about (it)," said the legal notice filed with the federal court. "The complaint was brought by (the regulator) for an improper purpose, namely to silence its critics."

The regulator has been engulfed in controversies since its 2004 inception, faced with allegations of financial mismanagement and inability to eliminate unscrupulous consultants from practising. A *Star* investigation last year

prompted the parliament's citizenship and immigration standing committee to review the regulatory regime.

The all-party committee concluded that the regulator was toothless and should be dismantled, replaced by a new statutory body that runs like a provincial law society and has the power to pursue and punish non-members who pass themselves off as consultants.

The consultants' association is asking the court to dismiss the regulator's complaints and disciplinary policy and terminate the investigation because the body "does not have the authority to discipline members who express their views on matters of public interest."

Neither Phil Mooney, the association's president, nor John Ryan, chair of the regulator, could be reached for comments. The lawsuit have yet to be proven in court.