



**TAB 5**

**Report to Convocation  
May 26<sup>th</sup>, 2016**

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**Paralegal Standing Committee**

**Committee Members**  
**Michelle Haigh, Chair**  
**Susan McGrath, Vice-Chair**  
**Marion Boyd**  
**Robert Burd**  
**Cathy Corsetti**  
**Janis Criger**  
**Brian Lawrie**  
**Marian Lippa**  
**Malcolm M. Mercer**  
**Barbara Murchie**  
**Baljit Sikand**  
**Catherine Strosberg**  
**Anne Vespry**

**Purpose of Report: Decision and Information**

**Prepared by the Policy Secretariat  
Julia Bass 416 947 5228**

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## **COMMITTEE PROCESS**

1. The Committee met on May 11<sup>th</sup>, 2016. Committee members present were: Michelle Haigh (Chair), Susan McGrath (Vice-Chair), Marion Boyd (by telephone) , Robert Burd (by telephone), Cathy Corsetti, Janis Criger, Brian Lawrie, Marian Lippa, Malcolm Mercer, Barbara Murchie, Baljit Sikand (by telephone) Catherine Strosberg and Anne Vespry. Staff in attendance were: Lesley Cameron, Naomi Bussin, Diana Miles, Jim Varro and Julia Bass.
2. The Committee met to give further consideration to the Rules amendments on May 12<sup>th</sup> 2016. This meeting was Chaired by Malcolm Mercer and also attended by Cathy Corsetti (by telephone), Janis Criger, Baljit Sikand, Catherine Strosberg and Anne Vespry. Staff in attendance were: Lesley Cameron, Naomi Bussin, Margaret Drent and Julia Bass.
3. The Committee also attended a joint meeting on May 12<sup>th</sup> with the Professional Development & Competence and Professional Regulation Committees, to discuss the report from the Task Force on Compliance-Based Entity Regulation.

FOR DECISION

**PROPOSED AMENDMENTS TO THE *PARALEGAL RULES***

**Motion**

4. That Convocation approve the amendments to the *Paralegal Rules of Conduct* set out at [TABS 5.1.1](#), [5.1.3](#), and [5.1.4](#).

**Issue**

5. The Paralegal Standing Committee and the Professional Regulation Committee have been considering a number of proposed amendments to the *Rules* for lawyers and paralegals, arising from the work on the Federation of Law Societies' *Model Code* Committee. There are now further amendments for consideration set out below.
6. The proposed changes for both sets of *Rules* were considered on May 12<sup>th</sup>. The corresponding changes to the lawyers' *Rules of Professional Conduct* are being recommended to Convocation by the Professional Regulation Committee.
7. These proposals address the paralegal *Rules* only - if the amendments are approved, it would then be appropriate to consider whether companion changes to the *Paralegal Guidelines* are necessary.

**Transactions with Clients**

8. The Committee is recommending a redraft of the rule formerly called "Doing Business with a Client", which has been renamed "Transactions with Clients", shown at [TAB 5.1.1](#). The current version of these provisions is shown at [TAB 5.1.2](#).
9. The revised wording is regarded as consistent, logical and clear and able to provide better guidance to the profession.
10. The new, narrower definition of "related person" will restrict the range of circumstances in which a paralegal may borrow from a client, providing better protection to the public.
11. The new title "Transactions with Clients" is regarded as more descriptive than the previous title "Doing Business with a Client".

## TAB 5.1

### Duty to Report

12. The Federation is proposing an amendment to the rule currently called “Duty to Report Misconduct” – *Paralegal Rule 9*. This amendment would, among other things, address issues of mental capacity in a more appropriate manner.
13. According to materials provided by the Federation’s Standing Committee, some law societies and legal ethics academics have expressed concerns about the current language, in which “mental instability” is described as “misconduct”. It is suggested that this language could be perceived as discriminatory. The amendment would also rename the provision “Duty to Report” instead of “Duty to Report Misconduct”. Again, this is regarded as less discriminatory.
14. The Committee also recommends the further amendment of Rule 9.01 (2), consistent with the *Model Code*, to provide  
  
*Unless to do so would be unlawful or would involve a breach of confidentiality between the paralegal and his or her client, a paralegal shall report to the Law Society conduct that raises a substantial question about a licensee’s capacity to provide professional services.*
15. A redline version of the Rule is shown at [TAB 5.1.3](#).

### Errors & Omissions Insurance

16. The Federation is proposing an amendment to the rule on giving notice of a potential insurance claim - *Paralegal Rule 8.04*.
17. This amendment would clarify that a paralegal’s ethical duty to report may arise regardless of whether the paralegal believes the claim has merit.
18. A redline version is shown at [TAB 5.1.4](#).

## Transactions with Clients

3.06 For the purposes of subrules 3.06 (1) to (7),

“regulated lender ” means a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of business

“related person” in relation to a paralegal means

- (a) a spouse, child, grandparent, parent, or sibling of the paralegal,
- (b) a corporation that is owned or controlled directly or indirectly by the paralegal or that is owned or controlled directly or indirectly by the paralegal’s spouse, child, grandparent, parent, or sibling,
- (c) an associate or partner of the paralegal.

“transaction with a client” means a transaction to which a paralegal and a client of the paralegal are parties, whether or not other persons are also parties, including lending or borrowing money, buying or selling property or services having other than nominal value, giving or acquiring ownership, security or other pecuniary interest in a company or other entity, recommending an investment, or entering into a common business venture;

- (1) A paralegal shall not enter into a transaction with a client unless the transaction is fair and reasonable to the client.
- (2) Except for borrowing from a regulated lender or from a related person, a paralegal shall not borrow from a client.
- (3) A paralegal shall not do indirectly what the paralegal is prohibited from doing directly under subrules (1) to (7).
- (4) In any transaction with a client that is permitted under subrules (1) to (7), the paralegal shall,
  - a. disclose the nature of any conflicting interest or how and why it might develop later;
  - b. with respect to independent legal advice and independent legal representation:
    - i. in the case of a loan to a client who is not a related person, the paralegal shall require that the client receive independent legal representation;
    - ii. in the case of a loan to a client who is a related person, the paralegal shall require that the client receive independent legal advice;
    - iii. in the case of a corporation, syndicate or partnership borrowing money from a client of the paralegal where either or both the paralegal and the paralegal’s spouse has a direct or indirect substantial interest in the

**TAB 5.1.1**

corporation, syndicate or partnership, the paralegal shall require that the client receive independent legal representation;

iv. in all other cases, the paralegal shall recommend that the client receive independent legal advice and, where the circumstances reasonably require, recommend or require that the client receive independent legal representation; and

c. obtain the client's consent to the transaction

(i) after the client receives the disclosure, legal advice or representation required under subrule (4), or

(ii) where a recommendation required under subrule (4) is made and not accepted, before proceeding with the transaction.

(5) Despite subrule (4), a paralegal need not recommend independent legal advice or independent legal representation if the paralegal is borrowing money from a client who is a regulated lender.

**No Advertising**

(6) A paralegal shall not promote, by advertising or otherwise, individual or joint investment by clients or other persons who have money to lend, in any mortgage in which a financial interest is held by the paralegal, a related person, or a corporation, syndicate, partnership, trust or other entity in which the paralegal or related person has a financial interest, other than an ownership interest of a corporation or other entity offering its securities to the public of less than five per cent (5%) of any class of securities.

**Guarantees by a Paralegal**

(7) Except as provided by subrule (8), a paralegal shall not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is a borrower or lender.

(8) A paralegal may give a personal guarantee in the following circumstances:

a. the lender is a regulated lender, and the lender is directly or indirectly providing funds solely for the paralegal, the paralegal's spouse, parent or child;

b. the transaction is for the benefit of a non-profit or charitable institution, and the paralegal provides a guarantee as a member or supporter of such institution, either individually or together with other members or supporters of the institution; or

c. the paralegal has entered into a business venture with a client and a lender requires personal guarantees from all participants in the venture as a matter of course and

i. the paralegal has complied with subrules (1) to (7) and

**TAB 5.1.1**

- ii. the lender and participants in the venture who are clients or former clients of the paralegal have independent legal representation.

**Payment for Legal Services**

- (9) When a client intends to pay for legal services by transferring to a paralegal a share, participation or other interest in property or in an enterprise, other than a non-material interest in a publicly traded enterprise, the paralegal shall recommend but need not require that the client receive independent legal advice before accepting a retainer.

**Judicial Interim Release**

- (10) Subject to subrule (11), a paralegal shall not in respect of any accused person for whom the paralegal acts,
  - a. act as a surety for the accused;
  - b. deposit with a court the paralegal's own money or that of any firm in which the paralegal is a partner to secure the accused's release;
  - c. deposit with any court other valuable security to secure the accused's release; or
  - d. act in a supervisory capacity to the accused.
- (11) A paralegal may do any of the things referred to in subrule (10) if the accused is in a family relationship with the paralegal and the accused is represented by the paralegal's partner or associate.

**CURRENT WORDING**

**3.06 DOING BUSINESS WITH A CLIENT**

3.06 (1) A paralegal must not enter into a transaction with a client unless the transaction is fair and reasonable to the client, the client consents to the transaction and the client has independent legal representation with respect to the transaction.

**Transactions with Clients**

(2) Subject to subrule (3), if a client intends to enter into a transaction with a paralegal who is representing the client, or with a corporation or other entity in which the paralegal has an interest other than a corporation or other entity whose securities are publicly traded, the paralegal, before accepting any retainer,

(a) shall disclose and explain the nature of the conflicting interest to the client, or, in the case of a potential conflict, how and why it might develop later;

(b) shall recommend independent legal representation and shall require that the client receive independent legal advice; and

(c) if the client requests the paralegal to act, shall obtain the client's written consent.

(3) If a client intends to pay for legal services by transferring to a paralegal a share, participation or other interest in property or in an enterprise, the paralegal shall recommend, but need not require, that the client receive independent legal advice before agreeing to act for the client.

(4) This rule does not apply to a transfer of a non-material interest in a publicly traded enterprise.

(5) If the paralegal does not choose to make disclosure of the conflicting interest or cannot do so without breaching a confidence, the paralegal shall decline the retainer.

**Borrowing from Clients**

(6) A paralegal shall not borrow money from a client unless,

(a) the client is a lending institution, financial institution, insurance company, trust corporation or any similar institution whose business includes lending money to members of the public; or

(b) the client is a related person as defined in section 251 of the *Income Tax Act* (Canada) and the paralegal is able to discharge the onus of proving that the client's interests were fully protected by the nature of the case and by independent legal advice or independent legal representation.

### **Guarantees by Paralegal**

(7) Subject to subrule (8), a paralegal shall not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is a borrower or lender.

(8) A paralegal may give a personal guarantee if,

(a) the lender is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, and the lender is directly or indirectly providing funds solely for the paralegal, the paralegal's spouse, parent or child;

(b) the transaction is for the benefit of a non-profit or charitable institution where the paralegal as a member or supporter of such institution is asked, either individually or together with other members or supporters of the institution to provide a guarantee; or

(c) the paralegal has entered into a business venture with a client and the lender requires personal guarantees from all participants in the venture as a matter of course and,

(i) the paralegal has complied with the requirements of these Rules regarding the avoidance of conflicts of interest, and

(ii) the lender and the participants in the venture who are or were clients of the paralegal have received independent legal representation.

### **Judicial Interim Release**

(9) Subject to subrule (10), a paralegal shall not in respect of any accused person for whom the paralegal acts

(a) act as a surety for the accused;

(b) deposit with a court the paralegal's own money or that of any firm in which the paralegal is a partner to secure the accused's release;

(c) deposit with any court other valuable security to secure the accused's release; or

(d) act in a supervisory capacity to the accused.

(10) A paralegal may do any of the things referred to in subrule (9) if the accused is in a family relationship with the paralegal and the accused is represented by the paralegal's partner or associate.

## 9.01 RESPONSIBILITY TO THE LAW SOCIETY

### Communications from the Law Society

9.01 (1) A paralegal shall reply promptly and completely to any communication from the Law Society and shall provide a complete response to any request from the Law Society.

### Duty to Report **Misconduct**

(2) A paralegal shall report to the Law Society, unless to do so would be unlawful or would involve a breach of confidentiality between the paralegal and his or her client,

- (a) the misappropriation or misapplication of trust monies by a licensee;
- (b) the abandonment of a law practice by a lawyer or a legal services practice by a paralegal;
- (c) participation in serious criminal activity related to a licensee's practice;
- ~~(d) the mental instability of a licensee of such a serious nature that the licensee's clients are likely to be materially prejudiced;~~
- (d) conduct that raises a substantial question as to another licensee's honesty, trustworthiness or competency as a paralegal;
- (e) conduct that raises a substantial question about a licensee's capacity to provide professional services; and
- (f) any other situation where a licensee's clients are likely to be severely prejudiced.

#### **8.04 COMPULSORY ERRORS AND OMISSIONS INSURANCE**

##### **Duty to Obtain and Maintain Insurance**

8.04 (1) All paralegals practising in Ontario shall obtain and maintain adequate errors and omissions insurance as required by the Law Society.

(2) A paralegal shall give prompt notice of any circumstance that ~~the paralegal~~ may ~~reasonably expect to~~ give rise to a claim to an insurer or other indemnitor so that the client's protection from that source will not be prejudiced.

**TAB 5.2**

**FOR INFORMATION**

**ENHANCEMENTS TO THE PARALEGAL LICENSING  
PROCESS**

19. In October 2012, Convocation approved the first major changes to the paralegal licensing process since the introduction of paralegal regulation. The report approved by Convocation at that time is shown at [TAB 5.2.1](#)
20. The Executive Director of Professional Development & Competence, Diana Miles, attended the Committee meeting to provide information on the result of the changes, including the raising of the standards at paralegal colleges and the more rigorous 7-hour examination.

***REPORT TO CONVOCATION OCTOBER 2012 - EXCERPT***

**PROPOSED REVISION OF THE PARALEGAL LICENSING PROCESS**

**Motion**

- 15. That Convocation approve the proposed project for revision of the paralegal licensing process.**

**Background**

16. After the conclusion of the Law Society's Five Year Review of Paralegal Regulation, and taking into account the information from the associated submissions and surveys, together with the information from stakeholders in connection with the Legal Needs Analysis, an important theme that the Committee has noted is a desire to strengthen the initial licensing process for paralegals, including the addition of substantive legal knowledge to the licensing examination.
17. Accordingly, at the Committee's request, the Director of Professional Development & Competence prepared the Report shown at **TAB 5.2.1**, as the first step in a proposed approach towards a strengthened competence basis for the paralegal profession.
18. The report forms part of an approach to address the strategic priorities related to paralegal members, with a framework for working through those matters methodically, reflecting strategic directions arising from Convocation's priority-setting exercises and the Committee's focus on competence issues.
19. The identified needs include enhancement of the entry level requirements for paralegals, including the addition of substantive legal knowledge to the licensing examination. Further steps will include consideration of the current field placement system to determine the interest in, and feasibility of a lengthier experiential component with greater emphasis on the demonstrated application of core skills and tasks during the work term.

**TAB 5.2.1**

20. These steps will form the background to any future development of the profession.
21. The process for the revision of the licensing examination will require two steps:
  - a. Part one proposes to add substantive and procedural law concepts to the existing licensing examination. This would be an expansion of the examination that will be focused at broadly-based substantive and procedural law concepts to ensure that the testing platform has more breadth while still maintaining standardized, fair, transparent and defensible criteria.
  - b. Part two of this revision then requires that the expanded scope of validated competencies for testing be traced back to the college program curricula. Colleges will be required to confirm and or make changes to their learning outcomes to ensure that these new competencies are embedded within their course structures.
22. The revision of the licensing examination to incorporate substantive legal topics is a major project requiring the redefinition of required competencies; altogether this process will require three years for full implementation. The budget for the work in the first year is estimated at \$200,000 and has been included in the draft 2013 budget. The total budget and timeline is set out in the Director's Report. The total estimated cost over three years would be \$457,000.
23. The Committee has reviewed the approach in the Director's Report and recommends it to Convocation for approval.