



TAB 4

Report to Convocation December 2, 2016

Paralegal Standing Committee

Committee Members
Michelle Haigh, Chair
Janis Criger, Vice-Chair
Marion Boyd
Robert Burd
Cathy Corsetti
Ross Earnshaw
Brian Lawrie
Marian Lippa
Susan McGrath
Barbara Murchie
Jan Richardson
Baljit Sikand
Anne Vespry

Purpose of Report: Decision and Information

**Prepared by the Policy Secretariat
(Margaret Drent 416 947-7613)**

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For Decision

Proposed Amendments to *Paralegal Rules of Conduct* [TAB 4.1](#)

COMMITTEE PROCESS

1. The Committee met on November 10, 2016. Committee members present were Michelle Haigh (Chair), Janis Criger (Vice-Chair), Cathy Corsetti (by telephone), Ross Earnshaw, Marian Lippa (by telephone), Susan McGrath, Barbara Murchie, Jan Richardson (by telephone), Baljit Sikand, and Anne Vespry. Malcolm Mercer also attended the meeting.
2. Staff in attendance were Karen Manarin, Elliot Spears, Terry Knott, Naomi Bussin, and Margaret Drent.

FOR DECISION

**AMENDMENTS TO THE PARALEGAL RULES OF CONDUCT
THREATENING PENAL OR REGULATORY PROCEEDINGS**

Motion

3. **That Convocation approve the amendments to the Paralegal Rules of Conduct set out at [Tab 4.1.1](#).**

Rationale

4. The proposed amendments are intended to clarify the scope of the prohibition against threatening criminal proceedings, which has been expanded to include penal or regulatory proceedings, and to also harmonize the Rules of Professional Conduct and the Paralegal Rules of Conduct in this area.

5. The Paralegal Rules currently provide:

Threatening Criminal Proceedings

3.02(9) A paralegal shall not, in an attempt to gain a benefit for a client, threaten, or advise a client to threaten:

- (a) To initiate or proceed with a criminal or quasi-criminal charge; or
- (b) To make a complaint to a regulatory authority.

6. Rule 3.02(10) further provides that “subrule(9)(b) does not apply to an application made in good faith to a regulatory authority for a benefit to which a client may be legally entitled”.
7. The current Rule was adopted by Convocation in 2013, together with other amendments to the Paralegal Rules of Conduct to implement the Model Code of Professional Conduct of the Federation of Law Societies of Canada (Model Code). Prior to the coming into force of these amendments in 2014, Rule 4.01(5)(l) of the Paralegal Rules of Conduct provided as follows:

When acting as an advocate, the paralegal shall not attempt to gain a benefit for the complainant by threatening the laying of a criminal charge or by offering to seek or to procure the withdrawal of a criminal charge.

8. Prior to the implementation of the Model Code in Ontario, there was no reference to making a complaint to a regulatory authority in the Rules. The Model Code amendments in this area were intended to reflect the growth of regulatory offences, which are public welfare offences that do not necessarily involve a finding of fault, and may include charges or the issuance of an order, such as a clean-up order under environmental legislation.
9. Rule 3.02(10) of the Paralegal Rules mirrors Rule 3.2-5.1 which was drafted by the Professional Regulation Committee to explain the meaning of the phrase “regulatory authority” in Rule 3.2-5 of the lawyers’ Rules. Rule 3.2-5.1 of the Rules of Professional Conduct and Rule 3.02(10) in the Paralegal Rules of Conduct are unique to the Law Society of Upper Canada.

Proposed Amendments

10. As noted earlier, the proposed amendments will clarify the scope of the prohibition against threatening criminal proceedings, expanded to include penal or regulatory proceedings. To this end, the Committee recommends the following:
 - (a) an amendment to the title of the Rule (which would now refer to “penal or regulatory proceedings”, rather than criminal proceedings);
 - (b) the replacement of the phrase “criminal or quasi-criminal charge” in Rule 3.02(9) to specifically refer to a charge for an offence under the *Criminal Code* or any other statute of Canada, a statute of a province or territory of Canada, or a municipal by-law;
 - (c) the deletion of Rule 3.02(10), consistent with the proposed changes to the Rules of Professional Conduct.
11. A “clean” version of the proposed amendments to the Paralegal Rules of Conduct is available for benchers’ review at [Tab 4.1.2](#).

Tab 4.1.1

Redline Showing Proposed Amendments to the Paralegal Rules of Conduct

Threatening ~~Criminal-Penal or Regulatory~~ Proceedings

3.02(9) A paralegal shall not, in an attempt to gain a benefit for a client, threaten, or advise a client to threaten without reasonable and lawful justification:

(a) to initiate or proceed with a charge for an offence, including an offence under

(i) the *Criminal Code* or any other statute of Canada;

(ii) a statute of a province or territory of Canada; or

(iii) a municipal by-law; ~~criminal or quasi-criminal charge~~; or

(b) to make a complaint to a regulatory authority.

~~(10) — Subrule (9)(b) does not apply to an application made in good faith to a regulatory authority for a benefit to which a client may be legally entitled.~~

Tab 4.1.2

Clean Version Showing Proposed Amendments to the Paralegal Rules of Conduct

Threatening Penal or Regulatory Proceedings

3.02(9) A paralegal shall not, in an attempt to gain a benefit for a client, threaten, or advise a client to threaten without reasonable and lawful justification:

- (a) To initiate or proceed with a charge for an offence, including an offence under
 - (i) the *Criminal Code* or any other statute of Canada;
 - (ii) a statute of a province or territory of Canada; or
 - (iii) a municipal by-law; or
- (b) To make a complaint to a regulatory authority.