



Tab 4

**Report to Convocation
February 28th, 2013**

Paralegal Standing Committee

Committee Members
Cathy Corsetti, Chair
Susan McGrath, Vice-Chair
Marion Boyd
Robert Burd
Paul Dray
Ross Earnshaw
Robert Evans
Michelle Haigh
Jacqueline Horvat
Dow Marmur
Malcolm M. Mercer
Kenneth Mitchell
Jan Richardson

Purpose of Report: Decision and Information

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Amendment to *Paralegal Guidelines* re Member Assistance Programme

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Access to Equity Programmes

Committee Process

1. The Committee met on February 14th, 2013. Committee members present were Cathy Corsetti (Chair), Susan McGrath (Vice-Chair), Robert Burd, Paul Dray, Robert Evans, Michelle Haigh, Jacqueline Horvat, Dow Marmur (by telephone), Malcolm M. Mercer, Kenneth Mitchell and Jan Richardson (by telephone). Staff members attending were Roy Thomas, Terry Knott, Annette Diamond, Sheena Weir, and Julia Bass.
2. For the item on insurance, the meeting was joined by Kathleen Waters, CEO and Duncan Gosnell, Executive Vice-President, LawPRO.

INSURANCE FOR PARALEGALS IN COMBINED LICENSEE PARTNERSHIPS

Motion

3. **That Convocation approve in principle an amendment to By-law 6 [Professional Liability Insurance] to require paralegals working in partnership with lawyers to purchase insurance from LawPRO, effective January 2014.**

Background

4. By-law 6 currently provides:
12. (1) Unless exempted, every licensee who holds a Class P1 licence shall maintain insurance against professional liability under a policy of professional liability insurance issued by a company licensed to carry on business in the province of Ontario that complies with the following minimum requirements and is otherwise comparable to a policy of professional liability insurance issued by the Lawyers' Professional Indemnity Company to a licensee who holds a Class L1 licence:
5. LawPRO raised an issue regarding the insurance situation of paralegals in partnership with lawyers, described as 'Combined Licensee Partnerships'. While Law Society records indicate that there are only about ten licensed paralegals in such partnerships, it is anticipated that this model may occur more frequently in the future.
6. The essence of the problem is that this structure may lead to situations where the paralegal's insurance does not cover possible negligence by the paralegal, if it is alleged that the paralegal was acting outside the permitted scope of practice or for various other reasons. This means that the paralegal risks being personally liable for any loss. This also raises a risk to the public in that insufficient funds may be available to compensate a client.

7. A claim may also be made against the paralegal's lawyer partner; if such a claim is successful, LawPRO would be liable for a claim for which it had received no premiums, while if it is unsuccessful, the paralegal will be personally liable. A claim of this type is currently the subject of litigation. A paralegal's lawyer partner may also face liability based upon partnership law alone, particularly in the case of general partnerships.
8. The current situation has the following potential drawbacks:
 - a. The paralegal partner who provided the service and the paralegal's insurer may be able to avoid responsibility for the paralegal claim;
 - b. The lawyer partner may be faced with a claim regarding the paralegal partner's work and required to report it to LawPRO;
 - c. LawPRO is obliged to investigate and defend such claims concerning paralegal partners and to pay such claims where the lawyer partner(s) may face liability. When LawPRO pays such claims, it incurs the added costs associated with pursuing the paralegal partner in a subrogated action, who may face an uninsured exposure;
 - d. Lawyers must fund un-recouped costs incurred by LawPRO in regard to such paralegal claims, through their premiums, and the lawyer partner(s) can expect implications for their deductible and claims history.
 - e. These potentially substantial losses are applied to the lawyers' insurance and not the paralegal insurance programme for the purposes of future rating and risk management, and
 - f. Where allegations are made against a paralegal and the paralegal's lawyer partner, both their insurance policies may potentially be exposed to the same claim.
9. Accordingly, it is proposed to amend the insurance provisions in By-law 6 to require a paralegal working in partnership with a lawyer to purchase insurance from LawPRO. Based on an estimate from LawPRO, the premium for this coverage is in the range of \$1,300 to \$1,400.

The Committee's Deliberations

10. The Committee considered that such an amendment would be in the public interest and would have the advantages that:

- a. the paralegal partner who provided the advice or service would be responsible for the paralegal claim;
 - b. LawPRO would deal with and cover such claims as a matter of course, in accordance with policy terms and conditions, appreciating the broad scope of services that may be expected of Combined Licensee Partnerships, ensuring effective protection of the public for such paralegal partner work and promoting an appropriate standard of care;
 - c. The costs associated with paralegal claims would reside with the paralegal insured, including deductible, claims history and other insurance implications as a result of the claim;
 - d. Costs spent on coverage issues, disputes between insurers, pursuit of subrogation or recovery proceedings, etc., are avoided from the outset;
 - e. Consistency in coverage between lawyer and paralegal partners in the firm and the potential for gaps in coverage is minimized.
11. To permit an orderly transition, the By-law change should be effective January 2014.

Insurance of MDP's

12. A related issue regarding partners in Multi-Discipline Partnerships was considered by the Professional Regulation Committee this month. The Professional Regulation Committee is recommending an amendment clarifying that insurance should be purchased from LawPRO for both the Law Society licensee and the other professional in a Multi-Discipline Partnership. This would not affect a paralegal unless the paralegal is in partnership in an MDP with a lawyer and a member of another profession.

TAB 4.2

FOR INFORMATION

AMENDMENT TO THE *PARALEGAL GUIDELINES* RE MEMBER ASSISTANCE

13. Effective January 1, 2013, the Law Society began funding a new member assistance programme, providing services equally to lawyers and paralegals, including peer-to-peer counselling.
14. The Commentary in the lawyers' *Rules of Professional Conduct* has for some time made reference to the circumstances where peer-to-peer counseling services are provided by a lawyer. At Convocation in January, the wording of the Commentary was amended to reference the new service provider.
15. Now that the service is available to paralegals, relevant wording has been developed for the *Paralegal Guidelines*, as follows:

6.1 Instances of improper conduct may arise from emotional, mental, or family disturbances or substance abuse. A paralegal who suffers from such problems should be encouraged to seek assistance as early as possible. The Society supports a member assistance plan committed to the provision of confidential counselling for licensees. Therefore, a paralegal acting in the capacity of peer counsellor for the member assistance plan or other similar support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity, or competence hearing without the consent of the paralegal or lawyer from whom the information was received. This does not change the reporting obligations under Rule 9.01 of a paralegal counselling another licensee.
16. This new provision will be added as Guideline 21, paragraph 6.1.
17. The *Guidelines* are approved by the Paralegal Standing Committee and do not require the approval of Convocation.

REPORT OF THE WORKING GROUP ON COSTS

18. A joint working group of the Tribunals Committee, the Paralegal Standing Committee and the Professional Regulation Committee was established in 2011 to consider a number of issues related to the award and enforcement of costs orders in Law Society proceedings. The Working Group prepared a final report for the joint committees' consideration, which was approved by the joint meeting of the three Committees on February 14th, and is being presented to Convocation by the Professional Regulation Committee.

PARALEGAL ACCESS TO EQUITY PROGRAMMES

19. The Equity Adviser provided the Committee with information on the continuing process of making equity programmes available to paralegals as well as lawyers.