



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

Report to Convocation January 24th, 2008

Paralegal Standing Committee

Committee Members

Paul Dray, Chair
Bonnie Warkentin Vice-Chair
Marion Boyd
James R. Caskey
Seymour Epstein
Michelle L. Haigh
Tom Heintzman
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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TABLE OF CONTENTS

For Decision

Persons with Suspended or Revoked Licences..... TAB A

For InformationTAB B

Amendment to By-law 4 (Licensing)

Grandparent Licensing Examination

COMMITTEE PROCESS

1. The Paralegal Standing Committee met on December 7th, 2007. Committee members present were Paul Dray, Chair (by telephone), Bonnie Warkentin (Vice-chair), Marion Boyd, James Caskey, Seymour Epstein, Tom Heintzman, Paul Henderson, Brian Lawrie, Doug Lewis, Margaret Louter and Cathy Strosberg. Staff members in attendance were Zeynep Onen, Terry Knott, Sara Hickling, Michael Elliot, Dulce Mitchell, Maria Loukidelis, Jim Varro and Julia Bass.
2. The Committee met further on January 10th, 2008. Committee members present were Paul Dray (Chair), by telephone, Bonnie Warkentin (Vice chair), Marion Boyd, James Caskey, Seymour Epstein, Michelle Haigh, Tom Heintzman, Brian Lawrie (by telephone), Margaret Louter and Stephen Parker. Staff members in attendance were Malcolm Heins, Terry Knott, Diana Miles, Katherine Corrick, Roy Thomas, Elliot Spears, Sara Hickling (by telephone), Lisa Mallia, Paul McCormick and Julia Bass.

FOR DECISION

PERSONS WHOSE LICENCES HAVE BEEN SUSPENDED OR REVOKED

Motion

- 3. That Convocation approve the changes to Rule 6.01 (6) of the Paralegal Code of Conduct and receive for information the new guidelines set out below.**

Background

4. On November 8th the Professional Regulation Committee approved new provisions concerning lawyers whose licences have been suspended or revoked, or who have given the Law Society an undertaking not to practise. These provisions are important, as they are designed to protect the public by making it clear what licensees can and cannot do when they have been the subject of disciplinary proceedings by the Law Society, resulting in restrictions in their practices.
5. Analogous provisions for paralegal licensees will become necessary once P1 licences have been issued in 2008. It would be difficult for the Law Society to enforce if the rules governing different classes of licensees were substantially different. Accordingly, the Chair of the Profession Regulation Committee requested that the Paralegal Standing Committee review the proposals prior to their being submitted to Convocation for approval.
6. The provisions governing lawyers are submitted to Convocation by the Professional Regulation Committee, together with the accompanying amendments to By-law 7.1 and By-law 9, which are applicable to all classes of licensee.

Existing Guidelines

7. The proposals replace an existing document entitled “Guidelines for Suspended, Resigned or Disbarred Members and Members Who Have Given an Undertaking Not to Practise,” last updated in June 2001.

8. There are two principal reasons why the current guidelines need revision:
 - a. Since the current provisions are in the form of guidelines, they are not enforceable. The proposals would incorporate new obligations into the Law Society's by-laws and into both the Lawyers' Rules of Professional Conduct and the Paralegal Code of Conduct to reflect the guidelines, so that they become enforceable.
 - b. The current guidelines do not reflect the recent amendments to the *Law Society Act*. Previously, suspended lawyers could act as paralegals. Now, lawyers who are suspended are also prohibited from providing legal services.

Proposed Guidelines

9. The new guidelines are divided into two separate documents, one covering suspended licensees and one covering former licensees whose licences have been revoked. This is logical, since the Law Society loses jurisdiction over a licensee once the licence is revoked. The Guidelines for paralegals whose licences have been suspended, or who have given an undertaking not to practise, are attached at **Appendix 1**.

Suspended Licences

10. A 'suspended paralegal' is defined as 'a paralegal whose licence to provide legal services is suspended or who undertakes to the Law Society not to provide legal services.' The guidelines set out the following:
 - a. 'Mandatory activities', that is, things a suspended licensee must do, such as removing signs from the door, disconnecting the telephone or changing the voice message to indicate that the office is closed;
 - b. 'Prohibited activities' that the suspended licensee is not permitted to do, such as taking on new clients or new legal work, giving an undertaking or occupying office space with a licensee;
 - c. Permitted activities, such as assisting clients in transferring their files, collecting accounts receivable and making arrangements with the licensee whom the suspended licensee has retained to complete outstanding reporting letters.

Where licence has been revoked or surrendered

11. The Guidelines for paralegals whose licences have been revoked or who have been permitted to surrender their licences are attached at **Appendix 2**. The guidelines again set out,
 - a. Mandatory activities that must be performed prior to the effective date of the revocation or surrender of the licence, such as removing signs from the door, disconnecting the telephone or changing the voice message to advise clients that the practice is closed, notifying clients that the former licensee is unable to complete the work, returning original documents to the client, closing down all trust accounts and paying out the moneys to the appropriate person;
 - b. Prohibited activities, such as accepting new work, giving a new undertaking, or occupying space with a licensee;
 - c. Permitted activities, such as assisting clients to transfer their files to another licensee, collecting accounts receivable, and rendering accounts for work performed before the date of the loss of the licence.
12. Although the Law Society loses jurisdiction over licensees who surrender their licence, or whose licences are revoked, the information contained in the guidelines is important, as it could be used as evidence in an unauthorized practice proceeding.
13. The proposed guidelines are based on the definitions of the practice of law and provision of legal services contained in the *Law Society Act*, and the case law on unauthorized practice.

Proposed amendments to the Paralegal Code of Conduct

14. The proposed amendments to Rule 6 of the Code, 'Duty to the Administration of Justice,' are attached at **Appendix 3**. Rule 6.01 (6) would be reworded. This rule currently forbids a licensed paralegal from retaining or occupying office space with a former lawyer or suspended lawyer. The effect of the change would be to add former paralegals and suspended paralegals to the persons that a licensed paralegal cannot retain or occupy office space with.

15. Two new sub-rules would be added, requiring licensed paralegals to comply with the by-laws and not provide legal services or hold themselves out as entitled to provide legal services while under suspension or while having given an undertaking not to provide legal services.

GUIDELINES FOR PARALEGALS WHO ARE SUSPENDED OR WHO HAVE GIVEN AN UNDERTAKING NOT TO PROVIDE LEGAL SERVICES

GENERAL

1. (1) In this guideline, “suspended paralegal” means a paralegal whose licence to provide legal services is suspended or who undertakes to the Law Society not to provide legal services.

(2) A suspended paralegal or a paralegal who has undertaken to the Law Society to restrict his or her professional business must cease providing legal services as a result of the suspension or the restriction on his or her professional business under the terms of the undertaking. By-laws XX and 9(II.1) impose on suspended paralegals certain notice requirements, obligations and restrictions on activities, including handling of money and other property.

MANDATORY ACTIVITIES

2. (1) Before the effective date of the suspension or undertaking not to provide legal services, the suspended paralegal shall:
 - a) Remove any sign from his or her door, building, premises, window, building directory, property, vehicle or any other location designating it as a “paralegal office”, “law office”, or “legal office” or designating the former paralegal as being able to provide legal services or to be a “paralegal”, “law clerk”, “court agent”, “Licensee of the Law Society of Upper Canada”, “Licensed by the Law Society of Upper Canada”, or “notary public” or similar words giving the impression, in English or any other language, that he or she is able to provide legal services.
 - b) Remove or cross-out the words or terms set out in a) from all stationery, letterhead, business cards, forms, stamps, accounts electronic mail forms, internet sites and any other advertisements or publications bearing his or her name;
 - c) Disconnect his or her telephone and facsimile lines or arrange for a voice message to advise callers that his or her professional business is closed until further notice and provide callers with the name and number of another licensee to call for information regarding their files.
 - d) Suspended paralegals under a definite suspension may leave a message advising when the office will reopen.

PROHIBITED ACTIVITIES

3. (1) Effective from the date of suspension or undertaking not to provide legal services, a suspended paralegal shall not:
 - a) Accept legal work for new clients;
 - b) Accept new legal work for existing clients;
 - c) Notarize documents pursuant to the *Notaries Act*, R.S.O. 1990, c. N.6, or commission affidavits or statutory declarations pursuant to the *Commissioners for taking Affidavits Act*, R.S.O. 1990, c. C.17;
 - d) Report to clients, other than to:
 - i) inform them of the suspension or the undertaking not to provide legal services; and
 - ii) deliver an account for services rendered in the period before the suspension or undertaking not to provide legal services began;
 - e) Give to another licensee or receive on behalf of a client, other individual, corporation or other entity, any undertaking with respect to any legal matter;
 - f) Occupy or share office space with a licensee in contravention of Subrule 6.01(6) of the *Paralegal Rules of Conduct*;
 - g) Provide services to a licensee, in relation to that licensee's professional business in contravention of Subrule 6.01(6) of the *Paralegal Rules of Conduct*;

- (2) A suspended paralegal shall not resume the provision of legal services upon termination of a suspension or undertaking not to practise until the suspended paralegal receives written confirmation of the termination of the suspension or undertaking not to provide legal services from the Law Society. This confirmation will be promptly given.

PERMITTED ACTIVITIES

4. (1) During the term of the suspension or undertaking not to provide legal services, the suspended paralegal may only:
 - a) See clients for the limited purpose of assisting them in transferring their past or present legal work to another licensee;
 - b) If requested by the client, suggest a referral to a particular licensee to continue work on the client's file. The ultimate choice of who is retained rests with the client and not with the suspended paralegal;
 - c) Collect accounts receivable;
 - d) Render accounts for work completed before the effective date of the suspended paralegal's suspension or undertaking not to provide legal services; and
 - e) Arrange with the licensee whom the suspended paralegal has retained to complete outstanding reporting letters and undertakings the licensee's remuneration.

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GUIDELINES FOR FORMER PARALEGALS WHOSE LICENCES HAVE BEEN REVOKED OR WHO HAVE BEEN PERMITTED TO SURRENDER THEIR LICENCES

GENERAL

1. (1) In this guideline,
 - (a) “former paralegal” means a paralegal whose licence to provide legal services has been revoked or who has been permitted to surrender his or her licence.
 - (b) “existing client” means,
 - i. a person who is a client of a former paralegal when an order is made revoking the former paralegal’s licence or permitting the former to surrender his or her licence, or
 - ii. a person who becomes a client of the former paralegal after an order is made revoking the former paralegal’s licence or permitting the former to surrender his or her licence but before the order takes effect.
 - (c) “former client” means a person who was a client of a former paralegal an order is made revoking the former paralegal’s licence or permitting the former to surrender his or her licence but who was not a client when the order was made.
 - (d) “prospective client” means a person who seeks to retain a former paralegal after an order is made revoking the former paralegal’s licence or permitting the former paralegal to surrender his or her licence but before the order takes effect.

(2) A former paralegal must cease providing legal services as defined by the *Law Society Act* as a result of the order revoking the former paralegal’s licence or permitting the former paralegal to surrender his or her licence, as only those persons licensed by the Law Society to provide legal services may do so.

MANDATORY ACTIVITIES

2. (1) Before the effective date of the revocation or surrender of his or her licence, the former paralegal shall:

Advertising

- (a) Remove any sign from his or her door, building, premises, window, building directory, property, vehicle or any other location designating it as

a “paralegal office”, “law office”, or “legal office” or designating the former paralegal as being able to provide legal services or to be a “paralegal”, “law clerk”, “court agent”, “Licensee of the Law Society of Upper Canada”, “Licensed by the Law Society of Upper Canada”, or “notary public” or similar words giving the impression, in English or any other language, that he or she is able to provide legal services.

- (b) Remove or cross-out the words or terms set out in a) from all stationery, letterhead, business cards, forms, stamps, accounts, electronic mail forms, internet sites and any other advertisements or publications bearing his or her name.
- (c) Disconnect his or her telephone and facsimile lines or arrange for a voice message to advise callers that his or her professional business is closed and provide callers with the name and number of another licensee to call for information regarding their files.

Notice to Clients

- (d) Notify all existing clients, work on whose matters will not be completed by the former paralegal before the order revoking the former paralegal’s licence or permitting the former paralegal to surrender his or her licence takes effect, of the order and that:
 - (i) the former paralegal will be unable to complete the work,
 - (ii) the client will need to retain another licensee of the client’s choosing to complete the work, and
 - (iii) the former paralegal, subject to any rights that the former paralegal may have over the client’s file, will transfer the file to the licensee, if any, retained by the client to complete the work or will return the file to the client; and
 - (iv) notify every existing client and former client for whom the suspended licensee performs or has performed the work described in subsection j(i), and the Law Society, of the name and contact information of the licensee to whom the suspended licensee has given possession of the clients’ documents and files.

Compliance with clause (d)(i) to (iii) not required

- (e) A former paralegal is not required to comply with the notice requirements mentioned in subclauses (d)(i) to (iii) if the only work remaining to be completed on the client’s matter is work mentioned in subsections (h) or (i) but, in such a case, the former paralegal shall, before the order revoking the former paralegal’s licence or permitting the former paralegal to surrender his or her licence takes effect, notify the client of the name and contact information of the licensee retained by the former paralegal to complete the work.

Notice requirements: on date of and during suspension

- (f) A former paralegal shall:
 - (i) notify all persons who contact the former paralegal's place of business of the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence; and
 - (ii) notify any existing client or former client who contacts the former paralegal's place of business, and the Law Society, of the name and contact information of another licensee who has given possession of the clients' documents and files.

Notice requirements: prospective clients

- (g) A former paralegal, at the time a prospective client seeks to retain the former paralegal, shall notify the prospective client of the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence.

Work remaining on file: final report to client

- (h) If, on the date the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, the only work remaining for the former paralegal to complete on a client's matter is a final report to the client, the former paralegal shall, before the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, retain another licensee, who is authorized to do so, to review the client's file and to complete and send the final report to the client.

Work remaining on file: fulfillment of undertakings

- (i) If, on the date the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, the only work remaining for the former paralegal to complete on a client's matter is the fulfillment of one or more undertakings given by the former paralegal, the former paralegal shall, retain another licensee or person, who is authorized to do so, to take all steps necessary to fulfill the undertakings.

Requirement re: original documents

- (j) A former paralegal shall, before the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect,

1. return to the client all original documents; or
2. transfer the client's file, including all original documents, to another licensee who is authorized to perform any requisite work, and inform the clients and the Law Society of the licensee who has been given possession of the client's documents and files.

Return of photo identification card

- (k) A suspended licensee shall, on or before the date the suspension begins, return to the Society any photo identification card issued to her or him by the Society.

Trust Accounts

- (l) A former paralegal shall within 30 days of the date on which the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect:
- (i) withdraw from every trust account kept in the name of the former paralegal, or in the name of the firm of licensees of which the former paralegal was a partner or by which the former paralegal was employed, and, as required, pay to the appropriate person,
 1. money properly required for payment to a person on behalf of a client,
 2. money required to reimburse the former paralegal for money properly expended, or for expenses properly incurred, on behalf of a client,
 3. money required for or toward payment of fees for services performed by the former paralegal, and
 4. all other money that belongs to the former paralegal or to a person other than a client;
 - (ii) after complying with clause (i), withdraw from every trust account kept in the name of the former paralegal, or in the name of the firm of licensees of which the former paralegal was a partner or by which the former paralegal was employed, all money belonging to a client and pay the money to,
 1. the client,
 2. another licensee to whom the client has directed the former paralegal to make payment, or
 3. another licensee who has agreed with the former paralegal to accept payment in the event that the suspended licensee is unable to comply with subclause 1 or 2;

unless the client transfers their files to another paralegal in the firm of licensees of which the former paralegal was a partner or by which the former paralegal was employed;

- (iii) after complying with clauses (i) and (ii),
 - 1. close every trust account that was kept in the name of the former paralegal, and
 - 2. cancel or cause to be cancelled the former paralegal's signing authority on every trust account that was kept in the name of the firm of licensees of which the former paralegal was a partner or by which the former paralegal was employed.

Report to Society

(m) A former paralegal shall, not later than thirty days after the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, complete and file with the Society, in a form provided by the Society, a report confirming and providing details of the former paralegal's compliance with these Guidelines.

Permission to be exempt from requirement

(n) A former paralegal may apply in writing to the Society for an exemption from or a modification of a requirement mentioned in this Guideline, and the Society may exempt the suspended licensee from or modify the requirement, subject to such terms and conditions as the Society may impose.

PROHIBITED ACTIVITIES

- 3. (1) Subject to subsection 2(1)(n) and 4(1)(f), a former paralegal shall not, after the date on which the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons
- (2) Effective from the date on which the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, a paralegal shall not:
 - a) Accept legal work for new clients;
 - b) Accept new legal work for existing clients;
 - c) Notarize documents pursuant to the *Notaries Act*, R.S.O. 1990, c. N.6, or commission affidavits or statutory declarations pursuant to the *Commissioners for taking Affidavits Act*, R.S.O. 1990, c. C.17;
 - d) Report to clients, other than to:

- i) inform them of the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her; and
- ii) deliver an account for services rendered in the period before the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence took effect;
- e) Give to another licensee or receive on behalf of a client, other individual, corporation or other entity, any undertaking with respect to any legal matter;
- f) Occupy or share office space with a licensee in contravention of Subrule 6.01(6) of the *Paralegal Rules of Conduct*;
- g) Provide services to a licensee, in relation to that licensee's professional business in contravention of Subrule 6.01(6) of the *Paralegal Rules of Conduct*.

PERMITTED ACTIVITIES

4. (1) After the date on which the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, the former paralegal may only:
- a) See clients for the limited purpose of assisting them in transferring their past or present legal work to another licensee;
 - b) If requested by the client, suggest a referral to a particular licensee to continue work on the client's file. The ultimate choice of who is retained rests with the client and not with the suspended paralegal;
 - c) Collect accounts receivable;
 - d) Render accounts for work completed before the date on which the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect;
 - e) Arrange with the licensee whom the former paralegal has retained to complete outstanding reporting letters and undertakings the licensee's remuneration; and
 - f) Receive from on behalf of a person or group of persons money:
 - (i) in payment of fees for services performed by the former paralegal for the person or group prior to the date on which the suspension began; or
 - (ii) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group prior to the date on which the suspension began.

PROPOSED AMENDMENTS TO THE PARALEGAL CODE OF CONDUCT

Rule 6

[NEW HEADING] Working with or employing unauthorized persons
[REVISED WORDING OF SUBSECTION (6)]

- (6) Without the express approval of a committee of Convocation appointed for the purpose, a paralegal shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the provision of legal services any person who, in Ontario or elsewhere,
- (a) is disbarred and struck off the Rolls,
 - (b) is a person whose license to practise law or to provide legal services is revoked,
 - (c) as a result of disciplinary action, has been permitted to resign his or her membership in the Law Society or to surrender his or her license to practise law or to provide legal services, and has not had his or her licence restored,
 - (d) is suspended,
 - (e) is a person whose license to practise law or to provide legal services is suspended, or
 - (f) is subject to an undertaking not to practise law or to provide legal services.

[NEW SUBSECTIONS]

Practice by suspended paralegal prohibited

(7) A paralegal whose licence to provide legal services is suspended shall comply with the requirements of the By-laws and shall not

- (a) provide legal services; or
- (b) represent or hold himself or herself out as a person entitled to provide legal services.

Undertakings not to provide legal services

(8) A paralegal who gives an undertaking to the Law Society not to provide legal services shall not,

- (a) provide legal services; or
- (b) represent or hold himself or herself out as a person entitled to provide legal services.

Undertakings to provide legal services subject to restrictions

(9) A paralegal who gives an undertaking to the Law Society to restrict his or her provision of legal services shall comply with the undertaking.

FOR INFORMATION

AMENDMENT TO BY-LAW 4 (LICENSING)

16. The Professional Regulation Committee is proposing an amendment to By-law 4, to the effect that a person cannot hold two classes of licence, L1 and P1, at the same time. The Paralegal Standing Committee reviewed this item, and concurs with the recommendation of the Professional Regulation Committee.

'GRANDPARENT' LICENSING EXAMINATION

17. The Professional Development & Competence Department projects the total number of applicants taking the Licensing Examination on January 17th at 1,911. The geographical breakdown is as follows:

Toronto (a.m.)	558
Toronto (p.m.)	854
London	192
Sudbury	48
Ottawa (a.m.)	25
Ottawa (p.m.)	41
Thunder Bay	14