



TAB 9

Report to Convocation May 24, 2018

Paralegal Standing Committee

Committee Members

Robert Burd (Chair)
Janis Criger (Vice-Chair)
Marion Boyd
Cathy Corsetti
Michelle Haigh
Brian Lawrie
Marian Lippa
Susan McGrath
Malcolm Mercer
Barbara Murchie
Jan Richardson
Baljit Sikand
Anne Vespry

Purpose of Report: Information

**Prepared by the Policy Division
Will Morrison (416-947-3314)**

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COMMITTEE PROCESS

1. The Paralegal Standing Committee (the "Committee") met on May 9, 2018. In attendance were Robert Burd (Chair), Janis Criger (Vice-Chair), Marion Boyd, Cathy Corsetti (by telephone), Marian Lippa, Susan McGrath, Malcolm Mercer, Barbara Murchie, Jan Richardson, Baljit Sikand (by telephone), and Anne Vespry.
2. Law Society staff members Cara-Marie O'Hagan, Lesley Cameron, Sheena Weir, and Will Morrison participated in the meeting.

FOR INFORMATION**AMENDMENTS TO THE PARALEGAL GUIDELINES –
HARASSMENT AND DISCRIMINATION****Introduction**

3. The Committee has approved amendments to Guideline 4 of the Paralegal Professional Conduct Guidelines, enhancing guidance provided to paralegals on their obligations in respect of harassment and discrimination. These amendments are being reported to Convocation for its information.
4. A redline in English, attached as **Tab 9.1.1**, shows amendments to the Paralegal Professional Conduct Guidelines that are required to implement the changes described below. A redline version of the amendments in French is attached as **Tab 9.1.2**.

Context**1. Elaboration of Issue**

5. The *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* both prohibit licensees from engaging in conduct that constitutes harassment (including sexual harassment) or discrimination.
6. These longstanding obligations prohibit such conduct clearly and comprehensively. However, in light of recent reported information, societal trends, and legislative reforms applicable to legal workplaces, the Law Society has committed to reviewing these obligations to ensure that they reflect modern standards and are as effective as possible.
7. The amendments described in this report strengthen the guidance provided to paralegals in meeting their obligations with respect to harassment and discrimination and ensuring that their workplaces remain free of these problems.

2. Articling Experience Survey Results

8. In 2017, the Professional Development & Competence Committee, as part of its ongoing review of the lawyer licensing process, commissioned an Articling Experience Survey (the “Survey”) to obtain information about the quality and effectiveness of articling placements.
9. The Survey was sent to 5,242 individuals who had either recently completed or were currently engaged in an articling placement; 1,471 responses were received. Although the participation rate of 28.1% was relatively low and impacted the

statistical reliability of the Survey results, those results nevertheless disclosed important information about licensing candidates' experiences in their articling workplaces. In the context of harassment and discrimination issues, the volume of incidents reported alone provided an indication of unacceptable problem levels, notwithstanding any concerns about the reliability of the percentage statistics.

10. Participants were asked:

“At any time in your articling process, do you feel that you faced any comments or conduct related to your age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, sex and/or sexual orientation that was unwelcome?”

11. Twenty-one percent of respondents who had completed their placements, and eighteen percent of those who were currently articling, responded that they had experienced these unwelcome comments or conduct. This amounted to 300 total respondents who answered in the affirmative.

12. Participants were also asked:

“At any time in your articling process, do you feel that you faced any unequal or differential treatment related to your age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, sex and/or sexual orientation?”

13. Seventeen percent of respondents who had completed their placements, and sixteen percent of respondents who were currently articling, responded that they had experienced that unequal or differential treatment. This amounted to 251 total respondents who answered in the affirmative.

3. SPOT Team

14. In response to the information reported by Survey respondents, the Law Society created the Steps, Progress, Opportunities and Tactics (“SPOT”) Team, comprised of five Benchers, to review the Law Society’s existing programs, policies, processes and supports related to discrimination and harassment, and to assess their effectiveness and identify any required improvements.
15. Among other action items, the SPOT Team identified a need to review the conduct rules for licensees and consider any amendments that could further strengthen them.

4. Review of Lawyers' Rules of Professional Conduct

16. In February and April 2018, the Professional Regulation Committee considered potential amendments to the lawyers' *Rules of Professional Conduct* in light of the Survey results and the SPOT Team's mandate.
17. The Professional Regulation Committee found that the *Rules of Professional Conduct* clearly and unambiguously prohibited harassment and discrimination, and did not require significant changes. Nevertheless, it brought forward amendments, which were approved by Convocation in April 2018, that better emphasize existing licensee obligations, particularly to highlight recent legislative changes applicable to all workplaces.
18. The Professional Regulation Committee's review focused on the lawyers' *Rules of Professional Conduct*, with a recommendation that this Committee subsequently conduct a similar review of the *Rules of Paralegal Conduct* and the *Paralegal Professional Conduct Guidelines*.

Analysis

1. Overview

19. Human rights law and standards governing harassment and discrimination continue to develop in relation to evolving societal expectations and contexts. For example, although Ontario's *Human Rights Code* was first enacted in 1962, new grounds of discrimination have subsequently been identified and added to the legislation over the years, including most recently in 2012 when "gender identity" and "gender expression" were added as grounds.
20. Likewise, professional regulatory codes must keep current with these standards. The Articling Experience Survey results have revealed a continuing need to ensure that the Law Society's rules clearly prohibit harassment and discrimination and effectively guide licensees to ensure that they do not engage in such conduct. Although the Survey focused only on lawyer licensing candidates' workplace experiences, it is possible that similarly problematic conditions could be present in paralegals' workplaces.
21. Although the obligations pertaining to harassment and discrimination in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* are structured and phrased differently in certain parts, both have the effect of clearly and unambiguously prohibiting harassment and discrimination.

2. Paralegal Rules of Conduct

22. Rule 2.03 of the *Paralegal Rules of Conduct* creates the obligations to refrain from engaging in sexual or other forms of harassment and discrimination. This Rule also obliges a paralegal to “ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule,” and to “ensure that his or her employment practices do not offend this rule.” Subrules 2.03(1) and (2) clarify that the *Human Rights Code* and the legal principles and jurisprudence that underpin it apply to this Rule.
23. The provisions within this Rule collectively target each of the priority concern areas, such as sexual harassment and workplace discrimination, that professional standards related to harassment and discrimination must address. They operate in a similar fashion to the provincial *Human Rights Code* and to the lawyers’ *Rules of Professional Conduct*, notwithstanding differences in legislative construction.
24. Although Convocation approved minor changes recommended by the Professional Regulation Committee to the rules within the lawyers’ *Rules of Professional Conduct*, none of those rule amendments (as opposed to amendments to Commentary sections) apply to the *Paralegal Rules of Conduct* because the issues they resolved are not present in the latter rules’ different structure.
25. On the basis of this assessment, the Committee is not recommending that any changes be made at this time to Rule 2.03 of the *Paralegal Rules of Conduct*. Where opportunities for strengthening these obligations are evident is in providing additional interpretive guidance to paralegals around the application of these standards to their day-to-day professional work.

3. Paralegal Professional Conduct Guidelines

26. Guideline 4 of the Paralegal Professional Conduct Guidelines is intended to be read with Rule 2.03 of the *Paralegal Rules of Conduct*. It provides similar guidance on harassment and discrimination obligations to that provided by the Commentary to the lawyers’ *Rules of Professional Conduct*.
27. The Committee has approved two revisions to Guideline 4 in order to enhance guidance to paralegals. These revisions can be seen in the redline versions of the Guidelines attached at [Tabs 9.1.1](#) and [9.1.2](#).
28. First, minor changes have been made to Guideline 4-7, which provides interpretive guidance on conduct that constitutes sexual harassment, in order to harmonize this section with s. 6.3-0 of the lawyers’ *Rules of Professional Conduct*. A statement that “sexual harassment is defined in the *Human Rights Code*” has been revised to reflect that the guidance that follows does not come directly from the text

of the *Human Rights Code*. The list of circumstances associated with sexual harassment has been revised to use clearer language that is also identical to that provided in the lawyers' rule.

29. Second, new Guidelines 4-9 – 4-12 have been added. These refer to the requirements applicable to workplace violence and harassment under the provincial *Occupational Health and Safety Act* (“*OHSA*”), which are relevant to Rule 2.03(7) that requires paralegals to ensure that they do not harass or discriminate in their employment practices. *OHSA* mandates that employers create workplace violence and harassment policies, as well as programs to implement those policies, and creates certain obligations for employers, including a duty to conduct investigations into allegations of workplace harassment that are appropriate in the circumstances.
30. The new Guidelines 4-9 – 4-12 are consistent with Commentary sections added to s. 6.3.1-3 of the lawyers' *Rules of Professional Conduct*.

Redline Showing Proposed Amendments to the Paralegal Professional Conduct Guidelines

GUIDELINE 4: HARASSMENT AND DISCRIMINATION

The Human Rights Code

Rule Reference: 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,
 - gender identity or gender expression 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 means~~ 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 submission~~ 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~~ made implicitly or explicitly a condition for the provision of professional services,
- ~~giving in submission~~ to such conduct is made implicitly or explicitly a condition of employment ~~by the paralegal, whether this condition was spoken or unspoken by the paralegal,~~
- ~~giving in submission~~ to or rejection ~~on of a~~ 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), or
- such conduct has the purpose or the effect of is intended to or results in interfering with an employee’s a person’s work performance or creating an intimidating, hostile, or offensive work environment, ~~or~~
- ~~such conduct creates an uncomfortable, unfriendly or unpleasant work environment.~~

9-8. 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 the 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.

Employment Practices

Rule Reference: Rule 2.03(7)

9. Paralegals who employ one or more workers or who contract for the services of one or more workers are also required to comply with workplace violence and harassment provisions in the *Occupational Health and Safety Act* (“OHS”). Under that Act, employers must prepare written workplace violence and workplace harassment policies and must review those policies as often as necessary, but at least annually. Paralegals who employ 6 or more workers must post their written policies at a conspicuous place in the workplace.
10. The OHS requires that employers assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work, and then develop and maintain a program to implement their workplace violence policy. That program must set out how the employer will investigate and deal with incidents or complaints of workplace violence, and must include measures and procedures to control any risks identified in the assessment, for summoning immediate assistance when workplace violence occurs or is likely to occur, and for workers to report incidents of workplace violence to the employer or supervisor.
11. Employers must also develop a program to implement the workplace harassment policy, which must include measures and procedures for workers to report incidents of workplace harassment to the employer or their supervisor, or to another person if the employer or supervisor is the alleged harasser. The program must also set out:
- (a) how incidents or complaints of workplace harassment will be investigated and dealt with;
 - (b) how information obtained about an incident or complaint, including identifying information about any individuals involved, will not be disclosed unless necessary for the investigation or for taking corrective action with respect to the incident or complaint, or is otherwise required by law; and
 - (c) how a worker who has allegedly experienced workplace harassment and the alleged harasser will be informed of the results of the investigation or the results of the investigation and of any corrective action taken as a result of the investigation.

[12. The Act also provides that an inspector may order, at the employer's expense, a third party investigation into allegations of workplace harassment.](#)

Promoting Equity and Diversity

13. 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.
14. 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.

Discrimination and Harassment Counsel

15. 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 Law Society but is completely independent of the Law Society. The service is free to the Ontario public, including paralegals and lawyers, and is strictly confidential.
16. 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.
17. More information is available at www.dhcounsel.on.ca/.

Modifications en rouge proposées aux lignes directrices du Code de déontologie des parajuristes

LIGNE DIRECTRICE 4 : HARCÈLEMENT ET DISCRIMINATION

Le Code des droits de la personne

Règle 2.03

1. Les obligations des parajuristes à l'égard du harcèlement et de la discrimination sont décrites dans le Code, dans le *Code des droits de la personne* et dans la jurisprudence connexe.
2. Le *Code des droits de la personne* accorde à tout le monde un traitement et des droits égaux sans discrimination à l'égard de l'emploi, du logement et des services. L'objectif du Code est de prévenir la discrimination ou le harcèlement au motif
 - de la race ou de la couleur,
 - de la citoyenneté, de l'ascendance, lieu d'origine ou origine ethnique,
 - de la croyance,
 - du sexe (y compris la grossesse),
 - de l'orientation sexuelle,
 - de l'âge (18 ans ou plus),
 - de l'existence d'un casier judiciaire (dans le cadre de l'emploi seulement),
 - de l'état matrimonial ou familial,
 - d'un handicap,
 - de l'identité sexuelle, de l'expression de l'identité sexuelle,
 - de l'état d'assisté social (dans le cadre du logement seulement).
3. Pour plus d'information sur les obligations en vertu du *Code des droits de la personne*, consultez le site web de la [Commission ontarienne des droits de la personne](#).

Discrimination

Règle 2.03 (4) et (5)

4. **Discrimination** s'entend du traitement d'une autre personne dans le cadre, par exemple, de l'emploi, des services ou du logement, d'une façon différente et moindre que les autres, en raison d'un des motifs illicites du Code.
5. Un parajuriste doit passer en revue et se familiariser avec les lois sur les droits de la personne pour s'assurer qu'il satisfait à ses obligations légales et déontologiques envers les autres.

Harcèlement

Règle 2.03 (3)

6. Le **harcèlement** est une forme de discrimination. Le harcèlement s'entend de commentaires ou de gestes contrariants dont on peut raisonnablement supposer qu'ils ne sont pas sollicités. D'ordinaire, pour parler de harcèlement, il faut une série d'évènements ou un comportement répétitif. Cependant, dans certaines circonstances, une seule fois peut être considérée comme assez grave pour représenter du harcèlement.

7. Le **harcèlement sexuel** est défini dans le ~~Code des droits de la personne~~ s'entend d'un incident ou une série d'incidents comportant des avances sexuelles non désirées, des requêtes de faveurs sexuelles ou d'autres comportements verbaux ou physiques de nature sexuelle dans l'une ou plusieurs des circonstances suivantes :

- lorsqu'on peut supposer raisonnablement que ces comportements causent un sentiment d'insécurité, d'inconfort, d'insulte ou d'humiliation chez le destinataire,
- ~~lorsqu'accepter~~ **lorsque l'acceptation** ~~lorsqu'accepter de~~ ces comportements est une condition implicite ou explicite pour obtenir des services juridiques ~~d'un parajuriste, que celui-ci ait verbalisé ou non cette condition d'un parajuriste, que celui-ci ait verbalisé ou non cette condition~~,
- ~~lorsqu'accepter~~ **lorsque l'acceptation de** ~~lorsqu'accepter~~ ces comportements est une condition d'emploi implicite ou explicite ~~par le parajuriste, que celui-ci ait verbalisé ou non cette condition par le parajuriste, que celui-ci ait verbalisé ou non cette condition~~,
- ~~lorsqu'accepter ou rejeter~~ **lorsque l'acceptation ou le rejet** ~~lorsqu'accepter ou rejeter de~~ ces comportements influence les décisions d'emploi du parajuriste à l'égard de l'employé (par exemple l'attribution de ~~tâches de classement~~ dossiers à l'employé, des questions de promotion, une augmentation de salaire, la sécurité d'emploi et les avantages sociaux, entre autres),
- lorsque ~~lorsque~~ ces comportements visent à ~~contrecarrer~~ avoir une incidence sur le rendement de travail de l'employé ~~l'employé~~ la personne ou à créer un milieu de travail ~~inconfortable~~ intimidant, hostile ou déplaisant, ou en ont les effets ~~cet effet~~.
- ~~Lorsque ces comportements créent un milieu de travail inconfortable, hostile ou déplaisant.~~

8. Voici des exemples de comportements considérés comme du harcèlement :

- plaisanteries sexistes gênantes ou offensantes,
- affichage de matériel offensant, comme des graffitis raciaux,
- utilisation de paroles sexuellement dégradantes pour décrire une personne,
- utilisation de remarques dérogoatoires ou dégradantes dirigées contre le sexe d'une personne ou contre son orientation sexuelle,
- utilisation de commentaires ou de gestes sexuellement suggestifs ou obscènes,
- commentaires ou questions malvenues sur la vie sexuelle d'une personne,
- insultes raciales répétées dirigées contre la langue ou l'accent d'un groupe particulier,
- flirt, avances ou propositions sexuelles malvenues,
- regards concupiscent,
- contact non désiré qui persiste ou attention non désirée après la fin d'une relation consensuelle,
- requêtes de faveurs sexuelles,
- attouchements non désirés,
- violence verbale ou menaces,
- agression sexuelle.

Pratiques d'emploi

Règle 2.03 (7)

9. Les parajuristes qui emploient un ou plusieurs travailleurs ou louent les services d'un ou de plusieurs travailleurs se conforment également aux dispositions sur la violence et le harcèlement de la *Loi sur la santé et la sécurité au travail* (« LSST »). En vertu de cette loi, les employeurs doivent formuler des politiques concernant la violence et le harcèlement au travail et doivent examiner ces politiques aussi souvent que nécessaire, mais au moins une fois par année. Les parajuristes qui emploient au moins six travailleurs doivent formuler ces politiques par écrit et les afficher dans un endroit bien en vue dans le lieu de travail.
10. La LSST prévoit que les employeurs évaluent les risques de violence au travail qui peuvent découler de la nature du lieu de travail, du genre de travail ou des conditions de travail, puis élaborer et maintenir un programme pour mettre en œuvre leur politique sur la violence au travail. Ce programme doit établir comment l'employeur enquêtera sur les incidents ou les plaintes de violence au travail, et doit inclure les mesures à prendre et les méthodes à suivre pour contrôler les risques indiqués dans l'évaluation, pour obtenir une aide immédiate lorsqu'il se produit de la violence au travail ou qu'il est susceptible de s'en produire, et pour que les travailleurs puissent signaler des incidents de violence au travail à l'employeur ou au superviseur.
11. Les employeurs doivent également élaborer un programme de mise en œuvre de la politique concernant le harcèlement au travail, qui comprend des mesures et des méthodes que les travailleurs doivent suivre pour signaler des incidents de harcèlement au travail à l'employeur ou à leur superviseur, ou à une autre personne si l'employeur ou le superviseur est le prétendu harceleur. Le programme doit aussi énoncer :

 - a) la manière dont l'enquête sur les incidents ou les plaintes de harcèlement au travail se déroulera et les mesures qui seront prises pour y faire face ;
 - b) la manière dont les renseignements obtenus au sujet d'un incident ou une plainte de harcèlement au travail, y compris les renseignements identificatoires au sujet des particuliers impliqués, demeureront confidentiels, sauf si leur divulgation est nécessaire pour enquêter ou prendre des mesures correctives à l'égard de l'incident ou de la plainte, ou encore si elle est exigée par la loi ;
 - c) la manière dont le travailleur qui aurait fait l'objet de harcèlement au travail et le prétendu harceleur seront informés des résultats de l'enquête et des mesures correctives prises à l'issue de l'enquête, le cas échéant.
12. La LSST prévoit également qu'un inspecteur peut ordonner que l'employeur fasse faire, à ses frais, par une tierce partie l'enquête sur les allégations de harcèlement au travail.