

Paralegal Governance in Ontario

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Learning Outcomes

After reading this chapter, you will understand:

- How to read the *Paralegal Rules of Conduct*.
- How to use the *Paralegal Professional Conduct Guidelines*.
- Paralegal governance in Ontario.
- Who must be licensed.
- Permitted areas of practice for P1 licensees.
- The licensing process.
- The good character requirement.
- Exemptions from licensing.

Introduction

The topic of ethics and professionalism has never before been so important in the field of law. With the rapid advancement of technology over the past several decades and its ever-increasing use in economic transactions, the rise in fraudulent activity targeting the trust accounts of lawyers and paralegals, the widely adopted use of virtual communication platforms since the COVID-19 pandemic, and the proliferation of Internet sites offering the public do-it-yourself legal forms and documents, there is a heightened need for legal professionals to vigilantly adhere to their professional rules of conduct and to maintain the highest ethical standards in the provision of legal services to the public.

The cornerstone of the relationship between legal professional and client is trust. Legal professionals act on *behalf* of their clients. In most cases, clients lack the subject-matter expertise to represent themselves in a legal matter. Not unlike a patient who relies on the expertise of their doctor or an individual who depends on their financial adviser when making investment decisions, clients rely on a legal professional to guide them through the complicated landscape of the legal system. The stakes are often high: financial security, employment status, personal or professional reputation, family relations, mobility, or personal freedom may hang in the balance. For this reason, the client must be able to trust the legal professional to act competently, with integrity and with a zealous commitment to faithfully serve the client's best interests. Lawyers and paralegals are the stewards of the legal system, charged with the role of advocating for people's legal rights. In the absence of ethics and professionalism, they could take on work in which they are not competent, compromise the confidentiality of their clients, act for opposing parties without regard to a conflict of interest, mislead a court or tribunal purely for the sake of winning a case, misappropriate client trust funds for personal financial gain, or disparage members of the judiciary to draw popularity in the media. However, rules of professional conduct establish a framework within which the legal professional works to provide competent, conflict-free, and integrous representation and uphold the administration of justice. For paralegals in Ontario, the *Paralegal Rules of Conduct*¹ provide this framework.

While the Rules are foremost intended to protect the public, it is important to keep in mind that they also protect the paralegal. They serve as a beacon to guide paralegals in decision-making when the "right" decision may not be clear. Applying the Rules, the paralegal can assess the most appropriate course of action that best serves the client, and if challenged on the chosen course of action, the paralegal can refer to the Rules to defend their decision and protect against liability and reputational harm.

Paralegals have not always been subject to a code of professional conduct. In fact, for several decades in Ontario, paralegals operated without any regulatory oversight. However, in May 2007, the Law Society of Upper Canada (as it was then known) came to regulate paralegals in the province.

¹ Law Society of Ontario, *Paralegal Rules of Conduct* (1 October 2014; amendments current to 24 February 2022), online: <<https://lso.ca/about-lso/legislation-rules/paralegal-rules-of-conduct/complete-paralegal-rules-of-conduct>> [Rules].

How Did the Law Society Become the Regulator of Paralegals in Ontario?

In Ontario, the **Law Society of Ontario** (“Law Society”) is the regulatory body that governs the legal profession in the public interest. Up until April 30, 2007, paralegals in the province were not regulated by the Law Society and had been practising as independent, non-lawyer agents providing paid legal services to the public for several decades. Some worked as independent paralegals—that is, non-lawyer agents who provided legal advice and other legal services (including appearances before courts, statutory boards, and tribunals) to the public for a fee. Others worked as supervised paralegals in roles similar or identical to those of legal assistants or law clerks. Supervised paralegals worked under the supervision and direction of lawyers or other managers who were accountable for the quality of the paralegal’s work in a range of law-related venues, including law firms, court offices, Crown offices, municipal prosecutions, government ministries, children’s aid societies, and legal aid clinics.

Over time, there was a growing demand for affordable legal services in such areas as family law, corporate law, wills and estates, and real estate. In response, paralegals began providing legal services in these areas where there was no statutory or other legal authority for them to do so. In the absence of any legislated form of professional governance, membership in paralegal professional associations and compliance with their requirements was voluntary. In reality, anyone could set up an office and provide legal services to the public as an independent paralegal. Many were honest and competent and handled their clients’ cases to a professional standard. However, in the absence of any legislated form of governance, paralegals were not required to have any formal legal training. They were not required to be of good character, comply with a code of professional standards, or carry errors and omissions insurance.

Errors and omissions insurance is a form of liability insurance that is intended to reimburse clients for loss or damage suffered as a result of negligence or wrongdoing by a legal representative.

If a paralegal firm was not insured, a client who had suffered damage as a result of a paralegal’s incompetence or negligence could not look to an insurer for compensation. Instead, a complainant would be forced to commence a court action against the delinquent paralegal firm for redress. Many independent paralegals incorporated their businesses. A successful plaintiff often found themselves trying to enforce a judgment against a shell corporation—that is, a business with no assets to enforce a judgment against. This situation raised issues of consumer protection with the Ministry of the Attorney General and the Law Society.

On May 1, 2007, the *Access to Justice Act, 2006*² became law, amending the *Law Society Act*³ (“the LSA”) to establish the Law Society as the regulator of the legal and paralegal professions in Ontario. The rationale for the regulation of paralegals was to improve access to justice by giving consumers more affordable choice in qualified legal services while protecting people who seek legal services from non-lawyers.

Law Society of Ontario
a self-governing body that regulates the legal and paralegal professions in Ontario in the public interest, according to Ontario law and the Law Society’s Rules, By-Laws, and Guidelines; formerly the Law Society of Upper Canada

errors and omissions insurance
insurance intended to reimburse clients for loss or damage suffered as a result of negligence or wrongdoing by a legal representative

² SO 2006, c 21.

³ RSO 1990, c L.8 [LSA].

Governance Structure of the Law Society of Ontario

Under the LSA, the Ontario provincial government has delegated authority to the Law Society to regulate the legal and paralegal professions in Ontario. As part of its mandate, the Law Society oversees the competence and professional conduct of lawyers and paralegals.

The Law Society is a self-regulating body. It is governed by a board of directors, known as benchers, consisting of 40 elected lawyers, 5 elected paralegals, and 8 lay-persons (non-licensees). The **lay benchers** are appointed by the lieutenant governor in council and serve as public representatives on the board. Benchers come together most months at **Convocation**—a large formal meeting during which Law Society policy matters and affairs are addressed. The most senior position within the Law Society is held by the treasurer, who serves as president and head of the Law Society and chair of Convocation.

The **Paralegal Standing Committee** is established by Convocation and is responsible for such matters as the *By-Laws* specify relating to the regulation of persons who provide legal services in Ontario.⁴ The Committee created the regulatory framework for the paralegal profession and initiated the Rules.

The composition of the Paralegal Standing Committee is as follows:

- five paralegal licensees, who are **elected benchers**;
- five lawyer licensees, who are elected benchers; and
- three lay benchers.⁵

One of the five elected paralegal benchers serves as the Chair of the Committee.

Pursuant to By-Law 3,⁶ section 130, the Paralegal Standing Committee is responsible for developing, for Convocation's approval, policy options on the following matters:

1. The classes of licence for the provision of legal services in Ontario issued under the Act, the scope of activities authorized under each class of licence and the terms, conditions, limitations or restrictions imposed on each class of licence.
2. The licensing of persons to provide legal services in Ontario, including the qualifications and other requirements for licensing and the application for licensing.
3. The regulation of persons licensed to provide legal services in Ontario in respect of,
 - i. the handling of money and other property, and
 - ii. the keeping of financial records.
4. The rules of professional conduct applicable to persons licensed to provide legal services in Ontario.
5. The requirements to be met by persons licensed to provide legal services in Ontario with respect to indemnity for professional liability.
6. The professional competence of persons licensed to provide legal services in Ontario, including,
 - i. the requirements to be met by such persons with respect to continuing legal education, and

lay bencher

a non-licensee who sits on Convocation

Convocation

the governing body of the Law Society of Ontario

Paralegal Standing Committee

a committee of five paralegal licensees who are benchers, five lawyer licensees who are benchers, and three lay (non-licensee) benchers, which is responsible for developing policy on all issues affecting paralegal practice in Ontario

elected bencher

a licensee who is elected to sit on Convocation

⁴ LSA, s 25.1(2).

⁵ LSA, s 25.1(3).

⁶ Law Society of Ontario, By-Law 3 (1 May 2007; amendments current to 29 September 2022), online: <<https://lso.ca/about-lso/legislation-rules/by-laws/by-law-3>>.

- ii. the review of the professional business of such persons.
- 7. Guidelines for professional competence applicable to persons licensed to provide legal services in Ontario.
- 8. The provision of legal services through professional corporations.
- 9. The provision of information to the Society, and the filing of certificates, reports and other documents, relating to the Society's functions under the Act, by persons licensed to provide legal services in Ontario.
- 10. The election of five persons who are licensed to provide legal services in Ontario as benchers.
- 11. The appointment of the chair of the Committee.

The Regulatory Framework

Section 4.1 of the LSA sets out the function of the Law Society, which is to ensure that

- (a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
- (b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.

Section 4.2 states that, in carrying out its functions, duties, and powers under the Act, the Law Society shall have regard to the following principles:

- 1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
- 2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
- 3. The Society has a duty to protect the public interest.
- 4. The Society has a duty to act in a timely, open and efficient manner.
- 5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

While the LSA establishes the framework for governance of the legal and para-legal professions, it is the *By-Laws*,⁷ the *Paralegal Rules of Conduct*, and the *Paralegal Professional Conduct Guidelines*⁸ that implement that framework. The focus of this textbook will be an examination of the role of the paralegal within the regulatory framework and their corresponding obligations under the Rules and related legislation.

7 Law Society of Ontario, *By-Laws* (1 May 2007), as amended, online: <<https://lso.ca/about-lso/legislation-rules/by-laws>>.

8 Law Society of Ontario, *Paralegal Professional Conduct Guidelines* (1 October 2014; amendments current to 24 February 2022), online: <<https://lso.ca/about-lso/legislation-rules/paralegal-professional-conduct-guidelines>> [Guidelines].

The Law Society Tribunal

The Law Society Tribunal is an independent adjudicative body that administers disciplinary proceedings against Ontario lawyers and paralegals (licensees). It derives its authority from the LSA. Convocation appoints members of the Tribunal and has established its *Rules of Practice and Procedure*.⁹ The Law Society will initiate proceedings before the Law Society Tribunal against a licensee applicant (either lawyer or paralegal applicant) if it has deemed that the individual does not meet the good character requirement under the LSA or against a licensee who has allegedly engaged in professional misconduct or conduct unbecoming. **Professional misconduct** amounts to a violation of the *Rules of Professional Conduct*¹⁰ for lawyers or the *Paralegal Rules of Conduct*, as the case may be. **Conduct unbecoming** refers to conduct in a lawyer's or paralegal's personal or private capacity that tends to bring discredit upon the profession. The Hearing Division of the Law Society Tribunal will adjudicate such matters and make a decision based on evidence submitted by the parties. Either party may appeal the decision of the Hearing Division to the Law Society Appeals Division if they feel that the Hearing Division was incorrect in its decision. To challenge the decision of the Law Society Appeals Division, a party must apply for judicial review.

professional misconduct

conduct in a paralegal's professional capacity that tends to bring discredit upon the paralegal profession

conduct unbecoming

conduct in a paralegal's personal or private capacity that tends to bring discredit upon the paralegal profession

Provision of Legal Services

A person who provides legal services in Ontario must be licensed in accordance with the LSA and the *By-Laws*. A person provides legal services if they engage in conduct involving the application of legal principles and legal judgment to the circumstances or objectives of another person.¹¹ Section 1(6) of the Act further defines what constitutes the provision of legal services. The excerpt below has been edited to reflect activities that fall within the permitted scope of paralegal practice:

1. advising a person about the legal interests, rights, or responsibilities of the person or another person;
2. selecting, drafting, completing, or revising on behalf of a person,
 - i. a document that affects a person's interests in or rights to or in ... personal property,
 - vi. a document that affects the legal interests, rights, or responsibilities of a person in areas of law authorized for paralegals, or
 - vii. a document for use in a proceeding before an adjudicative body;
3. representing a person in a proceeding before an adjudicative body; or
4. negotiating the legal interests, rights, or responsibilities of a person.

adjudicative body

a body—such as a federal or provincial court, an administrative tribunal, a statutory board, or an arbitrator—that hears evidence or legal arguments and makes a decision affecting the legal interests, rights, or responsibilities of a person (*Law Society Act*, s 1)

An **adjudicative body** is defined in section 1(1) of the LSA as a body that hears evidence or legal argument and makes a decision affecting the legal interests, rights, or responsibilities of a person, including (a) a federal or provincial court, (b) an administrative tribunal, (c) a statutory board, or (d) an arbitrator.

9 Law Society Tribunal, *Rules of Practice and Procedure* (1 January 2020; amendments current to 1 January 2024), online: <https://lawsocietytribunal.ca/rules-of-practice-and-procedure/#_Toc55311306>.

10 Law Society of Ontario, *Rules of Professional Conduct* (1 October 2014; amendments current to 28 June 2022), online: <<https://lso.ca/lawyers/practice-supports-and-resources/rules-of-professional-conduct>>.

11 LSA, s 1(5).

Conduct that is deemed to be **representing a person in a proceeding** includes:

1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document.
2. Conducting an examination for discovery.
3. Engaging in any other conduct necessary to the conduct of the proceeding.¹²

An examination for discovery is a disclosure process available in civil proceedings in the Superior Court of Justice.

WHAT IS A “PERSON”?

Ordinarily, the word “person” means a human being. For legal purposes, a **person** is any entity that is recognized by law as the subject of legal rights and obligations, including the right to enter into contracts and the right to sue and be sued. For example, a corporation is a legal person.

representing a person in a proceeding

representation includes making decisions about service and filing of documents relating to a proceeding; deciding what persons to serve a document on or with whom to file a document; deciding when, where, or how to serve or file a document; and/or engaging in any other conduct necessary to the conduct of the proceeding

person

any entity that is recognized by law as the subject of legal rights and obligations, including the right to sue and be sued

Section 6(2) of By-Law 4¹³ sets out the permitted scope of practice for paralegals. At present, P1 licensees may do any of the following:

1. Give a party advice on his, her or its legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.
2. Represent a party before,
 - i. in the case of a proceeding in the Small Claims Court, before the Small Claims Court,
 - ii. in the case of a proceeding under the *Provincial Offences Act*, before the Ontario Court of Justice,
 - iii. in the case of a proceeding under the *Criminal Code*, before a summary conviction court,
 - iv. in the case of a proceeding before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, before the tribunal, and
 - v. in the case of a proceeding before a person dealing with a claim or a matter related to a claim, before the person.
3. Anything mentioned in subsection 1(7) of the Act, provided the activity is required by the rules of procedure governing a proceeding.
4. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document for use in a proceeding.
5. Negotiate a party's legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.
6. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document that affects a party's legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.

¹² LSA, s 1(7).

¹³ Law Society of Ontario, By-Law 4 (1 May 2007; amendments current to 27 May 2021), online: <<https://lso.ca/about-lso/legislation-rules/by-laws/by-law-4>>.

For purposes of section 6(2)2(v), “claim” means a claim for statutory accident benefits within the meaning of the *Insurance Act*,¹⁴ excluding a claim of an individual who has or appears to have a catastrophic impairment within the meaning of the Statutory Accident Benefits Schedule.¹⁵

Licensing¹⁶

Licensing categories, requirements, and exemptions are governed by the LSA and By-Law 4. In the unregulated environment that existed prior to May 2007, paralegals provided legal assistance in any area of law where there was a demand for their services. Effective May 1, 2007, a P1 (paralegal) licensee is authorized to provide legal services only within the permitted scope of practice as outlined above. Providing legal services that are not authorized for the holder of a P1 licence constitutes an offence under the LSA.

paralegal

in Ontario, a non-lawyer agent who provides legal services to the public and who must be licensed to do so unless the agent falls within one of the categories of exemptions; the paralegal profession is governed by the Law Society of Ontario

A **paralegal** is a person who is licensed to provide legal services in Ontario. A person **provides legal services** if they engage in conduct involving the application of legal principles and legal judgment to the circumstances or objectives of a person.¹⁷ By-Law 4, section 5, establishes the P1 (paralegal) class of licence, which allows P1 licensees to provide legal services in Ontario.

Requirements for Issuance of a P1 Licence

The following are the requirements at By-Law 4, section 13(1) for the issuance of a Class P1 licence for an applicant who applies for the licence after June 30, 2010:

1. The applicant must have graduated from a legal services program in Ontario that was, at the time the applicant graduated from the program, an accredited program.
2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered.

provide legal services

to engage in conduct involving the application of legal principles and legal judgment to the circumstances or objectives of another person

EXEMPTIONS FROM EDUCATION REQUIREMENT

Under section 13(2) of By-Law 4, certain individuals applying for a P1 licence are exempt from the educational requirement set out in section 13(1)1. For instance, a member of the Human Resources Professionals Association (“HRPA”) may fall within an exempted class. To qualify for the exemption, they must be a member in good standing with the HRPA at the time of applying for their P1 licence, and have been a member in good standing for a total of three years within the five years immediately prior to their P1 application; they must have also worked as a human resources professional on a full-time basis, including engaging in activities related to the provision of legal services for a total of three years within the five years immediately prior to their P1 application; and they must have successfully completed a professional conduct and

¹⁴ RSO 1990, c I.8.

¹⁵ O Reg 34/10.

¹⁶ Law Society of Ontario, “Paralegal Licensing Process” (last visited 20 September 2024), online: <<https://lso.ca/becoming-licensed/paralegal-licensing-process>>.

¹⁷ LSA, s 1(5).

advocacy class administered by the Law Society within two years after the end of the licensing cycle into which they are registered.

Collections agents may also qualify for the exemption provided that they meet the exemption criteria. They must be registered and in good standing as a collector under the *Collection and Debt Settlement Services Act*¹⁸ for a total of three years in the five years immediately prior to applying for their P1 licence. They must have acted as a collector, including engaging in activities related to the provision of legal services, on a full-time basis for a total of three years in the five years immediately preceding their application for a P1 licence. They must also have successfully completed a professional conduct and advocacy course conducted by the Law Society within two years after the end of the licensing cycle into which they were registered.

For the purposes of the exemption clauses under By-Law 4, section 13(2), “full-time basis” means “engaging in an activity or acting in a particular capacity, on the average, 30 hours per week.”¹⁹

There are additional classes of persons exempt from the educational requirement under section 13(1)1. For a full list of the exemptions to the education requirement, see Appendix 1.1.

WHAT IS AN ACCREDITED LEGAL SERVICES PROGRAM?

An **accredited legal services program** is defined at By-Law 4, section 7, as a legal services (paralegal) program in Ontario that is approved by the Ministry of Colleges and Universities and accredited by the Law Society of Ontario.

The curriculum of accredited programs must, at a minimum, offer 970 program hours, allocated as follows: 630 instructional hours in compulsory legal courses covering material within the **permitted scope of paralegal practice**; 100 instructional hours in other courses that relate to the paralegal scope of practice or support becoming a well-rounded paralegal graduate; and 240 hours of field placement/practicum work experience. The program content must cover and evaluate all of the competencies established by the Law Society for an accredited legal services program.

Unless a P1 applicant meets the exemption for the education requirement set out above, all applicants who apply for a Class P1 licence after June 20, 2010, must be graduates of an accredited legal services program. As of this writing, a list of accredited legal services programs can be found on the Law Society website in the “Paralegals” section at <https://lso.ca/becoming-licensed/paralegal-licensing-process/paralegal-education-program-accreditation/accredited-programs>.

accredited legal services program

a paralegal program in Ontario that is approved by the Ministry of Colleges and Universities and accredited by the Law Society of Ontario

permitted scope of paralegal practice

areas of law in which licensed paralegals may provide legal services, as prescribed by the *Law Society Act* and the By-Laws

By-Law 4, section 8(1), outlines the basic procedures and requirements for the issuance of a P1 licence under the LSA:

8(1) The following are the requirements for the issuance of any licence under the Act:

1. The applicant must submit to the Society a completed application, for the class of licence for which application is made, in a form provided by the Society.

¹⁸ RSO 1990, c C.14.

¹⁹ By-Law 4, s 13(2.1).

2. The applicant must pay the applicable fees, including the applicable application fee.
3. The applicant must be of good character.
4. The applicant must take the applicable oath.
5. The applicant must provide to the Society all documents and information, as may be required by the Society, relating to any licensing requirement.

The paralegal Licensing Process Policies (“Licensing Policies”) at the Law Society website provide supplementary rules and procedures for licensing applications. As of this writing, they can be found at <<https://lso.ca/becoming-licensed/paralegal-licensing-process/licensing-process-policies>>. The Licensing Policies should be read in conjunction with By-Law 4. The following is a brief discussion of some key points.

False or Misleading Representations

misrepresentation

a statement or conduct by a person that is misleading or false and that is intended to deceive another person; includes a deliberate failure to disclose correct information

A **misrepresentation** is a statement or conduct by a person that is misleading or false and that is intended to deceive another person. A deliberate failure to disclose accurate information is also a misrepresentation.

It is essential that applicants be truthful and forthright, and comply with the Licensing Policies, when completing the steps in the licensing process. A person who makes a false or misleading representation or declaration by commission or omission on their licensing application is deemed thereafter not to meet, and not to have met, the requirements for the issuance of any licence under the LSA.²⁰ If an applicant makes a false or misleading representation or declaration by commission or omission on their examination application, they are deemed thereafter not to meet, and not to have met, the requirements for taking a licensing examination, and subject to certain exceptions the successful completion of any licensing examination taken by the person is deemed thereafter to be void.²¹ Similarly, a person who makes any false or misleading representation or declaration on or in connection with registration during the paralegal licensing process, by commission or omission, is deemed thereafter not to meet, and not to have met, the requirements for registration. The person’s registration is deemed thereafter to be void; the successful completion of any licensing examination taken by the person is deemed thereafter to be void; and the successful completion of any professional conduct course offered by the Law Society taken by the person is deemed thereafter to be void.²² These very serious consequences make it clear that honesty and forthrightness are imperative to one’s P1 application and throughout the licensing process.

Good Character Requirement

Under section 27(2) of the LSA, an applicant for a licence shall be of good character.

The Licensing Process Policies authorize the Law Society to require applicants to provide information and/or supporting documentation regarding good character. As an applicant, you must disclose any of the following if they apply to you. The requirement in Part V of the Licensing Policies states:

²⁰ By-Law 4, s 8(2).

²¹ By-Law 4, s 14(2).

²² By-Law 4, s 18(2).

Good Character Requirement

5.1 An applicant for a Class P1 Licence shall be of good character.

5.2 In order to determine whether a Candidate is of good character, the Society may require the person to provide information and/or supporting documentation. This information and supporting documentation may include but is not limited to information and documentation with respect to whether the person:

- a. has been found guilty of, or convicted of, any offence under any statute;
- b. is the subject of criminal proceedings;
- c. has had judgment rendered against them in an action involving fraud;
- d. has any outstanding civil judgments against them;
- e. has ever disobeyed any Order of any court requiring the person to do any act or to abstain from doing any act;
- f. has been discharged from any employment where the employer has alleged that there was cause;
- g. has been suspended, disqualified, censured or otherwise disciplined as a member of any professional organization;
- h. has surrendered a licence or permit or withdrawn from a licensing or permit process as a result of allegations made against them;
- i. has been denied a licence or permit or had any licence or permit revoked for failure to meet good character requirements;
- j. has been refused admission as an applicant or member of any professional body;
- k. has had allegations of misconduct made against them while attending a post-secondary institution, credentialing program or professional course of study or has been suspended, expelled or penalized for misconduct by a post-secondary institution, credentialing program or professional course of study;
- l. is subject to a petition or assignment in bankruptcy or a proposal to creditors under the *Bankruptcy and Insolvency Act* (Canada) or has been bankrupt or insolvent under any statute;
- m. has been or is now the subject of an insurance claim alleging fraud or dishonesty under a policy for professional liability insurance;
- n. has been a respondent in a proceeding in relation to a violation of any human rights or similar legislation;
- o. has been disciplined by an employer or been a respondent in proceedings in relation to a violation of any human rights legislation; or
- p. has been sanctioned or had a penalty imposed upon them by a court, an administrative tribunal or a regulatory body.

If an applicant answers “yes” to one or more of the good character questions, the application then undergoes a review by the Law Society’s Intake and Resolutions Department. Consideration is given to the nature of the issue disclosed, the number of occurrences, the time period over which the issue occurred, and any insight displayed

by the applicant.²³ At this stage, the good character issue may be cleared, resolved as a result of additional information provided by the applicant, or referred to the Law Society's Investigation Services Department for further review, at which point the applicant may be required to provide additional information and/or documentation and may be asked to provide character references.²⁴ The investigation will determine whether the good character issue has been cleared and the application can be returned to the licensing process or whether the matter should proceed to a hearing before the Hearing Division of the Law Society Tribunal. At the hearing, the Law Society has the onus of proving that the applicant's conduct puts to question their good character. The burden then shifts to the applicant to prove they are presently of good character.²⁵

fresh evidence

evidence of something that has happened since the first hearing or that has come to the knowledge of the applicant since the hearing and could not by reasonable means have come to the applicant's knowledge before that time

material change in circumstances

a change in the applicant's circumstances that has occurred since the previous hearing and that may justify a variation of the original order

If an application for a licence is refused, another application may be made at any time, based on **fresh evidence** or a **material change in circumstances**.²⁶ Fresh evidence is evidence of something that has happened since the first hearing or has come to the applicant's knowledge since the hearing and could not by reasonable means have come to their knowledge before that time. A material change in circumstances is a change in the applicant's circumstances since the first hearing that may justify a variation of the original order.

The legal test to determine whether an applicant is of good character for the purpose of licensing applications is set out in *Armstrong v Law Society of Upper Canada*.²⁷ In its analysis, the Tribunal considers:

- (a) the nature and duration of the misconduct;
- (b) whether the applicant is remorseful;
- (c) what rehabilitative efforts, if any, have been taken, and the success of such efforts;
- (d) the applicant's conduct since the proven misconduct; and
- (e) the passage of time since the misconduct.²⁸

In *Colangelo v Law Society of Ontario*,²⁹ the Law Society Tribunal Appeal Division upheld the Hearing Division's decision to grant a P1 licence to a former high school teacher who had been convicted of child luring in relation to three students, ages 16 and 17, with whom she had shared sexually explicit photos, messages, and a video. Despite the revocation of her teaching certificate by the Ontario College of Teachers, her guilty plea to the criminal charge, the imposition of a conditional sentence, which she was still serving at the time of the hearing, and the fact she was now a registered sex offender, the Appeal Division affirmed the Hearing Division's finding that she was of good character. It held that the Tribunal had properly applied the *Armstrong* factors to determine that sufficient time had passed between the misconduct and the hearing and that the evidence of the applicant's remorse and rehabilitation was genuine. While "the *Armstrong* factors are useful in addressing cases involving past misconduct ... these factors are not a code to be applied mechanically. It is the ultimate question of

23 Law Society of Ontario, "Good character requirement" (last visited 11 October 2024), online: <<https://lsoc.ca/becoming-licensed/lawyer-licensing-process/good-character-requirement#initial-referral-to-intake-and-resolution-department-5>>.

24 *Ibid.*

25 *Ibid.*

26 LSA, s 27(6).

27 2009 ONLSHP 29.

28 *Ibid* at para 29 ("Armstrong factors").

29 2023 ONLSTA 16, aff'g 2022 ONLSTH 141.

current good character that must be answered.”³⁰ The application for judicial review brought by the Law Society to the Divisional Court was dismissed on the basis that the decision of the Tribunal’s Appeal Division was reasonable, and the Law Society’s allegation of procedural unfairness was not made out.³¹ Notably, the Court found that there was “nothing in the governing statutory regime or jurisprudence that prohibited a finding that a person was of good character merely because they were serving a criminal sentence.”³²

APPLICANT FOUND NOT TO BE OF GOOD CHARACTER

Valiente v Law Society of Ontario,
2018 ONLSTH 160

In the Good Character section of the P1 licensing application, Ms Valiente disclosed that she had previously been convicted of credit card fraud in addition to breaches of her probation. At the time of her criminal activity, she had also been addicted to crystal meth and involved in an abusive relationship. In the three years prior to applying for her P1 licence, the applicant had gotten off drugs, secured employment, moved back in with her parents, returned to her church, engaged in community service, and completed an accredited paralegal education program.

At issue was whether Ms Valiente was of good character pursuant to section 27 of the LSA. The Hearing

Division found the applicant not to be of good character. While the progress she had made over the past few years was impressive, she had not demonstrated that she was prepared to admit to her criminal past in circumstances when it was relevant to do so, namely to the church at which she volunteered and to her field placement host. Even though she was not required to disclose the criminal convictions in either case, this information was relevant in the circumstances, and therefore the omission put to question her integrity. The Tribunal also noted that she had not yet completed her probation, nor had she paid a victim surcharge or begun to pay an outstanding civil judgment, all of which contributed to the finding that she was not of good character.

**CASE
in
POINT**

Exemptions from Licensing

Under the LSA and By-Law 4, there are various exemptions from licensing. The rationale for the exemptions is that the Law Society’s intention is to regulate *only* lawyers and paralegals in the province and not others who may be permitted to provide legal services to the public under permitted circumstances in which the public is not put at risk. At the time paralegals came under the regulation of the Law Society, other professionals such as mediators, human resources professionals, collections agents, and trade union representatives became concerned that due to the nature of their work, the Law Society may require them to become P1 licensees. The exemptions allow for these and other individuals to practise law or provide legal services, as the case may be, without a licence.

Two types of exemptions apply, and the distinction is subtle. Under section 1(8) of the LSA and section 28 of By-Law 4, there are classes of individuals who are *deemed* not to be practising law or providing legal services and are therefore not required to obtain a licence. Sections 29-32 of By-Law 4 exempt individuals from the requirement to obtain a P1 licence despite the fact that they are otherwise providing legal services.

³⁰ *Ibid* at para 25 (emphasis added).

³¹ *Law Society of Ontario v Colangelo*, 2024 ONSC 2446.

³² *Ibid* at para 48. At the time of writing, this decision is on appeal to the Ontario Court of Appeal.

An example of a class of individuals deemed not to be practising law or providing legal services is “an employee or officer of a corporation who selects, drafts, completes or revises a document for the use of the corporation or to which the corporation is a party.”³³ By way of example, consider the manager of a small business who, on behalf of the corporation, prepares a Response to a complaint filed against the company by a former employee under the Ontario *Human Rights Code*.³⁴ In preparing the Response, the manager is providing legal services in accordance with sections 1(5) and 1(6) of the LSA, but is deemed not to be providing legal services by virtue of this exemption and accordingly would not be required to be licensed by the Law Society.

Another class of individuals deemed not to be practising law or providing legal services includes “an individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise.”³⁵ This exemption contemplates individuals who choose to self-represent in legal matters and could include an individual who prepares a plaintiff’s claim on their own behalf, serves it on the defendant, and files it with the Small Claims Court, or someone who self-represents at a hearing before the Landlord and Tenant Board.

For a full list of persons who are *deemed* not to be practising law or providing legal services and accordingly are not required to be licensed, see Appendix 1.2, which contains excerpts of section 1(8) of the LSA and section 28 of By-Law 4.

Persons Providing Legal Services Who Are Exempt from Licensing

In By-Law 4, sections 29-32 set out additional classes of persons who are exempt from the requirement to obtain a P1 licence to provide legal services in Ontario. Some classes of individuals include:

IN-HOUSE LEGAL SERVICES PROVIDER

A person who is neither a Canadian law student nor an Ontario paralegal student who provides legal services strictly for their employer and whose employer is neither a licensee nor licensee firm may provide such legal services without a P1 licence.

ACTING FOR A FRIEND OR NEIGHBOUR

A person may provide legal services to a friend or neighbour without a P1 licence as long as their profession includes neither the practice of law nor the provision of legal services and they provide the legal services in respect of up to only three matters per year and do not receive any compensation, fee, gain, or reward in return.

ACTING FOR FAMILY

A person may provide legal services to a family member (defined in the *Income Tax Act*³⁶ as a “related person”) without a P1 licence as long as their profession includes neither the practice of law nor the provision of legal services and they do not receive any compensation, fee, gain, or reward in return.

³³ LSA, s 1(8)2.

³⁴ RSO 1990, c H.19.

³⁵ LSA, s 1(8)3.

³⁶ RSC 1985, c 1 (5th Supp), s 251(2).

TRADE UNIONS

An employee or volunteer representative of a trade union may advise the union or an existing or former union member of their legal interests, rights, or responsibilities regarding a workplace issue or dispute or to act on behalf of the person in connection with a workplace issue or dispute before an adjudicative body other than a provincial or federal court; they are, however, permitted to act on behalf of a person in Small Claims Court to enforce the person's rights under a collective agreement.

For a full list of persons who are exempt from the requirement to obtain a P1 licence to provide legal services in Ontario, see Appendix 1.3, which contains excerpts of sections 29-32 of By-Law 4.

The Law Society recognizes the principle that the number of exemptions should be reduced over time where possible. It has been recommended that the Law Society continue to pursue elimination of exclusions to its regulation that cannot be justified in terms of facilitating access to justice and/or protection of the public interest.

Notably, effective January 1, 2022, public servants who work in the Office of the Worker Adviser or in the Office of the Employer Adviser and provide advice to a party on their legal rights or interests under the *Workplace Safety and Insurance Act, 1997*³⁷ or appear before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal on behalf of a party must be P1 licensees. Previously, they were exempted under By-Law 4. The licensing requirement does not apply to public servants who have provided such legal services between May 1, 2007 and December 31, 2021, but anyone employed in this capacity as of January 1, 2022 is required to obtain a P1 licence.

Licensing exemptions for members of the Board of Canadian Registered Safety Professionals and the Appraisal Institute of Canada who provide advocacy services to members of the public were withdrawn in 2015. The Paralegal Standing Committee's *Report to Convocation* dated January 29, 2015,³⁸ recommending this measure, noted:

Key Issues and Considerations

10. The Law Society's policy, as established by Convocation, is that it is generally in the public interest for persons offering advocacy services to members of the public, including potentially vulnerable clients, to be licensed by the Law Society, insured and required to observe the rules of conduct.

11. These two organizations are well-established professional associations, most of whose members do not provide any advocacy services. In the Committee's view, it was appropriate for any of their members who wished to provide such services to become licensed After due consideration, the Committee is of the view that there is no compelling argument for keeping the exemption for these associations.³⁹

³⁷ SO 1997, c 16, Schedule A.

³⁸ Law Society of Ontario, Paralegal Standing Committee, *Report to Convocation* (29 January 2015) at Tab 3, online: <https://iso.access.preservica.com/uncategorized/IO_855b8c06-b255-4ba6-b7a2-549b5fb43faa>.

³⁹ *Ibid* at Tab 3.1, paras 10-11.

ARE YOU PROVIDING LEGAL SERVICES?

As a student in a paralegal program, you may sometimes find that others have certain expectations about the kinds of advice and service you are allowed to provide. To determine whether you are providing legal services without a licence, which is contrary to the LSA begin with the definitions of provision of legal services at sections 1(5) and (6) of the Act.

Question: Do you advise others with respect to their legal interests, rights, or responsibilities?

Discussion: If the answer is yes, then you are providing legal services. Non-licensees are not permitted to provide legal services to others.

Question: Do you select, draft, complete, or revise documents on behalf of a person that affects the person's legal interests, rights, or responsibilities, or documents to be used in a proceeding before a court or tribunal?

Discussion: If the answer is yes, then you are providing legal services. Even if you are working under supervision in a law firm or paralegal firm, you as a non-licencee are permitted to draft routine correspondence and documents only. All other correspondence and documents shall be reviewed by a licensee.

Question: Do you represent other persons in proceedings before an adjudicative body? That is, do you:

- Determine what documents to serve or file in relation to the proceeding?
- Determine on or with whom to serve or file a document?
- Determine when, where, or how to serve or file a document?
- Engage in any other conduct necessary to the conduct of a proceeding?

Discussion: If the answer to one or more of the questions above is yes, then you are providing legal services without a licence. If you are working in a law firm or paralegal firm, particular tasks and functions assigned to non-licensees by licensees are subject to the licensee's direct supervision and review. Non-licensees are permitted to appear before tribunals on routine scheduling and other administrative matters only.

Question: Are you responsible for negotiating a person's legal interests, rights, or responsibilities?

Discussion: In a law firm or paralegal firm, non-licensees are permitted to carry out routine negotiations only, with the client's consent and subsequent review by a licensee. In any other circumstances, you are providing legal services without a licence.

Exemptions

Question: Does your role fall within any of the exceptions or exemptions set out in the LSA, section 1(8), or in By-Law 4?

Discussion: If your conduct is captured by section 1(8) of the LSA or section 28 of By-Law 4, then you are deemed not to be providing legal services and therefore do not require a Class P1 licence. If your conduct is captured by one of the exemptions set out in By-Law 4, sections 30 to 32, then you may continue to provide legal services without a licence so long as you meet the conditions of the applicable exemption.

Offences

If you do not have a P1 licence in Ontario and you do not qualify under the deeming provisions or any of the exemptions discussed above, section 26.1 of the LSA prohibits you from:

1. providing legal services in Ontario,⁴⁰ and/or
2. holding yourself out or representing yourself to other persons as someone who may provide legal services in Ontario.⁴¹

If you possess a P1 licence in Ontario, section 26.1 prohibits you from:

1. providing legal services that are not prescribed for your class of licence by the LSA or the By-Laws,⁴² and/or
2. holding yourself out or representing yourself to others as a person who may provide legal services without specifying the restrictions on the areas of law in which you are authorized to provide legal services and the legal services that you are authorized by law to provide.⁴³

Failure to comply with section 26.1 is an offence that is punishable upon conviction with a fine of not more than \$25,000.00 for a first offence and not more than \$50,000.00 for each subsequent offence under section 26.2(1).

If a person is convicted of an offence contrary to section 26.1, the court may make it a condition of a probation order that the person pay compensation or make restitution to any person who suffered a loss as a result of the offence.⁴⁴ The court that convicts a person of an offence contrary to section 26.1 may also prescribe as a condition of a probation order that the person shall not contravene section 26.1.⁴⁵

Developments in the Paralegal Scope of Practice Since Regulation

Criminal Law

Prior to September 2019, paralegals, law students, and articling students could act as agents under the *Criminal Code*⁴⁶ in representing accused persons charged with summary conviction offences where the penalty did not exceed six months' imprisonment. Under Bill C-75,⁴⁷ enacted on September 19, 2019, the maximum penalty on summary conviction offences was increased to two years less a day. This amendment would have the effect of barring paralegals, lawyer licensing students, and articling students from appearing in such matters pursuant to section 802.1 of the *Criminal Code*, which states:

⁴⁰ LSA, s 26.1(1).

⁴¹ LSA, s 26.1(2).

⁴² LSA, s 26.1(3).

⁴³ LSA, s 26.1(4).

⁴⁴ LSA, s 26.2(3).

⁴⁵ LSA, s 26.2(4).

⁴⁶ RSC 1985, c C-46.

⁴⁷ *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, SC 2019, c 25.

Limitation on the use of agents

802.1 Despite subsections 800(2) and 802(2), a defendant may not appear or examine or cross-examine witnesses by agent if he or she is liable, on summary conviction, to imprisonment for a term of more than six months, unless

- (a) the defendant is an organization;
- (b) the defendant is appearing to request an adjournment of the proceedings; or
- (c) the agent is authorized to do so under a program approved—or criteria established—by the lieutenant governor in council of the province.

In response, the attorney general for Ontario proposed that the lieutenant governor approve a program for the regulation of persons authorized to practise law and provide legal services as determined by the Law Society, in accordance with section 802.1(c) of the amended *Criminal Code*. The Order in Council was approved and ordered on August 15, 2019 and came into force on September 19, 2019, thereby maintaining the range of services provided by regulated agents under the *Criminal Code* prior to Bill C-75.⁴⁸

A short time before Bill C-75 was enacted, Bill C-46⁴⁹ came into force, which removed the four following driving offences from the scope of regulated agents under the *Criminal Code*: dangerous operation of a conveyance (s 320.13(1)), failure to stop after accident (s 320.16(1)), flight from a peace officer (s 320.17), and operation while prohibited (s 320.18(1)) (collectively, “Driving Offences”). In September 2019, Convocation passed a motion by the Paralegal Standing Committee to amend By-Law 4 to include the Driving Offences within the paralegal scope of practice.

Effective September 19, 2019, the scope of criminal practice under By-Law 4 for paralegals includes the Driving Offences.⁵⁰

Immigration Law

On June 30, 2011, Bill C-35, *An Act to Amend the Immigration and Refugee Protection Act*,⁵¹ came into force. Section 91 of the *Immigration and Refugee Protection Act*⁵² was amended to state the following:

Representation or Advice

Representation or advice for consideration

91(1) Subject to this section, no person shall knowingly, directly or indirectly, represent or advise a person for consideration—or offer to do so—in connection with the submission of an expression of interest under subsection 10.1(3) or a proceeding or application under this Act.

48 Know How, the Blog of the Great Library, “Bill C-75 and Summary Conviction Matters” (19 September 2019), online (blog): *Law Society of Ontario* <<https://wordpresscomgreatlibrary.wordpress.com/2019/09/19/paralegals-articling-lpp-and-law-students-can-continue-to-act-in-summary-conviction-matters-despite-bill-c-75-changes/#:~:text=At%20its%20September%2011%20Convocation,Society's%20Rights%20of%20Appearance%20documents>>.

49 *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts*, SC 2018, c 21.

50 See By-Law 4, ss 6(1)(c)(ii).

51 SC 2011, c 8.

52 SC 2001, c 27.

Persons who may represent or advise

- (2) A person does not contravene subsection (1) if they are
- (a) a lawyer who is a member in good standing of a law society of a province or a notary who is a member in good standing of the Chambre des notaires du Québec;
 - (b) any other member in good standing of a law society of a province or the Chambre des notaires du Québec, including a paralegal; or
 - (c) a member in good standing of the College, as defined in section 2 of the *College of Immigration and Citizenship Consultants Act*.

Paralegals who are licensed by the Law Society fall within section 91(2)(b) as “other member[s] in good standing of a law society of a province,” and are therefore exempt from the general prohibition in section 91(1) against knowingly, directly or indirectly, representing or advising a person for consideration or offering to do so in connection with an application under the Act.

The Law Society’s position is that paralegal licensees may represent clients before the Immigration and Refugee Board and may provide legal services to clients in matters related to Immigration and Refugee Board hearings. Giving advice, preparing documents, or providing other legal services in areas not related to Immigration and Refugee Board matters is outside the permitted scope of practice for paralegals licensed by the Law Society.⁵³ A paralegal licensee who wishes to provide a full range of immigration services must be registered with the College of Immigration and Citizenship Consultants and accredited as a Regulated Canadian Immigration Consultant.

Family Law

For the past several years, the Law Society has sought input from lawyers, paralegals, organizations, the judiciary, and the public on the feasibility of non-lawyers, including paralegals, providing certain family legal services to the public.

In 2016, Justice Annemarie Bonkalo was appointed by the attorney general of Ontario and the treasurer of the Law Society to conduct a review of the provision of family law services in Ontario. Bonkalo J’s report⁵⁴ revealed that unmet legal needs were the result of a significantly high number of self-represented litigants in the family law system, that these individuals tended to fare less favourably than those represented by counsel, and that the most prominent barrier to representation was the cost of retaining and maintaining legal representation throughout their family law matter.

Following the Bonkalo Report, the Law Society and the Ministry of the Attorney General engaged in a joint action plan to improve access to justice in the area of family law. The *Family Law Action Plan*⁵⁵ was the Law Society’s contribution to this joint effort,

53 For a notice reinforcing paralegals’ permitted scope of practice in the realm of immigration and refugee law, see Law Society of Ontario, “Notice to the Profession: Important Information Regarding Paralegals Providing Legal Services Under the *Immigration and Refugee Protection Act*” (1 February 2023), online: <<https://lso.ca/news-events/news/latest-news-2023/notice-to-the-profession-important-information-re>>.

54 Annemarie E Bonkalo, *Family Legal Services Review* (31 December 2016), online: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review> [Bonkalo Report]. See also Ontario Ministry of the Attorney General, *Improving Access to Justice for Families: Making the Family Court System Easier to Navigate* (6 March 2017), online: <<https://news.ontario.ca/mag/en/2017/03/improving-access-to-justice-for-families.html>>.

55 Law Society of Ontario, “Family Law Action Plan” (last visited 20 September 2024), online: <<https://lso.ca/about-lso/initiatives/family-law-action-plan>>.

which was approved by Convocation in December 2017.⁵⁶ The *Family Law Action Plan* contemplated the development of a family legal services provider licence. Accordingly, the Family Law Working Group (“FLWG”), a subgroup of the Law Society’s Access to Justice Committee, was established to lay the groundwork for the creation of this new licence, including scope of permissible activities, related competencies, and required education and training for prospective family legal services providers. After extensive consultation with stakeholders, the FLWG developed a proposed Family Legal Services Provider licence (“FLSP licence”), which was presented to Convocation and approved on December 1, 2022.⁵⁷ The motion to approve the FLSP licence also included a provision that the licence be reviewed and assessed by the Access to Justice Committee within three years of its implementation with a corresponding report to Convocation.

To obtain an FLSP licence, an individual must be a P1 licensee in good standing in Ontario and must complete a mandatory education program, which includes online instructional courses, a 40-hour in person field placement, and an in-person competency-based final assessment (collectively the “Education Program”). Upon completion of the Education Program, individuals will be eligible to apply to the Law Society for licensure as a Family Legal Services Provider. FLSP licensees will be required to carry errors and omissions insurance in respect of the permissible family legal services they provide to the public.

Generally, the permissible activities for a holder of a FLSP licence include but are not limited to:

- process navigation at different stages of proceedings (e.g., completion of forms, motions and temporary relief proceedings, hearing preparation),
- filing domestic contracts,
- preparing change of name applications,
- preparing applications for joint/uncontested divorces,
- preparing and arguing motions to change child support in specific situations, and
- responding to proceedings to enforce support payments in specific situations.⁵⁸

As of 2025, under the Education Program, students must take the following courses:

- Ethics and Professionalism,
- Knowledge of the Law,
- Substantive Family Law (two courses),
- Alternative Dispute Resolution,
- Litigation Process, and
- Practice Management.

The program also includes a field placement and a final assessment.⁵⁹

⁵⁶ Law Society of Ontario, “Motion to Be Moved at the Meeting of Convocation on December 1, 2022” (9 November 2022), online (pdf): <<https://lawsocietyontario-dwd0dscmayfwh7bj.a01.azurefd.net/media/iso/media/about/convocation/2022/convocation-december-2022-treasurers-report-flsp-en.pdf>>. This report was approved by Convocation.

⁵⁷ *Ibid.*

⁵⁸ Fanshawe College, “Family Legal Services Provider” (24 February 2025), online: <<https://www.fanshawec.ca/pt/flp1-family-legal-services-provider>>.

⁵⁹ *Ibid.*

It is left to be seen whether the FLSP licence will be extended to other non-lawyers such as law students and law clerks. At the time of writing, it is only available to P1 licensees who meet the eligibility criteria.

Interpretation of the Paralegal Rules of Conduct (Rule 1.02)

Paralegals have an obligation to know, understand, and comply with the Rules. When reading and interpreting the Rules, you shall refer to the definitions set out in Rule 1.02. The definitions tell you what certain terms mean in the context of the Rules and of professional practice. Some terms (such as “client” or “consent”) may have different meanings in other contexts. However, for the purposes of compliance with the Rules, your starting point is the definition of the term set out in Rule 1.02.

If you are trying to determine whether a paralegal–client relationship exists between a person and you, your starting point is the definition of “client” in Rule 1.02. If you are considering whether you are in a position of conflict of interest, your starting point is the definition of “conflict of interest” in Rule 1.02. If you are seeking a client’s consent to a certain arrangement, you shall consult Rule 1.02 first to ensure that the consent given is valid for purposes of the Rules.

The Rules should be read in conjunction with the *Paralegal Professional Conduct Guidelines*. The Guidelines provide a helpful interpretation of the Rules in plain language by way of practical scenarios, tips, and cautionary statements. See the Introduction to the Guidelines at paragraph 2:

The *Paralegal Professional Conduct Guidelines* (“Guidelines”) have been created to assist paralegals with the interpretation and application of the *Paralegal Rules of Conduct*. The Guidelines should be considered along with the *Rules*, the *Act*, the By-Laws made under the *Act* and any other relevant case law or legislation. Neither the *Rules* nor the Guidelines can cover every situation; they should be interpreted and applied with common sense and in a manner consistent with the public interest and the integrity of the profession. It is expected that a paralegal will exercise his or her professional judgment in interpreting the Guidelines, keeping in mind the paralegal’s obligations to the client, the court or tribunal and the Law Society.

When interpreting the Guidelines, keep the following principles from the Introduction to the Guidelines in mind:

5. The following may be of assistance in interpreting the Guidelines:
 - The terms “shall” or “must” are used in those instances where compliance is mandated by either the By-Laws made pursuant to the *Act* or the *Rules*.
 - The term “should” and the phrase “should consider” indicate a recommendation. These terms refer to those practices or policies that are considered by the Law Society to be a reasonable goal for maintaining or enhancing professional conduct.

- The term “may” and the phrase “may consider” convey discretion. After considering suggested policies or procedures preceded by “may” or “may consider,” a paralegal has discretion whether or not to follow the suggestions, depending upon the paralegal’s particular circumstances, areas of professional business or clientele, or the circumstances of a particular client or matter.

When assessing a situation in which ethical or professional issues arise, consider taking the following steps:

1. Identify the ethical or professional issue or issues.
2. Consider any law that may apply, including but not limited to the LSA, the *By-Laws*, and/or tribunal decisions such as Law Society disciplinary decisions.
3. Review the applicable rule(s) and guideline(s).
4. Assess the fact situation with reference to the applicable rule(s) and guideline(s).
5. Determine what action is necessary in order to comply with both the “spirit” and the “letter” of the Rules. Observing the Rules in both the spirit and the letter means conducting yourself in a manner that complies both with the intent or purpose of the Rules and with the words on the page.
6. Consider whether the action required by the rule is mandatory (you “shall” or “must” follow a particular course of action), recommended (you “should” follow or “should consider” following a particular course of action), or discretionary (you “may” follow or “may consider” following a particular course of action).
7. Be circumspect if you are in a “grey area”—that is, a situation where there is no clear language in the Rules, the Guidelines, or other resources directing you toward a particular course of action.
8. If, after the steps above, you are still unsure about what action to take,
 - consult with another paralegal or a lawyer to secure legal advice about your proposed conduct,⁶⁰
 - check the resources for paralegals⁶¹ at the Law Society website if you have not already done so, and/or
 - contact the Practice Management Helpline for assistance.
9. Keep a written record of your analysis and any steps you took to deal with the situation.

⁶⁰ See Rule 3.03(8).

⁶¹ Law Society of Ontario, “Practice Supports & Resources” (last visited 20 September 2024), online: <<https://lso.ca/paralegals/practice-supports-and-resources>>.

PLANNING FOR PRACTICE

Good Character Requirement and Paralegal Scope of Practice

Rajni Peacock recently graduated from a paralegal program at an accredited Ontario college. She is now in the process of applying to the Law Society of Ontario for her P1 licence. As part of this process, applicants must complete the Good Character section of the P1 application form. Rajni feels confident there is nothing she must disclose to the Law Society in this section. However, her classmate, Jasper, is concerned about his application. Prior to enrolling in the paralegal program, Jasper worked in a call centre at a major bank. Five years ago, one of his female co-workers, Natacha, made a formal complaint to her manager about Jasper's behaviour in the workplace. There was a great deal of joking and flirtatious behaviour that went on among employees in the call centre. Jasper often made sexual innuendos toward Natacha, gave her "surprise" neck massages, squeezed her knees, or put his arm around her waist. Jasper's comments and physical contact made Natacha uncomfortable, and she asked him to stop more than once. Jasper ignored her objections and responded, "Oh please, you tell me to stop, but you love the attention." Offended and frustrated, Natacha launched a complaint. An internal investigation was conducted, and the team concluded that Jasper's behaviour, which had gone on for almost a year, amounted to sexual harassment.

He was suspended without pay for one week, reassigned to a different department, and required to take sensitivity training. Since that time, Jasper has become far more educated on the topic; has worked hard at developing healthy, respectful relationships with his co-workers; and is much more mindful of boundaries. Nevertheless, Jasper is worried about how the incident will affect his P1 application. He would rather not disclose it.

Meanwhile, Rajni has completed her P1 application and booked a date for her licensing exam. She graduated at the top of her class, and her family is extremely proud. While she and her mother were at the mall recently, they ran into her mother's friend, Fatima, who is in a Small Claims Court dispute with a general contractor. Rajni's mother was beaming with pride as she said, "Rajni is a paralegal. She can help you with your court case." Before Rajni could correct her mother, Fatima pulled papers out of her handbag, presented them to Rajni, and said, "Here is the plaintiff's claim I drafted last night. Would you be so kind as to look it over and tell me if I've missed anything?" Rajni tried to explain that under the circumstances she is not permitted to give legal advice, but her mother gave her a stern look and said, "Rajni would be happy to help you, Fatima."

Questions for Discussion

1. Should Jasper disclose the incident involving Natacha and the outcome of the investigation? Cite the authority for your answer. If he chooses not to disclose it, what might happen?
2. a. If Rajni succumbs to her mother's pressure and, while standing in the store, reads over the claim and makes a few suggested revisions, has Rajni provided legal services?
- b. How should Rajni respond to the pressure that her mother is putting on her to assist Fatima?

CHAPTER SUMMARY

On May 1, 2007, the LSA was amended to make the Law Society of Ontario the regulator of the paralegal profession in Ontario.

The governance model established by the Act and the *By-Laws* requires that any person who provides legal services in Ontario be licensed to provide those services. Providing legal services includes (1) advising a person about the legal interests, rights, or responsibilities of the person or another person; (2) drafting documents on behalf of a person that affect that person's legal interests, rights, or responsibilities; (3) drafting documents on behalf of a person for use before a court, tribunal, board, or arbitrator; (4) representing a person in a proceeding before a court, tribunal, board, or arbitrator; and (5) negotiating the legal interests, rights, or responsibilities of a person.

Paralegal licensees are permitted by By-Law 4 to:

1. give a party advice on legal interests, rights, or responsibilities with respect to a proceeding;
2. represent a party in Small Claims Court, provincial offences court, or summary convictions court, before statutory boards and tribunals, or in Statutory Accident Benefits Schedule claims under the *Insurance Act*;
3. make decisions about the service and filing of documents relating to a proceeding (including deciding what persons to serve a document upon or with whom to file a document, and deciding when, where, or how to serve or file a document); conduct an

examination for discovery; and/or engage in any other conduct necessary to the conduct of a proceeding, pursuant to the LSA, section 1(7);

4. select, draft, complete, or revise a document for use in a proceeding, or help someone else to do so;
5. negotiate a party's legal interests, rights, or responsibilities with respect to a proceeding; and
6. select, draft, complete, or revise a document that affects a party's legal interests, rights, or responsibilities in a proceeding, or help someone else to do so.

Certain classes of persons who are not licensed are permitted by the LSA and By-Law 4 to provide legal services in Ontario. It has been recommended that the Law Society continue to pursue elimination of exclusions to its regulation that cannot be justified in terms of facilitating access to justice and/or protection of the public interest.

If you are not a P1 licensee, you shall not provide legal services or represent yourself to other persons as someone who may provide legal services in Ontario.

If you are a P1 licensee, you shall not provide legal services that are not prescribed by the LSA or the *By-Laws*, and in offering legal services, you shall specify what legal services you are authorized by law to provide.

Failure to comply with the requirements above is an offence. You are liable upon conviction to a fine of up to \$25,000.00 for a first offence and up to \$50,000.00 for a subsequent offence.

KEY TERMS

accredited legal services program, **9**
adjudicative body, **6**
conduct unbecoming, **6**
Convocation, **4**
elected bench, **4**
errors and omissions insurance, **3**
fresh evidence, **12**

Law Society of Ontario, **3**
lay bench, **4**
material change in circumstances, **12**
misrepresentation, **10**
paralegal, **8**
Paralegal Standing Committee, **4**

permitted scope of paralegal practice, **9**
person, **7**
professional misconduct, **6**
provide legal services, **8**
representing a person in a proceeding, **7**

APPLY YOUR KNOWLEDGE

1. What are the functions of the Law Society of Ontario as set out in the LSA? Provide the statutory authority for your answer.
2. What principles must the Law Society have regard to when carrying out its functions, duties, and powers, according to the LSA? Provide the statutory authority for your answer.

3. Define “person who is authorized to provide legal services in Ontario.” Provide the statutory authority for your answer.
4. Define “provision of legal services” and give five examples. Provide the statutory authority for your answers.
5. What is the permitted scope of practice for P1 licensees? Provide the statutory or other authority for your answer.
6. Diya works as a human resources consultant for a geotechnical company in Toronto. In her role, Diya advises senior management about their legal obligations under the *Employment Standards Act, 2000*,⁶² negotiates severance packages with opposing counsel, and drafts plaintiff’s claims and defences on behalf of the company on wrongful dismissal and constructive dismissal claims in Small Claims Court. She also responds to Ministry of Labour complaints filed against the company by existing and former employees.
 - a. Diya would like to become a paralegal. Does she currently meet the requirements for an exemption of the educational requirement under section 13(1)1 of By-Law 4? If not, what must Diya do to qualify for the exemption?
7. You are a librarian. Your mother’s best friend asks you to help her draft a plaintiff’s claim in an action in the Small Claims Court for recovery of an unpaid debt of \$1,450.00 owed to her husband by a former friend. She claims that she phoned some lawyers, but the lowest fee quoted was \$500.00. You have known her all your life and have always called her and her husband “aunt” and “uncle.”

You obligingly find the Rules of the Small Claims Court forms online and complete the Form 7A, including the grounds for the claim as you understand them from what she has told you. You also find and direct your mother’s friend to the online resources at the attorney general’s website for information about how to issue and serve the claim. You have never done anything like this before, and you find that the online searches, drafting the claim, and so on take a lot more time than you thought they would. You resolve never to do it again. You don’t charge your mother’s friend anything.

When answering the following questions, give reasons for your answers, referring to the LSA and By-Law 4 where appropriate.

- a. Are you providing legal services when you draft the plaintiff’s claim in the Small Claims Court matter?
 - b. Have you committed an offence? If yes, what are the penalties?
8. You are a P1 licensee. Your father-in-law asks you to review his will and that of your mother-in-law. Both wills, along with powers of attorney for property and for personal care, were drafted several years earlier by a lawyer. However, one of your brothers-in-law has recently separated from his wife, and your father-in-law wants to confirm that, in the event of a permanent separation and/or a divorce, his former daughter-in-law will not be entitled to any part of the son’s inheritance under either will. Your mother-in-law has given you consent to review her will with respect to this issue.

When answering the following questions, give reasons for your answers, referring to the LSA and By-Law 4.

- a. If you agree to review the wills for a family member for no fee, are you providing legal services?
 - b. If you agree to review the wills for a family member for no fee, have you committed an offence? If yes, what are the penalties?
9. During Samuel Brown’s first semester in an accredited paralegal program, he was discovered using unauthorized materials on a final exam. After an investigation, Samuel’s professor was satisfied that a breach of academic integrity had taken place. It was Samuel’s first offence. Samuel received a zero on the exam, and a breach of academic integrity letter was put on his file. In accordance with the policies and procedures of the educational institution he attended, nothing appeared on his transcript. He passed the course with a D.

Samuel is now in his third semester of the program. He has committed no further breaches of academic integrity. He is applying to the Law Society to write the Paralegal Licensing Exam. He has read the Licensing Policies and understands their contents.

When completing the good character section of the application, Samuel does not disclose the breach of academic integrity. He figures that there is no way the Law Society will ever find out that he cheated on an exam in first year because there is nothing on his transcript to indicate that he did so.

- a. Has Samuel made a false or misleading representation to the Law Society?

⁶² SO 2000, c 41.

- b. If Samuel has made a false or misleading representation, what are the consequences if it is discovered?
 - c. What would the consequences be if Samuel had disclosed the breach of academic integrity?
 - d. Why does disclosure matter here since it is highly unlikely that the Law Society will ever learn of Samuel's omission?
10. Sasha was sued two years ago for breach of contract in a Small Claims Court action for recovery of an unpaid debt. He had purchased a road bike from Matt, who rode occasionally with Sasha's team. Sasha made a down payment of \$1,000.00. The balance of \$1,200.00 was to be paid in installments.

Soon after Sasha purchased the road bike, he began having problems with the drivetrain. When he spoke to Matt about it, Matt said, "It's just a cheap bike. If you want a good product, you have to expect

to pay more than \$2,000.00!" Matt refused to take the bike back and refund Sasha's down payment. When Sasha ceased making installment payments, Matt commenced the Small Claims Court action. At the time the action was commenced, the amount owing was \$950.00.

Sasha changed his address around that time and started riding with a new group. The claim was served at his old address and was not forwarded. One of the members of Sasha's new group fixed the drivetrain and made some other adjustments for \$700.00 including parts, and the bike now works fine.

Sasha first became aware of Matt's judgment when his wages started being garnished. Sasha is now a P1 applicant. Since the road bike was in fact defective and had to be fixed at a cost of \$700.00, is it necessary for Sasha to disclose this matter under the good character requirement?

APPENDIX 1.1 EXEMPTIONS FROM EDUCATION REQUIREMENT

By-Law 4, Law Society of Ontario

Requirements for issuance of Class P1 licence: application received after June 30, 2010

13(1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after June 30, 2010:

1. The applicant must have graduated from a legal services program in Ontario that was, at the time the applicant graduated from the program, an accredited program.
2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered.

Exemption from education requirement

13(2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if,

- (a) for an aggregate of at least 3 years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis; or
- (b) the applicant was previously licensed to provide legal services in Ontario and applied for that licence prior to November 1, 2007.

(i) has provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years immediately prior to her or his application for a Class P1 licence,

(ii) has provided written confirmation from two persons, from a list of persons and in a form provided by the Society, verifying that the applicant meets the requirement mentioned in subclause (i), and

(iii) has successfully completed a professional conduct and advocacy course conducted by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered;

- (c) the applicant is a member in good standing of the Human Resources Professionals Association

of Ontario, the Ontario Professional Planners Institute, the Board of Canadian Registered Safety Professionals or the Appraisal Institute of Canada and,

(i) has been a member in good standing of the organization for a total of three years in the five years immediately prior to her or his application for a Class P1 licence,

(ii) has carried on the profession or occupation represented by the organization, including engaging in activities related to the provision of legal services that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years immediately prior to her or his application for a Class P1 licence, and

(iii) has successfully completed a professional conduct and advocacy course conducted by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered;

- (d) the applicant is registered and in good standing as a collector under the *Collection Agencies Act* and,

(i) has been registered and in good standing as a collector under the *Collection Agencies Act* for a total of three years in the five years immediately prior to her or his application for a Class P1 licence,

(ii) has acted as a collector, including engaging in activities related to the provision of legal services that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years immediately prior to her or his application for a Class P1 licence, and

(iii) has successfully completed a professional conduct and advocacy course conducted by the Society by not later than two years after the end of the

licensing cycle into which the applicant was registered;

(e) the applicant was previously licensed to provide legal services in Ontario and applied for that licence prior to July 1, 2010;

(f) for an aggregate of at least 5 years, the applicant has, on a full-time basis, exercised the powers and performed the duties of a member of one or more of the following entities:

- (i) Agriculture, Food and Rural Affairs Appeal Tribunal,
- (ii) Animal Care Review Board,
- (iii) Assessment Review Board,
- (iv) Board of negotiation continued under subsection 27(1) of the *Expropriations Act*,
- (v) Board of negotiation established under subsection 172(5) of the *Environmental Protection Act*,
- (vi) Building Code Commission,
- (vii) Child and Family Services Review Board,
- (viii) Chiropody Review Committee,
- (ix) Consent and Capacity Board,
- (x) Conservation Review Board,
- (xi) Criminal Injuries Compensation Board,
- (xii) Crown Employees Grievance Settlement Board,
- (xiii) Custody Review Board,
- (xiv) Dentistry Review Committee,
- (xv) Environmental Review Tribunal,
- (xvi) Fire Safety Commission,
- (xvii) Health Professions Appeal and Review Board,
- (xviii) Health Services Appeal and Review Board,

- (xix) Human Rights Tribunal of Ontario,
- (xx) Landlord and Tenant Board,
- (xxi) Licence Appeal Tribunal,
- (xxii) Medical Eligibility Committee formed under subsection 7(1) of the *Health Insurance Act*,
- (xxiii) Normal Farm Practices Protection Board,
- (xxiv) Ontario Civilian Police Commission,
- (xxv) Ontario Labour Relations Board,
- (xxvi) Ontario Municipal Board,
- (xxvii) Ontario Parole Board,
- (xxviii) Ontario Review Board,
- (xxix) Ontario Special Education Tribunal (English),
- (xxx) Ontario Special Education Tribunal (French),
- (xxxi) Optometry Review Committee,
- (xxxii) Pay Equity Hearings Tribunal,
- (xxxiii) Physician Payment Review Board,
- (xxxiv) Public Service Grievance Board,
- (xxxv) Social Benefits Tribunal,
- (xxxvi) Workplace Safety and Insurance Appeals Tribunal; or

(g) for an aggregate of at least 5 years, the applicant has, on a full-time basis, exercised the powers and performed the duties of an Appeals Resolution Officer at the Workplace Safety and Insurance Board.

Interpretation: “full-time basis”

13(2.1) For the purposes of subsection (2), except clauses (2)(f) and (g), engaging in an activity or acting in a particular capacity on a full-time basis means engaging in an activity or acting in a particular capacity, on the average, 30 hours per week.

APPENDIX 1.2 PERSONS DEEMED NOT TO BE PROVIDING LEGAL SERVICES

Law Society Act, RSO 1990, c L.8

1(8) For the purposes of this Act, the following persons shall be deemed not to be ... providing legal services:

1. A person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.
2. An employee or officer of a corporation who selects, drafts, completes or revises a document for the use of the corporation or to which the corporation is a party.
3. An individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise.
4. An employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union in connection with a grievance, a labour negotiation, an arbitration proceeding or a proceeding before an administrative tribunal.
5. A person or a member of a class of persons prescribed by the by-laws, in the circumstances prescribed by the by-laws.

By-Law 4, Law Society of Ontario

Part IV: Not Practising Law or Providing Legal Services

28. For the purposes of this Act, the following persons shall be deemed not to be ... providing legal services:

Aboriginal Courtwork Program

1. A person who delivers courtworker services to Aboriginal people through an Aboriginal delivery agency that has contracted with the Government of Ontario or the Government of Canada to deliver courtworker services as part of the Aboriginal Courtwork Program.

Other profession or occupation

2. A person whose profession or occupation is not the provision of legal services or the practice of law, who acts in the normal course of carrying on that profession or occupation, excluding representing a person in a proceeding before an adjudicative body.

Committee of adjustment

3. A person whose profession or occupation is not the provision of legal services or the practice of law, who, on behalf of another person, participates in hearings before a committee of adjustment constituted under section 44 of the *Planning Act*.

APPENDIX 1.3 PERSONS EXEMPT FROM THE REQUIREMENT TO OBTAIN A P1 LICENCE

By-Law 4, Law Society of Ontario

Part V: Providing Legal Services Without a Licence **Interpretation**

29. In section 30,

“Canadian law student” means an individual who is enrolled in a degree program at a law school in Canada that is accredited by the Society;

“licensee firm” means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation.

“Ontario paralegal student” means an individual who is enrolled in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society.

Providing Class P1 legal services without a licence

30. The following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:

In-house legal services provider

1. An individual, other than a Canadian law student or an Ontario paralegal student, who,
 - i. is employed by a single employer that is not a licensee or a licensee firm,
 - ii. provides the legal services only for and on behalf of the employer, and
 - iii. does not provide any legal services to any person other than the employer.

Legal clinics

2. An individual, other than a Canadian law student or an Ontario paralegal student, who,
 - i. is employed by a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario,
 - ii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and
 - iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional

liability insurance that is required of a licensee who holds a Class L1 licence.

Not-for-profit organizations

3. An individual who,
 - i. is employed by a not-for-profit organization that is established for the purposes of providing the legal services and is funded by the Government of Ontario, the Government of Canada or a municipal government in Ontario,
 - ii. provides the legal services through the organization to the community that the organization serves and does not otherwise provide legal services, and
 - iii. has professional liability insurance coverage for the provision of the legal services in Ontario that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence.

Acting for friend or neighbour

4. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who provides the legal services only for and on behalf of a friend or a neighbour,
 - iii. who provides the legal services in respect of not more than three matters per year, and
 - iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

Acting for family

5. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who provides the legal services only for and on behalf of a related person, within the meaning of the *Income Tax Act* (Canada), and

- iii. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

Member of Provincial Parliament

6. An individual,
- i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who is a member of Provincial Parliament or his or her designated staff, and
 - iii. who provides the legal services for and on behalf of a constituent of the member.

Other profession or occupation

7. An individual,
- i. whose profession or occupation is not the provision of legal services or the practice of law,
 - ii. who provides the legal services only occasionally,
 - iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, and
 - iv. who is a member of the Human Resources Professionals Association of Ontario in the Certified Human Resources Professional category.

Interpretation

31(1) In this section,

“employer” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*;

“public servant” has the meaning given it in the *Public Service of Ontario Act, 2006*;

“survivor” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*;

“worker” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*.

Office of the Worker Adviser

(2) An individual mentioned in subsection (2.1) may, without a licence, provide the following legal services through the Office of the Worker Adviser:

- 1. Advise a worker, who is not a member of a trade union, or the worker’s survivors of their legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997* or any predecessor legislation.
- 2. Act on behalf of a worker, who is not a member of a trade union, or the worker’s survivors in

connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Individuals subject to subsection (2)

(2.1) Subsection (2) applies to an individual who meets the following criteria:

- 1. The individual is a public servant in the service of the Office of the Worker Adviser.
- 2. At any time during the period commencing May 1, 2007 and ending December 31, 2021, the individual was a public servant in the service of the Office of the Worker Adviser or the Office of the Employer Adviser.
- 3. At any time when the individual was a public servant in the service of the Office of the Worker Adviser or the Office of the Employer Adviser the individual provided legal services through the Office pursuant to section 31 of this By-Law as that section read immediately before January 1, 2022 or a predecessor provision.
- 4. Immediately before January 1, 2022, the individual was not a licensee.

Office of the Employer Adviser

(3) An individual mentioned in subsection (3.1) may, without a licence, provide the following legal services through the Office of the Employer Adviser:

- 1. Advise an employer of their legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997* or any predecessor legislation.
- 2. Act on behalf of an employer in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings.

Individuals subject to subsection (3)

(3.1) Subsection (3) applies to an individual who meets the following criteria:

- 1. The individual is a public servant in the service of the Office of the Employer Adviser.
- 2. At any time during the period commencing May 1, 2007 and ending December 31, 2021, the individual was a public servant in the service of the Office of the Employer Adviser or the Office of the Worker Adviser.

3. At any time when the individual was a public servant in the service of the Office of the Employer Adviser or the Office of the Worker Adviser the individual provided legal services through the Office pursuant to section 31 of this By-Law as that section read immediately before January 1, 2022 or a predecessor provision.

4. Immediately before January 1, 2022, the individual was not a licensee.

Interpretation

32(1) In this section,

“dependants” means each of the following persons who were wholly or partly dependent upon the earnings of a member of a trade union at the time of the member’s death or who, but for the member’s incapacity due to an accident, would have been so dependent:

1. Parent, stepparent or person who stood in the role of parent to the member.
2. Sibling or half-sibling.
3. Grandparent.
4. Grandchild;

“survivor” means a spouse, child or dependant of a deceased member of a trade union;

“workplace” means,

(a) in the case of a former member of a trade union, a workplace of the former member when he or she was a member of the trade union; and

(b) in the case of a survivor, a workplace of the deceased member when he or she was a member of the trade union.

Trade unions

(2) An employee of a trade union, a volunteer representative of a trade union or an individual designated by the Ontario Federation of Labour may, without a licence, provide the following legal services to the union, a member of the union, a former member of the union or a survivor:

1. Give the person advice on her, his or its legal interests, rights or responsibilities in connection with a workplace issue or dispute.
2. Act on behalf of the person in connection with a workplace issue or dispute or a related proceeding before an adjudicative body other than a federal or provincial court.
3. Despite paragraph 2, act on behalf of the person in enforcing benefits payable under a collective agreement before the Small Claims Court.