



TAB 12

Report to Convocation February 22, 2018

Paralegal Standing Committee

Committee Members

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

Purpose of Report: Information

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

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For Information

Amendments to the Paralegal Guidelines – Language Rights[Tab 12.1](#)

COMMITTEE PROCESS

1. The Paralegal Standing Committee (the "Committee") met on February 7, 2018. In attendance were Michelle Haigh (Chair), Janis Criger (Vice-Chair), Robert Burd, Cathy Corsetti, Brian Lawrie, Marian Lippa (by telephone), Susan McGrath, Malcolm Mercer, Jan Richardson, Baljit Sikand (by telephone), and Anne Vespry.
2. Law Society staff members Cara-Marie O'Hagan, Elliot Spears, and Will Morrison participated in the meeting.

FOR INFORMATION

**AMENDMENTS TO THE PARALEGAL GUIDELINES
REGARDING LANGUAGE RIGHTS**

3. The Committee has approved amendments to Guideline 7-16 of the Paralegal Professional Conduct Guidelines. These amendments are being reported to Convocation for its information.
4. A redline in English, attached as [Tab 12.1.1](#), shows amendments to the Paralegal Professional Conduct Guidelines that are required to implement the changes described below. A French version of the amendments is attached as [Tab 12.1.2](#).
5. These amendments follow Convocation's decision in September 2017 to amend Rule 3.02 of the Paralegal Rules of Conduct regarding advising clients of their language rights. At that time, Rules 3.02(22) and (23) were amended to reflect equivalent changes to the lawyers' Rules of Professional Conduct approved by Convocation in June and September 2015. Those new Rules originated from the Federation of Law Societies of Canada's Model Code of Professional Conduct.
6. Guideline 7-16 of the Paralegal Professional Conduct Guidelines is intended to be read with Rules 3.02(22) and (23). It was introduced prior to the Model Code and the lawyer and paralegal Rules changes. The new content of this Guideline effectively mirrors the three commentary paragraphs to the lawyers' Rules, except for the replacement of references to lawyers with paralegals.
7. Amending this Guideline enhances guidance to paralegals in situations where the client should be made aware of the right to use an official or statutorily recognized language of their choice, as well as where paralegals should consider whether they can competently provide legal services in the language chosen by the client.
8. Further, given the Law Society's policy that the Rules of Professional Conduct and the Paralegal Rules and Guidelines should be consistent with one another, these amendments are necessary to ensure that the regulatory framework provides consistent guidance to both categories of licensees. The Rules relating to advising clients of their language rights are now the same for paralegals as they are for lawyers. These amendments harmonize Guideline 7-16 with the three commentary paragraphs to the equivalent lawyers' Rules.

Redline Showing Amendments to the Paralegal Professional Conduct Guidelines**GUIDELINE 7: ADVISING CLIENTS****(...)****Official Language Rights****Rule Reference~~s~~: Rules 3.02(22) & (23)**

16. When advising ~~French-speaking clients~~ a client of the client's language rights, a paralegal should ~~advise a client of his or her French language rights under each of the following (where appropriate)~~ consider the following:

- the paralegal should advise the client of the client's language rights as soon as possible;
- the choice of language is that of the client not the paralegal. The paralegal should be aware of relevant statutory and constitutional law relating to language rights including the *Canadian Charter of Rights and Freedoms*, s. 19(1) and Part XVII of the *Criminal Code* regarding language rights in courts under federal jurisdiction and in criminal proceedings. The paralegal should also be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages; and
- when a paralegal considers whether to provide the required services in the language chosen by the client, the paralegal should carefully consider whether it is possible to render those services in a competent manner as required by Rule 3.02(23).
- ~~Subsection 19(1) of the *Constitution Act, 1982* on the use of French or English in any court established by Parliament;~~
- ~~Section 530 of the *Criminal Code* (Canada) on an accused's right to a trial before a court that speaks the official language of Canada that is the language of the accused;~~
- ~~Section 126 of the *Courts of Justice Act* that requires that a proceeding in which the client is a party be conducted as a bilingual (English and French) proceeding; and~~
- ~~Subsection 5(1) of the *French Language Services Act* for services in French from Ontario government agencies and legislative institutions.~~

Redline Showing Amendments to the Paralegal Professional Conduct Guidelines

LIGNE DIRECTRICE 7: CONSEILLER LES CLIENTS

(...)

Les droits linguistiques

Règles 3.02 (22) et (23)

16. Le ou la parajuriste ~~est tenu(e) d'aviser qui avise~~ son client ~~qui parle français~~ de ses droits linguistiques ~~en vertu des textes juridiques suivants (s'il y a lieu) devrait tenir compte de ce qui suit :~~
- ~~Le ou la parajuriste devrait informer le client de ses droits linguistiques le plus tôt possible ;~~
 - ~~Le choix de la langue revient au client et non au (à la) parajuriste. Le ou la parajuriste devrait connaître la législation et la loi constitutionnelle qui se rapportent aux droits linguistiques, notamment l'art. 19 (1) de la *Charte canadienne des droits et libertés* et la partie XVII du *Code criminel* à l'égard des droits linguistiques devant les tribunaux de compétence fédérale et dans une instance criminelle. Le ou la parajuriste devrait également savoir que les lois provinciales ou territoriales peuvent prescrire d'autres droits linguistiques, y compris des droits relatifs aux langues autochtones ;~~
 - ~~Lorsqu'une ou un parajuriste détermine si elle ou il peut rendre les services requis dans la langue choisie par son client, elle ou il doit s'assurer de pouvoir les rendre avec compétence, conformément à la règle 3.02 (23).~~
 - ~~le paragraphe 19 (1) de la *Loi constitutionnelle de 1982* concernant l'usage du français ou de l'anglais dans tous les tribunaux établis par le Parlement;~~
 - ~~l'article 530 du *Code criminel du Canada* concernant le droit dont dispose un accusé de subir son procès devant un tribunal qui parle la langue officielle du Canada qui est celle de l'accusé;~~
 - ~~l'article 126 de la *Loi sur les tribunaux judiciaires* qui exige qu'une instance à laquelle un client ou une cliente est partie soit instruite en tant qu'instance bilingue (anglais et français);~~
 - ~~le paragraphe 5 (1) de la *Loi sur les services en français* concernant la prestation de services en français au sein des organismes gouvernementaux et des organismes juridiques de l'Ontario.~~