Professionalism

2

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*.
- The general duty of integrity and civility.
- Management of outside interests and public office.
- The role of the paralegal as mediator.
- The obligation to fulfill undertakings.
- Harassment and discrimination.
- The role of the Discrimination and Harassment Counsel.

PLANNING FOR PRACTICE

Professionalism

Several months have passed and Rajni is now a P1 licensee. She has recently been hired by Price and Associates, a full-service paralegal firm in her hometown. The firm consists of Lana Price, who started the firm five years ago, Luis Perez, and Sebastian Merton. There are three assistants, a receptionist, and a bookkeeper.

On her second day, Rajni is invited to sit in on a meeting with one of Sebastian's clients. Sebastian has been in court all morning and is running late. Sebastian's assistant, Christina, has apologized to the client for the long wait, which is now approaching one hour. When Sebastian finally arrives at the office, the client file is not on his desk.

He goes back out to Christina's desk and says, "Where's the file?" Christina gives him a panicky look and says, "The file? I don't think I've seen it." Christina rises from her chair slowly. She was in a car accident three years ago that resulted in severe injuries to her neck, lower back, and right leg. As a result, she stands and walks slowly. She requires a special office chair to support her back, and she uses a software program that allows her to dictate documents instead of typing them. As Christina moves toward the filing cabinet, Sebastian sighs heavily and storms over, cutting her off and muttering, "My 85-year-old grandmother moves faster."

Rajni is shocked. Christina's face flushes and she makes her way back to her desk to continue searching. The file is not anywhere to be found. Sebastian smiles apologetically at the client and says, "I might be able to get stuff done around here if this one got organized," signalling toward Christina. He then goes back to his office, checks his own file trays and finds the file under some papers on his desk. He yells out to Christina, "It's okay, I found it where you buried it." Sebastian calls Rajni into his office. He has been so busy, he hasn't had time to review the file. He quickly goes through it, making notes, and hands it to Rajni saying, "You should have reviewed the file before this meeting. Now we're unprepared."

Later that day, Rajni finds Christina in the restroom, crying. When she asks her if she's all right, Christina sobs, "I don't know what to do. Every day he makes comments about how slowly I move. If I make the tiniest mistake, he suggests it's because of my condition. It's so humiliating, but I can't say anything. He's dying to find a reason to get rid of me."

Questions for Discussion

1. Has Sebastian complied with the *Paralegal Rules of Conduct*?[1] When answering this question, consider Sebastian's conduct toward Christina and Rajni.
2. Did Sebastian breach Rule 2.03 when making comments about Christina's mobility?
3. Did Sebastian breach Rule 2.01 by being late for the client appointment?

Introduction

The *Paralegal Rules of Conduct* ("the Rules"),[2] which establish standards of professional conduct for paralegals in Ontario, were approved by Convocation on March 29, 2007. Since then, the Rules have been amended many times, most extensively in 2014, and more recently as part of an ongoing initiative by all law societies across

1 Law Society of Ontario, *Paralegal Rules of Conduct* (1 October 2014; amendments current to 24 October 2019), online: <https://lso.ca/about-lso/legislation-rules/paralegal-rules-of-conduct/complete-paralegal-rules-of-conduct> [Rules].

2 *Ibid*.

Canada to bring their rules of conduct into conformity with the Federation of Law Societies of Canada *Model Code of Professional Conduct*.[3]

As a paralegal, you shall know the Rules and shall comply with the Rules. Non-compliance may result in disciplinary action by the Law Society. More importantly, unprofessional conduct may bring the reputation of the paralegal profession in Ontario into disrepute.

Interpretation of the Rules of Paralegal Conduct (Rule 1.02)

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 and interpreted in conjunction with the *Paralegal Professional Conduct Guidelines* ("the Guidelines").[4] 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* ["*Rules*"]. The Guidelines should be considered along with the *Rules*, the [*Law Society Act* (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*.

3 Federation of Law Societies of Canada, *Model Code of Professional Conduct* (14 March 2017), online: <https://flsc.ca/national-initiatives/model-code-of-professional-conduct/federation-model-code-of-professional-conduct>.

4 Law Society of Ontario, *Paralegal Professional Conduct Guidelines* (1 October 2014; amendments current to 24 May 2018), online: <https://lso.ca/about-lso/legislation-rules/paralegal-professional-conduct-guidelines> [Guidelines].

- 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 *Law Society Act*,[5] the By-Laws,[6] and/or tribunal decisions such as Law Society discipline 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 above steps, you are still unsure about what action to take,
   - consult with another paralegal or a lawyer to secure legal advice about your proposed conduct,[7]
   - check the Resources for Paralegals 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.

5 RSO 1990, c L.8.

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

7 See Rule 3.03(8).

Professionalism (Rule 2; Guidelines 1-4)

General

With respect to professionalism generally, Guideline 1 comments:

> 1. A paralegal should inspire the respect, confidence and trust of clients and the community.
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> 2. Public confidence in the administration of justice and in the paralegal profession may be eroded by a paralegal's unprofessional conduct. A paralegal's conduct should reflect favourably on the legal professions, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.
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> 3. A paralegal has special responsibilities by virtue of the privileges afforded the paralegal profession and the important role it plays in a free and democratic society and in the administration of justice. This includes a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals and to respect human rights laws in force in Ontario.

Integrity and Civility

Integrity (Rules 2.01(1), (2))

A paralegal has the following duties:

> (1) [T]o provide legal services and discharge all responsibilities to clients, tribunals, the public and other members of the legal professions honourably and with integrity.
>
> (2) [T]o uphold the standards and reputation of the paralegal profession and to assist in the advancement of its goals, organizations and institutions.[8]

Guideline 1 comments:

> 4. ***Acting with integrity*** means that a paralegal will be honest and will act with high ethical and moral principles. ***Integrity*** is the fundamental quality of any person who seeks to provide legal services. If integrity is lacking, the paralegal's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the paralegal may be.

acting with integrity
being honest and acting with high ethical and moral principles

Civility (Rule 2.01(3))

Rule 2.01(3) requires that a paralegal shall be courteous and civil, and shall act in good faith with all persons with whom the paralegal has dealings in the course of her or his practice.

Guideline 1 comments:

> 5. ***Acting with civility*** means that a paralegal will communicate politely and respectfully and act in a manner that does not cause unnecessary difficulty or harm to another.

acting with civility
being polite, respectful, and considerate of others

8 Rules 2.01(1), (2).

BOX 2.1

INTEGRITY

Fact Situation

You are a paralegal licensee. One of your clients is the defendant in a Small Claims Court proceeding. On the morning of the date set for trial you are waiting at the courthouse for your client when she phones to tell you that something urgent has come up and she cannot attend at court that day. You advise your client that in the circumstances the judge may order that the trial proceed in her absence or, if the judge grants an adjournment, she may be required to pay costs to the plaintiff, who is also represented, for inconvenience and delay. "Oh, just tell the judge that the baby's got colic and I can't get a sitter. That'll break his heart," your client says, and terminates the call. You happen to know that she has no children.

Question for Discussion

Can you follow your client's instructions?

6. The obligation to show courtesy and good faith extends to clients, opposing parties, other paralegals and lawyers, support staff, adjudicators, court and tribunal officers and staff and representatives of the Law Society. This obligation applies regardless of where the paralegal may be appearing or at what stage of the process the matter may be.

acting in good faith
making legitimate and honest efforts to meet your obligations in a given situation, without trying to gain an unfair advantage over or mislead other persons or parties through legal technicalities or otherwise

Acting in good faith means making legitimate and honest efforts to meet your obligations in a given situation, without trying to mislead other persons or parties or attempting to gain an unfair advantage over others, through legal technicalities or otherwise.

Paralegals shall make their legal services available to the public in a way that commands respect and confidence, and is compatible with the integrity and independence of the paralegal profession.

BOX 2.2

COURTESY, CIVILITY, AND GOOD FAITH: THE LAW SOCIETY OF UPPER CANADA V GROIA

Incivility can occur at any level of court or tribunal. This case is included because it deals with interesting issues around courtesy, civility, and good faith, and the factors a tribunal will consider when making a determination of incivility.

Background: The Felderhof Trial

Joseph Groia represented John Felderhof, former vice-president of Bre-X Minerals, in a fraud prosecution commenced in 1999 in the Ontario Court of Justice by the Securities Commission of Ontario. Mr Felderhof was charged with insider trading and

misleading statements in the affairs of Bre-X Minerals Ltd contrary to the Ontario *Securities Act*.[9]

The trial began before Justice Peter Hryn in late 2000.[10] Relations between Mr Groia and the Ontario Securities Commission prosecutors deteriorated rapidly. At issue were the role of the prosecutor and the production of documents. In 2002,[11] the prosecution made an application in the Superior Court of Justice for removal of Hryn J (who had by that time presided over the trial for 70 days) on grounds that he had lost jurisdiction. One of the allegations made by the prosecution in support of the application was that Hryn J had wrongly failed to restrain uncivil conduct by Mr Groia, thus producing an unfair trial and creating an apprehension of bias on the part of the judge.[12] In the discussion below, Mr Naster is one of the Ontario Securities Commission prosecutors.

NOTE TO STUDENTS: When reviewing the material below, keep in mind that the **only issue** before Campbell J (Superior Court of Justice) and Carthy, Doherty, and Rosenberg JJA (Ontario Court of Appeal) was whether, by reason of Hryn J's conduct of the Felderhof trial (including but not limited to his alleged failure to interfere with Mr Groia's trial tactics), he made a number of serious errors that deprived him of jurisdiction to proceed and undermined the applicant's right to a fair trial.

In his exhaustive 2002 review of the events giving rise to the application, Campbell J of the Superior Court of Justice notes:

> [20] Some of the trouble in this case flows from Mr. Groia's failure to understand the proper role of a prosecutor. Mr. Groia, in his unrestrained attacks on Mr. Naster's professional integrity said over and over again that it is improper for the prosecutor to seek a conviction. That statement, standing alone, is inaccurate.
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> [21] The classic words of Mr. Justice Rand, that "the purpose of a criminal prosecution is not to obtain a conviction" must be read in the context of the passage in which they appear. The context makes it clear that the mischief is not to seek a conviction but to do so unfairly.
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> [22] It is improper for Crown counsel to seek a conviction in the sense of seeking a conviction at all costs, or breaching the quasi-judicial duty of fairness and evenhandedness. This principle is sometimes expressed by saying that it is not the function of the prosecutor "simply" to seek a conviction, because his or her quasi judicial duties involve much more than simply seeking a conviction. In this expression of the principle everything turns on the qualification "simply," because it is appropriate for a Crown prosecutor to seek a conviction so long as he or she does not seek it unfairly or at all costs.
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> [23] Far from it being improper to Crown counsel to seek a conviction, it is appropriate for a prosecutor to seek a conviction as an aspect of seeking

9 RSO 1990, c S.5.

10 *R v Felderhof*, 2007 ONCJ 345, [2007] OJ No 2974 (QL).

11 *R v Felderhof*, 2002 CanLII 41888 (Ont Sup Ct J).

12 *Ibid* at para 5, point 4.

justice in the public interest. As the Honourable Michel Proulx J.A. and David Layton say in Ethics and Canadian Law:

> A prosecutor can seek a conviction but must all the while strive to ensure that the defendant has a fair trial.
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> • • •
>
> In acting as an advocate, the prosecutor is not to seek to convict but rather must see that justice is done through a fair trial upon the merits, and must act fairly and dispassionately.
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> • • •
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> The duty of the Crown to act fairly does not preclude the use of a trial strategy aimed at securing a conviction, so long as the strategy does not result in unfairness to the accused. …

[24] Those passages make it clear that although the prosecutor may not act unfairly, it is appropriate for the prosecutor to seek a conviction. As one Crown counsel noted:

> … counsel for the Crown are expected to be strong and persuasive public advocates who fully and effectively represent the interests of the Attorney General in an adversarial process … Crown counsel must be skilled and diligent advocates, and must be permitted to vigorously pursue a legitimate result to the best of their abilities.

[25] For the above reasons it is inaccurate to say that a prosecutor should not seek a conviction and it is unfair to criticize a prosecutor for doing so. Yet Mr. Groia did so, repeatedly and vehemently.[13]

Having analyzed the issues and the law, Campbell J dismissed the Securities Commission's application. He declined to award costs to Mr Felderhof, the successful party.

The Securities Commission appealed the decision to the Ontario Court of Appeal. Mr Felderhof cross-appealed Campbell J's costs award.

When considering the grounds for the appeal in 2003, Rosenberg JA for the Ontario Court of Appeal[14] commented:

> [1] … The prosecution alleges that the trial judge made a number of serious errors that have deprived him of jurisdiction to proceed and undermined the appellant's right to a fair trial. Fundamental to its position is the allegation that the trial judge has failed in his duty to curb the uncivil conduct of the respondent's counsel. …
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> • • •
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> [7] A singular problem with the documents is that defence counsel seemed to misunderstand the difference between documents that were to be part of the prosecution case and documents that the prosecutor was required to disclose to the defence. Some statements made by one of the prosecuting counsel prior to the trial, on December 22, 1999 in the course of

13 *Supra* note 11, at paras 20-25.

14 *R v Felderhof*, 2003 CanLII 37346 (Ont CA).

an earlier disclosure motion, may have exacerbated this misunderstanding. At that time, prosecution counsel told the trial judge that part of his obligation as a prosecutor was "to ensure that all relevant materials are placed before you." The defence developed the theme from this comment that whenever the prosecution failed to introduce a document that the defence thought was relevant and helpful to the defence, the prosecution was in breach of its duty and that this breach of duty could potentially lead to a stay of the charges for abuse of process. The defence also seemed to think that any document in the disclosure briefs could be admitted into evidence as a kind of abuse of process exception to the hearsay rule. This led to the defence presenting a prosecution witness with many documents about which he had no knowledge and which were not admissible through his testimony. The proceedings were thereafter peppered with allegations of prosecutorial misconduct.

• • •

[78] In his reasons, the application judge [Campbell J] has set out many examples of Mr. Groia's conduct in the trial. The application judge described this conduct in some of the following ways:

— "unrestrained invective" (at para. 34).

— "excessive rhetoric" (at para. 34).

— "The tone of Mr. Groia's submissions … descended from legal argument to irony to sarcasm to petulant invective" (at para. 64).

— "Mr. Groia's theatrical excess reached new heights on day 58" (at para. 89).

— "Mr. Groia's conduct on this occasion more resembles guerilla theatre than advocacy in court" (at para. 91).

— "unrestrained repetition of … sarcastic attacks" (at para. 271).

— "Mr. Groia's defence consists largely of attacks on the prosecution, including attacks on the prosecutor's integrity" (at para. 272).

[79] As the application judge noted, the problem was not simply with Mr. Groia's conduct. His rhetoric was, in many cases, tied to a view about what constitutes improper prosecutorial conduct that was simply wrong. As the application judge pointed out (at para. 29), there is nothing wrong with a prosecutor seeking a conviction, yet "Mr. Groia constantly accused the prosecution of impropriety in doing the very thing it has the right to do."[15]

The Ontario Securities Commission's appeal was dismissed by the Court of Appeal. The court rejected Mr Felderhof's cross-claim for costs at the application stage. In its reasons, the court noted:

> [100] … There were compelling reasons why a costs order against the prosecution would not be just and reasonable in this case. This application and appeal were brought because of the respondent's counsel's inappropriate behaviour during the trial. … The application judge gave full and careful reasons, which can be found at [*R v Felderhof*, 2003 CanLII

15 *Ibid* at paras 1, 7, 78-79.

41569 (Ont Sup Ct J), Campbell J]. I agree entirely with those reasons and in particular the following comments, at paras. 18 and 21:

> It was unnecessary on the application to pass judgment on [Mr Groia's] litigation style because it did not affect the jurisdiction of the trial judge. … On this costs motion, however, the nature and impact of his conduct must be considered to the extent that it triggered the application. Mr. Groia's conduct on significant occasions during the trial … was appallingly unrestrained and on occasion unprofessional. In light of this conduct the prosecutor's application, although unsuccessful, was reasonable.
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> • • •
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> Even with the problems in the conduct of the prosecution it seems unlikely this application would have been brought but for Mr. Groia's inappropriate conduct. The application, although novel and unsuccessful, was reasonable in light of the nature and quality of that conduct. It was necessary to review the record extensively before it became clear that his extreme conduct did not deprive the court of jurisdiction. To award costs to the defence in this case would be unfair to the prosecution and contrary to the public interest in the administration of justice. The behaviour indulged in by Mr. Groia should be discouraged, not encouraged by an award of costs. To award costs to the defence would carry the wrong message by rewarding him for the consequences of his unacceptable conduct.[16]

The Ontario Securities Commission appointed new prosecutors to the case, and the trial proceeded without incident for another 90 days. In 2007, Mr Felderhof was acquitted of all charges.

The Law Society Prosecution

In 2003, the Law Society of Ontario (formerly the Law Society of Upper Canada) became aware of Mr Groia's conduct through the media. The Law Society notified Mr Groia that it was looking into the matter in a letter dated April 3, 2003.

In 2004, the Law Society began an investigation of Mr Groia's conduct in the Felderhof trial during the period from 1999 to 2001 (the first phase). In 2009, the Law Society charged Mr Groia with professional misconduct. The Law Society Hearing Panel heard evidence in 2011 and 2012, and found Mr Groia guilty of professional misconduct on June 28, 2012. At the conclusion of reasons for the decision, the Hearing Panel[17] noted the following:

> [188] One of Groia's witnesses, Nicholas Richter, acknowledged that allegations of prosecutorial misconduct should not be made in the absence of any foundation in the record. …
>
> [189] The statements of Justices Campbell and Rosenberg about Mr. Groia's misapprehension of the role of a prosecutor and of the rules of evidence raise another question for the panel. Mr. Groia, according to the witnesses, is an experienced trial lawyer who has both prosecuted *Securities Act* offences and defended persons charged with such offences. Neither

16 *Ibid* at para 100.

17 *Law Society of Upper Canada v Joseph Peter Paul Groia*, 2012 ONLSHP 94.

> Justice Campbell nor Justice Rosenberg decided any new or novel points of law in their respective decisions. *This leaves the panel to ask whether Mr. Groia simply did not understand the legal duties and obligations of the prosecutor and the rules of evidence or instead ignored them in pursuit of a trial strategy aimed at baiting the prosecution into making mistakes or aimed at convincing the trial judge through rhetoric rather than evidence that the prosecution was indeed engaged in prosecutorial misconduct.* [Emphasis added.]
>
> [190] *Mr. Groia did not leave the panel with the impression that he was incompetent. On the contrary, his experience and competence were quite evident during his testimony. Although he is not a lawyer who believes in the old adage "be seen, be brief and be gone," we have concluded that he was more than competent to carry out Mr. Felderhof's defence as Mr. Felderhof's lead counsel. In other words, he either knew or ought to have known that his persistent allegations of prosecutorial misconduct were wrong in law and the positions he took on documents were not well-founded in the law of evidence or in accord with usual practices in large document cases. We are therefore drawn to the conclusion that … Groia's attacks on the prosecution were unjustified and therefore constituted conduct that fell below the standards of principles of civility, courtesy and good faith required by the Rules of Professional Conduct.* [Emphasis added.][18]

The Hearing Panel imposed a licence suspension of two-and-a-half months and a fine of $245,000.00. On appeal by Mr Groia, the Law Society Appeal Panel upheld the finding of the Hearing Panel that the appellant had engaged in professional misconduct, but varied the particulars and the reasons. The panel reduced the costs from $246,960.53 to $200,000.00, and the licence suspension from two-and-a-half months to one month.

In its 2013 reasons, the Appeal Panel[19] stated the following:

> [10] Having concluded that the hearing panel should have refused to apply the abuse of process doctrine, we give no deference to the findings of fact and assessments of credibility. Nor are we well positioned to make our own assessments of credibility. *Accordingly, in assessing Mr. Groia's conduct over the first 70 days of the Felderhof trial, we assumed that he honestly believed what he was saying.* Nevertheless, taken as a whole, many of the comments he made crossed the line: they included repeated personal attacks on the integrity of the prosecutors and repeated allegations of deliberate prosecutorial wrongdoing that did not have a reasonable basis and were not otherwise justified by the context. [Emphasis added.][20]

Mr Groia appealed the Appeal Panel's decision to the Divisional Court (the appellate branch of the Superior Court of Justice). The Law Society cross-appealed the reduction in the costs ordered. Both the appeal and the cross-appeal were dismissed.[21]

18 *Ibid* at paras 188-190.

19 *Law Society of Upper Canada v Joseph Peter Paul Groia*, 2013 ONLSAP 41 at para 10.

20 *Ibid* at para 10.

21 *Joseph Groia v The Law Society of Upper Canada*, 2015 ONSC 686 (Div Ct).

Mr Groia then appealed to the Ontario Court of Appeal in *Groia v The Law Society of Upper Canada*.[22] The appeal was dismissed by the majority of the court.

Of interest is the dissent of Brown JA, who noted the following:

> [244] This is a singular case. The Felderhof trial lasted several years, split into two phases. Phase One lasted 70 days; Phase Two, 90 days. Neither during nor after the trial did anyone involved in the trial complain to the Law Society of Upper Canada about Mr. Groia's conduct: not the prosecutors; not the trial judge; not the clients; nor any witness. No one.
>
> [245] The prosecution, the Ontario Securities Commission ("OSC"), did complain about Mr. Groia's conduct, but not to the Law Society. The OSC complained to the courts. The prosecution first complained to the trial judge about Mr. Groia's conduct. The trial judge made several rulings.
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> [246] The rulings did not satisfy the prosecution, so it applied to the Superior Court of Justice arguing, in part, that Mr. Groia's conduct, and what they saw as the trial judge's failure to restrain it, were resulting in an unfair trial. The prosecution wanted the trial stopped, and a new trial judge appointed. The application judge of the Superior Court of Justice refused to remove the trial judge.
>
> [247] The OSC appealed to this court. The appeal was dismissed.
>
> [248] So, the trial continued to its conclusion—an acquittal of Mr. Felderhof.
>
> [249] *The senior courts to which the prosecutors complained were not silent about Mr. Groia's conduct. Quite the contrary. In no uncertain terms they expressed their very strong displeasure. In the language of earlier times, they administered a public shaming to Mr. Groia. They told Mr. Groia to cut it out and smarten up. He listened, and he did. Phase Two continued without incident.*
>
> [250] *Neither the application judge nor any of the members of this court in* R. v. Felderhof *(2003), 2003 CanLII 37346 (ON CA), 68 O.R. (3d) 481, complained to the Law Society. That option was open to them. That is what the British Columbia Court of Appeal did in* R. v. Dunbar, Pollard, Leiding and Kravit*, 2003 BCCA 667 (CanLII), 191 B.C.A.C. 223. But that is not what the courts did in this case. A public shaming was administered; directions for the remainder of the trial were given; the courts moved on.*
>
> [251] *But not the Law Society. In 2003, a staff member read an article about the Felderhof trial. A file was opened. In 2009, after the trial had ended, the Law Society commenced professional misconduct proceedings against Mr. Groia, acting as its own complainant.* [Emphasis added.]
>
> [252] The Law Society Hearing Panel and Appeal Panel found that Mr. Groia had engaged in professional misconduct for his uncivil and unprofessional courtroom submissions and statements during the Felderhof trial. The Divisional Court dismissed Mr. Groia's appeal from the Appeal Panel's findings of misconduct, penalty and costs.

22 2016 ONCA 471.

> [253] My colleague would uphold those results. I must respectfully disagree with much of her analysis and with her result. I would grant Mr. Groia's appeal.[23]

See the excerpt below from Brown JA's reasons for judgment in *Groia v The Law Society of Upper Canada* at paragraphs 435 to 438.

> [435] Taking into consideration all three elements of the test for determining whether a barrister's in-court conduct amounts to professional misconduct, I conclude that the Appeal Panel erred in finding that Mr. Groia had engaged in professional misconduct.
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> [436] A hard-fought, high-profile criminal trial saw inappropriate submissions and allegations by Mr. Groia over the course of several days in Phase One. The trial judge responded to the prosecution's complaints about that inappropriate conduct. He ultimately directed Mr. Groia to stop making allegations of prosecutorial misconduct. Mr. Groia complied with the trial judge's rulings. This court then gave strong directions to both the trial judge and Mr. Groia about how to deal with the disputed evidentiary and abuse of process issues during the balance of the trial. This court found that the fairness of Phase One of the trial had not been compromised by Mr. Groia's conduct and the prosecution was not prevented from having a fair trial. At the same time, this court administered a "public shaming" to Mr. Groia. He mended his ways during the balance of the trial. The remaining 90 days of the trial proceeded without incident.
>
> [437] And, no one involved in the trial or the judicial reviews complained to the Law Society about Mr. Groia's conduct.
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> [438] Great weight must be given to Mr. Groia's compliance with the directions of the courts and to the fact that his conduct did not affect trial fairness. When that is done, and when the circumstances of the Felderhof trial are looked at in their entirety, I conclude that Mr. Groia did not engage in professional misconduct contrary to the *Rules of Professional Conduct*. Consequently, I conclude that the Appeal Panel erred in determining that he did.[24]

In 2018, when the majority of the Ontario Court of Appeal dismissed his action, Mr Groia appealed to the Supreme Court of Canada,[25] which allowed his appeal. The majority accepted that the impugned conduct upon which the Law Society based its finding of incivility by Mr Groia had been based upon genuine, if mistaken, beliefs. Note that the following two paragraphs are excerpted from the summary of the court's reasons that precedes the transcript of the reasons themselves. In those paragraphs, "G" refers to Mr Groia, the appellant.

> With respect to what the lawyer said, while not a stand alone "test," the Appeal Panel determined that prosecutorial misconduct allegations, or other challenges to opposing counsel's integrity, cross the line into professional misconduct unless they are made in good faith and have a reasonable

23 *Ibid* at paras 244-253.
24 *Ibid* at paras 435-438.
25 *Groia v Law Society of Upper Canada*, 2018 SCC 27.

basis. Requiring a reasonable basis for allegations protects against unsupportable attacks that tarnish opposing counsel's reputation without chilling resolute advocacy. *However, the reasonable basis requirement is not an exacting standard. It is not professional misconduct on account of incivility to challenge opposing counsel's integrity based on a sincerely held but incorrect legal position so long as the challenge has a sufficient factual foundation, such that if the legal position were correct, the challenge would be warranted. Nor is it professional misconduct to advance a novel legal argument that is ultimately rejected by the court. The good faith inquiry asks what the lawyer actually believed when making the allegations. In contrast, the "reasonable basis" inquiry requires a law society to look beyond what the lawyer believed, and examine the foundation underpinning the allegations. Looking at the reasonableness of a lawyer's legal position at this stage would, in effect, impose a mandatory minimum standard of legal competence in the incivility context—this would allow a law society to find a lawyer guilty of professional misconduct on the basis of incivility for something the lawyer, in the law society's opinion, ought to have known or ought to have done. This would risk unjustifiably tarnishing a lawyer's reputation and chilling resolute advocacy.*

• • •

Although the approach that it set out was appropriate, the Appeal Panel's finding of professional misconduct against G on the basis of incivility was unreasonable. First, even though the Appeal Panel accepted that G's allegations of prosecutorial misconduct were made in good faith, it used his honest but erroneous legal beliefs as to the disclosure and admissibility of documents to conclude that his allegations lacked a reasonable basis. The Appeal Panel acknowledged that submissions made on the basis of a sincerely held but erroneous legal belief cannot ground a finding of professional misconduct, and accepted that in making his allegations of impropriety against the OSC prosecutors, G was not deliberately misrepresenting the law and was not ill-motivated. Despite this, the Appeal Panel used G's legal errors to conclude that he had no reasonable basis for his repeated allegations of prosecutorial impropriety. Such a finding was not reasonably open to the Appeal Panel.[26]

Moldaver J for the court begins with a brief overview:

[1] The trial process in Canada is one of the cornerstones of our constitutional democracy. It is essential to the maintenance of a civilized society. Trials are the primary mechanism whereby disputes are resolved in a just, peaceful, and orderly way.

[2] To achieve their purpose, it is essential that trials be conducted in a civilized manner. Trials marked by strife, belligerent behaviour, unwarranted personal attacks, and other forms of disruptive and discourteous conduct are antithetical to the peaceful and orderly resolution of disputes we strive to achieve.

[3] By the same token, trials are not—nor are they meant to be—tea parties. A lawyer's duty to act with civility does not exist in a vacuum.

26 *Ibid* in the headnote summary of the majority's reasons (emphasis added).

Rather, it exists in concert with a series of professional obligations that both constrain and compel a lawyer's behaviour. Care must be taken to ensure that free expression, resolute advocacy and the right of an accused to make full answer and defence are not sacrificed at the altar of civility.

[4] The proceedings against the appellant, Joseph Groia, highlight the delicate interplay that these considerations give rise to. At issue is whether Mr. Groia's courtroom conduct in the case of *R. v. Felderhof*, 2007 ONCJ 345 (CanLII), 224 C.C.C. (3d) 97, warranted a finding of professional misconduct by the Law Society of Upper Canada. To be precise, was the Law Society Appeal Panel's finding of professional misconduct against Mr. Groia reasonable in the circumstances? For the reasons that follow, I am respectfully of the view that it was not.

[5] The Appeal Panel developed an approach for assessing whether a lawyer's uncivil behaviour crosses the line into professional misconduct. The approach, with which I take no issue, targets the type of conduct that can compromise trial fairness and diminish public confidence in the administration of justice. It allows for a proportionate balancing of the Law Society's mandate to set and enforce standards of civility in the legal profession with a lawyer's right to free speech. It is also sensitive to the lawyer's duty of resolute advocacy and the client's constitutional right to make full answer and defence.

[6] Moreover, the Appeal Panel's approach is flexible enough to capture the broad array of situations in which lawyers may slip into uncivil behaviour, yet precise enough to guide lawyers and law societies on the scope of permissible conduct.

[7] That said, the Appeal Panel's finding of professional misconduct against Mr. Groia on the basis of incivility was, in my respectful view, unreasonable. Even though the Appeal Panel accepted that Mr. Groia's allegations of prosecutorial misconduct were made in good faith, it used his honest but erroneous views as to the disclosure and admissibility of documents to conclude that his allegations lacked a reasonable basis. However, as I will explain, Mr. Groia's allegations were made in good faith and they were reasonably based. As such, the allegations themselves could not reasonably support a finding of professional misconduct.

[8] *Nor could the other contextual factors in this case reasonably support a finding of professional misconduct against Mr. Groia on the basis of incivility. The evolving abuse of process law at the time accounts, at least in part, for the frequency of Mr. Groia's allegations; the presiding judge took a passive approach in the face of Mr. Groia's allegations; and when the presiding judge and reviewing courts did direct Mr. Groia, apart from a few slips, he listened. The Appeal Panel failed to account for these contextual factors in its analysis. In my view, the only conclusion that was reasonably open to the Appeal Panel on the record before it was a finding that Mr. Groia was not guilty of professional misconduct.*

[9] Accordingly, I would allow Mr. Groia's appeal.[27]

27 *Ibid* at paras 1-9 (emphasis added).

Questions for Discussion

The Felderhof Trial

1. During the first 70 days of the Felderhof trial in the Supreme Court of Ontario, there were two issues in dispute between Mr Groia and the OSC prosecutors that were the basis for the acrimony between them. What were those issues and what was the nature of the dispute?

2.a. At the conclusion of the first phase of the trial, the prosecution made an application to the Superior Court of Justice. What relief was it seeking, and what was the basis for seeking that relief?

2.b. What order did Campbell J make?

2.c. Was Campbell J sympathetic to the defence?

3. The matter was then appealed to the Ontario Court of Appeal. Did the Court of Appeal grant the relief sought by the appellant?

4. How did Rosenberg JA deal with the allegations about Mr Groia's conduct?

5. How did the Court of Appeal deal with Mr Felderhof's cross-claim for costs at the application stage?

The Law Society Prosecution

6. When and how did Mr Groia's conduct during the first phase of the Felderhof trial come to the attention of the Law Society? Was there a complaint from any of the participants in the Felderhof trial?

7. Review paragraphs 189 and 190 of the Law Society Hearing Panel's 2012 decision in *Law Society of Upper Canada v Joseph Peter Paul Groia*, extracted above. What was the Law Society Hearing Panel's view with respect to Mr Groia's misapprehension of the role of the prosecutor and the rules around documentary disclosure, as stated by Campbell J and Rosenberg JA in the prosecution's application to have Hryn J dismissed?

The Law Society Appeal Panel

8. Mr Groia then appealed to the Law Society Appeal Panel. Did the Appeal Panel accept the Hearing Panel's opinion about Mr Groia's beliefs around the law that governs the role of the prosecutor and the disclosure of documents?

The Appeal to the Ontario Court of Appeal

9. Review Brown JA's comments at paragraphs 244 to 253 in his dissent in *Groia v The Law Society of Upper Canada*, above. Does Brown JA approve of the Law Society's intervention?

The Appeal to the Supreme Court of Canada

10. Review and discuss the excerpts from the summary of the majority's reasons at the Supreme Court of Canada, and Moldaver J's overview. How does Moldaver J attempt to balance the regulator's role with the obligations of defence counsel?

Outside Interests and Public Office (Rules 2.01(4), (5); Guideline 2)

A paralegal who engages in another profession, business, occupation, or other **outside interest**, or who holds public office at the same time as she or he is providing legal services, shall not allow the outside interest or public office to jeopardize the paralegal's integrity, independence, or competence.[28] A paralegal shall not allow involvement in an outside interest or public office to impair the exercise of his or her independent judgment as a paralegal on behalf of a client.[29] The question of whether and to what extent it is proper for the paralegal to engage in the outside interest will be subject to any applicable By-Law or rule of the Law Society.

outside interest
any profession, business, occupation, or other activity, including holding public office, engaged in by a paralegal concurrently with the provision of legal services

Guideline 2 comments:

1. The term "outside interest" covers the widest range of activities. It includes activities that may overlap or be connected with provision of legal services, for example, acting as a director of a corporation or writing on legal subjects, as well as activities less connected such as, for example, a career in business, politics, broadcasting or the performing arts.
2. When participating in community activities, a paralegal should be mindful of the possible perception that the paralegal is providing legal services and a paralegal–client relationship has been established. A paralegal should not carry on, manage or be involved in any outside interest in such a way that makes it difficult to distinguish in which capacity the paralegal is acting, or that would give rise to a conflict of interest or duty to a client.
3. It is the paralegal's responsibility to consider whether the outside interest may impair his or her ability to act in the best interest of his or her client(s). If so, the paralegal must withdraw, either from representation of the client or from the outside interest.
4. When acting in another role, the paralegal must continue to fulfill his or her obligations under the *Rules*, for example, to

- act with integrity,
- be civil and courteous,
- be competent in providing legal services,
- avoid conflicts of interest, and
- maintain confidentiality.

A **conflict of interest** arises when there exists a substantial risk that a paralegal's loyalty to or representation of a client would be materially and adversely affected by the paralegal's own interest or the paralegal's duties to another client, a former client, or a third person. The risk must be more than a mere possibility. There must be a genuine, serious risk to the duty of loyalty or to client representation arising from the retainer.[30]

conflict of interest
an interest, financial or otherwise, that may negatively affect a paralegal's ability to fulfill her or his professional and ethical obligations to a client

A paralegal who is in a situation where involvement in an outside interest gives rise to a substantial risk that the paralegal's loyalty to or representation of a client or clients

28 Rule 2.01(4).
29 Rule 2.01(5).
30 Rule 1.02 definitions.

will be adversely affected shall decide whether to withdraw from representation of the client or clients, or cease involvement in the outside interest.

When contemplating involvement in an outside interest, a paralegal shall also consider whether involvement in the outside interest will adversely affect her or his professional competence by, for example, taking up so much time that the paralegal is unable to attend properly to a clients' interests.

BOX 2.3

OUTSIDE INTERESTS

Fact Situation

You have been a member of the board of directors of a small, publicly funded community organization for two years. The organization consists of a general manager, four full-time staff, and a part-time office assistant. You are the only licensee on the board. During the course of your directorship, the general manager and you have become friendly.

Over the past few months, the general manager has begun calling you at your office more frequently. She is unhappy with the performance of Gloria, one of the full-time staff. Gloria has begun to take a lot of sick days. She takes long lunches and does not always complete the tasks assigned to her, placing an extra burden on the other staff. She is rude to her co-workers. Her conduct has caused resentment, disruption, and inconvenience. The general manager is at a point where she would like to terminate Gloria's employment. She wants your advice about how to manage the situation.

Question for Discussion

What are your obligations in these circumstances?

Acting as a Mediator (Rule 2.01(6); Guideline 2)

mediation
a non-adversarial process in which a qualified and impartial third party (the mediator) helps the parties to a dispute resolve their differences

mediator
a qualified and impartial third party who helps the parties to a dispute resolve their differences through mediation

Mediation is a non-adversarial process in which a qualified, impartial third party (the **mediator**) helps to resolve the differences between the parties to a dispute. A mediator has a duty to be neutral in relation to the participants in the mediation—that is, the mediator must have no preconceived opinions or biases in favour of or against one party or another.

The role of a paralegal mediator does not involve providing legal services to either party in the mediation. Rule 2.01(6) states:

> A paralegal who acts as a mediator shall, at the outset of the mediation, ensure that the parties to it understand fully that the paralegal is not acting as a representative for either party but, as mediator, is acting to assist the parties to resolve the issues in dispute.

A paralegal mediator shall also advise the parties that he or she cannot represent either or both of the parties in any subsequent legal matter related to the issues mediated.

Guideline 2 comments:

> 5. A mediator works with disputing parties to help them resolve their dispute. A paralegal acting as a mediator is not providing legal services to either party—the relationship is not a paralegal–client relationship. This does not preclude the mediator from giving information on the consequences if the mediation fails.
>
> 6. When acting as a mediator, the paralegal should guard against potential conflicts of interest. For example, neither the paralegal nor the paralegal's partners or associates should provide legal services to the parties. Further, a paralegal-mediator should suggest and encourage the parties to seek the advice of a qualified paralegal or a lawyer before and during the mediation process if they have not already done so. Refer to Guideline 9: Conflicts of Interest for more information on how a paralegal's outside interests may conflict with the paralegal's duty to his or her clients.

The commentary to section 5.7 of the *Rules of Professional Conduct* for lawyers[31] recommends that if, in the course of a mediation, a mediator prepares a draft settlement for the parties to consider, the mediator should expressly (that is, in writing) advise and encourage the parties to seek separate independent legal representation for purposes of reviewing the draft settlement contract.

Undertakings and Trust Conditions (Rules 2.02, 6.01; Guideline 3)

Undertakings (Rule 2.02)

An **undertaking** is a promise to carry out specific tasks and/or fulfill specific conditions.[32] Undertakings given by licensees are "matters of the utmost good faith and must receive scrupulous attention."[33]

undertaking
an unequivocal, personal promise by a paralegal to perform a certain act

Rule 2.02(1) states that a paralegal shall fulfill every undertaking given, and shall not give an undertaking that cannot be fulfilled. Except in exceptional circumstances, undertakings shall be made in writing at the time they are given, or confirmed in writing as soon as possible thereafter.[34] Unless the language of the undertaking clearly states otherwise, a paralegal's undertaking is a personal promise, and it is the paralegal's personal responsibility to fulfill the undertaking.[35]

Guideline 3 comments:

> 2. An undertaking is a personal promise. A paralegal could, for example, give an undertaking to complete a task or provide a document. Fulfilling that promise is the responsibility of the paralegal giving the undertaking.
>
> 3. The person who accepts the paralegal's undertaking is entitled to expect the paralegal to carry it out personally. Using the phrase "on behalf of my client," even in the undertaking itself, may not release the paralegal from the obligation

31 Law Society of Ontario, *Rules of Professional Conduct* (February 2017; amendments current to 26 April 2018), online: <https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct>.

32 Guideline 3.

33 *Towne v Miller*, 2001 CanLII 28006 at para 11, 56 OR (3d) 177 (Sup Ct J).

34 Rule 2.02(2).

35 Rule 2.02(3).

to honour the undertaking. If a paralegal does not intend to take personal responsibility, this should be clearly outlined in the written undertaking. In those circumstances, it may only be possible for the paralegal to personally undertake to make "best efforts."

4. A court or a tribunal may enforce an undertaking. The paralegal may be brought before a court or tribunal to explain why the undertaking was not fulfilled. The court or tribunal may order the paralegal to take steps to fulfill the undertaking and/or pay damages caused by the failure to fulfill the undertaking.

5. To avoid misunderstandings and miscommunication, a paralegal should remember the following points about undertakings. A paralegal

- should ensure that the wording of the undertaking is clear. If a paralegal is the recipient of an undertaking given by another paralegal or a lawyer, the paralegal should ensure that the wording is clear and consistent with his or her understanding of the undertaking. The paralegal should contact the other paralegal or lawyer to clarify the issue as soon as possible if this is not the case.
- should consider specifying a deadline for fulfilling the undertaking.
- should ensure that the undertaking provides for contingencies (e.g. if the obligations in the undertaking rely on certain events occurring, the paralegal should indicate what will happen if these events do not occur).
- should confirm whether or not the individual providing the undertaking is a paralegal or a lawyer.

Undertakings, whether given or received, should always be in writing. It is extremely unwise to give or accept an undertaking that does not state a deadline for completion. Deadlines should be reasonable and should reflect the complexity of the tasks to be performed and/or the nature and volume of the documents to be produced. You should consider agreeing to a reasonable request for an extension of a deadline by another party, if no prejudice to your client would result.

Do not give an undertaking, whether personal or "best efforts," that you know cannot be performed.

fulfill (or answer) an undertaking
to complete the requirements of the undertaking

diarize
to note a deadline or other important date in a tickler system, along with a series of bring-forward dates as reminders that the deadline is approaching

tickler system
a paper or electronic system that gives notice of upcoming deadlines (including limitation periods) or tasks to be completed

breach of undertaking
failure to fulfill an undertaking

Diarize any deadlines for completing undertakings, including undertakings to be completed by other parties. To **fulfill (or answer) an undertaking** means to complete the requirements of the undertaking. To **diarize** means to note a deadline or other important date in your tickler system, along with a series of bring-forward dates to remind you that the deadline is approaching. A **tickler system** is a paper or electronic system that gives you notice in advance of upcoming deadlines (including limitation periods) or tasks to be completed.

It is good and courteous professional practice to fulfill your own undertakings as soon as possible after they are given. If other parties fail to fulfill their undertakings by the stated deadline, you should follow up with them immediately in writing. As noted above, a court or tribunal may order a paralegal to perform an undertaking and/or pay any damages caused by the breach of undertaking. A **breach of undertaking** is a failure to fulfill an undertaking.

BEST EFFORTS UNDERTAKINGS

Sometimes you will be asked for an undertaking that is reasonable, but is not in your power to fulfill. An example would be a request by another party for documents that

are relevant to issues in a matter and that may be available to your client or another person, but have not been produced to you. You cannot take personal responsibility for production of the documents, because their production is not in your control.

Guideline 3 comments that a person who accepts a paralegal's undertaking is entitled to expect the paralegal to carry it out personally. Using the phrase "on behalf of my client" in an undertaking may not release the paralegal from the obligation to honour the undertaking. If you do not intend to take personal responsibility for fulfilling the undertaking, the language stating this in the undertaking should be clear and unequivocal. In such a case, where honouring the undertaking depends on the actions of another person, you should undertake to make best efforts. **Best efforts** means that you will make good-faith efforts to see that the undertaking is fulfilled, but you will not assume personal responsibility for answering it.

best efforts
a paralegal's effort to do what he or she can to ensure that an undertaking is fulfilled, without assuming personal responsibility

BOX 2.4

WHAT ARE A PARALEGAL'S RESPONSIBILITIES IN A "BEST EFFORTS" UNDERTAKING?

Giving another party a best efforts undertaking does not absolve a paralegal from making a good-faith effort to ensure that the undertaking is fulfilled. As the court noted in *Gheslaghi v Kassis*:[36]

> A promise to use one's best efforts … is an undertaking which a court will enforce and, in appropriate cases, apply sanctions for non-performance where serious efforts have not been undertaken. "Best efforts" mean just what one would expect the words to mean. The words mean that [a licensee] and his/her client will make a genuine and substantial search for the requested information and/or documentation. The undertaking is not to be taken lightly—a cursory inquiry is not good enough. … If a party and/or [licensee] is/are not able to discover the subject of the undertaking, [the party and/or licensee] must be able to satisfy a court that a real and substantial effort has been made to seek out what is being requested by the other party.[37]

Failure to fulfill an undertaking is a breach of Rule 2.02, and may result in another party making a complaint to the Law Society about you. The Law Society will review the situation, and may discipline you for a breach of undertaking, which may result in a finding of professional misconduct. This is why it is very important to have clear language in an undertaking about who is to fulfill the undertaking, what action is to be taken or documents produced, deadlines for completion, and so on.

Undertakings Given to the Law Society (Rules 6.01(8), (9))

In certain circumstances, a paralegal or a non-licensee may be required to give an undertaking to the Law Society.

36 2003 CanLII 7532, [2003] OJ No 5196 (QL) (Sup Ct J).
37 *Ibid* at para 7.

A paralegal whose licence to provide legal services has been suspended may be required to give an undertaking to the Law Society not to provide legal services. In such a case, the paralegal shall not

> (a) provide legal services, or
>
> (b) represent or hold himself or herself out as a person entitled to provide legal services.[38]

A paralegal required to give an undertaking to the Law Society to restrict his or her provision of legal services shall comply with the undertaking (Rule 6.01(9)).

Failure to comply with undertakings given to the Law Society could result in disciplinary action.

Trust Conditions (Rule 2.02; Guideline 3)

In certain circumstances, a paralegal may be required to hold documents and property in trust until certain conditions have been performed. The conditions pursuant to which the documents and property are held are called **trust conditions**.[39] A paralegal shall honour every trust condition once accepted.[40]

trust condition
a condition or conditions that must be performed before a paralegal may release certain documents and/or property held in trust by the paralegal

Once a trust condition is accepted, it is binding upon a paralegal, whether it is imposed by another legal practitioner or by a layperson. A **legal practitioner** is a person:

legal practitioner
a person who is a member of the bar in a Canadian jurisdiction other than Ontario, and is authorized to practise law as a barrister and solicitor in that jurisdiction; a lawyer

> (a) who is a licensee;
>
> (b) who is not a licensee but who is a member of the bar of a Canadian jurisdiction, other than Ontario, and who is authorized to practise law as a barrister and solicitor in that other jurisdiction.[41]

With respect to trust conditions, Guideline 3 comments:

> 7. Trust conditions should be clear, unambiguous and explicit and should state the time within which the conditions must be met. Trust conditions should be imposed and accepted in writing. Trust conditions may be varied with the consent of the person imposing them, and the variation should be confirmed in writing.
>
> 8. A paralegal should not impose or accept trust conditions that are unreasonable, nor accept trust conditions that cannot be fulfilled personally. When a paralegal accepts property subject to trust conditions, the paralegal must fully comply with such conditions, even if the conditions subsequently appear unreasonable.
>
> 9. A paralegal may seek to impose trust conditions upon a non-licensee, but great caution should be exercised in so doing since such conditions would be enforceable only through the courts as a matter of contract law.

38 Rule 6.01(8).
39 Guideline 3, para 1.
40 Rule 2.02(4).
41 Rule 1.02.

Professional Conduct and the Ontario Human Rights Code

Harassment and Discrimination (Rule 2.03; Guideline 4)

General (Rules 2.03(1), (2))

Rule 2.03(1) incorporates the principles of the Ontario *Human Rights Code* ("the Code")[42] and related case law into the interpretation of Rule 2.03. This means that Rule 2.03, the Code, and any relevant case law applying and interpreting the Code must be read together. A term used in Rule 2.03 that is defined in the Code has the same meaning as in the Code.[43]

The Ontario Human Rights Code

The Ontario *Human Rights Code* gives every person equal rights and opportunities without discrimination in the following areas:

- services, goods, and facilities;
- accommodation (housing);
- contracts;
- employment; and
- membership in trade or vocational associations, trade unions, and self-governing professions.

PROHIBITED GROUNDS

The Code prohibits discrimination or harassment of persons with respect to activities in any of the above areas on any of the following **prohibited grounds**:

- *Race or colour*. There is an exemption for special service organizations.
- *Ancestry and place of origin*. **Ancestry** refers to family descent. **Place of origin** means country or region of birth, and includes regions in Canada.
- *Ethnic origin*. **Ethnic origin** relates to cultural background.
- *Citizenship*. Citizenship refers to citizenship status, including landed immigrant, refugee, or non-permanent resident. Discrimination on the basis of citizenship is allowed in the circumstances set out in section 16 of the Code.
- *Creed*. **Creed** means religion or faith. The Code prohibits a person from trying to force another person to accept or conform to a particular religious belief or practice. As well, it may require an employer to make a reasonable accommodation for the religious beliefs and practices of an employee, such as allowing breaks for prayer at certain times. An **accommodation** is an action

prohibited grounds
grounds upon which discrimination is prohibited by the Ontario *Human Rights Code* (s 1)—race or colour, ancestry, place of origin, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital or family status, or disability; for purposes of employment, record of offence is a prohibited ground of discrimination; in the context of housing only, the receipt of public assistance is also a prohibited ground of discrimination

ancestry
family descent

place of origin
for purposes of the Ontario *Human Rights Code*, a person's country or region of birth, including a region in Canada

ethnic origin
cultural background

creed
religion or faith

accommodation
an action taken or a change made to allow a person or group protected by the Ontario *Human Rights Code* to engage in any of the activities covered by the Code—for example, employment

42 RSO 1990, c H.19 [Code].
43 Rule 2.03(2).

taken or a change made to allow a person or group protected by the Code to engage in any of the activities covered by the Code—for example, employment.

- *Sex*. For a woman, the right to equal treatment on this ground includes the right to equal treatment without discrimination in the event that she is or may become pregnant.[44]
- *Sexual orientation*. Sexual orientation includes heterosexual, lesbian, gay, and bisexual people.
- *Gender identity or gender expression*. Gender identity includes transgender and intersex people.
- *Age*. Legal age means 18 years old or more.
- *Record of offences* (in the context of employment only). A **record of offence** is a *Criminal Code*[45] conviction that has been pardoned, or a provincial offence.[46] Discrimination against a person based on a criminal conviction for which no pardon has been granted is legal.
- *Marital status or family status*. **Marital status** refers to the status of being married, single, widowed, divorced, separated, or living with a person in a conjugal relationship outside marriage.[47] **Family status** refers to parent and child relationships.[48] A parent may be a biological parent, an adoptive parent, or a legal guardian.
- *Disability*. The definition of disability in section 10(1) of the Code encompasses a broad spectrum of conditions, including (a) any degree of physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device; (b) a condition of mental impairment or a developmental disability; (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language; (d) a mental disorder; and (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*.[49] It includes past and presumed disabilities[50] and, in the context of housing only, receipt of public assistance.[51]
- *The receipt of public assistance* (in the context of housing only).

record of offence
for purposes of the Ontario *Human Rights Code, a Criminal Code* conviction that has been pardoned, or a provincial offence

marital status
for purposes of the Ontario *Human Rights Code*, the status of being married, single, widowed, divorced, separated, or living with a person in a conjugal relationship outside of marriage

family status
parent and child relationships (*Human Rights Code*, s 10(1)); a parent may be a biological parent, an adoptive parent, or a legal guardian

Paralegals provide legal services to the public. Paralegal firms provide employment to other persons. Paralegals shall ensure that no one is denied services or receives

44 Code, s 10(2).
45 RSC 1985, c C-46.
46 Code, s 10(1).
47 *Ibid.*
48 *Ibid.*
49 SO 1997, c 16, Schedule A.
50 Code, s 10(3).
51 O Reg 290/98, *Business Practices Permissible to Landlords in Selecting Prospective Tenants for Residential Accommodation*, online: <http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_980290_e.htm>, s 4.

inferior service on the basis of any of the prohibited grounds.[52] Paralegals shall ensure that their employment practices do not offend Rule 2.03[53]—in other words, that their employment practices comply with the Code.

Discrimination (Rules 2.03(4), (5))

Discrimination means treating a person or group differently or negatively based on a prohibited ground of discrimination under the Code. When determining whether discrimination has occurred, an objective standard is used. A person who makes discriminatory comments or engages in discriminatory conduct may not consciously intend to be discriminatory. However, if they ought reasonably to have known that their conduct would not be welcomed by the recipient, their conduct is discriminatory.

Discrimination includes **constructive discrimination** (sometimes referred to as **adverse impact discrimination**), defined in the Code as "a requirement, qualification or factor that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination."[54]

Rules 2.03(4) and (5) state the general duty of a paralegal to respect the requirements of human rights laws in force in Ontario:

> Discrimination
>
> (4) A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability with respect to the employment of others or in dealings with other licensees or any other person.
>
> (5) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.

Paralegals shall take reasonable steps to prevent or stop discrimination by any staff or other person who is subject to their direction and control.

discrimination
unfair treatment by one person of another person or group on any of the prohibited grounds under the *Human Rights Code*

constructive discrimination
a requirement, qualification, or factor that is not discrimination on a prohibited ground but that results in the exclusion, restriction, or preference of a group of persons who are identified by a prohibited ground of discrimination (*Human Rights Code*, s 11(1)); also known as adverse impact discrimination

adverse impact discrimination
see constructive discrimination

Harassment (Rule 2.03(3))

Rule 2.03(3) states:

> Harassment
>
> (3) A paralegal shall not engage in sexual or other forms of harassment of a colleague, a staff member, a client or any other person on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

Section 10(1) of the Code defines **harassment** as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be

harassment
engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome (*Human Rights Code*, s 10(1))

52 Rule 2.03(6).
53 Rule 2.03(7).
54 Code, s 11(1).

unwelcome." Harassment is a form of discrimination. It includes unwelcome comments or behaviour that might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to another person. Harassment also includes, but is not limited to, behaviours such as name calling, racial or religious slurs and jokes, sexual slurs and jokes, sexually suggestive conduct, and demands for sexual favours.

The definition in the Code speaks to a "course of vexatious comment or conduct." Guideline 4 notes that:

> 6. … Generally speaking, harassment is a "course of conduct" or a pattern of behaviour where more than one incident has occurred. Even one incident, however, may constitute harassment if the incident is serious in nature.

SEXUAL HARASSMENT

sexual harassment
an incident or series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature

The Code prohibits **sexual harassment** in the workplace along with any other harassment based on sex, sexual orientation, gender identity, or gender expression.[55]

> Harassment because of sex in workplaces
>
> (2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee.
>
> Sexual solicitation by a person in position to confer benefit, etc.
>
> (3) Every person has a right to be free from,
>
> (a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
>
> (b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

Note that there are two parts to the test for sexual harassment at section 7(3)(a) of the Code. First, a tribunal must consider whether the person engaging in the harassment knew that her or his behaviour was unwelcome. Second, a tribunal must consider whether the person engaging in the harassment ought to have known that her or his conduct was unwelcome—in other words, how would a reasonable person have perceived the impugned conduct in the circumstances?

In its policy on preventing sexual and gender-based harassment, the Ontario Human Rights Commission offers guidance on identifying and distinguishing between sexual and gender-based harassment.[56] Gender-based harassment is any behaviour, usually including bullying, that reinforces traditional heterosexual gender norms. It may be used to force people to conform to traditional gender stereotypes. It may be, but is not generally, motivated by sexual interest or intent.

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55 Code, ss 7(2), (3).

56 Ontario Human Rights Commission (OHRC), "Policy on Preventing Sexual and Gender-Based Harassment" (approved 27 January 2011; updated May 2013), online: <http://www.ohrc.on.ca/en/policy-preventing-sexual-and-gender-based-harassment-0>.

Sexual harassment, however, is generally motivated by sexual interest or intent. Sexual harassment may include some or all of the following behaviours:

- sexual solicitation and advances (your manager asks for sex in exchange for a promotion);
- a poisoned environment (inappropriate comments and pornographic images in the workplace);
- gender-based harassment (targeting someone for not following sex-role stereotypes); and
- violence (if inappropriate sexual behaviour is not dealt with, it may move to more serious forms, including sexual assault and other harmful behaviour).

Some examples of sexual and gender-based harassment include

- demanding hugs;
- invading personal space;
- making unnecessary physical contact, including unwanted touching, etc.;
- using language that demeans others, such as sex-specific derogatory comments and/or sex-specific derogatory names;
- leering or inappropriate staring;
- making gender-related comments about someone's physical characteristics or mannerisms;
- making comments or treating someone badly because of failure to conform to sex-role stereotypes;
- showing or sending pornography, sexual pictures or cartoons, sexually explicit graffiti, or other sexual images (including online);
- telling sexual jokes, including passing around written sexual jokes (for example, by email);
- sharing rough and vulgar humour or language related to gender;
- using sexual or gender-related comments or conduct to bully someone;
- spreading sexual rumours (including online);
- making suggestive or offensive comments or hints about members of a specific gender;
- making sexual propositions;
- verbally abusing, threatening, or taunting someone based on gender;
- bragging about sexual prowess;
- demanding dates or sexual favours;
- asking questions or talking about sexual activities;
- making an employee dress in a sexualized or gender-specific way;
- acting in a paternalistic way that someone thinks undermines their status or position of responsibility; and
- making threats to penalize or otherwise punish a person who refuses to comply with sexual advances (known as reprisal).

Guideline 4 comments:

7. ***Sexual harassment*** means an incident or series of incidents involving unwelcome sexual advances, requests for sexual favours or other verbal or physical conduct of a sexual nature when one or more of the following circumstances are present:

- such conduct might reasonably be expected to cause insecurity, discomfort, offence or humiliation to the recipient(s) of the conduct,
- submission to such conduct is made implicitly or explicitly a condition for the provision of professional services,
- submission to such conduct is made implicitly or explicitly a condition of employment,
- submission to or rejection of such conduct affects the paralegal's employment decisions regarding his or her employee (which may include assigning file work to the employee, matters of promotion, raise in salary, job security, and employee benefits, among other things), or
- such conduct has the purpose or the effect of interfering with work performance or creating an intimidating, hostile, or offensive work environment.

Guideline 4, paragraph 8 provides a non-exhaustive list of behaviours considered to be harassment.

BOX 2.5

IS IT HARASSMENT?

Fact Situation

Doug owns a busy paralegal practice. Recently he hired a young female associate, Kemala, to help out with Small Claims and residential tenancies matters. One day Kemala is talking to Doug about a trial she has coming up in a couple of days. It is Kemala's first trial. "I'm really nervous," she tells Doug. "I'm well prepared, everything is ready to go, but I keep thinking, what if I blow it and my client loses big time?"

"Don't worry about it," Doug says, grinning at her. "Dress for success. Wear high heels, a short skirt, and a low-cut blouse. If the judge is a guy, you'll win."

As it turns out, Kemala gets a very good result for her client. When she tells Doug about it, he says, "See? I told you it would work." When Kemala tells him that she wore a business suit and that the judge was a woman, Doug says, "You girls. You always stick together." Kemala is upset and offended, but she doesn't say anything because she does not want to put her job at risk.

Question for Discussion

Is Doug's conduct sexual harassment?

OTHER HARASSMENT

The definition of harassment in section 10(1) of the Code is not limited to sexual harassment. Any form of harassment in the workplace is forbidden by section 5(2) of

the Code. Guideline 4 gives the following examples of non-sexual harassment (refer to the Code and the case law, as the list is not exhaustive):

- the display of offensive material, such as racial graffiti;
- repeated racial slurs directed at the language or accent of a particular group; and/or
- verbal abuse or threats.

EMPLOYMENT PRACTICES (RULE 2.03(7))

Paralegals who employ or contract for the services of one or more workers are required to comply with the workplace violence and harassment provisions in the *Occupational Health and Safety Act* ("the OHSA").[57] Guideline 4 comments:

> 9. … Under the *OHSA*, employers must prepare written workplace violence and workplace harassment policies and must review those policies as often as necessary, but at least annually. Paralegals who employ six or more workers must post their written policies at a conspicuous place in the workplace.
>
> 10. The *OHSA* requires that employers assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work, and then develop and maintain a program to implement their workplace violence policy. That program must set out how the employer will investigate and deal with incidents or complaints [of] workplace violence, and must include measures and procedures to control any risks identified in the assessment, for summoning immediate assistance when workplace violence occurs or is likely to occur, and for workers to report incidents of workplace violence to the employer or supervisor.
>
> 11. Employers must also develop a program to implement the workplace harassment policy, which must include measures and procedures for workers to report incidents of workplace harassment to the employer or their supervisor, or to another person if the employer or supervisor is the alleged harasser. The program must also set out:
>
> > a. how incidents or complaints [of] workplace harassment will be investigated and dealt with;
> > b. how information obtained about an incident or complaint, including identifying information about any individuals involved, will not be disclosed unless necessary for the investigation or for taking corrective action with respect to the incident or complaint, or is otherwise required by law; and
> > c. how a worker who has allegedly experienced workplace harassment and the alleged harasser will be informed of the results of the investigation or the results of the investigation and of any corrective action taken as a result of the investigation.
>
> [12]. The *OHSA* also provides that an inspector may order, at the employer's expense, a third party investigation into allegations of workplace harassment.

57 RSO 1990, c O.1.

Policies and Procedures

Paralegals shall ensure that no one is discriminated against on a prohibited ground with respect to the provision of services.[58] Paralegals shall also ensure that their employment practices do not offend Rule 2.03.[59] The Law Society has developed a series of best practices and model policies to assist paralegals and lawyers in promoting equity and diversity in all areas of their practice, including employment and provision of services.[60] Guideline 4 recommends that paralegals implement these policies and procedures in their practice:

> 13. … Model policies cover practices relating to employment and the provision of services to clients and include
>
> - preventing and responding to workplace harassment and discrimination,
> - promoting equity in the workplace,
> - parental and pregnancy leaves and benefits,
> - accommodation in the workplace, flexible work arrangements, and
> - issues relating to creed and religious beliefs, to gender and sexual orientation, and to individuals with disabilities.
>
> 14. Equity Initiatives has also developed a professional development program to design and deliver education and training to legal service providers regarding … equity and diversity issues. A paralegal may contact the Law Society to discuss available training sessions, which may be offered as seminars, workshops or informal meetings.

Discrimination and Harassment Counsel

The Law Society Discrimination and Harassment Counsel provides its service free of charge to lawyers, paralegals, articling and field placement students, and the Ontario public. The Counsel confidentially assists anyone who may have experienced discrimination or harassment by a lawyer or paralegal, or within a law or paralegal firm. Although funded by the Law Society, the Counsel is completely independent of the Society. Contact information is posted at the Law Society website.

The Counsel provides advice and support, and reviews options with complainants. These may include

- filing a complaint with the Law Society,
- filing a complaint with the Ontario Human Rights Tribunal, and
- allowing the Counsel to mediate a solution in cases where all parties agree.

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58 Rule 2.03(6).

59 Rule 2.03(7).

60 Law Society of Ontario, *Model Policies & Guides*, online: <https://lso.ca/lawyers/practice-supports-and-resources/equity-supports-resources/model-policies,-publications-reports?lang=en-ca>. © The Law Society of Ontario, 2019. All rights reserved. Reprinted with permission of The Law Society of Ontario.

CHAPTER SUMMARY

The *Paralegal Rules of Conduct* establish standards of professional conduct for paralegals in Ontario. In order to avoid disciplinary action by the Law Society and to avoid bringing the reputation of the paralegal profession in Ontario into disrepute, a paralegal must know the Rules and comply with their standards for professional conduct.

The *Paralegal Professional Conduct Guidelines*, the By-Laws, and relevant case law or legislation will provide additional guidance as you read and interpret the Rules.

A paralegal has a duty to provide legal services and discharge all responsibilities to clients, tribunals, the public, and other members of the legal professions honourably and with integrity. A paralegal has a duty to uphold the standards and reputation of the paralegal profession and to assist in the advancement of its goals, organizations, and institutions. Paralegals who do not conduct themselves with integrity may harm their clients, and will damage their own reputations within the paralegal profession as well as the reputation of the profession within the community.

A paralegal shall be courteous and civil, and shall act in good faith toward all persons with whom the paralegal has dealings in the course of his or her practice. Acting with civility means that a paralegal shall communicate politely and respectfully and act in a manner that does not cause unnecessary difficulty or harm to another. The obligation to be polite, respectful, and considerate of others extends to clients, opposing parties, other paralegals and lawyers, support staff, adjudicators, court and tribunal officers and staff, and Law Society representatives. The obligation applies regardless of the formality or informality of the venue, or the stage you are at in a matter.

Paralegals who engage in another profession, business, occupation, or other outside interest, or who hold public office at the same time as they provide legal services, shall not allow the outside interest or public office to jeopardize their integrity, independence, or competence.

A paralegal who acts as a mediator shall ensure that the parties to the mediation understand that the paralegal is not acting as a representative for either party, but as an impartial third party whose role is to help the parties resolve their dispute. The paralegal should also advise the parties that she or he cannot represent either of them in any subsequent legal matter related to the issues mediated.

Undertakings given by licensees are matters of the utmost good faith and must receive scrupulous attention. Except in exceptional circumstances, they should be made in writing at the time they are given, or confirmed in writing as soon as possible thereafter. Unless the language of an undertaking clearly states otherwise, a paralegal's undertaking is a personal promise, and it is his or her responsibility to fulfill it.

A paralegal may be required to hold documents and property in trust until certain conditions have been performed. The conditions pursuant to which the documents and property are held are called trust conditions. Once a trust condition is accepted, it is binding upon a paralegal, whether it is imposed by another legal practitioner or by a layperson.

Paralegals shall respect the requirements of Ontario human rights laws. The principles of the Ontario *Human Rights Code* and related case law must be applied when interpreting Rule 2.03.

Paralegals shall not discriminate with respect to the employment of others, or in dealings with other licensees or any other person, on the prohibited grounds stated in the Code. They shall not engage in sexual or other forms of harassment of colleagues, staff members, clients, or any other person on any of the prohibited grounds. They shall ensure that no one is discriminated against on a prohibited ground with respect to the provision of services.

Paralegals who employ or contract for the services of one or more workers are required to comply with the workplace violence and harassment provisions in the *Occupational Health and Safety Act* ("the OHSA"). Under the OHSA, employers must prepare written workplace violence and workplace harassment policies and must review those policies as often as necessary, but at least annually. Paralegals who employ six or more workers must post their written policies at a conspicuous place in the workplace.

Employers must also develop a program to implement the workplace harassment policy, which must include measures and procedures for workers to report incidents of workplace harassment to the employer or their supervisor, or to another person if the employer or supervisor is the alleged harasser.

Paralegals are encouraged to implement the best practices and model policies developed by the Law Society to assist them in promoting equity and diversity in all areas of their practice.

The Discrimination and Harassment Counsel provides confidential assistance to anyone who may have experienced discrimination or harassment by a lawyer or paralegal, or within a law or paralegal firm.

KEY TERMS

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APPLICATION QUESTIONS

1. Define the following words and phrases. For review and study purposes, it is a good idea to note the source of your definition, and the section or rule number.
   a. accommodation
   b. acting with integrity
   c. acting in good faith
   d. acting with civility
   e. best efforts
   f. breach of undertaking
   g. conflict of interest
   h. discrimination
   i. fulfill an undertaking
   j. harassment
   k. mediation
   l. mediator
   m. outside interest
   n. prohibited grounds
   o. sexual harassment
   p. trust condition
   q. undertaking
2. As a paralegal, what tools should you use to promote equity and diversity in your workplace?
3. a. You are asked for an undertaking to produce a document to an opposing party in a proceeding. It is a reasonable request. The document is relevant to issues in the proceeding. The obligation of full disclosure has been explained to your client. You have the original in your client matter file at your office. May you give the undertaking? If yes, what terms should be included in the undertaking?
   b. You are asked for an undertaking to produce a document to an opposing party in a proceeding. The document is relevant to issues in the proceeding. The obligation of full disclosure has been explained to your client. You do not have the document in your possession. Your client says she may be able to obtain a copy from another person. May you give the undertaking? If yes, what terms should be included in the undertaking?
4. One of your paralegal colleagues has a calendar on the wall in her office. It is in a corner behind a bookshelf. It cannot be seen from the door of her office, but it can be seen easily by anyone who approaches her desk, including other paralegals, staff, students, and any clients who meet with her in her office. The calendar shows pictures of male firefighters posing in various states of undress, from shirtless to completely naked except for a very skimpy swimsuit and a firefighter's hat. The calendar is sold to the public to raise money for a children's charity.

   You think the calendar is unsuitable for display in a workplace where it may be seen by clients and others. When you share your opinion with your colleague, she laughs and says, "It's for a very good cause. Why don't you get a life?"

   Does the calendar constitute harassment?
5. Magda is a newly licensed paralegal who is eager to develop her client base. She intends to specialize in traffic offences and landlord–tenant matters. A client by the name of Robin is coming in for an initial consultation regarding a careless driving charge.

When Robin arrives at the reception area, Magda catches sight of her and notices that Robin is a man dressed in women's clothing, wearing make-up and jewelry. Magda shakes her head in disbelief and immediately closes her office door. She buzzes her assistant and instructs her to tell Robin that something very last minute has come up with another client and Magda won't be able to meet Robin after all. "Do you want me to reschedule for another day?" asks the assistant. "No, tell him I'm booked solid for the next two weeks," Magda says.

Comment on Magda's conduct with reference to the Rules.

6. Michael is representing Jenna on a Workplace Safety and Insurance Appeals matter. Jenna is appealing a WSIB decision to deny her psychiatric entitlement relating to a workplace accident. Michael has met with Jenna three times. On each of these meetings, Michael has requested additional retainer monies, which Jenna has provided. Several weeks have passed and Michael has provided no update to Jenna on the file. Jenna has left repeated telephone messages for Michael inquiring as to the status of the claim, and he has failed to return them. Finally, after receiving six messages, Michael calls Jenna and in an angry voice he shouts, "You need to stop calling me and filling up my voice mail! These files move very slowly. I've got everything under control on your file so there's absolutely no need for us to talk every second day!" Comment on Michael's conduct in the context of the Rules.