



**Submissions of the
Criminal Lawyers' Association
on LSUC Call for Input:
Proposed Amendments
to the Paralegal Rules of Conduct (Advertising)**

THE CRIMINAL LAWYERS' ASSOCIATION

April 2016

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PREFACE

The Criminal Lawyers' Association (CLA) represents more than 1300 members. Our membership consists primarily of criminal defence lawyers in Ontario.

Among our considerable contributions to the justice system, a large portion of our efforts relate to ensuring access to justice in the criminal law context and protecting the civil liberties of Canadians. The majority of our members' clients are part of vulnerable groups in one way or another. Both our organization and our members routinely assist individuals with mental health issues, marginalized racial groups, the impoverished, and the uneducated.

The CLA has routinely made submissions with respect to policy decisions both provincially and federally. The CLA has also intervened as an interested party in significant litigation that concerns important criminal law matters and the concerns of its members, both at the Ontario courts and the Supreme Court of Canada.

INTRODUCTION

The CLA appreciates the opportunity to participate in the discussion concerning the Law Society of Upper Canada's Proposed Amendments to the *Paralegal Rules of Conduct*. These submissions on behalf of the CLA are with respect to the proposed amendments relating to paralegal advertising/marketing.

The CLA is very concerned about misleading and improper advertising by paralegals. Over the past three years, our organization has brought forward in excess of fifteen specific complaints about improper advertising conducted by paralegals.

A common thread in our complaints was that paralegals were advertising for services that they were prohibited from doing by virtue of section 802.1 of the *Criminal Code of Canada* and the *Law Society Act* Bylaw 4 subsection 6(2). Paralegals were also making broad claims of superiority with respect to their fees and/or services in comparison to lawyers and that they were holding themselves out as "specialists" in particular areas of practice.



Proposed Rule Amendments:

While we support the proposed rule changes, more specificity is required to help curtail the improper marketing behaviour raised in our complaints to the Law Society. The CLA, therefore, submits that additional rules ought to be drafted to precisely address the above-mentioned areas of concern.

The CLA submits that additional rules offering examples of prohibited conduct will offer needed guidance to paralegals to help them properly conduct their marketing practices.

Under Proposed Rule 8.03(2.1) we are submitting the following additional subsections be included as marketing practices that would contravene the requirements of Rule 8.03(1) and (2).

- a) advertising for services that a paralegal is unable to perform even if the intention is to refer that work to a qualified lawyer.
- b) disparaging or demeaning the fees, knowledge or experience of lawyers.
- c) suggesting qualitative superiority to services offered by lawyers.
- d) holding themselves out as specialists or claiming to specialize in any areas of practice.

Advertising Services that Paralegals are Unable to Perform

It is submitted that paralegals marketing for services that they cannot perform is contrary to Rule 8.03(2)(c). The CLA submits that this practice must be explicitly set out as prohibited conduct to better guide paralegals in their marketing efforts.

The *Law Society Act* Bylaw 4 subsection 6(2) and Section 802.1 of the *Criminal Code of Canada* limits the scope of paralegal representation in criminal court. Paralegals cannot appear on indictable matters or summary matters for accused persons where the term of imprisonment for an offence is greater than six months ("Super Summary Matters").



The CLA submitted numerous complaints to the Law Society over the past three years to address concerns that paralegals were marketing for services that they were not able to lawfully provide to clients. Many paralegal websites advertised that they defended drinking and driving related cases in criminal court even though they are prohibited from acting on these charges by virtue of Section 802.1 of the *Criminal Code*. It is misleading and inappropriate for paralegals to advertise representation for services that they cannot legally perform. The only service a paralegal could perform in relation to indictable and Super Summary Matters would be to refer the matter to a qualified lawyer. It is not in the best interests of the public nor consistent with a high standard of professionalism to allow this type of marketing.

The intention of regulating the marketing of legal services is to ensure the public is marketed to in a fair manner that will ensure paralegals and the legal profession are viewed as having a high standard of professionalism. Paralegals and lawyers should only be marketing for services that they can perform themselves.

The CLA submits that Proposed Rule 8.03(2.1) should explicitly prohibit this type of conduct to ensure paralegals are properly marketing for services that they can perform. Paralegals marketing services that they cannot lawfully provide is not in the public interest.

Our recommendation is to include a rule **prohibiting advertising for services that a paralegal is unable to perform even if the intention is to refer that work to a qualified lawyer.**

Improper Comparisons to Lawyers

The CLA submits that paralegals require specific guidance with respect to comparisons being made to lawyers.

The purpose of marketing for both paralegals and lawyers is to allow the public to understand the services that are being offered by a particular professional or firm and to allow the public to understand the merits of that particular professional or firm.

It is unnecessary for paralegals to disparage, demean, or suggest qualitative superiority of their services or fees as compared to lawyers in their attempts to



market themselves, especially when neither the fee comparison nor the level of experience in a particular practice area is demonstrably true..

This practice is not in the best interests of the public and creates an obvious negative public perception for both lawyers and paralegals.

Our recommendation is to include specific language prohibiting paralegals from either **disparaging or demeaning the fees, knowledge or experience of lawyers or suggesting qualitative superiority to services offered by lawyers.**

Certified Specialist Program

It is submitted that paralegals must not claim or hold themselves out as specialists or claim to specialize in specific areas of practice as it contravenes Rule 8.03(2)(b) and 8.03(2)(c).

The *Rules of Professional Conduct for Lawyers* specifically addresses this issue under Section 4.3 that: “A lawyer shall not advertise that the lawyer is a specialist in a specified field unless the lawyer has been so certified by the Law Society”.

The *Paralegal Rules of Conduct* do not in their current form specifically address this issue because there is no Certified Specialist Program for paralegals. The practice of paralegals holding themselves out as “specialists” or claiming to “specialize” in certain areas of practice is prevalent and is likely to mislead and confuse the public with respect to specialist terminology.

Furthermore, this practice devalues the utility and usefulness of the Certified Specialist Program designed for lawyers.

The CLA submits that specifying this practice as improper under Proposed Rule 8.03(2.1) would address and help eliminate this improper advertising practice by offering needed guidance to paralegals.

Our recommendation is to prohibit paralegals from **holding themselves out as specialists or claiming to specialize in any areas of practice.**



CONCLUSION

The CLA submits that it is in the best interests of the profession and in the public interest to further refine the *Paralegal Rules of Conduct* as they relate to paralegal marketing and advertising. Paralegals will also benefit from further guidance in Proposed Rule 8.03(2.1) with the addition of the suggested four clauses referring to marketing practices that would contravene the requirements of Rule 8.03(1) and (2).

These types of improper marketing practices by paralegals are widespread and the CLA has brought forward numerous complaints involving improper paralegal marketing and advertising practices over the past three years. See Addendum “A”.

In response to our complaints, our organization was advised that the Law Society simply does not have the resources to effectively monitor online advertising nor do they have the ability to prosecute these types of infractions.

Given this reality, it is even more important that the rules state with clarity that such improper conduct by paralegals will not be tolerated. Only further clarity in the rules will eliminate such conduct in the future.



Addendum A: (REDACTED BEFORE PUBLIC POSTING)

1. Complaint – [REDACTED], November 29, 2012
2. Complaint – [REDACTED], February 11, 2013
3. Complaint – [REDACTED], February 11, 2013
4. Complaint – [REDACTED], February 28, 2013
5. Complaint – [REDACTED], February 28, 2013
6. Complaint – [REDACTED] March 6, 2013
7. Complaint – [REDACTED], March 8, 2013
8. Complaint – [REDACTED], March 8, 2013
9. Complaint – [REDACTED], March 8, 2013
10. Complaint – [REDACTED], March 11, 2013
11. Complaint – [REDACTED], March 11, 2013
12. Complaint – [REDACTED], April 4, 2013
13. Complaint – [REDACTED], April 11, 2013
14. Complaint – [REDACTED], March 10, 2014
15. Complaint – [REDACTED], March 10, 2014
16. Complaint – [REDACTED], March 14, 2014
17. Complaint – [REDACTED], March 14, 2014
18. Complaint – [REDACTED], April 2, 2014