

The following was adopted by the membership as an addition to the Code of Professional Conduct as Commentary 7A and the Notes to Commentary 7A at the MidWinter Meeting of the Law Society of Prince Edward Island held on January 15, 1993.

CHAPTER IX: THE LAWYER AS ADVOCATE

COMMENTARY 7A

Delay in Family Law Proceedings

7A. In order to minimize the risk of domestic violence inherent in many family law matters, the lawyer as advocate in such proceedings, whether civil or criminal in nature, must avoid all unnecessary delays in the advancement or defence of an action from commencement through to conclusion.

Notes to Commentary 7A

7A The McQuaid Inquiry established that the risk of violence, almost exclusively borne by women and children, to parties and participants in both civil and criminal family law matters increases as the time period between commencement and conclusion of the action increases. It is the duty of the lawyer who is an advocate in such proceedings to proceed with dispatch and avoid all unnecessary delays.

Unnecessary delays include:

- those occasioned by the client for the purpose of harassing the other side or to gain a tactical advantage;
- those occasioned by the lawyer for the purpose of gaining a tactical advantage or because the lawyer who has had sufficient preparation time is not ready to proceed.

Commentary 7A applies to all lawyer advocates in civil family law matters and to both prosecution and defence counsel in criminal family law matters.

Civil family law matters include, *inter alia*:

- legal separation;
- divorce;
- annulment;
- custody/access;
- property division;
- adoption;
- maintenance and support;
- sexual assault;
- assault and battery.

Criminal family law matters include all criminal charges involving allegations of domestic violence. Victims of domestic violence include children, adults and seniors. Use of available procedural tactics can, in certain circumstances, constitute unnecessary delay. In order to avoid delays and to limit the risk of violence against victims, the lawyer should become fully knowledgeable of the case against the client at the earliest opportunity.

(Adopted by the membership at the
MidWinter Meeting, January 15, 1993)