



The Law Society of
Upper Canada | Barreau
du Haut-Canada

Important information if you are the subject of a complaint

One of the Law Society's most important responsibilities is to respond to complaints about lawyers and paralegals. Our complaints process is principled and balanced to ensure fairness to all parties while at all times protecting the public interest.

Most lawyers and paralegals are seriously concerned when they learn they are the subject of a complaint.

The Law Society has prepared this brochure to help you understand the Law Society's complaints process and your responsibilities.

The Law Society's mandate

The Law Society's mandate is to regulate the lawyers and paralegals of Ontario in the public interest.

The Law Society's authority to regulate lawyers and paralegals comes from the *Law Society Act*. Lawyers and licensed paralegals must comply with the *Law Society Act* and all related governance legislation, including regulations and by-laws and the *Rules of Professional Conduct* or *Paralegal Rules of Conduct*.

The Law Society has statutory jurisdiction to receive and address complaints about lawyers and paralegals, from clients, persons opposed in interest, other lawyers and paralegals, judicial officers, government officials and members of the public.

Within our mandate, we respond to complaints about the conduct, competence and capacity of lawyers and paralegals. For example, we deal with issues relating to a lawyer or paralegal's failure to reply to communications; failure to report on a transaction; delay; misleading, rude and discriminatory behaviour and failure to account for or improper handling of money. Generally, we are concerned with issues relating to the service, ethics and honesty of lawyers and licensed paralegals.

The Law Society's complaints process

The Law Society *reviews and considers* every complaint we receive. However, we do not *investigate* every complaint we receive.

Receipt and assessment of complaints

Complaints Services in the Law Society's Client Service Centre is the first point of contact for complainants. Many complaints raise issues that are outside our jurisdiction. Complainants may be referred to the Assessment Office of the Superior Court of Justice, to the police, to other regulatory authorities, or advised to seek advice from another lawyer or paralegal.

If the complaint is within the Law Society's jurisdiction and raises issues of professional conduct, Complaints Services directs the matter to the Intake Department of the Professional Regulation Division. Complaints Services also attempts to resolve some types of complaints.

Early resolution of complaints

Many of the complaints received by the Law Society involve communication issues between lawyers or paralegals and their client or another lawyer or paralegal. Such cases can often be resolved at an early stage.

In appropriate cases, we will contact you on receipt of a complaint to explore the opportunity for early resolution. Early resolution can assist in repairing relationships between you and your client and is generally less expensive and time-consuming than the more formal responses required in an investigation.

Matters can be resolved at various stages of the complaints process and your co-operation in reaching a resolution is always helpful, to the profession, the public and you.

Investigation of complaints

The Intake Department reviews each complaint as it comes into the Professional Regulation Division and identifies the regulatory issues. Intake staff may ask the complainant to provide specific information to support the allegations in the complaint. If the complaint and supporting information do not suggest that a lawyer or paralegal may have engaged in professional misconduct or conduct unbecoming or that the lawyer or paralegal lacks capacity, the file will be closed. Typically, staff

will also close the complaint if the complainant fails to provide documents or information to support the allegations. Staff may also close the complaint or defer the investigation for other reasons, for example where the allegations are the subject of concurrent civil or other regulatory proceedings.

Otherwise, where regulatory issues have been identified, the Law Society will commence an investigation under the *Law Society Act*. Complaints about less serious breaches of the Act, rules, by-laws and regulations are generally referred to the Complaints Resolution Department. Allegations of more serious breaches of the Act, rules, by-laws and regulations, more complex investigations or those requiring audit expertise are generally referred to the Investigations Department.

You will be notified and kept informed about the complaint

If a complaint is directed to the Professional Regulation Division, a Law Society staff person will contact you by phone, letter or a visit to your office. If the complaint is investigated, you will be given the opportunity to respond to allegations about your conduct. We will provide you with the substance of the complaint before asking you to respond. We will keep you informed during the investigation process.

The Complaints Resolution and Investigations Departments both investigate complaints under the authority of the *Law Society Act* (s. 49.3). The investigator's scope of the authority is set out in the *Act* and depends on the nature of the allegations. Law Society staff may ask you for an oral interview or a written response to the complaint or may attend at your office. The investigator may request information from you, people who work with you or other witnesses. You may be requested to produce documents that relate to the matters under investigation, such as client files. You have a duty to respond promptly and completely to a request from the Law Society and to co-operate with a Law Society investigation.

If the evidence does not warrant further regulatory proceedings, the file will be closed. Sometimes a complaint file will be closed after a discussion with or letter from Law Society staff about your conduct. In either case, you will receive a letter from the Law Society advising that the file is closed and explaining our reasons for closing it.

Complaints and investigations are confidential unless the Law Society has issued a notice of application, which informs you that the Law Society is pursuing conduct proceedings (see Proceedings Authorization Committee below). Confidentiality is a requirement under section 49.12 of the *Law Society Act*.

Duty to respond

Regardless of the severity of the complaint or your assessment of the merits of the complaint, you have a professional obligation to respond promptly to all communications from the Law Society and to continue to co-operate with the investigation (Rule 6.02 – lawyers and Rule 9.01 – paralegals). If you fail to respond to or co-operate with the Law Society, you may be subject to discipline proceedings under the Law Society’s Summary Hearing Process, in addition to any proceedings relating to the original complaint. The Summary Hearing Process is an expedited hearing process before a single bench Hearing Panel.

Your obligation to respond to our investigators includes providing information that is confidential and/or covered by solicitor-client privilege. Disclosure to us does not constitute a waiver of solicitor-client privilege. Subject to the exceptions in the *Law Society Act*, we will not disclose information gathered in an investigation.

Legal representation

You may retain a legal representative to assist you when you are the subject of a complaint or investigation by the Law Society.

If you do hire legal representation, you still must respond promptly to our requests for information and continue to co-operate with the investigation. The obligations to respond and co-operate are your personal, professional obligations and continue even if you retain a representative.

Proceedings Authorization Committee

In some cases, a matter will be referred to the Proceedings Authorization Committee (a committee of benchers) to consider whether further action is warranted. The Proceedings Authorization Committee may authorize disciplinary proceedings or a more informal conclusion of the matter. The authority for the Proceedings Authorization Committee is found in the *Law Society*

Act and By-Law 11. If your matter is referred to the Proceedings Authorization Committee, you will be notified of the outcome.

The matter becomes public if the Proceedings Authorization Committee authorizes a hearing and a Notice of Application is issued and served upon you. The Notice of Application is a public document that outlines details of the allegations against you.

Disciplinary proceedings and hearings

A hearing is authorized when the Proceedings Authorization Committee has reasonable grounds to believe that you,

- have engaged in professional misconduct or conduct unbecoming a lawyer or paralegal;
- have failed to meet the standards of professional competence;
- are incapacitated.

A Hearing Panel presides over the case and decides whether the allegations have been proven and if so, what penalty will be imposed.

Discipline proceedings are normally open to the public and are a matter of public record. They are governed by the Rules of Practice and Procedure.

Penalties

The Law Society’s Hearing Panel can impose a range of penalties. A Hearing Panel can issue a formal warning or a temporary suspension, can order you to pay a fine, revoke your licence (disbarment) or grant you permission to surrender your licence (permission to resign).

Either party may appeal the Hearing Panel’s decision, in which case the matter may progress to the Appeal Panel, subject to the Law Society’s legislation that governs appeals.

Timelines

The length of time it takes to resolve or close a complaint depends on the nature of the complaint and its complexity. Most complaints are resolved or the file is closed upon completion of the investigation – without the need for further regulatory action such as a hearing. If the complaint is complex or discloses serious regulatory issues, it can take up to a year or longer to complete the investigation. If the matter proceeds to a hearing, additional time will be added to the length of the process. About 5% of complaints are referred to the Proceedings Authorization Committee and may result in a disciplinary proceeding and hearing.

Closed complaints can be reviewed

If a complainant is dissatisfied when Complaints Resolution or Investigations staff close his or her complaint, the complainant can ask the Complaints Resolution Commissioner to review that outcome. This is not a right of appeal but, rather, a review of whether the Law Society acted reasonably. You do not participate in the review, however, the Commissioner will consider your comments to the Law Society in response to the complaint. If the Commissioner recommends that the Law Society take further action on the complaint, and if the Law Society agrees to take further action, you will be notified and will be given another opportunity to respond. The jurisdiction of the Complaints Resolution Commissioner and the complaints review process is found in the *Law Society Act* and By-Law 11.

Other obligations

In addition to the matters set out in this document, you have other professional, ethical and legal obligations. Among other things, you may be obliged to,

- give notice to your insurer and inform your client of an error or omission;
- report misconduct on the part of another lawyer or paralegal;
- reimburse the Compensation Fund as required for monies paid to victims because of your dishonesty.

Assistance

Most lawyers and paralegals are seriously concerned when they learn that they are the subject of a complaint to the Law Society. It may help to discuss the complaint and your response to the complaint with a partner, colleague or other trusted advisor. You may also wish to seek formal advice from another lawyer or paralegal.

Ontario Lawyers' Assistance Program

The Ontario Lawyers' Assistance Program (OLAP) is a confidential provincial program for judges, lawyers, law students and their immediate family members. The services that OLAP provides include professional counselling, peer support, assessment, resource information and referrals to specialized programs and centres. OLAP reflects the commitment and acknowledges the responsibility of the profession to assist lawyers who experience personal or professional distress.

For further information:
Website: www.olap.ca
Telephone: 1-877-576-6227
GTA: 905-238-1740

Discrimination and Harassment Counsel

As part of its efforts to enable equity and diversity in the workplace and the profession, and to help stop discrimination and harassment, the Law Society provides a Discrimination and Harassment Counsel (DHC) service free-of-charge to the Ontario public, lawyers and paralegals. The DHC confidentially assists anyone who may have experienced discrimination or harassment by a lawyer or paralegal.

Although the DHC position is funded by the Law Society, the DHC works independently from the Law Society. The DHC keeps all information received in strict confidence.

For further information:
Website: www.dhcounsel.on.ca
Telephone: 1-877-790-2200

Duty Counsel Programs

In the event that discipline proceedings are commenced against you, you are entitled to be present at the hearing with or without a representative. The Criminal Lawyers' Association provides *pro bono* duty counsel for unrepresented lawyers and paralegals at sittings of the Hearings Management Tribunal. In addition, the Advocates' Society runs a program that provides for *pro bono* duty counsel for unrepresented lawyers and paralegals at hearings before Hearing Panels.

Before both the Hearings Management Tribunal and the Hearing Panel, duty counsel provide limited services much like duty counsel in criminal courts. On hearing days, duty counsel provide assistance by speaking to adjournments, finalizing Agreed Statements of Facts, and speaking to penalties in cases where there is an admission of professional misconduct or conduct unbecoming a lawyer or a paralegal. Duty counsel are not entitled to be subsequently retained on the basis of a paid retainer.