



**TAB 4**

## **Report to Convocation November 21, 2013**

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### **Professional Regulation Committee**

#### **Committee Members**

Malcolm Mercer (Chair)  
Paul Schabas (Vice-Chair)  
John Callaghan  
Robert Evans  
Julian Falconer  
Janet Leiper  
William C. McDowell  
Kenneth Mitchell  
Ross Murray  
Jan Richardson  
Susan Richer  
Peter Wardle

**Purpose of Report: Decision and Information**

**Prepared by the Policy Secretariat  
(Margaret Drent (416-947-7613))**

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## COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on November 7, 2013. In attendance were Malcolm Mercer (Chair), Paul Schabas (Vice-Chair), John Callaghan, Robert Evans, Julian Falconer, Janet Leiper, William C. McDowell, Kenneth Mitchell, Ross Murray, Jan Richardson, Susan Richer, and Peter Wardle. Staff members attending were Zeynep Onen, Naomi Bussin, Janice LaForme, Sophia Sperdakos, and Margaret Drent.

TAB 4.1

**FEDERATION OF LAW SOCIETIES OF CANADA:  
CONSULTATION REPORT ON SUITABILITY TO PRACTISE  
STANDARD - LAW SOCIETY SUBMISSION**

**MOTION**

2. **That Convocation approve the Law Society Submission, set out at [TAB 4.1.1: Submission](#), responding to the Federation of Law Societies of Canada’s Consultation Report on a Suitability to Practise National Standard.**

**BACKGROUND**

3. In September the Paralegal Standing, Professional Development & Competence, Professional Regulation and Tribunals Committees all received a copy of the Federation of Law Societies’ (“the Federation”) Consultation Report on Suitability to Practise (good character). This report, set out at [TAB 4.1.2: Federation Consultation Report](#), has arisen out of the Federation’s identification of the following strategic priority:

To develop and implement high, consistent and transparent national standards for Canada’s law societies in core areas of their mandates.

4. To facilitate the Committees’ discussions of the report, a Working Group with representatives from each of the four Committees was established.<sup>1</sup> The working group met three times, providing a memorandum for committees and, based on the Committees’ discussions at two meetings, the submission set out at [TAB 4.1.1: Submission](#). The four committees have considered the submission and recommend it for approval and transmission to the Federation.

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<sup>1</sup> The members of the Working Group are Malcolm Mercer (Chair) and Susan Richer from this Committee, Janet Minor and Ross Earnshaw from the Professional Development and Competence Committee, Cathy Corsetti and Paul Dray from the Paralegal Standing Committee, and Raj Anand and Larry Banack from the Tribunals Committee.



**LAW SOCIETY OF UPPER CANADA**

**SUBMISSION ON**

**THE FEDERATION OF LAW SOCIETIES OF  
CANADA'S**

**NATIONAL SUITABILITY TO PRACTISE STANDARD**

**CONSULTATION REPORT**

**NOVEMBER 2013**

## **Introduction**

One of the Law Society of Upper Canada's ("the Law Society") legislative functions is to ensure that those who are licensed in Ontario are of good character. This requirement applies equally to lawyer and paralegal licensees.

With the introduction of national mobility, admission as a lawyer in one jurisdiction effectively opens the door to admission in all jurisdictions in Canada. While all Canadian law societies have good character requirements, there is currently no uniform national standard expressing what applicants for licensing must demonstrate to meet that requirement.

The Federation of Law Societies of Canada's National Admission Standards Project includes the development of a national good character standard to ensure that requirements are clearly articulated and defensible and that the process of assessing licensing applicants is consistent and fair across the country.

The National Suitability to Practise Standard Consultation Report ("the Consultation Report") seeks input from law societies on the proposed standard, which in the case of the Law Society of Upper Canada would apply to both lawyer and paralegal licensees.

The Law Society appreciates the Federation's work-to-date as a first step in the ongoing discussion among law societies on the development of the good character national standard. This submission provides the Law Society's preliminary views on the issues addressed, with comment on additional issues to consider going forward.

Its comments also anticipate that law societies will have a further opportunity to provide more detailed input as the proposed approach is more fully developed.

## **Discussion**

The Consultation Report considers and then accepts that there are valid regulatory reasons for law societies to continue to require applicants for a license to be of good character. It then sets out a proposed approach to assess whether applicants have met the requirements.

The Law Society's submission addresses each of these points, as follows:

1. Are there valid regulatory reasons to have a good character requirement?
2. If the good character requirement is to continue,
  - a. is the current approach to considering good character appropriate and sufficient, making the proposed changes unnecessary?
  - b. if changes are warranted, is the term "suitable to practice" an improvement over "good character?"
  - c. if changes are warranted, are the four behaviours set out in the Consultation Report, the appropriate ones?

## **Regulatory Reasons for a Good Character Requirement**

One of the criticisms of the good character requirement is that there is little evidence that an applicant's past conduct predicts misconduct after licensing. Critics suggest that the absence of predictive value means that law societies are expending resources for an activity that has no real regulatory benefit, does not protect the public and is unfair to applicants.

The Law Society agrees that there is little evidence that past misconduct is a meaningful predictor of future behaviour, particularly as it relates to future professional misconduct. Despite this, however, it is of the view that there are other reasons to continue the requirement, particularly if the enhancements discussed in the Consultation Report and elaborated upon later in this submission are introduced to improve the transparency and predictability of the standard.

It is important to convey to the public and the profession that licensees are required to comply with standards of professional conduct. One of the ways of doing so is to license those who, at the time of licensing, have demonstrated the behaviours discussed in the Consultation Report namely, respect for the rule of law and the administration of justice, honesty, governability and

financial responsibility. Underlying these behaviours is the principle that the profession must be worthy of clients' and the public's trust. If an applicant's past conduct has raised some question about his or her respect for the behaviours integral to the profession, it is valuable for law societies to make further inquiries and determine whether the applicant should be licensed. In this way, the Law Society's commitment to maintaining standards of professional conduct is demonstrated.

Furthermore, communicating a more clearly articulated good character requirement may deter some of those whose past behaviour raises concern, and who are not prepared to attempt to demonstrate an ability to maintain professional standards in the future, from applying for a license. Finally, through a more directed questionnaire developed to identify relevant past behaviours, the Law Society may be better alerted to those applications that merit further examination.

### **The Consultation Report's Focus on Four Behaviours**

The Consultation Report states that the term "good character" suffers from vagueness and potential subjectivity in application, providing little concrete guidance to applicants on the standard they must meet. The Consultation Report recommends replacing the current concept of character with one of "suitability to practise" with a focus not on character traits, but on four behaviours that are required of lawyers, and in Ontario, paralegals as well.

#### **Is the current approach to considering good character appropriate and sufficient, making the proposed changes unnecessary?**

The Law Society has considered the current approach to interpreting and applying the good character requirement, which has evolved largely through developing jurisprudence. For some, this approach best addresses the need for flexibility to consider individual cases. The reliance on jurisprudence provides direction and guidance, while allowing panels flexibility.

While some flexibility is important, overall the Law Society agrees with the Consultation Report that the current open-ended approach to the good character inquiry can lead to subjective analyses that provide little concrete guidance to applicants and adjudicators on the standard to be

met. It can also lead to inconsistent and potentially non-transparent licensing decisions, which is particularly problematic with national mobility.

The commitment to transparent, fair and effective self-regulatory processes necessitates improvements to the way in which good character requirement is defined, communicated and applied.

**If changes are warranted, is the term “suitable to practice” an improvement over “good character?”**

The change in terminology from “good character” to “suitability to practise” would not improve the process or enlarge the public or profession’s understanding of the requirement. “Good character” is a familiar term to many people, particularly as it is applied across many professions, trades and walks of life. A criticism of the term is that its vagueness allows for a wide range of interpretations, but the same objection could be applied to the term “suitability,” which has a variety of meanings. These include behavioural propriety, substantive competency, mental or physical fitness and social or cultural “fit.” Moreover, the term good character permeates law society legislative provisions and jurisprudence, suggesting that only a compelling rationale should result in a change.

The term “good character” should continue to be used provided that it is made clear that what is subject to inquiry is not open-ended, but rather focused on the standards of professional conduct required of lawyers and paralegals.

**If changes are warranted, are the four behaviours set out in the Consultation report, the appropriate ones?**

The Law Society examined the four behaviours that the Consultation Report specifies as relevant to law society inquiries, namely:

- Respect for the rule of law and the administration of justice
- Honesty
- Governability
- Financial responsibility

It also examined the draft questionnaire included in the Consultation Report, which highlights the relevant areas of inquiry under each named behaviour. The Law Society agrees that these four pillars are the main areas of behaviour with which law societies should be concerned, for the reasons set out in the Consultation Report. They highlight what should be the main concerns of a good character standard and make clear that inquiries into an applicant's good character are focused on specific professional obligations. Greater specificity in the good character standard, as illustrated by the four behaviours, should assist applicants to know the past behaviours that may affect their ability to be licensed. The public will also be made aware of the specific behaviours on which law societies place emphasis.

While the Law Society agrees that these are the primary behaviours with which law societies should be concerned, it is also of the view that there should be residual discretion for law societies to inquire beyond these four behaviours where circumstances warrant. This should not be open-ended and should require an adjudicator who makes a finding not based on the four behaviours to provide specific reasons for doing so. Reliance on this residual discretion should properly require careful analysis and explanation of the relevance of the past behavior to the professional responsibilities.

The adoption of the four behaviours, with a limited residual discretion, provides greater predictability to the good character inquiry without removing appropriate flexibility.

The Law Society also considered whether certain past misconduct should act as an absolute bar to licensing, either permanently or subject to conditions. Sometimes referred to as a bright line test, this approach would be applied without further investigation or hearing and with no possibility to consider context or relevant factors. Alternatively, such past misconduct might give rise to a presumptive bar to licensing, capable of being rebutted only by a sufficient passage of time since the misconduct occurred together with compelling evidence of rehabilitation.

Certain types of egregious misconduct may merit especially intensive scrutiny into the applicant's respect for the rule of law and the administration of justice, honesty, governability or

financial responsibility. The Law Society is of the view it is sufficient to focus particular attention on such conduct without requiring the rigidity of a bright line test.

In the Law Society's view, without limiting panels' ability to consider the facts of each case, it may be appropriate to provide some policy guidance on the types of misconduct that should give rise to greater scrutiny as well as on the evidence that should be considered in determining current good character. The Consultation Report discusses each of the four behaviours and the types of conduct under each that might raise regulatory concerns. Guidance or commentary such as that set out in the Consultation Report could be provided as the national standard is developed. The Consultation Report also discusses some of the factors that should be taken into account in assessing the relevance of past conduct on current character. These include the nature, seriousness, consequences of and penalties for the past conduct, as well as evidence of subsequent rehabilitation and compliance with the law. Policy guidance could usefully elaborate on the type of objective evidence that should be taken into account to enhance consistency of decision-making generally and in particular on the issue of subsequent rehabilitation.

The Law Society supports the adoption of guidelines as a means of increasing more consistent and fairer decision-making and transparency. Guidelines that are analogous to the commentary to the Rules of Professional Conduct should better assist law societies and adjudicators in decision-making, without interfering with flexibility.

Finally, the Law Society is of the view that within the behavior defined as "respect for the rule of law and the administration of justice" and the related questions, greater attention should be paid to specifying breaches of human rights codes as conduct that should be further investigated on a good character inquiry. Specific reference to respect for and adherence to human rights and equality principles sends an important message to those entering the legal profession.

### **A National Process and Questionnaire**

Having addressed the policy component of the Consultation Report, the Law Society also considered the report's consideration of a national implementation process and questionnaire.

The Law Society agrees that the goals of a national standardized questionnaire and similar information gathering, investigation, assessment and hearing processes are worth pursuing. At the same time, however, there must be careful consideration of purpose and utility. The Law Society suggests that a number of considerations are important to the development of a fair and effective system and to effective allocation of resources.

The system should remain primarily self-reporting. While there may be some areas in which independent verification of answers is important (e.g. criminal record checks) there should be a careful assessment of when this is actually necessary. Increasing the resources devoted to the assessment process and adding to the amount of information gathered as part of the process should only be done where there is sufficient reason to think that regulatory outcomes are actually improved and the purpose of the inquiry is directly connected to the regulatory goal.

The Consultation Report proposal is not yet specific enough to enable law societies to understand proposed benefits and assess the effect on resources. For example, the potential operational impact on law societies of the “gathering and verifying of information” and the “further investigation” components of the Consultation Report proposal, could be significant depending upon how proactive and resource intensive each step is. In the quest for a rationalized process law societies should not place burdens and costs on applicants and the profession that are not justified by improved regulatory outcomes. They must be proportionate to the benefits actually achieved.

Similarly, the Law Society has considered the proposed questionnaire. It supports the approach in which questions are posed under each of the relevant behaviours. This focuses attention on the relevance of each question to an identified behaviour integral to lawyer and paralegal professional responsibilities.

The Law Society is of the view, however, that further work must be done on the questionnaire. In particular, each question should be considered to determine whether it,

- directly addresses one of the behaviours that underpin the proposed national standard;

- is as specific as possible to ensure that applicants are not being required to over-report conduct that is not a reliable measure of their adherence to the standard;
- is not under-inclusive, leaving out important inquiries; and
- is focused on addressing the *conduct* that is relevant to the national standard. So, for example, law societies may not need to know about every “charge” pending against an applicant however trivial; their interest is better restricted to those circumstances when the conduct that is the subject of the charge is relevant to one of the four behaviours. Where questions are unnecessarily intrusive or vague and the value of the answers may be minimal they should be avoided.

### **Implementation of a National Standard**

The Consultation Report does not address how a national standard would be implemented. Although each law society has a good character requirement, the authority for and specificity of the requirement may differ from jurisdiction to jurisdiction. Depending upon the Federation’s proposed approach, law societies may have different views on how best to move the national standard forward.

So, for example, the Law Society has considered two possible approaches. The first is formal and prescriptive, entailing possible legislative, rule and by-law amendments to enshrine the national standard. The second is less prescriptive and more iterative, envisioning law societies adopting a national policy protocol to provide policy guidance for good character assessments. This would enable the introduction of the national standard with the ability to assess and refine it as necessary. In its preliminary consideration of the implementation issue the Law Society is of the view that the latter approach may be more appropriate, but further discussion of implementation issues will be important.

The Law Society encourages the Federation to address this issue in its next report to enable law societies to consider the potential implementation implications of the proposed national standard.

### **Conclusion**

The Law Society looks forward to the Federation’s further consultations with law societies following its consideration of comments on the Consultation Report. The more detailed the

Federation's next report, addressing law society concerns, such as those raised in this submission, the better able law societies will be to move forward in developing a national good character standard.

# National Suitability to Practise Standard



## Consultation Report

July 2013



## **NATIONAL SUITABILITY TO PRACTISE STANDARD CONSULTATION REPORT**

### **INVITATION TO COMMENT**

Law societies in Canada are mandated by statute to regulate the legal profession in the public interest. Setting appropriate standards for admission to the profession to ensure that lawyers and Quebec notaries are competent and understand their ethical obligations is a critical aspect of this mandate. While there is much common ground in the admission programs in Canada's 14 law societies, differences do exist.

Members of the legal profession in Canada today enjoy unprecedented mobility between jurisdictions. The mobility regime established under the Federation's mobility agreements – the National Mobility Agreement, the Territorial Mobility Agreement, and the Quebec Mobility Agreement and Addendum - permits members of the profession to move with ease between jurisdictions. Changes to the federal-provincial-territorial Agreement on Internal Trade have led to mobility rights for all licensed professionals and certified workers being enshrined in legislation.

Mobility has generated increased reflection about what the law societies do and why. With admission as a lawyer in one jurisdiction effectively opening the door to admission in all jurisdictions in Canada, mobility may make different regulatory practices difficult to justify as being in the public interest. Recognizing this, the Council of the Federation has identified the following strategic priority:

To develop and implement high, consistent and transparent national standards for Canada's law societies in core areas of their mandates.

The National Admission Standards Project reflects this priority.

In 2010, Canada's law societies agreed on a uniform national requirement that graduates of Canadian common law programs must meet to enter the licensing program of any of the Canadian common law jurisdictions. The national requirement, which will apply to graduates of existing and prospective law schools effective 2015, specifies the competencies and skills graduates must have attained and the law school academic program and learning resources law schools must have in place. The National Admission Standards Project is intended to build on this base by developing comprehensive standards for admission for implementation in each jurisdiction.

The Council of the Federation identified two goals for the first phase of the project: (i) developing a national profile of the competencies required upon entry to the profession; and

**July 2013**

(ii) the drafting of a common standard for ensuring that applicants meet the requirement to be of good character.

Through the collaborative efforts of senior law society admission staff members, professional credentialing consultants, and practicing lawyers, a profile of entry-level competencies – knowledge, skills and tasks – was developed. The National Entry-Level Competency Profile for Lawyers and Quebec Notaries was adopted by the Council of the Federation in September 2012. The profile has now been adopted by 13 of Canada's 14 law societies. Work is now under way to explore options for implementation of the profile by the law societies.

Law society policy and credentialing counsel (the Good Character Working Group) have also been working on drafting a common good character standard.<sup>1</sup>

Although applicants for admission to the profession across Canada are required to “be of good character”, there is no nationally agreed upon statement of exactly what an applicant must demonstrate to meet the requirement. The drafting of a common standard is intended to address this problem by ensuring that the requirements are clearly articulated and defensible and that the process of assessing candidates is consistent and fair. The Good Character Working Group (“the Working Group”) has reviewed relevant statutory requirements, academic literature and criticism, case law, current law society practices, and the practices of regulators in other countries and other professions to consider the policy rationale for the good character requirement, define the principles that should be reflected in a common standard, and recommend consistent processes.

The considerations and preliminary views of the Working Group are set out in the following consultation report. The goal of this consultation is to obtain the comments of law societies and other interested stakeholders on the Working Group's views to facilitate the final development of a national standard.

Detailed feedback is invited on any or all aspects of the report, in particular related to,

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<sup>1</sup> Concurrent with the drafting of a common good character standard, the Working Group explored the appropriateness of a “fitness to practise” requirement. Some law societies enquire into fitness to practise by asking applicants about their mental health, physical health, and substance abuse or addictions. The Working Group recommended that a Fitness Task Force be created to explore fitness issues more broadly, both at entry to the legal profession and throughout a legal professional's career. Due to other Federation priorities, the establishment of a Fitness Task Force has been deferred. The drafting of a National Suitability to Practise Standard will proceed without consideration of a fitness requirement at this time. A recommendation about fitness to practise in the context of the National Suitability to Practise Standard may be made in the future after the Task Force has been established and has completed its work. In the meantime, law societies may choose to continue their current practises concerning fitness enquiries on admission to the profession.

- the working group's consideration of the purpose of the good character assessment;
- the proposed use of the concept of "suitability to practise";
- the four elements that should form part of the national standard; and
- the proposed guidelines for applying the standard.

Interested stakeholders are encouraged to provide written comments by **November 30, 2013**. Please direct them to:

National Admission Standards Project  
Federation of Law Societies of Canada  
**consultations@flsc.ca**

**July 2013**

## **INTRODUCTION**

1. Applicants for admission to the legal profession bear the onus of showing that they are qualified for admission. Some qualifications, such as whether the applicant has the required law degree or has passed the bar exam, are straightforward to assess. Determining whether an applicant understands and can be expected to act in accordance with the standards demanded of lawyers and Quebec notaries<sup>2</sup> is more complex.
2. The provincial and territorial statutes under which Canadian law societies operate include requirements that members of the profession be of “good character”, “good repute”, or “fit and proper persons” (referred throughout this report as “good character”), and all regulators of the legal profession in Canada currently assess good character as part of the admission process. It has been suggested that the conceptual rationale for the requirement rests on the interrelated concepts of protection of the public and protection of the reputation of the profession.<sup>3</sup> Assessing character, it is argued, is essential for determining whether an applicant will adhere to the high ethical standards required of members of the profession.<sup>4</sup>
3. The legal profession is not alone in requiring that its members be of good character; most professions have similar requirements. In the case of the legal profession, the roles that lawyers and Quebec notaries play in the legal system and the nature of their relationships with their clients provide perhaps the strongest justification for the requirement.
4. Lawyers and Quebec notaries occupy a position of trust. The administration of justice, in which legal professionals play an integral part, can operate effectively only if those who function within it do so with honesty and integrity. Individual clients, the public at large, the courts, and the regulators must be able to rely on members of the profession to be honest and trustworthy. Clients require honest and candid advice, and tribunals and other members of the profession must be able to rely on the representations of legal counsel. As key participants in the justice system and as officers of the court, lawyers and Quebec notaries must also demonstrate respect for the rule of law and the administration of justice, and a willingness to be governed by the regulators of the

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<sup>2</sup> In Ontario, licensed paralegals regulated by the Law Society of Upper Canada, must also meet the good character requirement. As the licensing of paralegals is unique to Ontario and as Ontario’s paralegals do not fall under the Federation’s umbrella, the report refers to lawyers and Quebec notaries throughout.

<sup>3</sup> *Re Rajnauth and Law Society of Upper Canada* (1993), 13 O.R. (3d) 381 at 384

<sup>4</sup> *Law Society of Upper Canada v. Aidan Christine Burgess*, 2006 ONLSHP 0066 at para 10 (paraphrasing from *Preyra v. Law Society of Upper Canada*, [2000] L.S.D.D. No. 60) [“*Burgess*”]

profession. As fiduciaries for their clients legal professionals must place their clients' interests above their own at all times and must be capable of handling client funds honestly and responsibly.

5. While it seems reasonable to expect regulators to take steps to screen out applicants who pose a risk of breaching their ethical duties and harming their clients, the ability of good character assessments to achieve this goal has been the subject of discussion and criticism.
6. The Working Group was asked to consider whether there is a sufficient rationale for continuing to assess the character of applicants for admission and if it concluded there was, to draft a common good character standard for consideration and adoption by the provincial and territorial regulators of the legal profession. In doing so it has considered criticisms that the requirement's vagueness and inconsistency in application make its utility in protecting the public questionable. It has also considered whether, if the requirement is to continue, the process for conducting good character assessments could be improved.
7. The Working Group has reviewed the statutory provisions related to good character from each jurisdiction, the practices of each law society in applying the requirement, approaches to good character assessments of regulators of the legal profession outside Canada and of regulators of other professions, and academic criticism of good character assessments. It has also reviewed case law and hearing panel decisions from a number of Canadian jurisdictions.
8. This report first sets out the underlying rationale for continuing to have a good character requirement, although the Working Group recommends moving away from "character" to "suitability" and focusing not on personal attributes, but rather on the behaviour that is required of all members of the legal profession. This concept is discussed in detail below.
9. Next, the report describes four categories of conduct that the Working Group believes are relevant – respect for the rule of law and the administration of justice, honesty, governability and financial responsibility – and discusses the specific factors in each category that the Working Group thinks are relevant to an assessment of the applicant's conduct and suitability.
10. The report concludes with a description of the recommended process for conducting an assessment of an applicant's suitability to practise law, including the gathering of information and the conduct of hearings.

## **RATIONALE**

11. Canada's law societies are mandated by statute to regulate the legal profession in the public interest. Included in this statutory mandate is a duty to take reasonable measures to protect the public. Protection of the public requires regulators to endeavour to ensure that members of the profession are suitable to practise and will conduct themselves in a manner expected of them, both on admission and throughout their careers.
12. Public confidence in the legal profession is important to the effective administration of justice. Clients repose tremendous trust in the legal professionals they engage to assist them. The reputation of the profession is important to the maintenance of that trust. All reasonable efforts must be taken by the regulators to ensure that those they admit to the profession will conduct themselves in accordance with the high ethical standards required of legal professionals.
13. Candidates for licensing are expected to satisfy a number of requirements before law societies will admit them. These requirements establish a "point-in-time" assessment of candidates' qualifications. Licensing examinations and good character assessments are the two most prevalent point-in-time assessments on which law societies rely at the admission stage, measuring competence and suitability to practise.
14. Continued use of good character assessments has been criticized on the basis that they have limited predictive value. But it is not only predictive regulatory activities that are useful to protect the public. The purpose of good character assessments, as with licensing examinations, is to assess an applicant's suitability to practice at the time of application, not to predict the applicant's future conduct. They are a baseline that provides law societies with an initial measurement, but are by no means the end of the law society's monitoring of the member's character and competence. Good character assessments are but one of a number of tools at the disposal of regulators to monitor suitability throughout a lawyer's career. Practice and trust account audits, members' annual reporting requirements, complaints, and disciplinary investigations and proceedings are all used by law societies to assess suitability and competence over the course of the career of a legal professional.
15. As discussed above, the statutes or regulations governing the legal profession in every jurisdiction in Canada require applicants to the profession to be of good character. The Working Group has concluded that good character assessments represent an important first opportunity for law societies to review the conduct of applicants to determine whether they are suitable for the practice of law.
16. The Working Group is of the view that a good character assessment is a useful regulatory tool, however it agrees that there is room to improve both the definition and

the application of the standard. Appropriately refined, good character assessments can assist law societies in meeting the important goals of protecting both the public and the reputation of the profession. The Working Group's ideas for refining and improving both the standard against which applicants are assessed and the process for conducting the assessment are explored in the following section.

### **ELEMENTS OF A COMMON STANDARD**

17. The Working Group recognizes that the elements of the standard that applicants must meet should be firmly rooted in the realities of ethical legal practice and should be as clear as possible. In an effort to bring greater clarity to both the standard and the assessment process, the Working Group recommends replacing the concept of "character" with one of "suitability to practise" and focusing not on character traits, but rather on the behaviour that is required of all members of the profession.
18. Although precise descriptions vary, the following definition of good character from one Nova Scotia Barristers' Society decision is representative: "good character refers to the character traits of an ethical lawyer."<sup>5</sup> Others have described character as "the combination of qualities or features distinguishing one person from another."<sup>6</sup>
19. Critics have suggested that such definitions are vague, potentially subjective, and, as a result of their lack of precision, provide little concrete guidance to applicants on the standard they have to meet. The Working Group sees some merit in these criticisms. In its view, however, by focusing on suitability and identifying conduct directly related to the practice of law, the standard can be made clearer and fairer.
20. To identify the conduct that is relevant to the practice of law and therefore the determination of an applicant's suitability, the Working Group began with an examination of the general requirements of practice. It notes that the practice of law requires that practitioners adhere to high ethical standards, exercise good judgment, uphold the rule of law and the administration of justice, be accountable, comply with the legal and regulatory obligations imposed on members of the legal profession, provide honest and candid advice to clients, accept responsibility for their decisions and conduct, and handle client money reliably and responsibly. This means that members of the profession must act with integrity, candour, honesty, and trustworthiness.

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<sup>5</sup> *Christopher Ian Robinson v. The Nova Scotia Barristers' Society*, 2008 NSBS 4 (CanLII) at para 52.

<sup>6</sup> *Re P (DM)*, decision of a panel of the Law society of Upper Canada [1989] O.J. No. 1574 at 22, cited in Alice Woolley, "Tending the Bar: The "Good Character" Requirement for Law Society Admission" (2007) 30 Dalhousie L.J. 27 at 36.

21. The Working Group considers that in assessing whether an applicant is likely to meet these expectations and so be suitable for the practise of law information on an applicant's conduct in the following areas is relevant:

- i. Respect for the rule of law and the administration of justice
- ii. Honesty
- iii. Governability
- iv. Financial responsibility

***i. Respect for the rule of law and the administration of justice***

22. The rule of law is a central characteristic of a just society. Members of the legal profession are key participants in a justice system that advances the rule of law and should therefore be expected to uphold and demonstrate respect for the rule of law and the administration of justice by acting in accordance with the law. Public confidence in the legal profession would suffer if an applicant who does not show this respect were to be admitted to the practice of law.
23. Evidence of criminal convictions, failure to comply with court orders, abuse of court processes, contempt of court, or participation in an organization that advocates violence or unlawful discrimination may demonstrate that an applicant lacks the required respect for the rule of law and the administration of justice.
24. Participation in offences involving dishonesty, fraud, perjury, bribery, and obstruction of justice are of particular concern as they demonstrate that the applicant has engaged in conduct that demonstrates that the applicant lacks the required ability to act with the honesty and integrity necessary to practise law.
25. Although past conduct may not predict future conduct, evidence of past misconduct does merit further inquiry as it inevitably raises questions about the applicant's understanding of the conduct required of a member of the profession. The circumstances of the past misconduct, the applicant's actions since the misconduct, and the applicant's insight into the incident should all be considered in determining whether, notwithstanding the past misconduct, the applicant is currently suitable to practise law.
26. In determining the relevance of past misconduct to the applicant's current suitability, law societies should consider the following:
- a) the nature and seriousness of the misconduct including its relevance to the practice of law;
  - b) the age of the applicant at the time of the conduct;
  - c) number of offences or incidents of the misconduct;

- d) the length of time between the conduct in question and the application;
- e) evidence of remorse;
- f) evidence of rehabilitation including but not limited to acknowledgments that the conduct was wrong and acceptance of responsibility for the conduct; treatment and/or counselling; compliance with any disciplinary sanctions, sentences, or court orders; conduct since the offences or misconduct, including evidence of positive social contributions through employment, community or civic service;
- g) evidence of the applicant's current understanding that the conduct was wrong.

**ii. Honesty**

- 27. Members of the legal profession are in a position of trust and are expected to conduct themselves honestly in their dealings with and representation of their clients. Failure to demonstrate the required honesty will undermine the confidence a client has in her legal counsel, public confidence in the profession, and the effective administration of justice.
- 28. Evidence that an applicant has engaged in dishonest conduct, including crimes of dishonesty, professional or academic misconduct, and breach of trust, requires further investigation. As in the case of misconduct that calls into question an applicant's respect for the rule of law and the administration of justice, the circumstances, intervening conduct, and insight into the dishonest conduct are all relevant considerations.
- 29. A pattern of dishonest behaviour may indicate that an applicant does not possess the required honesty to practise law, but is not necessarily an automatic bar to admission. As in the case of all other misconduct it is the applicant's current suitability that is at issue. In assessing the relevance of past dishonest behaviour to current suitability the following should be taken into consideration:
  - a) the applicant's age at the time of the conduct;
  - b) whether the dishonest acts were committed to achieve personal gain or advantage;
  - c) the impact on others of the dishonest behaviour;
  - d) evidence of the applicant's understanding of the matter and acceptance of responsibility;
  - e) compliance with any sanctions for the dishonest conduct;
  - f) evidence of rehabilitation;
  - g) the passage of time since the dishonest acts and the applicant's conduct in the interim.
- 30. Failure to disclose all relevant information or a lack of candour in the admission process is also relevant to the assessment of the ability of the applicant to conduct themselves with honesty. Not every inaccuracy, however, will be a bar to admission. In determining

the relevance of any misrepresentation or lack of candour, the following should be taken into consideration:

- a) whether the applicant has deliberately provided false or misleading information, or has demonstrated recklessness or wilful blindness in relation to the information provided;
- b) whether the information in question is material to the application for admission.

**iii. Governability**

- 31. The regulators of the legal profession are charged with ensuring that the public interest is protected. Applicants for admission to the legal profession must demonstrate a willingness to accept the authority of the law society, and an understanding of the importance of effective governance of the profession to the protection of the public. They must be prepared to comply with the regulations in place to protect clients, the administration of justice, and the public, and must respond to the law society appropriately and in a timely manner in order to facilitate effective and efficient regulation.
- 32. Information about the regulatory history of an applicant who has previously been subject to professional regulation in another profession or jurisdiction is relevant to a determination of whether the applicant has demonstrated the required willingness to comply with professional regulation. Evidence that an applicant has been the subject of a serious disciplinary finding, sanction or action by a regulatory body or that an applicant has been refused registration by a regulatory body may raise questions about the applicant's willingness to accept the authority of the regulator. The circumstances of any regulatory sanction or refusal to license must be examined. Matters relevant to an assessment of the relevance of such actions to the determination of the applicant's suitability to practise include:
  - a) when the sanction or other action or the refusal to license occurred;
  - b) whether the applicant accepted responsibility for the underlying conduct;
  - c) the seriousness of the underlying conduct;
  - d) evidence of rehabilitation;
  - e) evidence of subsequent compliance with regulatory authority.

**iv. Financial responsibility**

- 33. Evidence of lack of financial responsibility is relevant to the assessment of suitability to practise in a number of ways. Lawyers and Quebec notaries act as fiduciaries for their clients and may be entrusted with significant amounts of money. Once money has been deposited into a lawyer's or a notary's trust account clients have little or no direct control

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over the money they have entrusted; they must rely on their legal counsel to handle their money with integrity and in accordance with their instructions. It is essential that members of the legal profession be honest in dealing with client funds and that they handle the funds in a professional and responsible manner consistent with their fiduciary role.

34. Public confidence in the handling of client funds by lawyers and Quebec notaries may also be undermined if members of the profession demonstrate an inability to handle their personal finances. An applicant's ability to handle client funds responsibly may be called into question if the applicant has been wilfully financially irresponsible in the past. Serious financial difficulties may also present a risk that an applicant will misuse client funds.
35. Evidence of financial problems, mismanagement or neglect of financial responsibilities including, for example, unpaid court judgments or liens, failure to make child support payments, defaulting on debts or bankruptcy raise questions about an applicant's financial responsibility. In order to determine whether an applicant is guilty of deliberate financial mismanagement or avoidance of financial responsibility or is simply an honest, but unfortunate debtor it is essential to examine information on the details surrounding any bankruptcy or other financial problems. Factors to consider include the following:
  - a) the circumstances surrounding any bankruptcy or other financial problems, including, in particular, any evidence of wilful financial mismanagement or exceptional circumstances beyond the control of the applicant that could not have reasonably been foreseen;
  - b) the nature of the debt at the time of bankruptcy or other financial difficulty;
  - c) actions, if any, taken to discharge debts;
  - d) the applicant's financial situation since the bankruptcy or other financial problems including the applicant's recent credit history;
  - e) the passage of time since the bankruptcy or other financial difficulty; and
  - f) evidence, if any, of the handling of funds for others since the bankruptcy or other financial problems.

#### **GUIDELINES FOR APPLYING THE STANDARD**

36. The Working Group recognizes the value in bringing greater consistency to the assessment of suitability to practise. Identifying both a common process for the assessments and a set of common factors that should be considered is likely to promote consistency both within individual jurisdictions and between jurisdictions. The latter aspect is particularly important in this era of ever-increasing mobility of members of the profession between jurisdictions.

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37. The assessment process can be divided into the following possible stages: preliminary gathering and verifying information, further investigation, assessing information, hearings, and appeals. The following sections describe a template for the different stages.

#### ***Gathering and verifying information***

38. Law societies currently employ a variety of means of gathering information from which to assess whether an applicant has demonstrated that they are suitable to practise. Self-reporting by applicants through a series of questions on the admission application is a common element and one that the Working Group believes should be preserved. The Working Group has drafted a proposed standard questionnaire (attached as Appendix "A") that includes questions relating to the four categories of conduct discussed above: respect for the administration of justice and the rule of law; honesty; governability; and financial responsibility. The draft standard questionnaire also includes the rationale for the questions and guidance for assessing the answers. Using a common questionnaire will promote consistency in suitability assessments both within and across jurisdictions.
39. Independent verification of the information provided by applicants is not now carried out in all jurisdictions, and where it is, it is not done consistently. The Working Group suggests that obtaining information from independent sources – for example criminal records checks, court registry databases, certificates of standing and reports of disciplinary history from other regulatory bodies, references from third parties, and reports or certificates from articling principles – is important and recommends that such independent verification be included in the standard and undertaken by all jurisdictions.

#### ***Further Investigation***

40. For the majority of applicants the inquiry into suitability will end with the answers to the questions on the application form and a review of the independently obtained information. In some cases, however, the information provided about the applicant's past conduct will trigger further inquiry. This further investigation may be undertaken by law society staff or by independent investigators retained by the law society. The scope of any additional investigation will vary according to the facts of each case, but in all cases it should involve gathering additional information, either from the applicant directly, through further independent verification, or both. Information should be obtained about the circumstances of any past misconduct revealed on the application, the applicant's intervening conduct, and the applicant's current understanding of the incident(s) to determine whether, at the time of application, they are suitable to practise law.

### ***Assessing Information***

41. Following the preliminary gathering and verification of information and any further investigation an assessment of the applicant's suitability to practise (good character) must be made. Practices vary between law societies – in some staff are mandated to undertake this assessment while in others the assessment is made by a committee comprised of benchers or members of council. In each case, it is important that the information be assessed against the factors discussed above, including the nature and seriousness of the conduct at issue, the passage of time since the conduct, and the applicant's current understanding of the conduct.

### ***Hearings and Appeals***

42. In the event of a negative assessment of an applicant's suitability, procedural fairness requires that the applicant be given an opportunity to be heard. A negative assessment triggers a right to a hearing and applicants who are unsuccessful at the hearing must also have a right of appeal or review.
43. The applicant must be provided with written reasons for the negative assessment and the law society must disclose all information that it intends to rely on at a hearing into the applicant's suitability.
44. At the hearing the law society must prove on a balance of probabilities that there is a factual basis for questioning the applicant's suitability, for example evidence of misconduct that bears on the likelihood that the applicant will conduct themselves appropriately if admitted to the practise of law. Where this factual basis has been established, the onus is on the applicant to rebut (on a balance of probabilities) the presumption that they are not suitable to practise law.
45. Written reasons of the hearing or appeal decision must be provided.

### **CONCLUSION**

46. The screening of applicants for licensing as lawyers or Quebec notaries – whether to determine their character or their suitability to practise law – raises a number of important and challenging issues. In its suggested approach to a common standard the Working Group has endeavoured to respond to the major criticisms of the current approach by proposing criteria and processes that can be applied consistently across the country.

47. The final determination of how to address suitability or character assessments cannot be made without your feedback. We encourage you to comment on any of the issues raised in the report.

**DRAFT STANDARD QUESTIONNAIRE****To the Applicant:**

Law societies regulate the legal profession in the public interest. One of the most important decisions that law societies make is who they license to practise law. The public interest requires that all applicants prove they are suitable to practise.

Law societies assess the suitability of applicants in many ways, but the following factors are particularly relevant and important:

- Respect for the rule of law and administration of justice
- Honesty
- Governability
- Financial responsibility

The questions in the following questionnaire are one of the primary ways in which law societies obtain the information necessary to assess an applicant's suitability.

The questions that follow are arranged under headings based on the factors set out above. In general, all positive answers to the questions set out in the sample questionnaire will be investigated. A positive answer does not necessarily mean that the applicant will be refused admission to the law society. Follow-up questions or further investigation may be pursued, and the applicant may, in certain circumstances, be entitled to a hearing into the issues raised by their answers.

In answering the questions, the applicant must disclose all material information relating to their application, including any matters that have occurred in Canada and elsewhere. Law societies regard failure to disclose material information as prima facie evidence of dishonest behaviour.

All records or required information must be provided along with the licensing application or the application will be considered incomplete.

**Criminal background check:** you must submit with this application, the result of a criminal record search conducted by a municipal, regional, provincial, or federal police force issued within the past 90 days

**Respect for the Rule of Law and the Administration of Justice**

Respect for the rule of law and the administration of justice is essential to a free and democratic society. Although all members of such a society should show this respect, it is particularly important that those who work in the justice system do so. Information about past conduct that raises questions about an applicant's respect for the justice system warrants further

## Appendix "A"

investigation to determine if the applicant will conduct themselves with honesty and integrity and will comply with the ethical rules governing members of the legal profession.

The questions below seek to identify conduct that may suggest a lack of respect for the justice system. There will be overlap with other categories, such as honesty and governability.

1. Have you, or has any business that you control, ever been found in contempt of an order of a court or an administrative tribunal?
2. Have you, or any business that you control, ever violated an order of a court or an administrative tribunal?
3. Has a court ever made a finding:
  - a. That you, or any business that you control, is a vexatious litigant?
  - b. That you, or any business that you control, has abused the process of the court?
4. Have you ever failed to respond to a warrant or subpoena?
5. Has there ever been a conviction or finding of liability against you, or any business that you control, involving a breach of trust, fraud, perjury, misrepresentation, deceit, forgery, dishonesty, or undue influence in any civil, criminal, or administrative proceeding?
6. Has a court or an administrative tribunal ever determined that your evidence was not credible?
7. Are there any outstanding warrants, judgments or court orders against you or any business that you control?
8. Have you, or any business that you control, ever been the subject of an order enjoining you from the unauthorized practice of law, or are there any outstanding allegations of unauthorized practice of law outstanding against you or any business that you control?
9. Have you ever been charged in Canada or anywhere else with a crime, offence, or delinquency under any statute, regulation, ordinance or law?
10. Are you a member of an organization that advocates violence or unlawful discrimination?

**Honesty**

The administration of justice, in which members of the legal profession pay an integral part, can operate effectively only if those who function within it do so with a commitment to honesty and integrity.

**Appendix "A"**

The public, the courts, and the regulators require members of the profession to be free of deceit. It is essential that they be able to rely upon representations made by a member of the profession as truthful.

Lawyers and Quebec notaries have a professional obligation to give honest and candid advice. If a client has any doubt about the honesty or trustworthiness of their legal advisor an essential element of the solicitor/client relationship is missing.

A lawyer is an officer of the court. As such, a lawyer has special responsibilities to the administration of justice, including the duty to be candid and the prohibition against deceiving or misleading the court.

Dishonest conduct on the part of a member of the legal profession brings discredit upon the profession and the administration of justice.

1. Have you ever been refused admission to any post-secondary institution or similar institution for the stated reason of dishonesty or other misconduct?
2. Have you ever been suspended, expelled or penalized for misconduct (including warning, placed on probation, permitted or advised to resign in lieu of discipline) while attending a post-secondary institution?
3. Are you currently the subject of any allegations or misconduct by a post-secondary institution?
4. Have you ever been refused admission as a student-at-law, articled clerk, or similar position in any other professional body?
5. While undertaking studies for the purpose of admission to a professional body (law or other) have you ever been suspended or expelled or penalized for misconduct (including warning, placed on probation, permitted or advised to resign in lieu of discipline)?
6. Have you ever been discharged, suspended, disciplined, or permitted to resign from employment in lieu of discipline due to allegations of misconduct? Misconduct includes dishonesty or human rights code violation or other inappropriate conduct.
7. Have you ever been a member of a group that advocates conduct that violates the Criminal Code, human rights or privacy legislation? If you answer yes, please provide the name of the group and describe the extent of your participation in it.

**Governability**

The regulators of the legal profession are charged with insuring the public interest is protected. Members of the profession must demonstrate respect for the authority of the regulator and a willingness to comply with the professional standards in place to protect clients, the administration of justice, and the public. Lawyers and Quebec notaries must respond to the regulator appropriately and in a timely manner in order to facilitate effective and efficient regulation. They must demonstrate that, if they have previously been subject to professional regulation, they respected and complied with such regulation, despite any personal differences or disagreements they may have had with their regulatory body.

The following questions seek information as to whether or not the applicant will accept governance by their regulator. Law societies ask questions about the regulatory history of applicants to assess whether the applicant has demonstrated the required willingness to comply with professional regulation. Law societies must also know if the applicant has been refused entry into a regulated profession due to good character concerns. Evidence of failure to comply with professional regulatory requirements or denial of admittance to any profession may call the applicant's suitability to practise or governability into question.

1. Have you ever been suspended, disqualified, censured or disciplined as a member of any profession or organization or as the holder of a public office?
2. Have you ever been denied a licence or had a licence revoked for any business, trade or profession?
3. Have you ever been or are you currently the subject of any charges, complaints, grievances (formal or informal), investigations, findings, proceedings, or concerns regarding your conduct as a member of any profession or organization or as the holder of a public office?
4. Have you ever been cautioned, warned, or your conduct subject of a regulatory advisory by a Canadian law society?
5. Have you ever applied for and been refused a licence from a regulatory body where proof of good moral character or fitness to practise was required?

**Financial Responsibility**

There are two reasons it is important that applicants demonstrate that they are financially responsible.

The first is that clients entrust their legal advisors with significant amounts of money. Additionally, clients do so under circumstances in which they have little direct control over the

Appendix "A"

money they have entrusted. It is therefore essential that members of the legal profession deal with client's funds honestly and in a professional manner.

The second reason is that the public expects members of the legal profession to be business-like and financially responsible in their own affairs. An inability to manage personal finances may be indicative of an inability to appropriately manage client's funds.

Wilful financial irresponsibility raises serious concerns about an applicant's ability to handle client funds responsibly. Serious financial difficulties may also present a risk that an applicant will misuse client funds.

Bankruptcy will not automatically disqualify an applicant, but will require an investigation of the circumstances to determine, for example, whether the applicant is an honest but unfortunate debtor, or is deliberately avoiding responsibilities for their debts. Either way, it is important for law societies to ascertain the circumstances as they may go beyond financial mismanagement to ethical breach.

1. Are you now, or have you ever been a bankrupt, made a proposal under the *Bankruptcy and Insolvency Act*, or made any other formal declaration of insolvency?
2. Has any corporation, partnership, or business entity over which you have or had control become bankrupt or made a proposal under the *Bankruptcy and Insolvency Act*, or made any other formal declaration of insolvency?
3. Have you, in the last two years, been in default, or are you currently in default of any financial obligation, including any loan, debt or credit?
4. Have you ever misused your position to obtain financial advantage, or misused your position of trust in relation to vulnerable people?

**FOR INFORMATION**  
**REPORT ON JUDICIAL COMPLAINTS**

5. Attached as **Tab 4.2.1** for Convocation's information is a report prepared by the Director of the Professional Regulation Division on judicial complaints received by the Law Society regarding lawyers and paralegals.

## **REPORT OF THE DIRECTOR OF PROFESSIONAL REGULATION REGARDING JUDICIAL COMPLAINTS**

### **INTRODUCTION**

1. This report provides a brief analysis of the judicial complaints received by the Law Society since the implementation of the Civility Complaints Protocols between the Society and the Ontario Courts (the “Protocols”) to 31 July 2013.
2. The Protocols were developed by the Law Society in consultation with the Chief Justices of the Court of Appeal, the Superior Court of Justice and the Ontario Court of Justice. Formalized in September 2009, the Protocols set out a procedure for trial judges and justices of the peace to refer incidents of misconduct to the Law Society. They also provide for a process whereby judges can request that lawyers receive mentoring from a panel of senior members of the bar.

### **NUMBER OF COMPLAINTS RECEIVED**

3. While the Protocols were not finalized until in and around 31 March 2010, the Law Society and the Courts began following these Protocols in the late summer, early fall of 2009. Hence, complaints from judges which were received after 1 September 2009 are considered to be part of this joint endeavour and are the focus of this memorandum.
4. Between 1 September 2009 and 31 July 2013, the Law Society received **94 complaints** from judges in various courts (“judicial complaints”): 5 were received in 2009; 32 were received in 2010, 20 were received in 2011, 21 were received in 2012 and 16 have been received in 2013, as at 31 July. The following chart sets out the number of judicial complaints received in Professional Regulation, by calendar year, since 2000.<sup>1</sup>

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<sup>1</sup> In and around September 2009, when the Protocols were developed, a unique way to identify these complaints was developed in Professional Regulation’s case management system. However, prior to that time, there was no ability to identify complaints received from judges. For this memorandum, complaints opened between 1 January 2000 and 1 September 2009 were identified as judicial complaints if the complainant or additional complainant in the case was identified as a judge. Those complaints which were lodged by someone on behalf of a judge have not been included as there is no way they could be identified.

<b>YEAR</b>	<b>NUMBER OF COMPLAINTS</b>
2000	1
2001	3
2002	2
2003	3
2004	13
2005	10
2006	1
2007	3
2008	5
2009*	18
2010	32
2011	20
2012	21
2013**	16

\* Note that 13 complaints were received prior to the implementation of the Protocols

\*\* as at 31 July 2013

#### **ANALYSIS OF THE JUDICIAL COMPLAINTS RECEIVED POST-IMPLEMENTATION OF THE PROTOCOLS**

5. An analysis of the 94 judicial complaints received since 1 September 2009 reveals the following information.
  
6. **Types of Licensees**
  - (a) 64 complaints were made against 56 lawyers;
  - (b) 20 complaints were made against 18 paralegal licensees;
  - (c) 1 complaint was made against 1 paralegal applicant;
  - (d) 1 complaint was made against 1 lawyer applicant; and
  - (e) 8 complaints were made against 8 non-licensees.

7. **Originating Court and Process Followed**

Originating Court	Complaints Received in the Law Society		
	Total #	# Received through the CEO's Office	# Received Directly from the Judge
<b>Ontario Court of Justice</b>	<b>27</b>	11	16
<i>In Toronto</i>	16		
<i>Jurisdictions outside Toronto</i>	11		
<b>Superior Court of Justice</b>	<b>62</b>	23	39
<i>In Toronto</i>	29		
<i>Jurisdictions outside Toronto</i>	33		
<b>Divisional Court</b>	<b>1</b>	0	1
<b>Court of Appeal for Ontario</b>	<b>1</b>	1	0
<b>Federal Court of Canada</b>	<b>2</b>	2	0
<b>Manitoba Court of Queen's Bench</b>	<b>1</b>	1	0
<b>TOTAL</b>	<b>94</b>	38	56

8. **Mentoring**

Six licensees (involving 6 cases) have been referred for mentoring.

(a) In 11 cases, a request was made for mentoring:

(i) in 7 cases, it was determined that mentoring was not appropriate;

(ii) in 4 cases, it was determined that mentoring was appropriate.

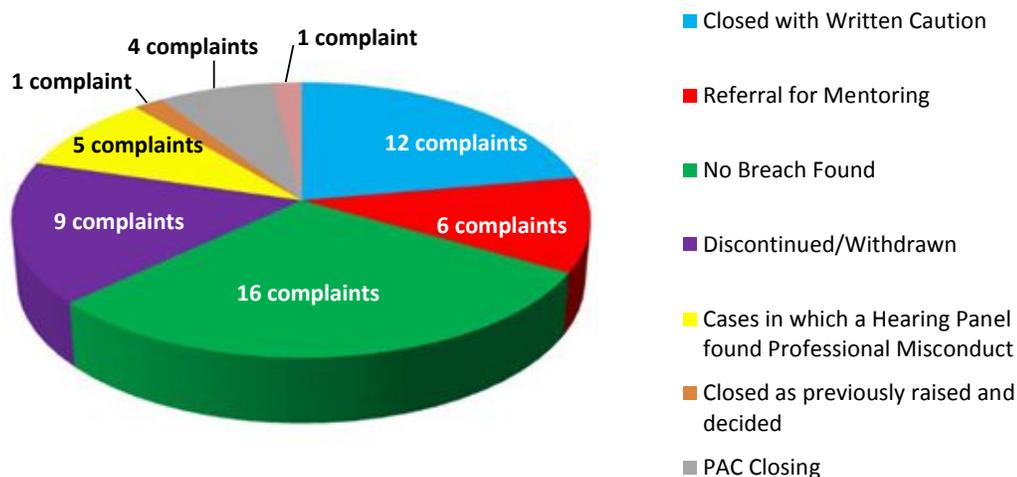
(b) In 2 other cases, it was also determined that mentoring was appropriate, although a formal request for mentoring was not made by the referring court.

9. **Open/Closed**

Process	# of open complaints	# of complaints in abeyance	# of closed complaints
Intake	1	0	8
Investigations	17	2	37
Discipline	19 (re 16 licensees)	0	7 (re 6 licensees/applicants)
Director's Office – Prosecutions	1 (unauthorized practice)	0	2
<b>TOTAL</b>	<b>38 complaints</b>	<b>2 complaints</b>	<b>54 complaints</b>

10. Of the 16 licensees currently in Discipline:
- (a) 3 are subject to interlocutory suspension orders;
  - (b) 1 is subject to an undertaking not to practice law;
  - (c) 7 are not entitled to practise for other reasons (e.g. current discipline or administrative suspension, retired, etc.)

The following chart provides a breakdown of the dispositions for the 54 complaints that have been closed:



11. **Timeliness**

(a) **Closed Cases**

With respect to the judicial complaints that have been closed:

- (i) The average age of the 8 cases closed in Intake was 81 days. With respect to the six cases in which the licensee was referred for mentoring, the age at closure ranged from 34 days to 151 days and averaged 104 days.
- (ii) The average age of the 37 cases closed in Investigations was 272 days. The oldest case took 813 days from initiation to closure; the youngest took 34 days.
- (iii) The average age of the 7 cases closed in Discipline was 855 days at the time of closure. The average length of the investigation in these cases was 388 days. The average age from the time the case came into Discipline until the matter was completed was 518 days.

**(b) Active Cases**

With respect to active cases as at 31 July 2013:

- (i) There is 1 active case in the Intake Department, in which mentoring is being arranged. It is 55 days old.
- (ii) The average age of the 19 active cases currently in Investigations is 217 days (i.e. from date of case creation). The breakdown of these cases is as follows:
  - 0 to 90 days = 6 cases
  - 90 to 180 days = 3 cases
  - 180 to 240 days = 2 case
  - 240 to 540 days = 7 cases
  - > 540 days = 1 case
- (iii) The average age of the 19 active cases in Discipline (from date of case creation) is 915 days. Further,
  - the average length of the investigation of these cases was 321 days; and the average length of time between the date the case was transferred into Discipline to 31 July 2013 was 593 days.
- (iv) With respect to the 16 licensee/applicant matters in Discipline,
  - 1 matter is pending at PAC;
  - 13 matters (8 lawyer conduct, 3 paralegal conduct and 3 lawyer capacity) are in the hearings process;
  - In 2 matters, the hearing has concluded and appeals have been launched by the licensee/applicant. In 1 matter, the licensee's appeal to the Appeal Panel was dismissed and he has now appealed to Divisional Court. In the other matter, the applicant is appealing the Hearing Panel's cost order to the Appeal Panel (ordered in an abandoned licensing matter)

**12. Area of Law**

The following chart breaks down the 94 judicial complaints by area of law:

Area of Law	# of Complaints	% of Judicial Complaints
Civil Litigation	37	40%
Criminal/Quasi-Criminal	34	36%
Matrimonial/Family Law	18	19%
Estates/Wills	2	2%
Administrative/Immigration	3	3%

### 13. Types of Complaints

In 91 of the 94 judicial complaints received, there have been a total of 173 allegations raised.<sup>2</sup>

The following graph shows the number of allegations by case type (Governance Issues, Integrity issues, Service issues and Special Applications) that have been received:



■ Governance Issues (18%) ■ Integrity Issues (52%) ■ Service Issues (25%) ■ Special Applications(5%)

<sup>2</sup> Note that, in three cases, case types/allegations were not identified as of 31 May 2013.

- (a) With respect to the 89 allegations which raised Integrity issues:
  - (i) 42 allegations (47%) were for counseling/behaving dishonourably;
  - (ii) 17 allegations (19%) raised civility issues.
- (b) With respect to the 44 allegations which raised Service issues, 34 allegations (77%) were for failing to serve his/her client
- (c) With respect to the 31 allegations which raised Governance issues:
  - (i) 10 allegations (32%) were for practicing under suspension;
  - (ii) 9 allegations (29%) concerned the unauthorized practice by a non-licensuree
- (d) With respect to the 9 Special Application allegations, 8 allegations (89%) raised capacity issues.