

TAB 3
Report to Convocation
April 27, 2023

Professional Regulation Committee

Committee Members

Megan Shortreed (Chair)

Robert Burd (Vice-Chair)

Gerard Charette

Etienne Esquega

Julian Falconer

Cheryl Lean

Michelle Lomazzo

C. Scott Marshall

Geneviève Painchaud

Jonathan Rosenthal

Quinn Ross

Cheryl Siran

Andrew Spurgeon

Nicholas Wright

Purpose of Report: Information

Prepared by the Policy Division

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Annual Report of the Complaints Resolution Commissioner

January 1, 2022 – December 31, 2022

Submitted by Marilyn E. Marshall,
Complaints Resolution Commissioner

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A. Introduction

The Office of the Complaints Resolution Commissioner (Office of the Commissioner) is part of the broader organizational regulation of the conduct, capacity, and professional competence of licensed lawyers and paralegals. The role of the Complaints Resolution Commissioner (Commissioner) was established in 1998, by the *Law Society Amendment Act, 1998*. The role of the Commissioner is to “ensure that complainants are dealt with fairly and that complaints receive thorough attention.”¹

Section 49.14 of the *Law Society Act*, R.S.O. 1990, c. L.8 (Act) gives Convocation statutory authority to appoint the Commissioner in accordance with O. Reg. 31/99.

The Commissioner’s functions, powers of investigation, and right to access information are set out in section 49.15 of the Act. Sections 49.16 to 49.18 address administrative matters, and section 49.19 provides that decisions of the Commissioner are final and not subject to appeal. A copy of these sections is attached as Appendix 1.

Part 1 of By-Law 11², made pursuant to subsection 62(0.1) clause 38 of the Act, provides additional detail on which complaints are reviewable, the process that applies to the review, and the dispositions available following a review. A copy of Part 1 of By-Law 11 is attached as Appendix 2.

The Office of the Commissioner engages with the Law Society through the Office of General Counsel.

Under section 3 of By-Law 11, the Commissioner is required to submit an Annual Report to the Professional Regulation Committee of the Law Society “upon the affairs of the office of the Commissioner during the immediately preceding year.” The Commissioner also submits an Annual Report to the Paralegal Standing Committee.

This 2022 Annual Report covers the activities of the Office of the Commissioner for the 2022 calendar year, and includes statistical information, comparisons to prior years, and the Commissioner’s observations.

Marilyn Marshall was appointed Commissioner effective April 1, 2018. Ms. Marshall’s current term expires July 31, 2023.

B. The role of the Commissioner

By-Law 11 provides the Commissioner with two distinct functions: complaints resolution and complaints review.

¹<https://www.ola.org/en/legislative-business/house-documents/parliament-36/session-2/1998-10-07/hansard-1>

² By-Law 11 was made May 1, 2007 and was last amended October 24, 2019.

Complaints resolution function

The complaints resolution function provides the Commissioner with the statutory authority to perform a formal resolution role. While the resolution function has been available since 2007, to date, the Commissioner has not been called upon to perform the resolution function.

Complaints review function

By-Law 11 provides the Commissioner with the statutory authority to review a complaint if a complainant requests that the Law Society refer a reviewable complaint to the Commissioner for review.

Subsection 4(1) of By-Law 11 establishes four criteria for a complaint to be reviewable by the Commissioner. A complaint may be reviewed if,

- (a) the merits of the complaint have been considered by the Law Society;
- (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Division or Appeal Division;
- (c) the complaint has not been previously reviewed by the Commissioner; and
- (d) the Law Society has notified the complainant that it will be taking no further action in respect of the complaint.

Subsection 4(2) of By-Law 11 provides that a complaint may not be reviewed by the Commissioner if, in the opinion of the Commissioner, it concerns only the quantum of fees or disbursements charged by a licensee, requirements imposed on a licensee under By-Law 9 (Financial Transactions and Records) or the negligence of a licensee.

Subsection 5(3) of By-Law 11 requires that a request to refer a reviewable complaint to the Commissioner for review be made by the complainant within 60 days after the day on which the Law Society notifies the complainant that it will be taking no further action in respect of the complaint.

Referral of complaints to the Commissioner

Section 6 of By-Law 11 provides that the Law Society shall refer every reviewable complaint to the Commissioner, where a complainant has made a request under, and in accordance with, section 5. The licensee concerned is notified by the Law Society that the complaint has been referred to the Commissioner for review but does not participate in the review.

Fresh evidence

Subsection 7(1) of By-Law 11 provides that when reviewing a complaint that has been referred to the Commissioner for review, if the Commissioner receives or obtains information, which in the Commissioner's opinion is significant, about the conduct of the licensee who is the subject of the complaint that was not received or obtained by the Law Society as a result of or in the course of its consideration of the merits of the complaint, the

Commissioner shall refer the information and complaint back to the Law Society for further consideration.

Standard of review and outcomes

Subsection 7(2) of By-Law 11 requires the Commissioner to apply a standard of reasonableness in the review of the Law Society's consideration of a complaint and its decision to take no further action.

If the Commissioner is satisfied that the Law Society's consideration of the complaint and its decision to take no further action in respect of the complaint are reasonable, the Commissioner will notify the complainant and the Law Society of this decision. If the Commissioner is not satisfied that the Law Society's consideration of the complaint and its decision to take no further action in respect of the complaint are reasonable, the complaint will be referred back to the Law Society with a recommendation for further action. In either case, the Commissioner will provide reasons for the decision. The Commissioner will notify the complainant of this decision.

Subsection 7(4) of By-Law 11 states that if the Commissioner refers a complaint back to the Law Society with a recommendation that the Law Society take further action in respect of the complaint, or in respect of the licensee who is the subject of the complaint, the Law Society shall consider the recommendation and notify the Commissioner, complainant, and licensee who is the subject of the complaint, in writing, whether the Law Society will be following the recommendation. If the Law Society determines that it will not follow the Commissioner's recommendation for further action, subsection 7(5) of By-Law 11 requires that the Law Society provide the complainant, the Commissioner, and the licensee with a written explanation for its determination.

C. Complaints review process

Complainants are advised by staff in Investigations and Intake & Resolution of their right to request a review by the Commissioner if the merits of their complaint have been considered by the Law Society and it has been determined that no further action will be taken in response to the complaint. The Law Society's letter to the complainant refers them to the Law Society's website where a link to the Commissioner's Request for Review Form and Information Sheet can be found. A copy of the Request for Review Form is attached as Appendix 3 and a copy of the Information Sheet is attached as Appendix 4.

Where the complainant has submitted a request for a review within 60 days of the day they are notified by the Law Society that it will be taking no further action in respect of the complaint, the Office of the Commissioner confirms receipt of the request and notifies the Law Society.

Though notified by the Law Society of the request for review, pursuant to subsection 8(4) of By-Law 11, the licensee does not participate in the review and the Office of the Commissioner

does not communicate with the licensee. Once the review is concluded, it is the Law Society that notifies the licensee, in writing, of the Commissioner's decision.

Subsection 8(2) of By-Law 11 provides that "The Commissioner shall, where practicable, meet with each complainant whose complaint has been referred to the Commissioner for review, and the Commissioner may meet with the complainant by such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously." Prior to March 2020, complainants were offered a choice of a review being conducted in person, by teleconference or in writing.

In March 2020, due to the COVID-19 pandemic, in-person review meetings were no longer conducted. Complainants who had asked for an in-person review, and complainants in new requests received, were offered the option of a written review, an audio call meeting (by telephone or computer audio), or a video conference meeting. The availability of telephone meetings remains important for complainants with limited or no internet access. Under subsection 8(1) of By-Law 11, the Commissioner determines what procedures apply to the review of a complaint. For example, the practice has been that review meetings are not recorded, and complainants are asked to confirm they are not recording the meeting.

D. Statistical information

Number of requests for review

Of the 331 requests for review received by the Office of the Commissioner in 2022, 43 requests were not accepted for a review by the Commissioner for the following reasons:

- 23 requests for review were of Intake & Resolution decisions that had not been referred to the Commissioner as they were not reviewable complaints as defined in section 4 of By-Law 11. These included complaints not reviewed on the merits and complaints that dealt only with issues of negligence or fees.
- 12 requests were received beyond the 60-day time period for requesting a review.
- 3 requests were of Intake & Resolution decisions that had not been referred to the Commissioner as they were complaints regarding matters involving concurrent litigation and, as such, were not considered on the merits. Complainants are informed by the Law Society that they may resubmit their complaint once the litigation is completed.
- 2 requests were from decisions made by the Law Society's Complaints and Compliance Department in respect of complaints that were identified as outside the jurisdiction of the Law Society.

- 2 requests were not eligible for review as they were in respect of matters that were with Litigation Services (Litigation).
- 1 request was in respect of a decision of the Compensation Fund and was not reviewable by the Commissioner.

Number of files accepted for review

Of the 331 requests for review received by the Office of the Commissioner in 2022, 288 were accepted for review.

By comparison, in 2021 there were 316 requests for review received, of which 243 were accepted for review.

In 2020, of the 304 requests for review received, 254 were accepted for review.

Number of requests for review received

Table 1 – Comparison of requests for review received in 2022, 2021 and 2020

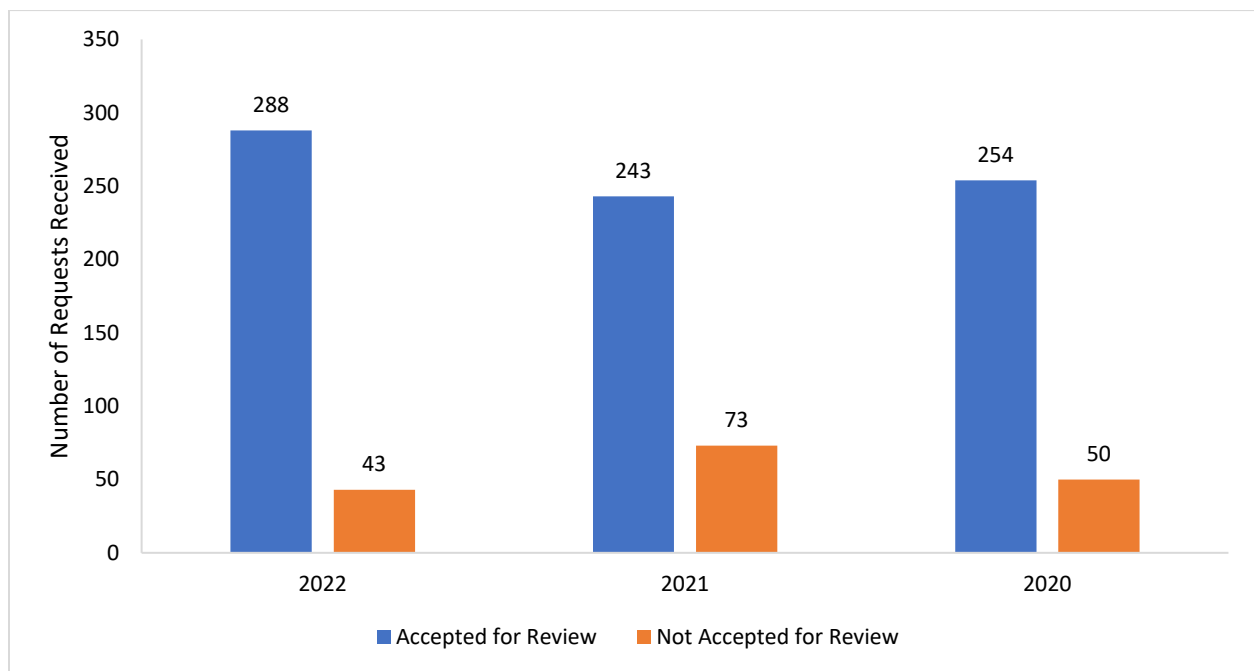


Table 1, above, includes a comparison of files accepted or not accepted for review for the years 2022, 2021 and 2020.

Number of reviews conducted

Table 2 – Comparison of reviews conducted in 2022, 2021 and 2020

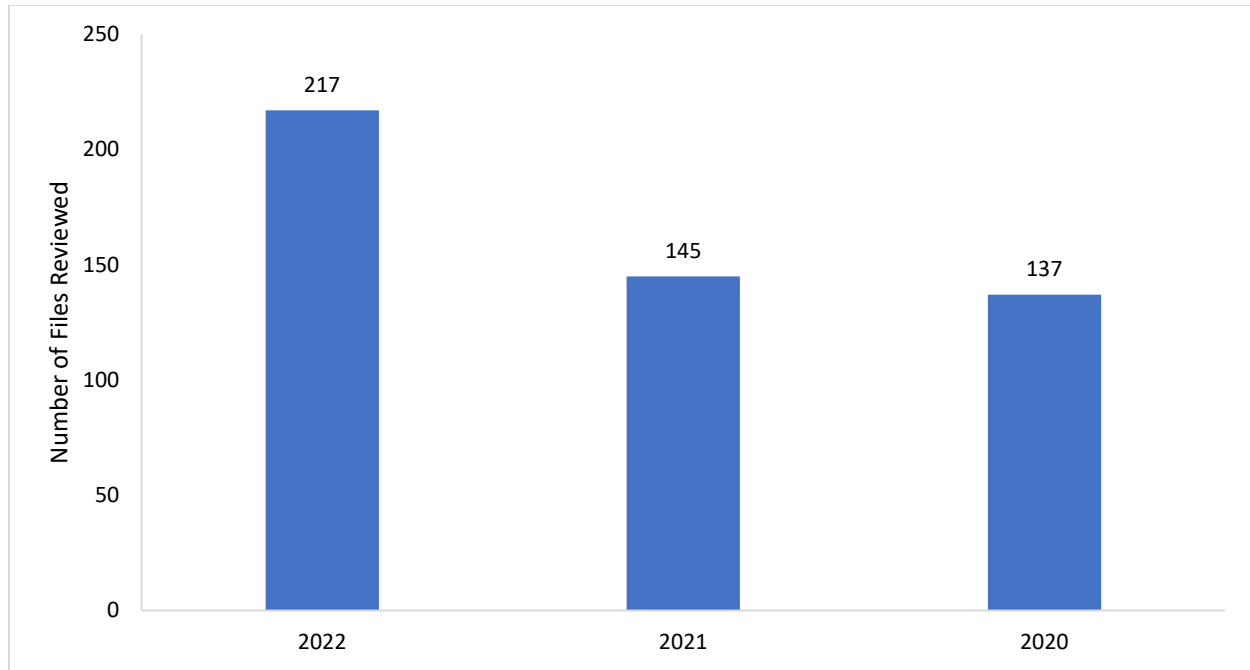


Table 2, above, provides a comparison of the number of files reviewed in 2022, 2021 and 2020. In 2022, the Office of the Commissioner reviewed 217 files. By comparison, 145 files were reviewed in 2021, and 137 files were reviewed in 2020.

Of the 217 files reviewed in 2022, 202 were complaints made against lawyers and 15 were complaints made against paralegals.

Of the 217 files reviewed in 2022, 200 were files from Intake & Resolution, 13 were files from Investigations, three were from the Office of the Director of Professional Regulation (PR), and one was from Litigation.

The Office of the Commissioner continued to offer French language reviews which were well received by complainants.

Table 3 – Geographic regions for files reviewed in 2022

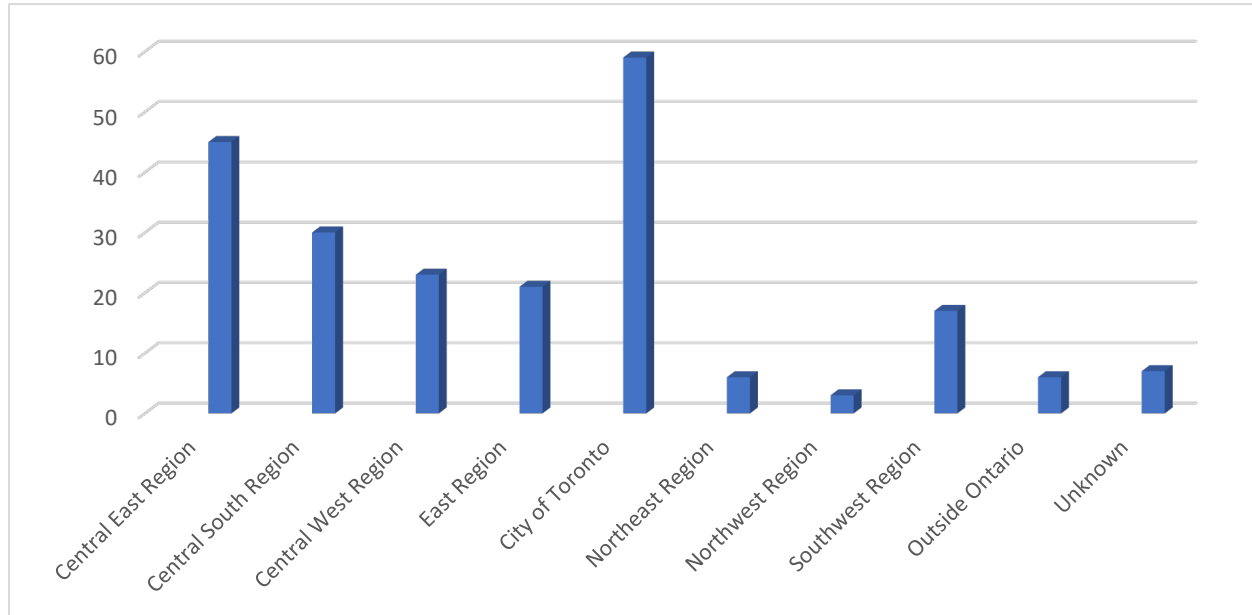


Table 3, above, depicts where the complainant resides for each of the complaints reviewed in 2022³. In 28% (59) of the reviews conducted in 2022, the request was received from a complainant who resides in the City of Toronto.

³ The regions in Table 3 are based on electoral regions for the Law Society as set out in section 6 of By-Law 3, attached as Appendix 5.

Format of review meetings

Table 4 – Comparison of format of reviews for 2022, 2021 and 2020

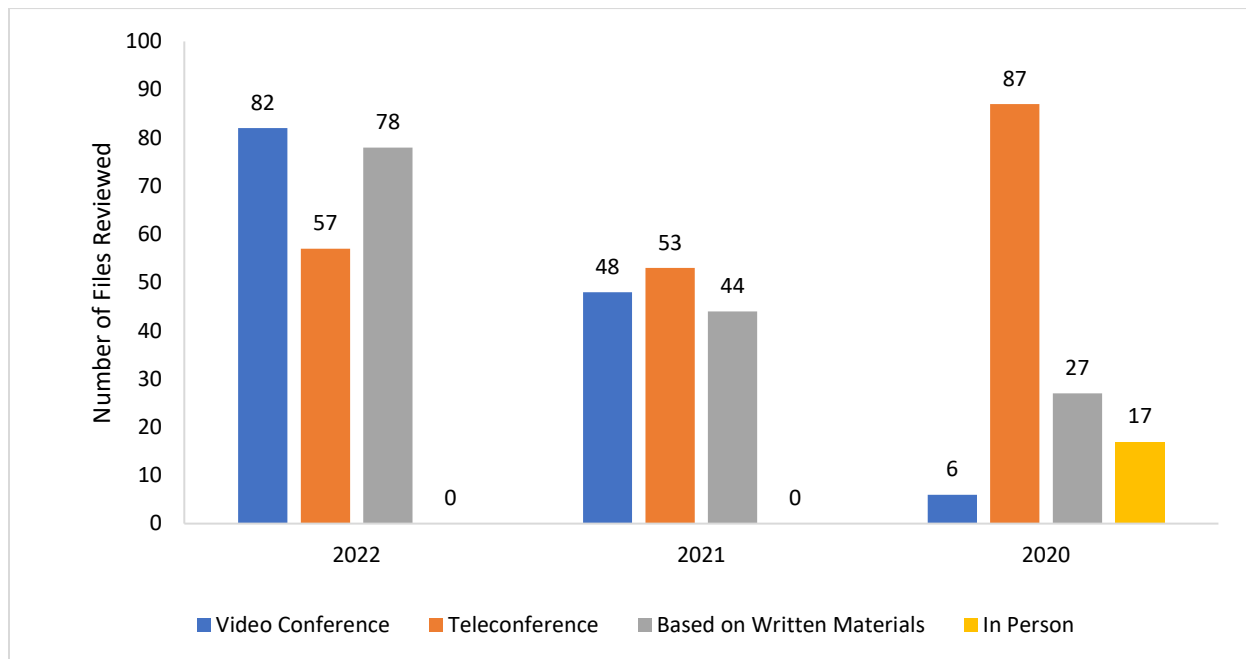


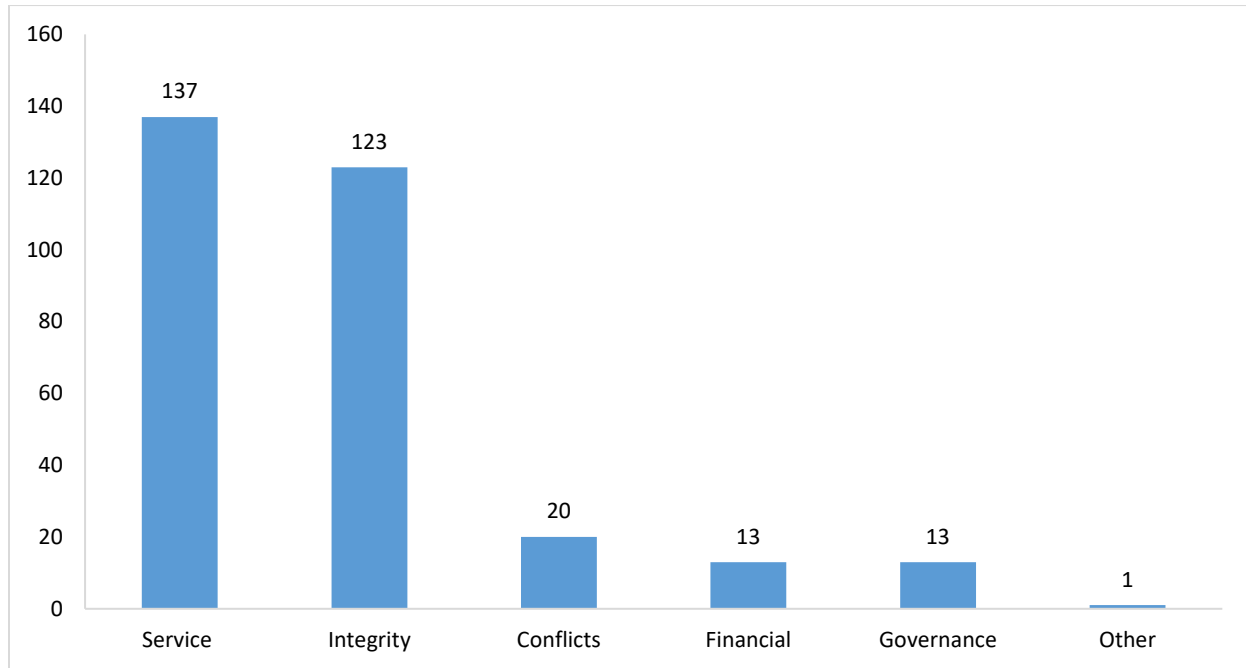
Table 4, above, indicates that of the 217 files reviewed in 2022, 82 (38%) proceeded by video conference, 57 (26%) were conducted by teleconference, and 78 (36%) proceeded based on the written material in the file.

When in-person meetings remained suspended in 2021 due to the COVID-19 pandemic, the Office of the Commissioner began offering complainants the option of having video conference meetings using the Zoom platform. Most teleconference meetings switched from using a dedicated teleconference line for the Office of the Commissioner to using the Zoom platform. The dedicated teleconference line continued to be used for complainants with limited or no internet access.

No in-person meetings were offered in 2022.

Regulatory issues by category for files reviewed

Table 5 – Regulatory issues by category for files reviewed in 2022



The Law Society tracks the regulatory issues raised in each file. Relying on the Law Society's categorization, Table 5, above, identifies the five categories of issues raised in the 217 files reviewed in 2022. Since the current case management system may record more than one issue in each file, the total number of issues identified exceeds the number of files reviewed.

In 2022, as in previous years, service and integrity issues continued to be the predominant issues raised by complainants.

Results of reviews conducted in 2022 with comparisons to 2021 and 2020

Figure 1 – Results of reviews conducted in 2022

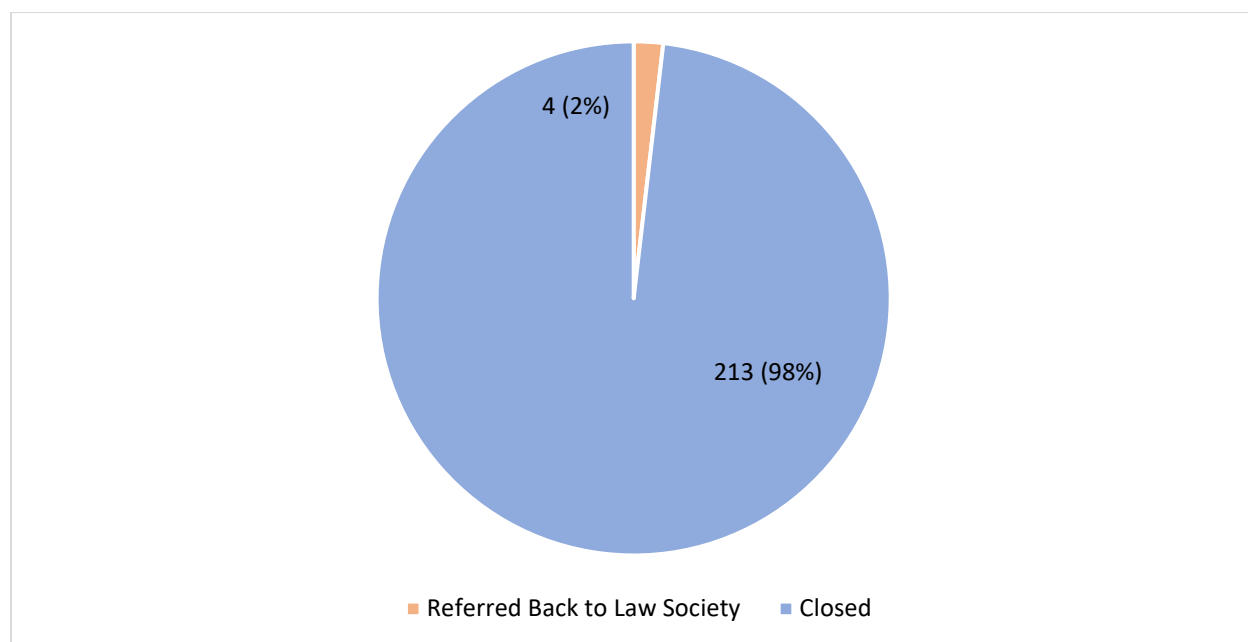


Figure 1, above, shows the outcome of the files reviewed in 2022 by number and percentage. The Commissioner reviewed and rendered a decision in 217 files. Of those 217 files, 213 (98%) remained closed and four (2%) were referred back to the Law Society with a recommendation for further action.

For the four files that were referred back to the Law Society, the Commissioner was not satisfied that the decision to close was reasonable and they were referred back pursuant to subsection 7(2)(b) of By-Law 11, with recommendations for further action.

There was one additional file that would have been referred back to the Law Society, however, the complainant withdrew his complaint shortly before the review formally proceeded but after a thorough internal review of the complaint file had been conducted. In this file, a memo regarding practice concerns was sent to the Executive Director of PR, but no decision letter was issued, and the file was not formally referred back to the Law Society.

In 2022, a new policy was implemented by the Office of the Commissioner that had a direct impact on the number of files referred back to the Law Society. In 10 files, where the complainant submitted new and significant information to the Office of the Commissioner or to Intake & Resolution (which new and significant information was then forwarded to the Office of the Commissioner), or if the Director of Intake & Resolution requested that the file be sent back to PR for its reconsideration, then, with the agreement of both offices, the files were sent back to PR prior to the Commissioner's review. The decision whether to send a file back before a review by the Commissioner depended in part on the content of the new and significant information and the issues raised in the complaint.

In 2021, in 13 of the 15 files that were referred back to the Law Society, the Commissioner was not satisfied that the decision to close was reasonable. Those matters were referred back pursuant to subsection 7(2)(b) of By-Law 11, with recommendations for further action. In one file, the Commissioner was satisfied that the Law Society's decision to close the file was reasonable based on the evidence available to the Law Society at the time of closing. However, the Commissioner referred the file back for further consideration, pursuant to subsection 7(1) of By-Law 11, as a result of receiving significant new evidence from the complainant. For the remaining file, the Commissioner referred the matter back to the Law Society pursuant to subsections 7(2)(b) and 7(1) of By-Law 11, as the Commissioner was not satisfied that the decision to close was reasonable, and the complainant had submitted significant new evidence.

In 2020, the Commissioner reviewed and rendered a decision in 137 files. Of those 137 files, 129 (94%) remained closed and eight (6%) were referred back to the Law Society with a recommendation for further action. In three of 129 files closed, while the Commissioner was satisfied that the decisions to close the files were reasonable in respect of the issues raised in the complaint, the Commissioner brought practice and process concerns to the Law Society's attention for its consideration.

Executive Director's response to files referred back to the Law Society in respect of reviews conducted in 2022 with comparisons to 2021 and 2020

In 2022, the Executive Director agreed to take further action on each of the four files referred back by the Commissioner to the Law Society.

In 2021, the Executive Director accepted the Commissioner's recommendation for further action in 11 files referred back, and declined to accept the recommendation for further action in four files. The Executive Director provided an explanation for the four files not accepted for further action.

In 2020, the Executive Director agreed to take further action on the recommendations made by the Commissioner on seven files referred back and declined to take further action on one file. The Executive Director also agreed to inquire further into three files where the Commissioner identified practice and process concerns.

E. Age tracking of files closed in 2022 with comparisons to 2021 and 2020

What follows is statistical data regarding the average time to advance a file through the complaints review process in 2022 with comparisons to 2021 and 2020.

Average age of reviews completed

	2022 (days)	2021 (days)	2020 (days)
Average age from the receipt of the request to the date the Commissioner's decision was released	509*	451	241
(a) Average age from the date the request for a review was received to the date PR was notified of the request	4	3	2
(b) Average age from the date that PR was notified of the request to the date that PR notified Office of the Commissioner that the file materials were uploaded to IRIS	118	144	65
(c) Average age from the date the file materials were uploaded to IRIS by PR to the date the review meeting was first scheduled	294	211	69
(d) Average age from the date the review meeting was first scheduled to the date the review meeting was conducted	71	61	84
(e) Average age from the date the review meeting was conducted to the date of the Commissioner's decision	22	32	43

*** The increase in time needed to complete the review process is due, in part, to the following:**

- On February 7, 2017, a reorganization of the Professional Regulation Division (PRD) (as it then was) was implemented and the Intake & Resolution Department was established. Where a complainant disagreed with the decision of Intake & Resolution, rather than referring the complainant to the Commissioner, the complainant was offered a managerial review by a manager of Intake & Resolution. This reorganization significantly decreased the number of files referred to the Commissioner for review.

On August 12, 2019, after discussions with the Office of the Commissioner and PRD, Intake & Resolution began advising complainants, whose complaints were closed in Intake & Resolution and that were eligible for review by the Commissioner, of their right to ask that their complaint be referred to the Commissioner for review.

- As well as receiving these new requests, Intake & Resolution had a number of files which had been closed prior to August 12, 2019, where the complainants had been offered and accepted a managerial review, but the review had not yet occurred. To assist with these outstanding files, complainants whose files were closed between

January 1, 2019 and August 11, 2019, and who had accepted a managerial review, were offered a review by the Commissioner. Unlike the 60-day time period in place under By-Law 11 for requesting a review by the Commissioner, no time limit had been in place for a complainant to ask for a managerial review. Between June 2019 and November 2019, the Office of the Commissioner received 102 of the outstanding Intake & Resolution files. While most of these 102 reviews were conducted prior to 2022, the receipt of these reviews *en masse* initiated the creation of a backlog.

- In early May 2020, a full-time contract counsel position in the Office of the Commissioner was terminated due to changes resulting from COVID-19. The position was not filled until Spring of 2021. The reduced staffing in the Office of the Commissioner decreased the number of reviews conducted during that period.

Active inventory as of December 31, 2022

There were 351 files in the Office of the Commissioner's active inventory as of December 31, 2022, with the following status:

- 52 files scheduled for review in 2023
- 13 files awaiting physical files or confirmation from the Law Society that electronic files are ready for Commissioner's review
- 286 files ready to be scheduled

The Office of the Commissioner typically schedules review meetings no more than three months out to minimize missed or cancelled review meetings.

F. Addressing the backlog

To address the backlog of files to be reviewed, the Office of the Commissioner instituted changes in staffing and processes.

Reorganization of the Office of the Commissioner

The position of Senior Coordinator, an administrative role, was changed to the position of Officer, a position that includes both administrative responsibilities as well as carriage of a number of complaint files. This allowed for an increased number of reviews to be completed in 2022.

Looking forward to mid-2023, the current position of part-time Senior Counsel will be changed to a full-time Counsel position, allowing for an increase in the number of files that will be reviewed.

Process changes

As noted earlier in this Annual Report, the Office of the Commissioner instituted a new policy to return some files to PR prior to the Commissioner's review if the complainant had provided new and significant information in respect of the complaint, or if a request had been made by a Director of PR. On agreement of both offices, a number of files were returned to the Law Society for its further consideration.

Instituting the new policy of sending a file back to PR prior to the Commissioner's review is consistent with the larger perspective of protection of the public. It ensures that complaint files are dealt with in a more timely manner. For files to be sent back to the Law Society under this new policy, both the Manager of the Office of the Commissioner as well as the Director of Intake & Resolution must agree. The Office of the Commissioner will monitor the impact of this approach on the timing of reviews and the number of referrals back following review meetings.

The Manager of the Office of the Commissioner, together with Counsel to the Executive Director of PR and department directors, have and continue to work to resolve and clarify process related issues raised in certain files. Specifically, the Manager in the Office of the Commissioner and the Director of Intake & Resolution have engaged in discussions on systemic practice and process concerns identified through the review process, including issues relating to the sharing of information with complainants, in order to support efficient and timely attention to and review of complaints.

Efforts to address the backlog have increased urgency given the 19% increase in requests for review in 2022 that were accepted as within the Commissioner's jurisdiction.

G. Commissioner's observations

The role of senior licensees in mentoring and coaching junior licensees

There were multiple files in 2022 where, had the newly licensed subject licensee been more actively mentored and coached by a senior licensee, the conduct that led, at least in part, to the complaint to the Law Society might have been avoided. Licensees, both seeking support and prepared to offer support, might benefit from being encouraged to consider accessing the opportunities offered by the Law Society including its Coach and Advisor Network.

The role of licensees to seek to resolve disputes

Rule 3.2-4 of the *Rules of Professional Conduct* (Rules) requires that a lawyer "advise and encourage the client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis" and "discourage the client from commencing or continuing useless legal proceedings." For a paralegal, the equivalent is Rule 3.02(11) of the *Paralegal Rules of Conduct* (Paralegal Rules).

In some complaints, the allegation was that the licensee's conduct was influenced by their personal feelings, whether as between them and another licensee or as between them and a self-represented party. While an assertive position may sometimes be warranted, and no reasonable compromise or settlement possible, licensees should be mindful not to allow personal feelings to impact their obligation to seek compromise and settlement.

In complaints where the complainant was self-represented at the relevant time, the allegations were that the licensee was aggressive or discourteous towards them, unnecessarily prolonged the litigation, or made no effort to compromise or settle the dispute. It is appreciated that encouraging compromise or settlement may be more difficult when dealing with a self-represented party. Nonetheless, the responsibility continues, and licensees should be reminded to document their efforts in this regard.

Licensees and social media

There were a number of complaints about licensees' communications on social media, made in their personal capacity and not obviously linked to their practice. Although the Rules and the Paralegal Rules do not have specific provisions speaking to licensees' social media activity, licensees should be mindful of how those communications, even when made in a strictly personal capacity, might adversely impact the integrity of the profession and public confidence in the administration of justice. It is worth noting Commentary [1] to Rule 5.6-1 of the Rules, dealing with a lawyer's duty to encourage respect for the administration of justice, which provides:

The obligation set out in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen. A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements. Yet for the same reason, a lawyer should not hesitate to speak out against an injustice.

The corresponding rule for paralegals is Rule 6.01 of the Paralegal Rules.

Licensees' obligations to keep diligent records and properly document their work and legal advice

For many complaint files, there continues to be an absence of evidence with respect to allegations made in complaints. Typically, complainants tell their version of events and licensees provide theirs. What is absent is corroborating evidence of what actually occurred. The end result is often that there is "insufficient evidence" on which to base further action. To a complainant this is often received as simply the licensee's version of events being favoured over their version of events.

Licensees should be reminded to be diligent in documenting and recording interactions, instructions received, and advice given. I note in particular the importance of keeping written notes of key client conversations, and confirming, in writing, instructions received, especially as they relate to offers to settle. A client's case or dispute is likely the most important thing to the client; whereas to the licensee, it is one of many matters they are dealing with. Consequently, it is incumbent on the licensee to keep careful notes of meetings and attendances on the file. The absence of such notes could call into question the reliance on the lawyer's memory of events over that of the complainant.

Licensees who incorporate the expectations of the Rules or Paralegal Rules, as applicable, into their day-to-day work through documented practices and processes are well-positioned to respond to a complaint, if any, that might be made against them.

COMPLAINTS RESOLUTION COMMISSIONER

Appointment

49.14 (1) Convocation shall appoint a person as Complaints Resolution Commissioner in accordance with the regulations. 1998, c. 21, s. 21.

Restriction

(2) A bencher or a person who was a bencher at any time during the two years preceding the appointment shall not be appointed as Commissioner. 1998, c. 21, s. 21.

Term of office

(3) The Commissioner shall be appointed for a term not exceeding three years and is eligible for reappointment. 1998, c. 21, s. 21.

Removal from office

(4) The Commissioner may be removed from office during his or her term of office only by a resolution approved by at least two thirds of the benchers entitled to vote in Convocation. 1998, c. 21, s. 21.

Restriction on practice of law

(5) The Commissioner shall not engage in the practice of law during his or her term of office. 1998, c. 21, s. 21.

Section Amendments with date in force (d/m/y)

1998, c. 21, s. 21 - 01/02/1999

Functions of Commissioner

49.15 (1) The Commissioner shall,

- (a) attempt to resolve complaints referred to the Commissioner for resolution under the by-laws; and
- (b) review and, if the Commissioner considers appropriate, attempt to resolve complaints referred to the Commissioner for review under the by-laws. 1998, c. 21, s. 21.

Investigation by Commissioner

(2) If a complaint is referred to the Commissioner under the by-laws, the Commissioner has the same powers to investigate the complaint as a person conducting an investigation under section 49.3 would have with respect to the subject matter of the complaint, and, for that purpose, a reference in section 49.3 to an employee of the Society holding an office prescribed by the by-laws shall be deemed to be a reference to the Commissioner. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (1).

Access to information

(3) If a complaint is referred to the Commissioner under the by-laws, the Commissioner is entitled to have access to,

- (a) all information in the records of the Society respecting a licensee who is the subject of the complaint; and
- (b) all other information within the knowledge of the Society with respect to the subject matter of the complaint. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (2).

Section Amendments with date in force (d/m/y)

1998, c. 21, s. 21 - 01/02/1999

2006, c. 21, Sched. C, s. 48 (1, 2) - 01/05/2007

Delegation

49.16 (1) The Commissioner may in writing delegate any of his or her powers or duties to members of his or her staff or to employees of the Society holding offices designated by the by-laws. 1998, c. 21, s. 21.

Terms and conditions

(2) A delegation under subsection (1) may contain such terms and conditions as the Commissioner considers appropriate. 1998, c. 21, s. 21.

Section Amendments with date in force (d/m/y)

1998, c. 21, s. 21 - 01/02/1999

Identification

49.17 On request, the Commissioner or any other person conducting an investigation under subsection 49.15 (2) shall produce identification and, in the case of a person to whom powers or duties have been delegated under section 49.16, proof of the delegation. 1998, c. 21, s. 21.

Section Amendments with date in force (d/m/y)

1998, c. 21, s. 21 - 01/02/1999

Confidentiality

49.18 (1) The Commissioner and each member of his or her staff shall not disclose,

- (a) any information that comes to his or her knowledge as a result of an investigation under subsection 49.15 (2); or
- (b) any information that comes to his or her knowledge under subsection 49.15 (3) that a benchler, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12. 1998, c. 21, s. 21.

Exceptions

(2) Subsection (1) does not prohibit,

- (a) disclosure required in connection with the administration of this Act, the regulations, the by-laws or the rules of practice and procedure;
- (b) disclosure required in connection with a proceeding under this Act;
- (c) disclosure of information that is a matter of public record;
- (d) disclosure by a person to his or her counsel; or
- (e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure. 1998, c. 21, s. 21.

Testimony

(3) A person to whom subsection (1) applies shall not be required in any proceeding, except a proceeding under this Act, to give testimony or produce any document with respect to information that the person is prohibited from disclosing under subsection (1). 1998, c. 21, s. 21.

Section Amendments with date in force (d/m/y)

1998, c. 21, s. 21 - 01/02/1999

Decisions final

49.19 A decision of the Commissioner is final and is not subject to appeal. 1998, c. 21, s. 21.

Section Amendments with date in force (d/m/y)

1998, c. 21, s. 21 - 01/02/1999

BY-LAW 11

Made: May 1, 2007
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September 20, 2007 (editorial changes)
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February 23, 2017
May 25, 2017
December 12, 2018 (editorial changes)
October 24, 2019

REGULATION OF CONDUCT, CAPACITY AND PROFESSIONAL COMPETENCE

PART I

COMPLAINTS RESOLUTION COMMISSIONER

GENERAL

Definitions

1. In this Part,

“complainant” means a person who makes a complaint;

“complaint” means a complaint made to the Society in respect of the conduct of a licensee;

“Commissioner” means the Complaints Resolution Commissioner appointed under section 49.14 of the Act;

“reviewable complaint” means a complaint that may be reviewed by the Commissioner under subsection 4 (1).

Provision of funds by Society

2. (1) The money required for the administration of this Part and sections 49.15 to 49.18 of the Act shall be paid out of such money as is budgeted therefor by Convocation.

Restrictions on spending

(2) In any year, the Commissioner shall not spend more money in the administration of this Part and sections 49.15 to 49.18 of the Act than is budgeted therefor by Convocation.

Annual report

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.

REVIEW OF COMPLAINTS

Reviewable complaints

4. (1) A complaint may be reviewed by the Commissioner if,
- (a) the merits of the complaint have been considered by the Society;
 - (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Division or Appeal Division;
 - (c) the complaint has not been previously reviewed by the Commissioner; and
 - (d) the Society has notified the complainant that it will be taking no further action in respect of the complaint.

Same

(2) A complaint may not be reviewed by the Commissioner to the extent that, in the opinion of the Commissioner, it concerns only the following matters:

- 1. Quantum of fees or disbursements charged by a licensee to a complainant.
- 2. Requirements imposed on a licensee under By-Law 9 [Financial Transactions and Records].
- 3. Negligence of a licensee.

Interpretation: “previously reviewed”

(3) For the purposes of this section, a complaint shall not be considered to have been previously reviewed by the Commissioner if the complaint was referred back to the Society for further consideration under subsection 7 (1).

Right to request referral

5. (1) A complainant may request the Society to refer to the Commissioner for review a reviewable complaint.

Request in writing

(2) A request to refer a reviewable complaint to the Commissioner for review shall be made in writing.

Time for making request

(3) A request to refer a reviewable complaint to the Commissioner for review shall be made within 60 days after the day on which the Society notifies the complainant that it will be taking no further action in respect of the complaint.

When notice given

(4) For the purposes of subsection (3), the Society will be deemed to have notified the complainant that it will be taking no further action in respect of the complaint,

- (a) in the case of oral notification, on the day that the Society notified the complainant; and
- (b) in the case of written notification,
 - (i) if it was sent by regular lettermail, on the fifth day after it was mailed, and
 - (ii) if it was faxed, on the first day after it was faxed.

Referral of complaints

6. (1) The Society shall refer to the Commissioner for review every reviewable complaint in respect of which a complainant has made a request under, and in accordance with, section 5.

Notice

(2) The Society shall notify in writing the licensee who is the subject of a complaint in respect of which a complainant has made a request under, and in accordance with, section 5 that the complaint has been referred to the Commissioner for review.

Fresh evidence

7. (1) When reviewing a complaint that has been referred to the Commissioner for review, if the Commissioner receives or obtains information, which in the Commissioner's opinion is significant, about the conduct of the licensee who is the subject of the complaint that was not received or obtained by the Society as a result of or in the course of its consideration of the merits of the complaint, the Commissioner shall refer the information and complaint back to the Society for further consideration.

Disposition of complaint referred for review

(2) After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner shall,

- (a) if satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society; or
- (b) if not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and so notify in writing the complainant.

Disposition of complaint referred for review: notice

(3) The Society shall notify in writing the licensee who is the subject of a complaint reviewed by the Commissioner of the Commissioner's disposition of the complaint.

Referral back to Society: notice

(4) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, the Society shall consider the recommendation and notify in writing the Commissioner, complainant and licensee who is the subject of the complaint of whether the Society will be following the recommendation.

Same

(5) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and the Society determines not to follow the

recommendation of the Commissioner, the Society shall provide the Commissioner, complainant and licensee who is the subject of the complaint with a written explanation for the determination.

Procedure

8. (1) Subject to this Part, the procedures applicable to the review of a complaint referred to the Commissioner shall be determined by the Commissioner.

Meeting

(2) The Commissioner shall, where practicable, meet with each complainant whose complaint has been referred to the Commissioner for review, and the Commissioner may meet with the complainant by such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

Participation in review: Society

(3) Other than as provided for in subsections (5) and (6), or unless otherwise expressly permitted by the Commissioner, the Society shall not participate in a review of a complaint by the Commissioner.

Participation in review: licensee

(4) The licensee who is the subject of a complaint that has been referred to the Commissioner for review shall not participate in a review of the complaint by the Commissioner.

Description of consideration, etc.

(5) At the time that the Society refers a complaint to the Commissioner for review, the Society is entitled to provide the Commissioner with a description of its consideration of the complaint and an explanation of its decision to take no further action in respect of the complaint.

Requirement to answer questions

(6) The Commissioner may require the Society to provide information in respect of its consideration of a complaint that has been referred to the Commissioner for review and its decision to take no further action in respect of the complaint, and the Society shall provide such information.

RESOLUTION

Discretionary referral of complaints

9. (1) The Society may refer a complaint to the Commissioner for resolution if,

- (a) the complaint is within the jurisdiction of the Society to investigate;
- (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Division or Appeal Division;
- (c) the complaint has not been referred to the Proceedings Authorization Committee;
- (d) no resolution of the complaint has been attempted by the Society; and
- (e) the complainant and the licensee who is the subject of the complaint consent to the complaint being referred to the Commissioner for resolution.

Parties

10. The parties to a resolution of a complaint by the Commissioner are the complainant, the licensee who is the subject of the complaint and the Society.

Outcome of Resolution

11. (1) There shall be no resolution of a complaint by the Commissioner until there is an agreement signed by all parties agreeing to the resolution.

No resolution

(2) If there is no resolution of a complaint by the Commissioner, the Commissioner shall so notify in writing the parties and refer the complaint back to the Society.

Enforcement of resolution

(3) A resolution of a complaint by the Commissioner shall be enforced by the Society.

Confidentiality: Commissioner

12. (1) Subject to subsection (2), the Commissioner shall not disclose any information that comes to the Commissioner's knowledge during the resolution of a complaint.

Exceptions

(2) Subsection (1) does not prohibit disclosure required of the Commissioner under the Society's rules of professional conduct.

Without prejudice

(3) All communications during the resolution of a complaint by the Commissioner and the Commissioner's notes and record of the resolution shall be deemed to be without prejudice to any party.

Procedure

13. Subject to this Part, the procedures applicable to the resolution of a complaint referred to the Commissioner shall be determined by the Commissioner.

Request for Review by the Complaints Resolution Commissioner

Before you complete the request form, please read the Office of the Complaints Resolution Commissioner (CRC) information sheet.

A request for review must be made **in writing** within **60 days** of the day you are notified that the Law Society will not be taking further action and that a review is available to you. Please complete and send a separate Request for Review form for separate complaints.

To submit a Request for Review, please complete this form online or send it by facsimile, email or regular mail. Our contact information is as follows:

Office of the Complaints Resolution Commissioner
393 University Avenue
Suite 515
Toronto ON M5G 1E6
Telephone: 416-947-3442
Toll Free: 1-866-880-9480
Fax: 416-947-5213
Email: complaintsreview@lso.ca

If you have any questions about your request for a review, please contact our office.

1. INFORMATION ABOUT YOU (THE COMPLAINANT)

Salutation: Mr. ___ Ms. ___ Mrs. ___ Dr. ___ Other (specify): _____

First Name: _____ Last Name: _____

Primary Phone Number: _____ Secondary Phone Number: _____

Fax Number: _____ Email: _____

Address: _____ Unit/Apt.: _____

City: _____ Province: _____ Postal Code: _____

What is the best way to contact you from Monday to Friday between the hours of 9:00 a.m. and 5:00 p.m. (select one)?

Telephone

Email

Are you a licensed lawyer or paralegal: Yes ___ No ___

Request for Review by the
Complaints Resolution Commissioner

2. DETAILS OF LAW SOCIETY COMPLAINT

- Law Society file number: _____
- Name of lawyer/paralegal: _____
- Date of Law Society’s letter notifying you that the file was closed: _____
- What is your relationship to the lawyer/paralegal?
___ Client ___ Opposing lawyer or paralegal ___ Other (specify): _____
- Are you acting under a Power of Attorney or some other form of authorization? ___ Yes ___ No

If yes, please include supporting documentation with your Request for Review.

List any other complaints you have submitted which are still under investigation with the Law Society:

File Number(s)	Name of Lawyer(s)/Paralegal(s)
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

Request for Review by the Complaints Resolution Commissioner

3. PREFERENCE FOR REVIEW FORMAT

Please check **one** box to show your preference for the format of the Commissioner’s review.

- In Person** - At the Office of the Complaints Resolution Commissioner in Toronto.
- Video Conference** - Required is an internet connection, webcam, microphone and speaker
- Teleconference** - Your telephone number for the Review Meeting: _____
- In writing** - In your absence, based on the documents in the file.

The information in the Law Society’s file will be provided to the Commissioner in advance of the Review Meeting. Please do not resend copies of documents already provided to the Law Society.

If you want to send written submissions or additional documents, please send them to the Office of the Complaints Resolution Commissioner as soon as possible.

4. REASON FOR YOUR REQUEST FOR REVIEW

Please briefly explain why you believe the Law Society’s decision to close the file was not reasonable. Before you complete this section, please review the information sheet which explains the Commissioner’s role.

5. SIGNATURE

Date: _____ **Name:** _____

Please advise us if, given your needs, you require the Office of the Complaints Resolution Commissioner communications in an alternate format that is accessible or if you require other arrangements to make our services accessible to you.

Office of the Complaints Resolution Commissioner

This information sheet will help you request a review by the Complaints Resolution Commissioner (Commissioner).

REQUEST FOR REVIEW:

The Commissioner, at your request, will do an independent review of the Law Society's investigation and the decision to close your complaint file. If you want to have the Law Society's decision to close your complaint file reviewed by the Commissioner, please complete the Request for Review form. Please return the form to the Office of the Complaints Resolution Commissioner following the instructions on the Request for Review form. **A request for review by the Commissioner must be made in writing within 60 days of the day you are notified that the Law Society will not be taking further action involving your complaint, and that a review is available to you.**

THE ROLE OF THE COMPLAINTS RESOLUTION COMMISSIONER:

The role of the Commissioner is to review the Law Society's investigation of your complaint and its decision to take no further action in respect of your complaint.

POSSIBLE OUTCOMES OF THE REVIEW

After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner will,

- If satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society.
- If not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and so notify in writing the complainant.

THE COMPLAINTS RESOLUTION COMMISSIONER CANNOT:

- make a finding of professional misconduct
- impose disciplinary penalties
- make a finding of professional negligence
- award payment of money or other compensation for financial losses
- direct a licensee (lawyer or paralegal) to refund fees or disbursements

Office of the Complaints Resolution Commissioner

INFORMATION SHEET

MEETING WITH THE COMPLAINTS RESOLUTION COMMISSIONER:

Review Meetings may be in person, by conference call or based on the materials in the file. In-person and conference call Review Meetings are informal and involve a discussion of your complaint and the concerns you have with the Law Society's decision to close your file. Your meeting will be scheduled for one hour.

The Commissioner will consider your preference for the Review Meeting format.

If you wish, you may bring a friend, family member or a legal representative to the Review Meeting.

Legal Counsel to the Commissioner is present at the Review Meeting to assist the Commissioner and respond to legal questions raised by the Commissioner. Legal Counsel's role is limited to providing assistance to the Commissioner and Counsel cannot give you legal advice.

The lawyer or paralegal who is the subject of your complaint does not participate in the review.

SCHEDULING OF THE REVIEW MEETING:

The Review Meeting will be scheduled as soon as possible. It may take several months for the Review Meeting to take place. We appreciate and thank you for your patience.

If you are unable to participate in the Review Meeting on the scheduled date and want it rescheduled, or have decided not to proceed with the Review Meeting, please notify the Office of the Complaints Resolution Commissioner as soon as possible. If you want the Review Meeting date to be rescheduled, the Commissioner may ask for supporting documentation explaining why you cannot participate on the scheduled date.

PROVIDING NEW INFORMATION:

If you have new information concerning your complaint or you want to make written submissions to the Commissioner, please send this material as soon as possible. **Please do not send original documents.**

Do not resend copies of documents which have already been provided to the Law Society. The information contained in the Law Society's file is provided to the Commissioner in advance of the Review Meeting. **Resending copies of documents or repeating information already provided to the Law Society may delay the review.**

Office of the Complaints Resolution Commissioner

INFORMATION SHEET

DECISION OF THE COMPLAINTS RESOLUTION COMMISSIONER:

The Commissioner will send you the decision in writing after the review has been conducted. If the Commissioner agrees with the Law Society's decision to take no further action and close the complaint file, the Commissioner's decision concludes the matter. There are no further reviews and the decision is final.

FOR MORE INFORMATION:

If you have any questions about how to request a review by the Commissioner, please contact the Office of the Complaints Resolution Commissioner and we will be pleased to help you:

393 University Avenue
Suite 515
Toronto, ON M5G 1E6
Telephone: 416-947-3442
Toll-Free: 1-866-880-9480
Fax: 416-947-5213
Email: complaintsreview@lso.ca

Please advise us if, given your needs, you require the Office of the Complaints Resolution Commissioner communications in an alternate format that is accessible or if you require other arrangements to make our services accessible to you.

ELECTORAL REGIONS

Electoral regions

6. (1) The following electoral regions are established:

1. The Province of Ontario "A" Electoral Region, composed of the City of Toronto.
2. The Province of Ontario "B" Electoral Region, composed of the area in Ontario outside the City of Toronto.

Same

(2) Within the Province of Ontario "B" Electoral Region, the following additional electoral regions are established:

1. The Northwest Electoral Region, composed of the territorial districts of Kenora, Rainy River and Thunder Bay.
2. The Northeast Electoral Region, composed of the territorial districts of Algoma, Cochrane, Manitoulin, Nipissing, Parry Sound, Sudbury and Timiskaming.
3. The East Electoral Region, composed of,
 - i. the counties of Frontenac, Hastings, Lanark, Lennox and Addington, Prince Edward and Renfrew,
 - ii. the united counties of Leeds and Grenville, Prescott and Russell and Stormont, Dundas and Glengarry, and
 - iii. the Regional Municipality of Ottawa-Carleton.
4. The Central East Electoral Region, composed of,
 - i. the District Municipality of Muskoka,
 - ii. the counties of Haliburton, Northumberland, Peterborough, Simcoe and Victoria, and
 - iii. the regional municipalities of Durham and York.
5. The Central West Electoral Region, composed of,
 - i. the counties of Bruce, Dufferin, Grey and Wellington, and
 - ii. the regional municipalities of Halton and Peel.
6. The Central South Electoral Region, composed of,
 - i. the County of Brant, and
 - ii. the regional municipalities of Haldimand-Norfolk, Hamilton-Wentworth, Niagara and Waterloo.
7. The Southwest Electoral Region, composed of the counties of Elgin, Essex, Huron, Kent, Lambton, Middlesex, Oxford and Perth.

Province of Ontario “A” Electoral Region

- (3) Twenty benchers shall be elected for the Province of Ontario “A” Electoral Region as follows:
1. One bencher shall be elected on the basis of the votes cast by electors residing in the electoral region.
 2. Nineteen benchers shall be elected on the basis of the votes cast by all electors.

Province of Ontario “B” Electoral Region

- (4) Twenty benchers shall be elected for the Province of Ontario “B” Electoral Region as follows:
1. One bencher shall be elected for each electoral region described in paragraphs 1 to 7 of subsection (2) on the basis of the votes cast by electors residing in the electoral region.
 2. Thirteen benchers shall be elected on the basis of the votes cast by all electors.