

TAB 3
Report to Convocation
April 25, 2024

Professional Regulation Committee

Committee Members

Megan Shortreed (Chair)

William McDowell (Vice-Chair)

Pam Hrick

Michelle Lomazzo

Sonia Ouellet

Geneviève Painchaud

Jonathan Rosenthal

Kevin Ross

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Matthew Wilson

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Purpose of Report: Decision and Information

Prepared by the Policy Division
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Law Society
of Ontario

Barreau
de l'Ontario

Tab 3.1

Client Contingency Planning

Amendments to By-Law 7.1

April 25, 2024

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Motion

That Convocation approve the Motion at Tab 3.1.1, which amends By-Law 7.1 to implement a requirement for licensees in private practice to maintain a client contingency plan for their professional business.

Background

In January 2021, this Committee established a Working Group tasked with considering six proposals to transform the Law Society's Trustee Services department, which were made in an external review.

The Working Group reported back to the Committee in April 2022, including endorsing the recommendation in the external review that the Law Society adopt a new by-law requirement for all licensees in private practice to maintain a succession or business continuity plan for their professional business. The Working Group recommended the requirement apply to sole practitioners and licensees practising law or providing legal services in firms.

In June 2022, the Committee launched a consultation about this recommendation.¹ Based on the feedback from that consultation, the Committee made a number of changes to the proposed recommendation, including narrowing and focusing the role of a successor or administrator licensee to safeguarding client interests in circumstances where their lawyer or paralegal is suddenly or unexpectedly unable to continue in respect of the retainer.²

Rationale - Protecting Client Interests

In most circumstances, licensees have arrangements in place to ensure the protection of client interests and property in the event that they suddenly or unexpectedly cease practising law or providing legal services, whether due to death, disability, or other cause.

For lawyers and paralegals who work in firm structures, the partnership/shareholder or associate/employee model inherently provides that continuity. Clients retain the firm, which will take over responsibility for client matters and ensure the continued protection of client files and property if a lead lawyer or paralegal is no longer able to act.

¹ The Consultation Report is available [here](#).

² Note that in by-law drafting the term successor was replaced with administrator. It is recommended that this change be adopted by the Committee in respect of the client contingency plan requirement as it more accurately reflects the scope of responsibility applicable to the licensee who steps in to protect client interests.

Licenses who do not practise law or provide legal services in firm structures may also make individual arrangements for the continuity or succession of their professional business in the event that they are no longer able to continue working.³

Unfortunately, the experience of the Law Society's Trustee Services department is that some sole practitioners and those working in cost and space saving type arrangements fail to plan for sudden or unexpected events that may impair their ability to maintain their professional obligations to clients. These professional obligations include the duties of competence, quality of service, confidentiality, preservation of clients' property, and responsibilities to the courts and tribunals.⁴

Where licenses cease practising law or providing legal services unexpectedly without making appropriate arrangements for their professional business, the Trustee Services department must step in to protect and distribute client trust monies and other property, assist with the wind-up of the business, and transition client files.

There are two primary problems with this:

1. By the time Trustee Services finds out that they need to intervene in a practice it is often weeks after the licensee has actually stopped working; and
2. Trustee Services does not have any of the necessary information about the licensee's practice to intervene immediately and must take the time needed to access digital records and files and locate trust accounts.

Often clients won't be aware that their lawyer or paralegal is no longer practising law or providing legal services and will assume their legal matter is still being monitored.

If that isn't the case, urgent issues may be ignored, cases may be dismissed or limitation periods missed, and legal interests may be compromised. Clients may also find that their trust funds are suddenly inaccessible, which may hold up pending real estate transactions, or require clients to wait to receive their funds while Trustee Services works to gain access to the licensee's accounts.

A licensee who fails to plan for unexpected practice interruptions may also suffer personal and professional consequences. The worth of their practice may be impaired without a plan to realize value from it, and their family members are often left with the responsibility

³ Voluntary succession planning has long been encouraged by the Law Society. Since at least 2014, the Law Society has published a [contingency planning guide](#) for lawyers, which provides step-by-step guidance, sample documents and additional resources. Since at least the early 2000s, practice specific CPD programming has highlighted the importance of licensee succession planning and programs dedicated entirely to retirement and succession planning issues for licenses are provided regularly.

⁴ Encouraging succession planning does not appear to have sufficiently addressed this issue. The exact number of licenses who have succession or continuity plans is unclear. One Law Society survey revealed that 80% of licenses do not have estate plans or business continuity plans. In addition, between 2017 and 2019, 468 sole practitioners underwent a practice review, and 41% responded "no" to the question that asks among other things whether they have a succession plan. An additional 40% indicated some level of compliance with the issues covered under that question.

of winding-up the licensee's professional business at significant expense and burden during a very difficult and vulnerable time.

In the last decade or two, the number of practices that have required the involvement of Trustee Services has increased significantly. It is anticipated that this trend will continue, corresponding with an aging bar, in particular in respect of sole practitioners.⁵ Therefore, there is a pressing and increasing need to address this issue in order to protect client interests.

The Committee recommends that Convocation approve the proposed amendments to By-Law 7.1 to require that licensees in private practice implement a contingency plan for their professional business that is targeted at protecting their clients' interests in circumstances where they are no longer able to practise law or provide legal services.

The Client Contingency Plan

To ensure that clients are not left in the lurch and to ensure that their interests are protected, the proposed amendments require that all licensees in private practice maintain a client contingency plan for their professional business.

A compliant plan, for which a template will be made available, will include information and adequate arrangements to allow for the handling of client property and management of the licensee's professional business including, with respect to:

- Appointment of an administrator licensee to assume responsibility for the wind-up of the licensee's professional obligations to clients;
- The location of
 - open and closed files;
 - client property including wills and will indices;
 - foundation documents and other important records and valuable property;
- Passwords and the means to access computers, email, accounting and other electronic records;
- Details of, and access to all trust accounts, trust funds and any other accounts related to the licensee's professional business, including the location of all accounting records and the contact information for any bookkeepers or accountants; and
- Any other arrangements necessary to wind-up the licensee's professional obligations to clients.

A template plan will be made available by the Law Society to ensure licensee compliance.

⁵ Between 2005 and 2022 there was an increase of almost 240% in the number of sole practitioner lawyers over 65, and a similar increase in the number of paralegal sole proprietors over 65 between 2010 and 2022.

I. The Administrator

Licensees who are sole proprietors will be required to name one or more other licensees to act as their administrator. Appointing an administrator licensee to protect the interests of clients in the event that a licensee is unexpectedly absent from practice is consistent with contingency planning advice for licensees from both the Law Society and LawPRO.

In response to feedback received during the consultation, the Committee recommends a narrow role for the administrator, who will be required, at minimum, to wind-up the licensee's client obligations or supervise a non-lawyer steward (for instance a staff or family member) in the proper wind-up of the licensee's obligations to their clients.

Specifically, the administrator will be required to carry out, or supervise three functions:

1. Notify the Law Society's Trustee Services department and the licensee's insurer as soon as possible after learning that the licensee has ceased working.
2. Advise clients that the licensee is no longer able to continue in respect of the retainer and arrange for the transfer of the clients' files and other property to another licensee or their return to the clients.
3. Attempt to access the licensee's trust accounts, if applicable, for the purpose of returning or transferring trust funds as directed by the clients (or parties, or the court, where consent is required).

Licensees may wish to enter into more comprehensive business continuity agreements that include the continuation of the licensee's business by the administrator or the sale of the licensee's business to another licensee or licensee firm. However, the mandated requirements of administrators are limited to the three functions above.

In circumstances where an administrator cannot be identified, for instance where licensees are working in remote locations without a community of licensees on which to rely, the Trustee Services department will assist in identifying an administrator and to facilitate the arrangement. The Trustee Services department may charge a fee for this service that will be set at an amount that encourages diligence on the part of the licensee but does not punish licensees who are simply unable to find an administrator due to circumstances beyond their control. Ultimately, if a suitable administrator cannot be identified, the Trustee Services department can work with the licensee to put a plan in place to ensure the wind-up of the licensee's professional business in accordance with the client contingency plan requirement.

II. Reporting

Licensees in private practice will be required to confirm annually that they have made appropriate client contingency arrangements, including creating a contingency plan that they have reviewed in the preceding 12 months.

Licenseses who work as in-house counsel, in legal clinics or government, and licenseses who are in the non-practising class will be exempt from the requirement.

Reporting will include two options:

1. Sole practitioners will be required to confirm that they have created a client contingency plan that complies with the Law Society's minimum requirements, that they have reviewed that plan in the preceding 12 months, and that they have obtained the consent of their administrator to act as such.
2. Licenseses practising in firms (partners and associates) will be required to confirm that their firm has a plan, and that it complies with the Law Society's minimum requirements, including a contingency in the event that no members of the firm are able to carry on the firm's professional business.

Licenseses will report on the Law Society Annual Report, beginning for the 2025 year (i.e. a reporting deadline of March 31, 2026).

III. Compliance Focus

Non-compliance with the Client Contingency Plan, when discovered and not remedied, will be subject to the same corrective and disciplinary options as other failures to comply with other Law Society requirements.

However, compliance through advice, guidance, and education, as opposed to enforcement or discipline, will be the focus of the initiative. Existing Law Society programs, such as spot audits, practice reviews, the Practice Management Helpline, and the Practice Essentials Course will serve as means to educate licenseses about the requirement and to connect licenseses who are having difficulty complying with the Trustee Services department, for instance to assist in identifying an administrator. Enforcement will only be considered in circumstances where a licensee refuses to comply with the requirement.

Additional Supports for Licenseses

To support licenseses, the Committee recommends the following in support of the client contingency plan requirement:

I. Resources

A full suite of resources be prepared or updated for licenseses, including:

- A client contingency plan template, which if used and completed correctly will ensure that the licensee's plan is compliant with the requirement.
- A power of attorney template and instruction letter precedents to direct the transfer of the licensee's trust account(s) to their administrator.

- Increased succession planning CPD offerings, as well as targeted practice supports.
- Amended and updated resources, including the [Law Society's contingency planning guide](#).
- Individualized guidance and resources, including telephone support. The Trustee Services department will continue to provide guidance and assistance as business cessation issues arise for licensees, including administrators, family members, and employees. For example, Trustee Services will remain available to:
 - consult with licensees creating a client contingency plan;
 - provide templates, checklists and other resources commonly used when winding up a practice;
 - facilitate access to bank accounts and storage facilities; and
 - provide guidance with respect to communications with clients and others seeking access to files and information.

II. Clarity about Liability and Insurance Coverage for Administrators

The Law Society will also provide specific guidance about professional liability for administrators. This issue was discussed at length by the Committee and was the focus of significant feedback during the consultation. Ultimately, the Committee decided that the narrowed role for the administrator would ensure limited, if any, involvement in the clients' legal matter, thereby limiting their potential exposure to liability claims.

However, the Law Society will continue attempts to leverage the expertise of LawPRO and paralegal insurers in crafting practical guidelines for administrators. These guidelines will document best practices that will help administrators exercise proper diligence in respect of the wind-up of the licensee's professional obligations to clients. While liability will depend on the specific circumstances of each situation, best practice guidelines will establish a baseline for licensees and may serve as a checklist to avoid accusations or findings of negligence.

III. Guidance About Trust Account Management

Licensees will continue to be advised that part of the client contingency planning process includes meeting with their bank manager to ensure that the bank will accept what the licensee has put in place to transfer responsibility for their trust account to the administrator licensee.

In addition, the Law Society will attempt to continue engaging with the Canadian Bankers Association (CBA) with the goal of establishing standardized processes and procedures to facilitate the transfer of a trust account from a licensee to their administrator.

Next Steps

If the Motion at Tab 3.1.1 is adopted by Convocation, the amendments to By-Law 7.1 will come into force on January 1, 2025.

LAW SOCIETY OF ONTARIO
BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE LAW SOCIETY ACT

BY-LAW 7.1 [OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 25, 2024

MOVED BY Megan Shortreed

SECONDED BY William McDowell

THAT By-Law 7.1 [Operational Obligations and Responsibilities], in force immediately before this motion is moved, be amended as follows:

1. Effective January 1, 2025, the English version of the By-Law is amended by adding the following:

PART II.1

CONTINGENCY PLANNING

Definition: administrator

19.1. (1) In this Part, “administrator” means a licensee appointed and authorized to take or cause to be taken all steps necessary to preserve and carry on or to wind up the professional business of the licensee who appoints them.

Interpretation: winding up professional business

(2) Without limiting what it means to wind up the professional business of a licensee, winding up the professional business of a licensee includes the following:

1. Advising the licensee’s clients that the licensee cannot complete their retainers and arranging for the transfer of the clients’ files to another licensee or returning the clients’ files to the clients.
2. Returning or transferring clients’ trust funds as directed by the clients.

When contingency planning requirement not applicable

19.2. (1) This section does not apply to a licensee while they are practising law or providing legal services,

(a) within any of the following settings:

1. The Government of Canada,
2. A provincial or territorial government,
3. A municipal government,
4. A First Nation, Metis or Inuit government,
5. A clinic, within the meaning of the Legal Aid Services Act, 2020, that is funded by Legal Aid Ontario,

6. Legal Aid Ontario, pursuant to Part III of the Legal Aid Services Act, 2020,
7. An in-house legal department; or

(b) through a firm that is a sole proprietorship not owned by the licensee, an ordinary partnership or a limited liability partnership.

Contingency planning requirement

(2) A licensee who practises law or provides legal services shall maintain a contingency plan in accordance with this section for the preserving or carrying on or the winding up of their professional business in the event the licensee is unexpectedly temporarily or permanently unable to practise law or provide legal services and is incapable of meeting their obligations as licensee or former licensee.

Minimum components of contingency plan

(3) A contingency plan shall, at a minimum, include the following:

1. The appointment of an administrator.
2. Information on the location of and the means of obtaining possession or control of all property that is or should be in the possession or control of the licensee in connection with,
 - i. the professional business of the licensee,
 - ii. the business or affairs of a client or former client of the licensee,
 - iii. an estate for which the licensee is or was executor, administrator or administrator with the will annexed,
 - iv. a trust of which the licensee is or was a trustee,
 - v. a power of attorney under which the licensee is was the attorney, or
 - vi. a guardianship under which the licensee is or was the guardian.
3. Without limiting the generality of paragraph 2, information on the location of and the means of obtaining possession or control of all trust and other accounts of which the licensee is holder in connection with,
 - i. the professional business of the licensee,
 - ii. the business or affairs of a client or former client of the licensee,
 - iii. an estate for which the licensee is or was executor, administrator or administrator with the will annexed,
 - iv. a trust of which the licensee is or was a trustee,
 - v. a power of attorney under which the licensee is was the attorney, or
 - vi. a guardianship under which the licensee is or was the guardian.
4. Without limiting the generality of paragraphs 2 and 3, information on the location of and the means of obtaining possession or control of all [accounting records] and contact information for all bookkeepers or accountants that worked for the licensee in connection with,
 - i. the professional business of the licensee,
 - ii. the business or affairs of a client or former client of the licensee,
 - iii. an estate for which the licensee is or was executor, administrator or administrator with the will annexed,
 - iv. a trust of which the licensee is or was a trustee,
 - v. a power of attorney under which the licensee is was the attorney, or
 - vi. a guardianship under which the licensee is or was the guardian.

Contingency plan to be current

(4) A contingency plan shall be current at all times.

Timing of review of contingency plan

(5) A licensee shall review their contingency plan at least once every year.

Administrator to notify Society, insurers

19.3. An administrator whose appointment is activated shall notify the Society and the appointing licensee's professional liability insurers that the appointing licensee has ceased practising law or providing legal services and that they are the administrator in respect of the appointing licensee's professional business.

BARREAU DE L'ONTARIO

RÈGLEMENT ADMINISTRATIF PRIS EN APPLICATION DES
PARAGRAPHES 62 (0.1) ET (1) DE LA LOI SUR LE BARREAU

**RÈGLEMENT ADMINISTRATIF N° 7.1 [OBLIGATIONS ET RESPONSABILITÉS
OPÉRATIONNELLES]**

MOTION À PRÉSENTER À LA RÉUNION DU CONSEIL LE 25 AVRIL 2024

PRÉSENTÉE PAR Megan Shortreed

APPUYÉE PAR William McDowell

QUE le Règlement administratif n° 7.1 [Obligations et responsabilités opérationnelles], en vigueur immédiatement avant la présentation de la motion, soit modifiée comme suit :

1. Le 1^{er} janvier 2025, la version anglaise du règlement administratif est modifiée par adjonction de ce qui suit :

PART II.1

PLANIFICATION DES MESURES D'URGENCE

Définition : administrateur

19-1. (1) Dans la présente partie, « administrateur » S'entend d'un titulaire de permis qui est nommé et autorisé à prendre ou à faire prendre toutes les mesures nécessaires pour protéger, poursuivre ou liquider les activités professionnelles du titulaire de permis qui le nomme.

Interprétation : liquider les activités professionnelles

(2) Sans restreindre son sens, liquider les activités professionnelles d'un titulaire de permis comprend les tâches suivantes :

1. Informer les clients du titulaire de permis que le titulaire de permis n'est pas en mesure de s'acquitter de son mandat et prendre les dispositions nécessaires pour assurer le transfert des dossiers des clients à un autre titulaire de permis ou pour les retourner aux clients.

2. Retourner les fonds en fiducie des clients ou assurer leur transfert, conformément aux directives des clients.

En cas de non-application de l'exigence de planification des mesures d'urgence

19-2. (1) La présente partie ne s'applique pas au titulaire de permis qui exerce le droit ou fournit des services juridiques

(a) dans un des cadres suivants :

1. Gouvernement du Canada.

2. Gouvernement provincial ou territorial.
3. Administration municipale.
4. Gouvernement des Premières Nations, métis ou inuit.
5. Clinique, au sens de la *Loi de 2020 sur les services d'aide juridique*, financée par Aide juridique Ontario.
6. Aide juridique Ontario, conformément à la partie III de la *Loi de 2020 sur les services d'aide juridique*.
7. Services juridiques internes.

(b) dans un cabinet qui est une entreprise à propriétaire unique dont le titulaire de permis n'est pas propriétaire, une société en nom collectif ou une société à responsabilité limitée.

Exigence de planification des mesures d'urgence

(2) Un titulaire de permis qui exerce le droit ou fournit des services juridiques tient à jour un plan d'urgence conformément au présent article afin de protéger, de poursuivre ou de liquider ses activités professionnelles s'il est subitement dans l'incapacité temporaire ou permanente d'exercer le droit ou de fournir des services juridiques et s'il n'est pas en mesure de s'acquitter de ses obligations à titre de titulaire de permis ou d'ancien titulaire de permis.

Éléments obligatoires d'un plan d'urgence

(3) Un plan d'urgence comporte à tout le moins les éléments suivants :

1. Nomination d'un administrateur.
2. Renseignements sur l'emplacement de tous les biens qui sont ou qui devraient être en la possession ou sous le contrôle du titulaire de permis, et les moyens d'en obtenir la possession ou le contrôle, en ce qui concerne :
 - i. les activités professionnelles du titulaire de permis ;
 - ii. les activités commerciales ou les affaires d'un client ou d'un ancien client du titulaire de permis ;
 - iii. une succession dont le titulaire de permis est ou a été l'exécuteur ou l'administrateur testamentaire ou l'administrateur successoral ;
 - iv. une fiducie dont le titulaire de permis est ou a été le fiduciaire ;
 - v. une procuration en vertu de laquelle le titulaire de permis est ou a été le fondé de pouvoir ;
 - vi. une tutelle en vertu de laquelle le titulaire de permis est ou a été le tuteur.
3. Sans que soit limitée la portée générale du paragraphe 2, les renseignements sur l'emplacement de tous les comptes en fiducie ou autres détenus par le titulaire de permis, et les moyens d'en obtenir la possession ou le contrôle, en ce qui concerne :

- i. les activités professionnelles du titulaire de permis ;
- ii. les activités commerciales ou les affaires d'un client ou d'un ancien client du titulaire de permis ;
- iii. une succession dont le titulaire de permis est ou a été l'exécuteur ou l'administrateur testamentaire ou l'administrateur successoral ;
- iv. une fiducie dont le titulaire de permis est ou a été le fiduciaire ;
- v. une procuration en vertu de laquelle le titulaire de permis est ou a été le fondé de pouvoir ;
- vi. une tutelle en vertu de laquelle le titulaire de permis est ou a été le tuteur.

4. Sans que soit limitée la portée générale des paragraphes 2 et 3, les renseignements sur l'emplacement de tous [les registres comptables] et les moyens d'en obtenir la possession ou le contrôle, et les coordonnées de tous les comptables ou commis comptables qui ont travaillé pour le titulaire de permis, en ce qui concerne :

- i. les activités professionnelles du titulaire de permis ;
- ii. les activités commerciales ou les affaires d'un client ou d'un ancien client du titulaire de permis ;
- iii. une succession dont le titulaire de permis est ou a été l'exécuteur ou l'administrateur testamentaire ou l'administrateur successoral ;
- iv. une fiducie dont le titulaire de permis est ou a été le fiduciaire ;
- v. une procuration en vertu de laquelle le titulaire de permis est ou a été le fondé de pouvoir ;
- vi. une tutelle en vertu de laquelle le titulaire de permis est ou a été le tuteur.

Actualisation du plan d'urgence

(4) Le plan d'urgence est actualisé en permanence.

Fréquence de révision du plan d'urgence

(5) Le titulaire de permis revoit son plan d'urgence au moins une fois par an.

Avis de l'administrateur à donner au Barreau et aux assureurs

19-3. L'administrateur dont la nomination est activée informe le Barreau et ses assureurs de responsabilité civile professionnelle que le titulaire de permis l'ayant nommé a cessé d'exercer le droit ou de fournir des services juridiques et qu'il est l'administrateur des activités professionnelles du titulaire de permis l'ayant nommé

Annual Report of the Complaints Resolution Commissioner

January 1, 2023 – December 31, 2023

Submitted by Virginia Torrance,
Complaints Resolution Commissioner

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APPENDICES

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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 2023 Annual Report covers the activities of the Office of the Commissioner for the 2023 calendar year, and includes statistical information, comparisons to prior years, and the Commissioner’s observations.

The functions of Commissioner were performed by Marilyn Marshall from January 1, 2023 until July 31, 2023. Virginia Torrance was appointed Commissioner effective August 1, 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. The Commissioner will notify the complainant of this decision. In either case, the Commissioner will provide reasons for the 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 Investigation Services and Intake & Resolution of their right to request a review by the Commissioner in the Law Society decision letter 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.

From January 1, 2023 until July 22, 2023, the Law Society's decision letter to the complainant referred them to the Law Society's website where a link to the Commissioner's Request for Review Form and Information Sheet could be found. A copy of the Request for Review Form and Information Sheet are attached as Appendix 3 and 4 respectively.

On July 24, 2023, the Law Society's LSO Connects online portal went live. From July 24, 2023 onwards, the Law Society's letter to the complainant refers them to a link in the LSO Connects online portal for submitting a request for review by the Commissioner. Complainants may still submit a request for review by contacting the Office of the Commissioner in writing, by phone or in person.

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 subject 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 choice 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 complainants may have another person participate or be present to support them. In a number of review meetings, the complainant had their legal representative participate in the review meeting.

D. Statistical information

Number of requests for review

Of the 395 requests for review received by the Office of the Commissioner in 2023, 110 requests were not accepted for a review by the Commissioner for the following reasons:

- 55 requests 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.
- 25 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.

- 21 requests were received beyond the 60-day time period for requesting a review.
- 4 requests were in respect of files that were still open with the Law Society.
- 3 requests were made in which there was no record of a complaint having been made to the Law Society.
- 2 requests were of Intake & Resolution decisions that had not been referred to the Commissioner as they were complaints regarding matters involving concurrent litigation. Complainants are informed by the Law Society that they may resubmit their complaint once the litigation is completed.

Number of files accepted for review

Of the 395 requests for review received by the Office of the Commissioner in 2023, 285 were accepted for review.

By comparison, in 2022 there were 331 requests for review received, of which 288 were accepted for review.

In 2021, of the 316 requests for review received, 243 were accepted for review.

There has been a slight increase in the number of files that were not accepted for review in 2023 and, while there is no discernable trend, it will be monitored.

Number of requests for review received

Table 1 – Comparison of requests for review received in 2023, 2022 and 2021

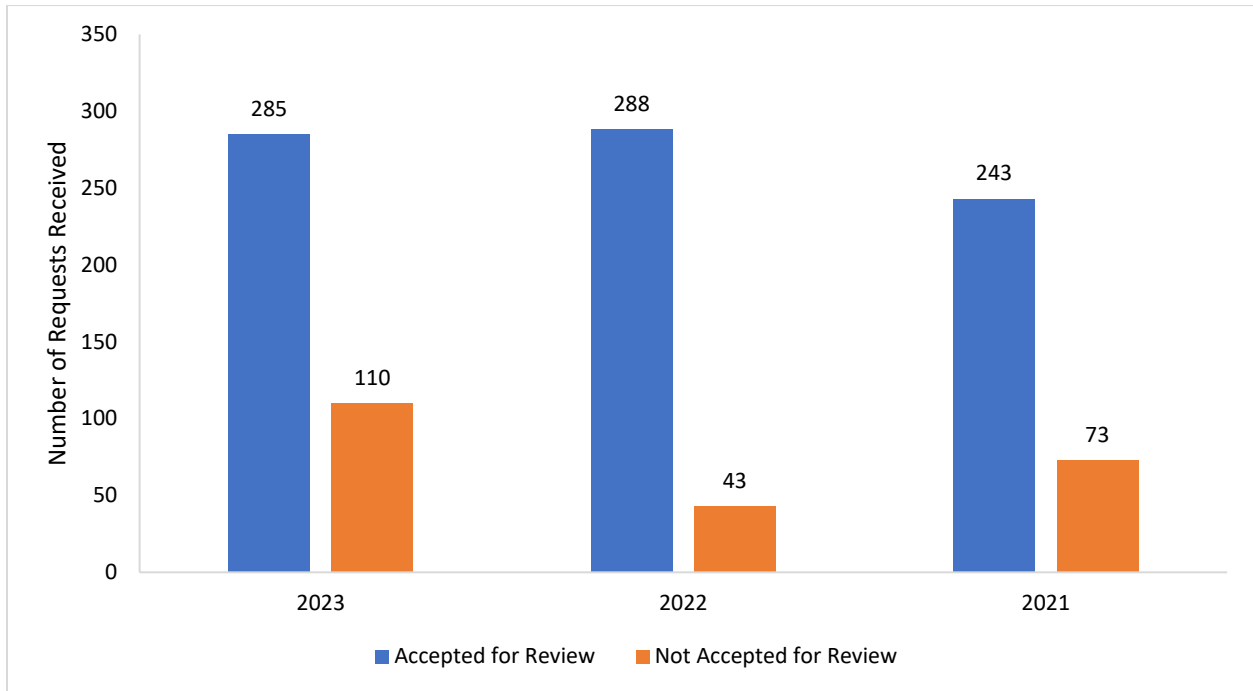


Table 1, above, includes a comparison of files accepted and not accepted for review for the years 2023, 2022 and 2021.

Number of reviews conducted

Table 2 – Comparison of reviews conducted in 2023, 2022 and 2021

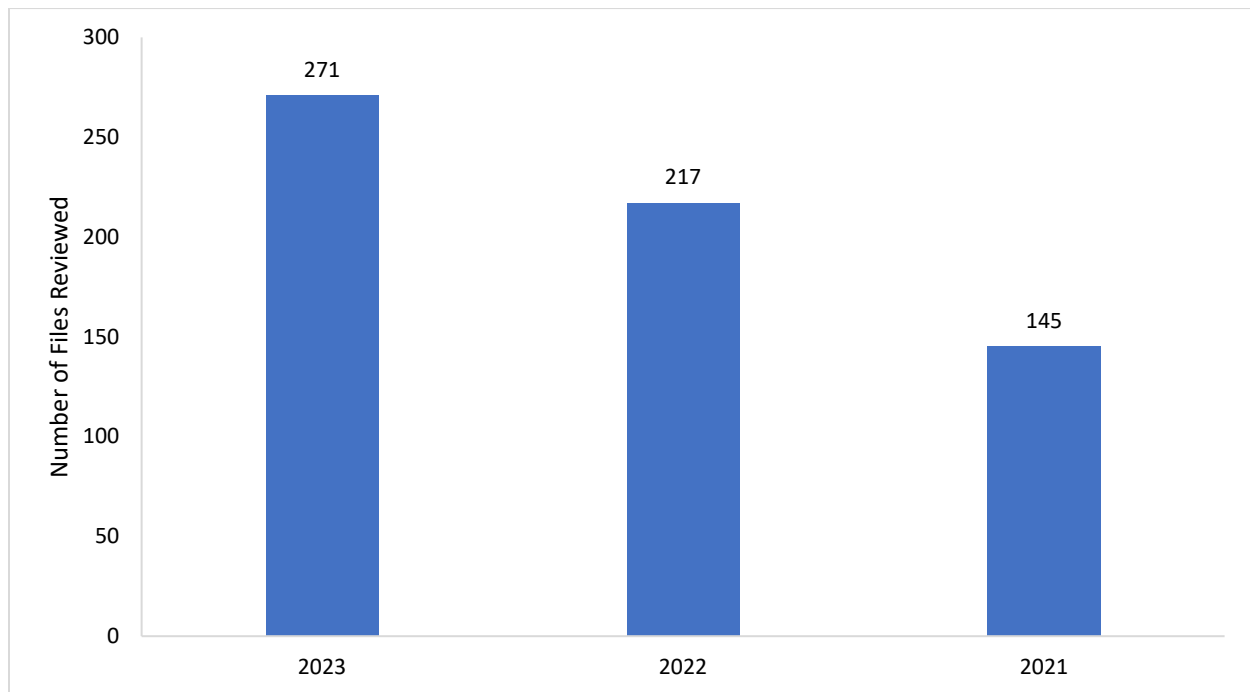


Table 2, above, provides a comparison of the number of files reviewed in 2023, 2022 and 2021. In 2023, the Office of the Commissioner reviewed 271 files. By comparison, 217 files were reviewed in 2022, and 145 files were reviewed in 2021.

Of the 271 files reviewed in 2023, 248 were complaints made against lawyers and 23 were complaints made against paralegals.

Of the 271 files reviewed in 2023, 252 were files from Intake & Resolution and 19 were files from Investigation Services.

Geographic regions for files reviewed

Table 3 – Geographic regions for files reviewed in 2023

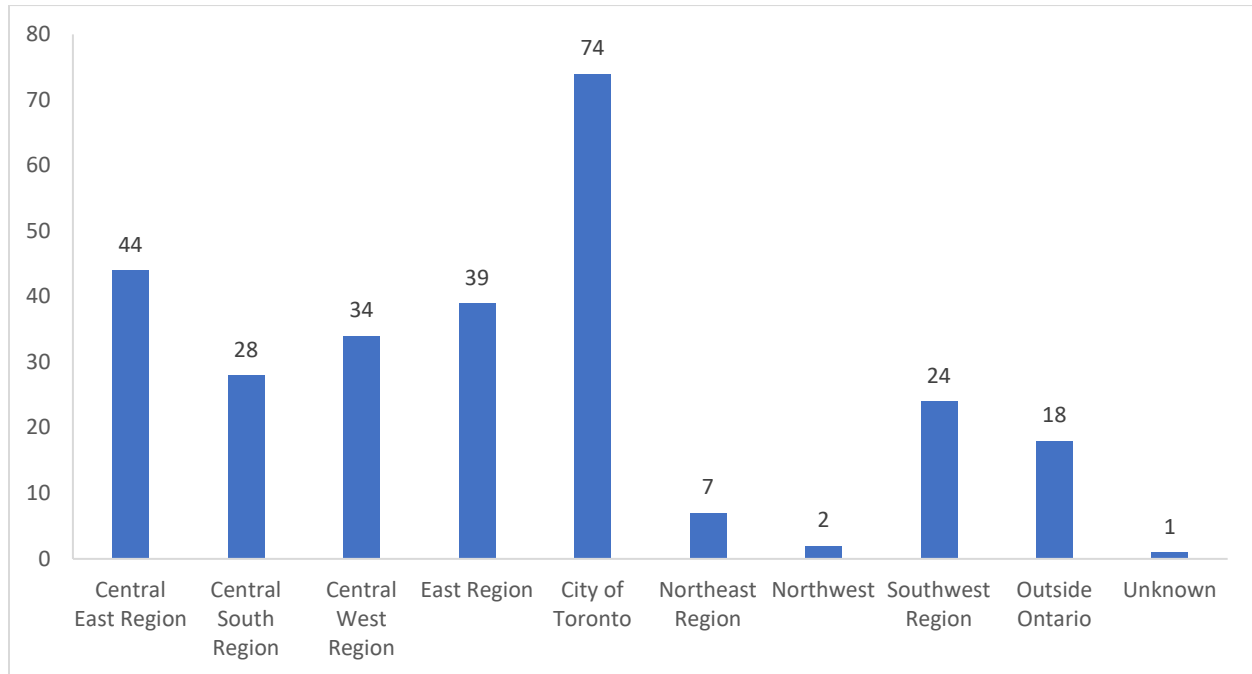


Table 3, above, depicts where the complainant resides for each of the complaints reviewed in 2023³. In 27% (74) of the reviews conducted in 2023, the request was received from a complainant who resides in the City of Toronto.

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 2023, 2022 and 2021

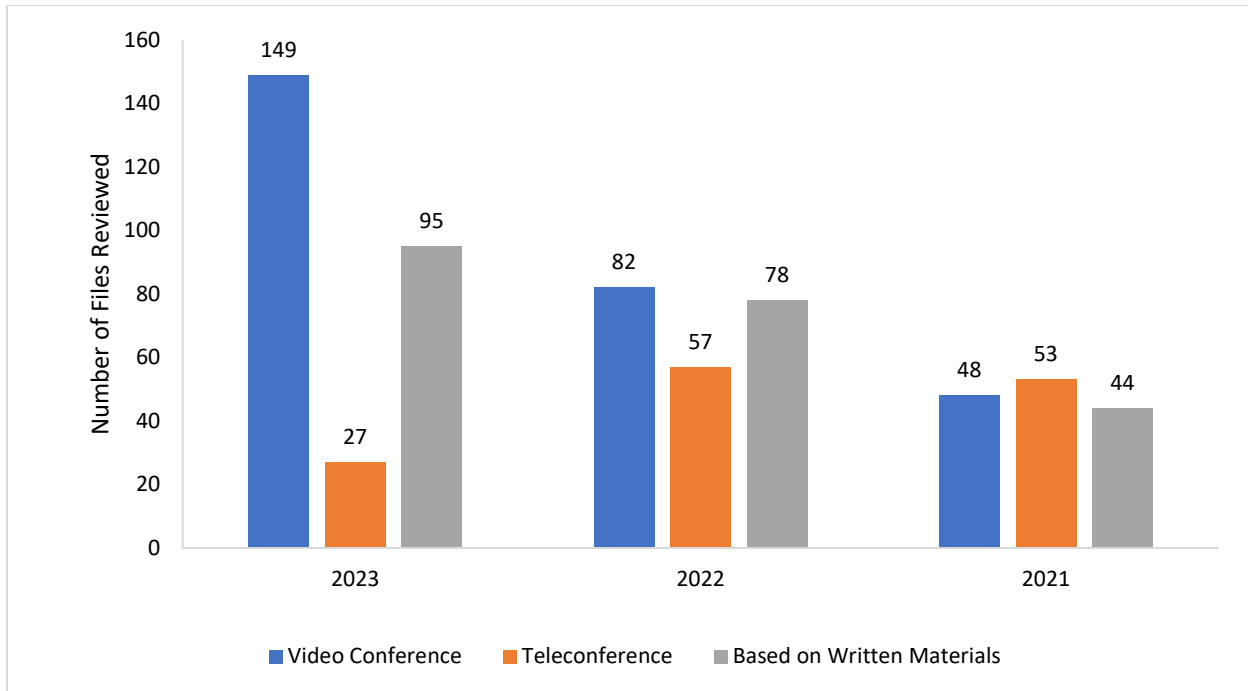
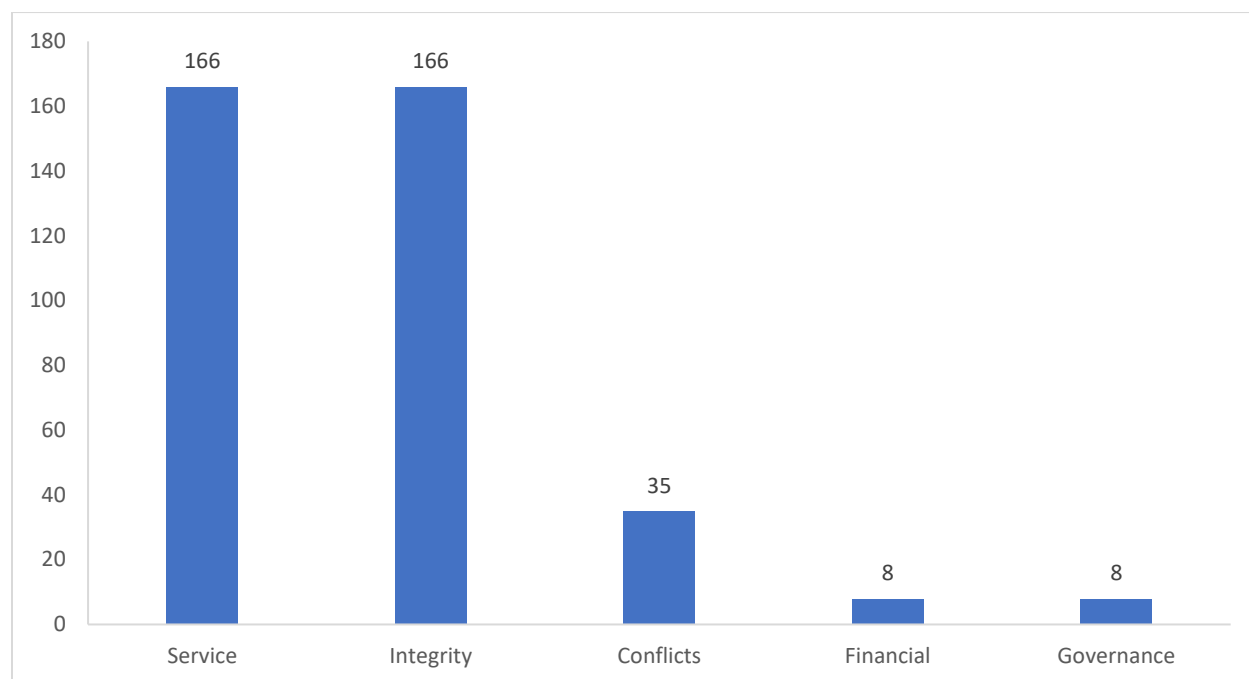


Table 4, above, indicates that of the 271 files reviewed in 2023, 149 (55%) proceeded by video conference, 27 (10%) were conducted by teleconference, and 95 (35%) proceeded based on the written material in the file.

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.

Regulatory issues by category for files reviewed

Table 5 – Regulatory issues by category for files reviewed in 2023



The Law Society tracks the regulatory issues raised in each complaint file. Relying on the Law Society’s categorization, Table 5, above, identifies the five categories of issues raised in the 271 files reviewed in 2023. 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 2023, as in previous years, service and integrity issues continued to be the predominant issues raised by complainants.

Results of reviews conducted in 2023 with comparisons to 2022 and 2021

Figure 1 – Results of reviews conducted in 2023

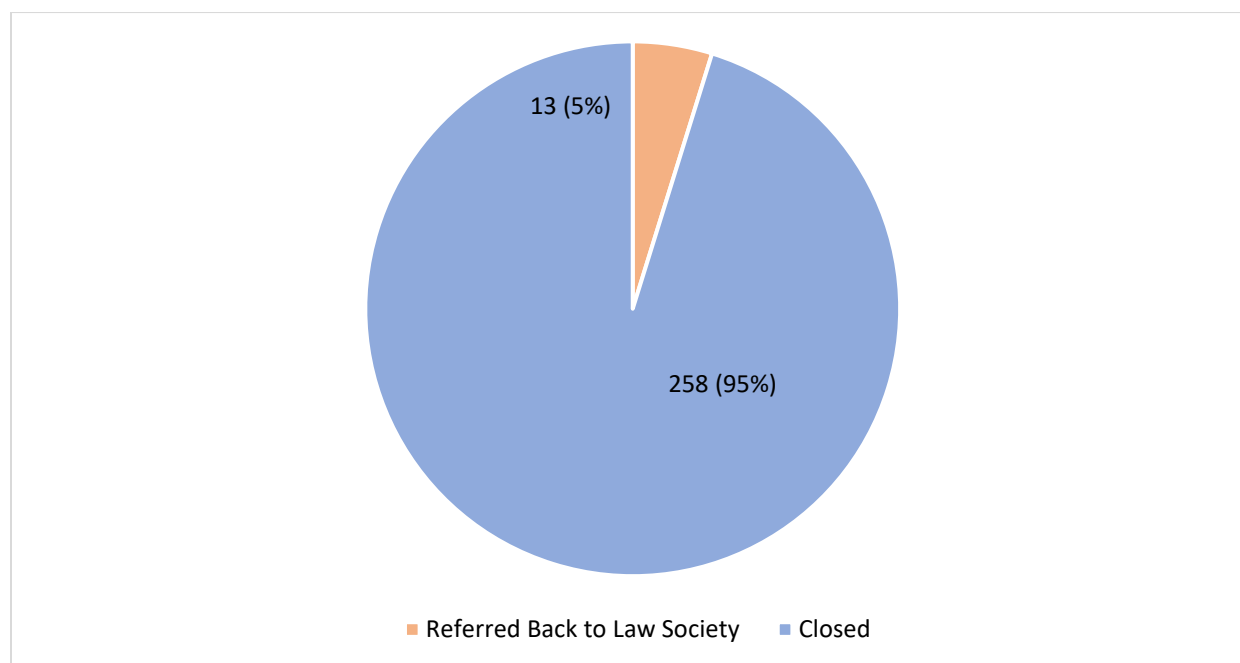


Figure 1, above, shows the outcome of the files reviewed in 2023 by number and percentage. The Commissioner reviewed and rendered a decision in 271 files. Of those 271 files, 258 (95%) remained closed and 13 (5%) were referred back to the Law Society with a recommendation for further action.

In 12 of the 13 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. For the remaining file, the Commissioner referred the matter back to the Law Society pursuant to both 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 fresh evidence.

In 2022, 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.

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 both 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 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. Where the complainant submitted new and significant information to the Office of the Commissioner or to the originating Professional Regulation (PR) department (which new and significant information was then forwarded to the Office of the Commissioner), or if the Director of the originating PR department requested that the file be returned to their department 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 return 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. This policy is intended to reduce delays in dealing with issues raised in complaints.

In 2023, two files were returned to the Law Society prior to the Commissioner's review in accordance with the new policy. In 2022, 10 files were returned in accordance with this policy.

Executive Director's response to files referred back to the Law Society in respect of reviews conducted in 2023 with comparisons to 2022 and 2021

In 2023, the Executive Director took further action on 12 of the 13 files referred back to the Law Society and declined to take further action on one file.

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 on 11 of the 15 files referred back and declined to accept the recommendation for further action on four files.

E. Average age of files completed in 2023 with comparisons to 2022 and 2021

Average age of files completed

Of the files completed in 2023, the average age from the receipt of the request for review to the date the Commissioner's decision was released and the file was closed was 470 days. In 2022, the average age of files completed was 509 days and in 2021, it was 451 days.

The number of days between the date a request for review is received by the Office of the Commissioner and the date of the Commissioner's decision is impacted by a range of factors.

Previous reports provided statistical information across the three-year period (age tracking chart). Briefly, some of the factors that have contributed to the time gap include:

- 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 an immediate and large 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.
- There has been a substantial increase in the number of requests for review received. The number of requests for review that were accepted as within the Commissioner's jurisdiction in each of 2023 and 2022 is 50% greater than the requests accepted in 2019, largely due to reverting to a prior practice of offering more complainants the option to request a review by the Commissioner. 2023 and 2022 each had an increase of approximately 18% in the number of requests for review accepted for review as compared to 2021.

Active inventory as of December 31, 2023

There were 359 files in the Office of the Commissioner's active inventory as of December 31, 2023, with the following status:

- 90 files scheduled for review in 2024
- 207 files ready to be scheduled
- 59 files awaiting confirmation from the Law Society that electronic files have been exported and are ready for Commissioner's review
- 3 files were new

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. Efforts to address the backlog have increased urgency, given the 18% increase in accepted requests for review in 2023 and 2022 over 2021.

Reorganization of the Office of the Commissioner

In June 2022, the Office of the Commissioner replaced the position of Senior Coordinator, an administrative role, with the position of Officer. The position of Officer includes both administrative responsibilities as well as carriage of a number of complaint files.

In September 2023, the position of part-time Senior Counsel was replaced with a full-time Counsel position.

In January 2024, a new one-year contract Counsel position was added to the Office of the Commissioner.

These changes are expected to have a positive impact on reducing the time between a request for review being received and the date of the Commissioner's decision, and in addressing the backlog.

Process changes

As noted earlier in this Annual Report, the Office of the Commissioner instituted a new policy of returning 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.

Instituting the new policy of returning 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 returned to the Law Society under this new policy, both the Manager of the Office of the Commissioner as well as the Director

of the originating PR department must agree. The Office of the Commissioner will monitor the impact of this approach on whether reviews are requested, 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.

Future projections

In December 2023, the Office of the Commissioner was dealing with files in which the requests for review were received prior to August 2022. It is anticipated that recent staffing changes will allow the Office of the Commissioner to complete the remainder of all requests for review received in 2022 before the end of December 2024 as well as most of the requests received in 2023. The backlog is expected to be significantly reduced by the end of 2024. At the present staffing level, which includes the new contract Counsel position, it is projected that the Office of the Commissioner will require another year to work through the backlog.

G. Commissioner's observations

Increase in accommodation requests

In 2023 the Office of the Commissioner received an increase in the number of requests for accommodation from complainants. Some of the requests were for a friend or family member to attend the review meeting with the complainant. This request was readily accommodated and experience has shown that it facilitates the review meeting. Some complainants asked for an extension of time to provide information to the Office of the Commissioner in advance of the review meeting. Other complainants asked for additional time at the review meeting. Where these requests could be provided without unnecessarily delaying matters, or impacting the scheduling of other matters, they were accommodated.

In some files, the Office of the Commissioner arranged for interpretation services to be available, including, for example, Arabic and Cantonese translation services.

The mode of communication was particularly important for some complainants. The Office of the Commissioner would, for example, only communicate with the complainant in writing where requested.

Some requests for accommodation were complex, for example, accompanied by extensive communication from complainants and referring to the potential involvement of other agencies and tribunals such as the Human Rights Tribunal. These requests required

significant staff time to assess and ensure that they were responded to appropriately as well as managing significant amounts of correspondence from complainants in these cases.

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).

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

Licensees may find themselves engaged with clients and third parties on various social media platforms. As noted in an earlier Annual Report, 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 as noted in Commentary [1] to Rule 5.6-1 of the Rules and Rule 6.01 of the Paralegal Rules, dealing with a licensee’s duty to encourage respect for the administration of justice. Also related to social media use is the importance of a licensee’s duty of confidentiality. Particular attention must be paid to ensuring that compliance with this duty is not put at risk by use of a particular mode of communication.

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 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.

The Law Society should expect licensees to be diligent in documenting and recording interactions, instructions received, and advice given throughout their involvement with a client’s matter. The use of retainer agreements is very helpful in determining the scope and limitations of the retainer, and its importance as a best practice should be emphasized.

I note, in particular, the importance of keeping detailed written notes of key client conversations, and confirming, in writing, instructions received, especially as they relate to

offers to settle or impediments to the case. 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.

Fee disputes framed as misconduct complaints

A significant number of complaint files involve a complaint about fees charged. There are some files where fees are really the sole issue but the complainant frames the allegedly excessive fees and/or the legal methods used by licensees to collect unpaid accounts as misconduct. This often extends to a belief that the discipline process can result in the licensee having to give back the money or the Law Society reimbursing the complainant. These claims persist despite being told by both the Law Society and the Office of the Commissioner that there is no jurisdiction to deal with this issue. These complaints become more difficult in the absence of a retainer agreement or clear communication (and accounting to the client) regarding fees.

Licensees should be reminded to set out fees, retainers, and payment requirements in writing at the beginning of the retainer, and to communicate clearly regarding costs throughout their involvement, including requirements to top up retainers. There may be value in monitoring the implementation of the new requirements for contingency fee arrangements. These are complex arrangements with serious financial implications for the clients and there is often a corresponding lack of understanding of the specific details of the arrangement.

Experiential training and mentorship

Complaints continued to be received alleging a lack of particular training on the part of a licensee, for example, in respect of billing. Others raised concerns around communication skills. Required or encouraged experiential training for licensees, as a response to a complaint, would benefit the public and the individual licensee. From a complainant's perspective it is likely to be seen as more responsive to their complaint than a Law Society decision letter noting that the licensee's attention has been drawn to the applicable Rule or Rules.

In a past Annual Report, the previous Commissioner expressed the view that 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. The Commissioner notes the positive addition of experiential training options for licensees and would encourage the Law Society to continue with its active promotion of the mentorship program.

Complexity of issues raised in complaints

Just as litigation and other legal processes have become more complex, procedurally and otherwise, so too have the complaints that flow from those proceedings. The issues raised in some of the complaints touched on challenging legal issues that would ordinarily be addressed by the appropriate court or tribunal. While these complex legal issues remain for a court or tribunal to determine, the conduct and strategies of legal counsel in advancing or responding to those issues may also engage the application of one or more of the Rules or Paralegal Rules.

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
Amended: June 28, 2007
September 20, 2007 (editorial changes)
October 25, 2007 (editorial changes)
February 21, 2008
April 24, 2008
October 30, 2008
January 29, 2009
October 28, 2010
April 25, 2013
May 30, 2013
March 4, 2014
June 26, 2014
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
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: _____

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.

- Zoom Video Conference** Internet connection, webcam, microphone and speaker required
- Zoom Teleconference (audio only)** Internet connection, microphone and speaker required
- Dial-in Conference Call**
- 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

INFORMATION SHEET

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 by Zoom video conference, Zoom teleconference (audio only), dial-in conference call or based on the materials in the file. 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
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.



Law Society
of Ontario

Barreau
de l'Ontario

NOTE: This report was amended following April 25, 2024 Convocation, however the statistics contained in the report remain the same.

2023 End-of-Year Report

Professional Regulation Division

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MESSAGE FROM THE EXECUTIVE DIRECTOR

A significant focus for the Professional Regulation division in 2023 was on the transformation of its business processes to improve its ability to produce effective, timely regulatory outcomes. This included the introduction of a new case management system, integrated with the rest of the organization's information system, to replace the outdated legacy system. Given that the transition reflects a fundamental shift in how the work of the division is completed, this has been a time-consuming process, which has temporarily impacted the efficiency of workflows and consequent productivity. The added challenge has been that these forward-looking enhancements have been occurring while the division continued to advance its current caseload in the public interest. All of this created immense pressures on staff across the division. It is a great testament to the commitment and creativity of the team that the core work of the division was substantially maintained in the face of these pressures. In fact, many of the benchmarks addressed in this report, particularly around the age of files being completed, actually improved. We have been able to mitigate the impact of the transformation by developing strategies to enhance the effective completion of matters. These included an expanded and early assessment of risk, an emphasis on the completion of older cases, and the resolution or diversion of low-risk cases at an early stage. These priorities will continue to benefit our work going forward. With these measures remaining in place, a more significant reduction in the age of inventory is a priority

for 2024, as the new processes and system are more fully adopted.

A number of systemic barriers to timely completion of regulatory proceedings remain. The failure of licensees to cooperate with investigations is a significant one. We have worked with the Tribunal to support the creation of a duty counsel system that is intended to allow for earlier intervention with licensees and improve responsiveness, without summary hearings being required. Early results are promising. In 2023, the average length of completed non-summary and capacity files was almost 50% higher as the Tribunal was able to complete a number of older files. At the same time, the number of appeals from Hearing Division decisions matched the previous high. The number of appeals by the Law Society from Hearing Division decisions increased for a second straight year. As a result, more resources have been required to meet our mandate without increasing the number of cases.

One notable structural improvement was the integration of the functions related to the receipt and triage of complaints in the Intake & Resolution department in order to streamline that process. This transition has been combined with a shift to requiring complaints to be submitted through the LSO Connects portal to allow the direct integration of those complaints into the case management system. The work on related processes continues, with an eye to maximizing the ability to promptly assess complaints. The necessity of these changes is reflected in the fact that the Law Society received 6488 complaints in 2023 – the highest number since 2012, which all need to be assessed and resolved.

Having transitioned away from paper documents, we made, and will continue to

make, significant gains in the management of electronic documents, which is crucial to the work of the division given the volume of material handled. The simplification of document transfer between departments and the ongoing improvement of the processes for managing disclosure in cases involving hearings are two central advances.

Over 2023, increasing emphasis has been placed on the application of a risk analysis to decisions involving the triage of complaints and case planning throughout the regulatory process. Measures have been introduced to ensure that risk is considered regularly and consistently across the division, supported by, and documented in, the case management system. Continuing effort is being put into providing necessary training to ensure the effective and consistent assessment of risk.

An emphasis on the early assessment of risk has begun to enable the early resolution of low-risk cases, such as those involving licensees on social media, and the expanded consideration of alternative dispositions, particularly where licensees demonstrate insight into their conduct and seek to cooperate with the Law Society to address any risk to the public. In high-risk cases, risk assessment early in the regulatory process increasingly allows timely determinations of whether interim measures are required and the priority given to investigation and prosecution of those matters. For example, recent cases involving serious allegations of abusive loan arrangements (typically targeting vulnerable people) resulted in two interlocutory suspensions of licensees.

In 2023, we continued to prioritize the improvement of our frameworks for the handling of certain regulatory issues, where there is a risk of particular harm to portions of the public. A new framework for the receipt

and investigation of sexual misconduct and harassment complaints was implemented in the fall of 2023 with designated staff assigned to these matters. Similarly, work has continued on refining our approach to the handling of complaints involving Indigenous complainants or licensees. These efforts included the introduction of a possible restorative justice model to the potential responses to complaints, either in conjunction with or as an alternative to statutory regulatory processes and the increased availability of *Gladue* reports, where a licensee wishes. Significant effort was also invested in refining approaches to engage with licensees with mental health issues, continuing to emphasize diversion where appropriate.

We have continued to prioritize the Law Society's commitment to regulating the professions in the public interest in our work. We have pressed to enhance the transparency of the regulatory process to the public by advocating for the participation of public members on more panels of the Tribunal and introducing guidelines for staff to expand the contact made with complainants throughout the regulatory process. It is anticipated that increased communication with complainants will help to identify more opportunities for early and effective resolutions to address regulatory concerns raised by complaints.

Finally, this report would be incomplete without recognizing the challenges of compiling data from two case management systems – and the efforts made by Danielle Smith and Cathy Braid to ensure that we had the most complete survey of our work possible. We owe this report to their ability to learn a new system and master an old one.

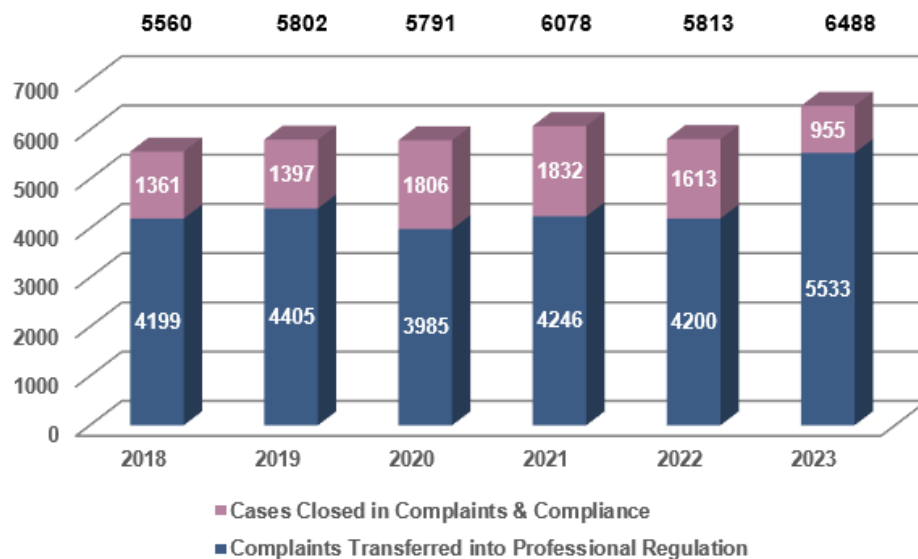
Glenn Stuart

COMPLAINTS RECEIVED

In 2023, there was a change in relation to where complaints were initially received in the Law Society. Formerly, the Complaints & Compliance department in the Client & People Services division received all complaints, and either closed them or, for complaints where a potential regulatory issue was identified, transferred them into Professional Regulation's Intake & Resolution (I&R) department. Starting midyear in 2023, Professional Regulation began to receive all complaints directly.

In previous year-end reports for Professional Regulation (PR), the focus was on complaints transferred into the division each year from Complaints & Compliance. With the change in process, our reporting focus has also changed. In the graph below, each bar displays what occurred with all complaints received in the respective calendar year.

For 2023, the number of new complaints received in the Law Society increased by 11.6% from the number of complaints received in 2022, and by 6.7% from the number received in 2021.



Breakdown by Subject

70% involving lawyers

11% involving paralegals

19% involving non-licensees and applicants

Breakdown by Complainant

78% brought by members of the public

9% brought by licensees

13% commenced internally

Only a small number of licensees receive complaints. In 2023, only 5.34% of licensed lawyers and 2.40% of licensed paralegals received complaints.¹ Looking at licensees in private practice²,

- 9.52% of lawyers in private practice received at least one complaint in 2023.
- 10.46% of paralegals in private practice received at least one complaint in 2023.

INITIAL TRIAGE RESULTS

The **Intake & Resolution** (I&R) department conducts early, robust triage of complaints, based on objective risk assessment. It identifies regulatory issues and collects information, resolves complaints or transfers complaints for further investigation and considers the public interest in determining appropriate regulatory responses.

In 2023, I&R had a very challenging year navigating the changes introduced through the business transformation project. Not only did staff have to learn and adjust to a new case and document management system to manage their cases, but also, the department confronted further challenges in ensuring that complaints were triaged in a timely and efficient manner:

- starting mid-year, the department took on receipt of all complaints received by the Law Society from the former Complaints & Compliance department,
- a new process to receive complaints online via a new Law Society portal was implemented; and,
- a higher volume of new complaints was received throughout the year.

Given I&R's position in the complaints process, the department had to move quickly to address these challenges. New business processes were created to address changes in how complaints were received and addressed and to ensure that risks to the public were identified in a timely and efficient manner. These processes are under constant review, with updating as required. Staff have managed these challenges with a combination of creativity, commitment to quality work and, perhaps most notably, an impressive level of teamwork and collegiality, supported by the efforts of a leadership team that itself changed over the year.

"You are excellent to talk to and you actually listening (sic) to me..."

from a complainant

¹ "licensed licensees" include licensees who are entitled to provide legal services and licensees whose licence is suspended. They do not include honorary licensees or licensees holding judicial office.

² The majority of complaints against licensees involve licensees in private practice, which includes licensees in a status that indicates they are sole owner, partner, employee or associate. In 2022, 87% of complaints received against lawyers were received against lawyers in private practice, and 70% of complaints received against paralegals were received against paralegals in private practice.

“Thank you very much for this swift response below. It really is sincerely appreciated... ..this complaint was naturally quite troubling to [the subject]. Your swift response brings closure and comfort.”

From the representative of the subject of a complaint

In addition, the department

- spent significant amounts of time with complainants who were either having difficulty working in the new portal system or didn't want to use it.
- introduced a new divisional process for responding to sexual misconduct allegations, including creating and staffing a new phone line, implementing new protocols and improving the information on the Law Society's website.
- continued to enhance the process for engaging First Nations, Inuit & Metis peoples (FNIM) making complaints, taking the time to speak to vulnerable complainants on the FNIM phonenumber and handle their complaints in accordance with our commitment to reconciliation.
- continued to work with other departments, including Investigation Services, Litigation Services and Trustee Services staff, using a risk-based approach to cases, to determine the most effective regulatory response to novel issues or multiple / serious complaints.

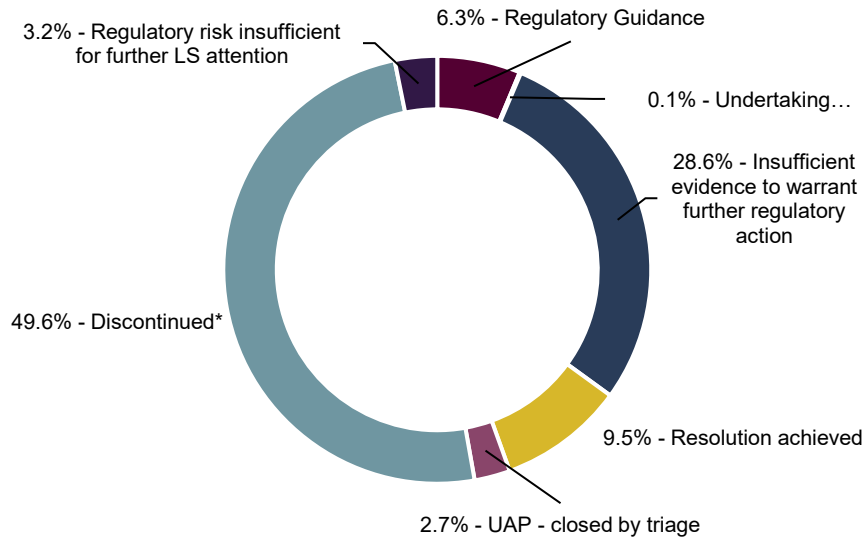
The overall impact of the challenging transitions faced by I&R in 2023 was a reduction in the total number of cases resolved and closed. However, I&R effectively managed the risks presented by this caseload by prioritizing higher risk cases (being those that were transferred for investigation). The team also focused on timely turnover of lower risk cases and transfer of the highest risk cases. This effort is reflected in a reduction of the median age of the files closed within the department by 19% from 2022 to 2023, and a 32% decrease from 2021 to 2023. In turn, this decreased the median age of the department's inventory by 11% from 2022 to 2023.

In 2023:

- 4,526 cases were resolved and closed.³ (14% decrease from 2022)
- 976 complaints were transferred.
- Staff addressed the unanticipated workload of an additional 685 cases that were merged with existing cases (duplicate on-line forms) and 2,873 'ghost' cases where the complainant did not complete the on-line complaints form or was timed out.

³ Includes cases closed in Complaints & Compliance prior to the merge with I&R.

Breakdown of closed complaints



* Discontinued includes complaints closed as outside jurisdiction, ongoing concurrent external or internal litigation or withdrawal of complaint

INVESTIGATION SERVICES

Investigation Services investigates serious allegations of licensee misconduct, incapacity or incompetence, “good character” of applicants and unauthorized practice by non-licensees or former licensees.

Real estate and civil litigation were the top areas of law in new complaints received and those transferred into Investigation Services in 2023.

In 2023, the department received 17% fewer new cases than in 2022, but only 1% fewer than in 2021. As previously reported, the increased number of new cases in 2022 was directly related to the investigations into prohibited conduct by lawyer licensing applicants on the Law Society’s November 2021 barrister and solicitor online licensing examinations. Without those cases, the number of new cases in 2022 would have been similar to the numbers received in 2021 and 2023.

As with other departments in Professional Regulation, the greatest impact on Investigation Services file work was the work on the business transformation project and the launch of the new case management system in 2023. Work had to be reallocated to allow a number of staff to assist with the transformation initiative. Staff had to spend a significant amount of time learning the new system and assisting external users (licensees and complainants) with the use of the on-line portal. In addition, the department saw the departure of a number of experienced investigators in 2023. Staff transitions always create a significant impediment to the work of the department given the size of many investigations and the challenge of new staff becoming familiar with cases. It is

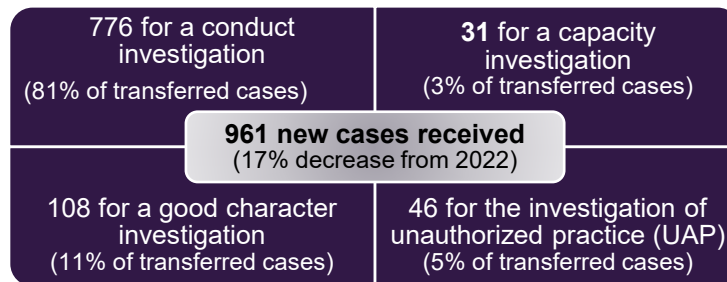
IS staff managed the additional work of inviting and supporting 1,148 licensees and complainants in active matters to set up accounts in the new LSO Connects portal.

anticipated that features of the new case management system may facilitate these transitions. Throughout, Investigation Services staff have supported each other, and managers have worked hard to support the ongoing work of the department during a time of unprecedented change.

Notwithstanding these challenges, the Investigation Services department

- achieved its case completion goal for 2023,
- made progress in focusing efforts on completing its oldest investigations, resulting in a reduction in the actual number of files over 18 months old, as well as the percentage these files represent of the department’s total inventory,
- organized a number of additional initiatives to support staff with their orientation of the new system, and
- continued to focus on a risk-based case assessment through regular file review by staff and management, the regular use of risk assessment questionnaires, and ongoing consultation with other PR departments.

Key Statistics for Investigation Services:



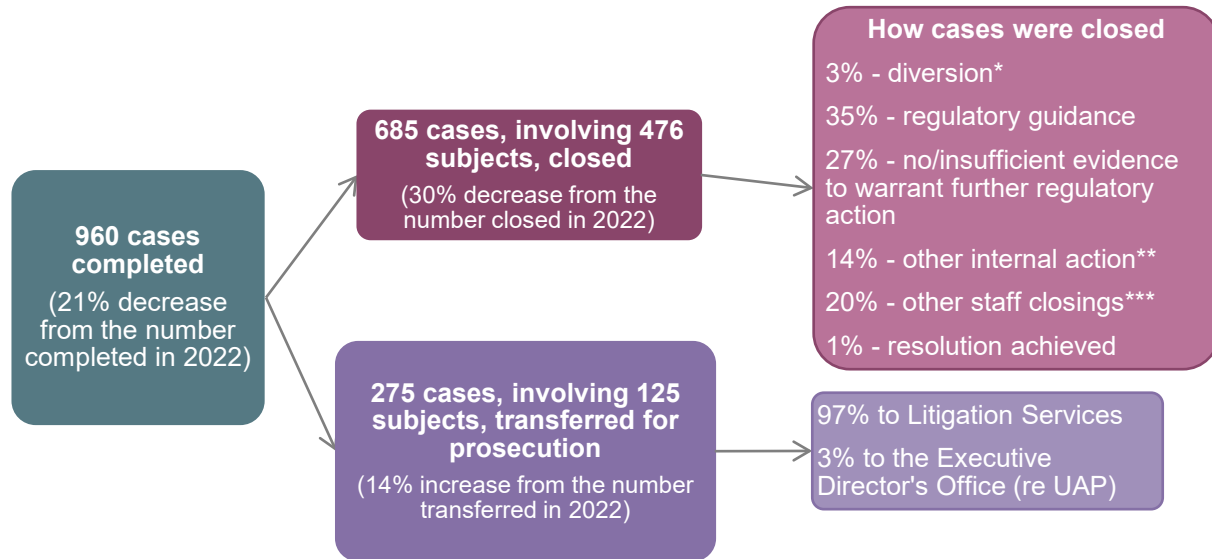
As a result of the efforts of the teams in I&R and Investigation Services, Professional Regulation continued to meet the National Discipline Standard for Investigations and even improved its performance against that benchmark.

National Discipline Standard - Investigations	2022	2023
80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months	86%	89%
90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months	90%	92%

These statistics are based on all complaints that come into Professional Regulation that were

- closed by staff in 2023, or
- proceeded to PAC and were either authorized or closed in 2023.

Matters were closed by Investigation Services in a variety of ways; 29% were transferred for prosecution.



* Regulatory Meeting, invitation to Attend, Letter of Advice, practice/spot audit recommendation, undertaking

** Closed as other related regulatory action was being taken with respect to the licensee

*** Includes discontinued complaints and complaints outside the jurisdiction of the Law Society

REQUESTS FOR REVIEW TO THE COMPLAINTS RESOLUTION COMMISSIONER

When a complaint is closed in Intake & Resolution or Investigations following a review of the merits of the complaint, the complainant is advised of their right to request a review of the closing decision from the Complaints Resolution Commissioner. In 2023:

369 new requests were received for a review by the Commissioner regarding cases closed in I&R and Investigation Services. Excluding the requests that were outside the Commissioner's jurisdiction, the requests received in 2023 represent 13% of all cases closed in I&R and Investigation Services that were eligible for a review.

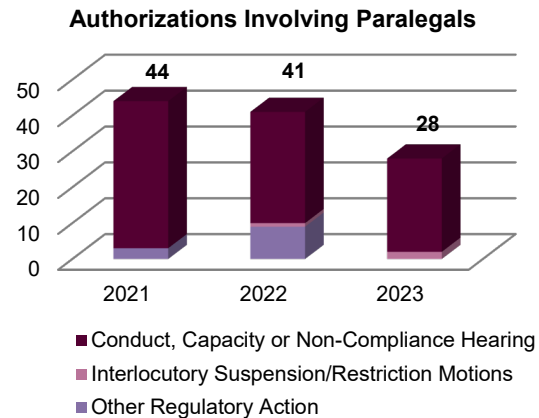
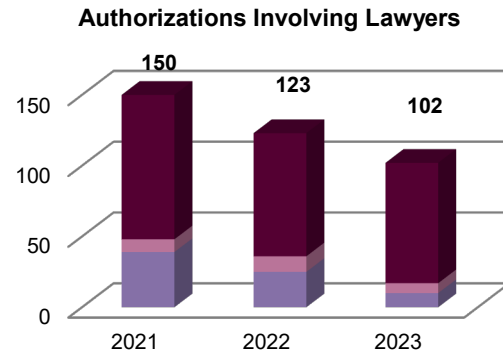
271 decisions were rendered by the Commissioner, of which 95% (258 cases) remained closed and 5% (13 cases, of which 7 were related) were referred back to the Division with a recommendation for further action.

The Executive Director adopted the Commissioner's recommendation in **11 of the 13 files** that were referred back.

AUTHORIZATIONS BY THE PROCEEDINGS AUTHORIZATION COMMITTEE (PAC)

In 2023, the PAC authorized 130 matters:

- 120 matters were authorized to proceed for a hearing before the Law Society Tribunal - Hearing Division (an 8% reduction from 2022).
- 8 matters were authorized for other regulatory responses (i.e., either a letter of advice, an invitation to attend or a regulatory meeting).
- In addition, the PAC authorized 2 applications for disclosure, pursuant to s.49.13 of the *Law Society Act*.



The reduction in the number of matters referred for hearing, along with a reduction in the number of matters referred for remedial measures, reflects the effect of prioritizing higher risk matters, while allowing for the impacts of the business transformation across the division.

LITIGATION SERVICES

Litigation Services is responsible for all prosecution related activities in the division. Discipline Counsel, Associate Discipline Counsel and Discipline Paralegals (together “Discipline prosecutors”):

- provide advice to investigators during their investigations,
- recommend cases to the PAC for the commencement of regulatory hearings,
- issue notices of application (which commence the hearing process),
- disclose to the subject licensee material obtained through the investigative process, and
- represent the Law Society in pre-hearing, hearing and appeal processes before the Law Society Tribunal and in the courts where appeals or judicial reviews are taken from Tribunal decisions.

In 2023, Discipline prosecutors continued to prepare for and attend hearings which were mostly held virtually at the initiative of the Tribunal, even where the parties agreed that an in-person hearing was preferable. In addition, there was an increased complexity in cases in 2023 due to the number of proceedings, motions (including for costs), and appeals brought by licensees at both the Tribunal and in Court.

Litigation Services also worked to meet the challenges of working within the new case management system.



Challenges arose in gaining familiarity with a new system, development of business processes and procedures, and tackling communication and document management challenges, including efficient review and identification of documents for disclosure purposes.

Advantages of the new system included transitioning to both electronic data and document management, improved access to information across the team, the ability to use metadata tagging to assist in organizing large volumes of material, increased efficiency with internal approvals, and a more transparent view into ongoing risk assessment to ensure appropriate regulatory outcomes.

Notable Activities in 2023 for Litigation Services

Preserving the Public Voice

Law Society of Ontario v. Schulz, 2023 ONSC 3943

The Divisional Court held that where the Law Society Tribunal departs from the mandatory requirement to include a lay adjudicator on its three person panels, the Tribunal must document both that it has exercised the discretion to do so and the grounds for the exercise of that discretion (among the three permissible grounds). The inclusion of a lay adjudicator was particularly essential in this case, which involved misconduct related to a criminal conviction for possession of child pornography. The Court remitted the matter back to the Hearing Division for a new hearing.

Motions for Interlocutory Suspensions - Significant Risk to the Public or Public Interest

Professional Regulation continued to emphasize early interventions in cases of significant risk to the public. In 2023, several licensees were suspended on an interlocutory basis, while the investigation was ongoing, because of findings that there was significant risk to the public or the public interest in the administration of justice, including in the following circumstances:

- exploitative loan agreements in which senior citizens were induced to enter mortgages or security interests with onerous terms, typically without full disclosure, or where mortgages (or higher mortgages) were placed on their properties without their knowledge or consent, setting up situations where these mortgages were enforced unfairly. (*Jain 2023 ONLSTH*)

132; and *Harrison 2023 ONLSTH 80*⁴).

- Given the magnitude of the problem reflected in these cases, PR worked with other departments in the Law Society to issue a notice to the professions regarding these transactions in an effort to pre-empt future recurrences involving other licensees. In early 2024, the Ontario government took further legislative action to prevent these abuses.
- allegedly fraudulent transactions that resulted in substantial losses to multiple parties, and misleading of a client and the Law Society (*Bartolo, 2023 ONLSTH 134*).
- a trust account was used for transactions unrelated to the provision of legal services in an alleged investment scheme, where the panel concluded that the use of the trust account exposed the people who deposited money to significant risk (*Falletta, 2023 ONLSTH 36*)⁵.
- charges for criminal offences related to child luring (*Vieira, 2023 ONLSTH 103*).
- substantial shortages in the trust account for extended periods of time, which placed clients' funds in significant jeopardy. A suspension was ordered despite the licensee's argument that the issue was only poor bookkeeping and a supervision order was sufficient (*Haque, 2023 ONLSTH 91*).

Licensing Cases

A significant portion of the work in Litigation Services in 2023 involved licensing hearings and related proceedings. A number of these are connected to allegations of academic misconduct arising from the November 2021 licensing examinations. Applications for judicial review of decisions made in the licensing process regarding these examinations were heard in a consolidated hearing by the Divisional Court in October 2023. The Law Society was partly successful in that the voiding of the applicants' examinations was upheld, but the Court set aside the decisions by the Licensing & Accreditation Department to void the candidates' registrations. The Law Society has sought leave to appeal to the Court of Appeal in order to address a number of errors, including assertions that do not accurately reflect the Law Society's actual processes or statutory framework, which undermine the Law Society's ability to effectively regulate in the public interest.

⁴ In 2023, Ms. Harrison successfully appealed the suspension decision on the grounds of procedural fairness by the Hearing Division (*2024 ONLSTA 1*). In response, in 2024, the Law Society brought its motion again, and Ms. Harrison was suspended on an interlocutory basis due to the serious integrity issues raised by the evidence (*2024 ONLSTA 24*).

⁵ In 2023, the Hearing Division found that the use of a trust account for purposes unrelated to provision of legal services was very serious misconduct, deserving of substantial sanction (*Law Society of Ontario v. Albaum, 2023 ONLSTH 116*).

AA v. Law Society of Ontario, 2023 ONLSTH 98

In 2023, the Hearing Division found the applicant to be of good character, notwithstanding evidence of incidents of sexual abuse of children occurring prior to 2010, the failure to be forthcoming of these incidents in a previous licensing application, and evidence that he should not be unsupervised with children still. A condition was imposed that AA could not meet with children while unsupervised (without any further detail as to what supervision was required). In 2024, the Appeal Division upheld this decision, and the decision to anonymize AA (2024 ONLSTA 6), but the Law Society is seeking judicial review of the decision before the Divisional Court, emphasizing the fundamental contradiction between the condition based on a risk to a vulnerable population and the finding of good character.

Law Society of Ontario v. Colangelo, 2023 ONLSTA 16

The Appeal Division upheld the Hearing Division's decision that the applicant was of good character, despite a recent conviction of child luring involving students while she was in a position of trust as a teacher, the revocation of her Ontario teaching certificate in 2021, and her status as a registered sex offender. The Appeal Division also upheld the Hearing Division's decision to restrict her ability to practice until the expiry of the custodial sentence she was currently serving in the community. The Law Society has brought a judicial review application before the Divisional Court focusing on addressing the damage to public confidence, and the failure to provide reasons both for not considering the application premature and for rejecting the Law Society's position that serving a criminal sentence should be a presumptive bar to a finding of good character.

In three cases of licensees whose licences had previously been revoked, the Law Society successfully opposed their re-licensing on the basis they were not presently of good character.

McLellan v. Law Society of Ontario, 2023 ONLSTH 98

The applicant's licence was revoked in 2009 for misappropriation, and he was criminally convicted for fraud. The panel found he was not of good character. His community involvement and educational achievements were of little relevance to rehabilitation: he did not show sufficient remorse and had failed to make meaningful restitution. The decision is under appeal by the applicant.

Mundulai v. Law Society of Ontario, 2023 ONLSTA 13

The applicant's licence was revoked in 2012 for ungovernability, including breaching bail conditions, disobeying court orders, and failing to answer investigative inquiries. The Appeal Division dismissed his appeal of the Hearing Division's finding he was not of good character. During the licensing process, he failed to disclose various matters, including outstanding civil judgments and insurance claims, as well as serious criminal charges.

Senjule v. Law Society of Ontario, 2023 ONLSTH 11

The applicant's licence was revoked in 2010 for knowing assistance in fraudulent or dishonest conduct, among other misconduct. The past misconduct was very serious,

affected many clients and others, involved large amounts of money and spanned years. There was little evidence regarding rehabilitation: he had not apologized or expressed regret to any clients. A subsequent appeal was dismissed: 2023 ONLSTA 22.

The Law Society also obtained strong findings against **applicants who made misleading representations or statements** during the licensing application process.

Amendola v. Law Society of Ontario, 2023 ONSC 4123

The Divisional Court affirmed the Law Society's jurisdiction to commence retroactive licensing cases against licensees who had been granted a licence, if it was discovered that the licensee had made a deliberate misrepresentation as part of their licensing application.

Williams v. Law Society of Ontario, 2023 ONLSTH 133

The Hearing Division affirmed that where a finding of deliberate misrepresentation on a licensing application is made, there is no discretion to grant a licence application. The applicant was found to have deliberately misled the Law Society by failing to disclose information regarding a criminal conviction from 2009.

Dumanian v. Law Society of Ontario, 2023 ONLSTH 84

The applicant was denied a licence because he made false or misleading declarations in his licensing application about the investigation, penalty and his admission of guilt regarding previous allegations of sexual misconduct from a university.

Outside Counsel

The Law Society periodically retains outside counsel to support the division's work in various ways including acting as experts on files and taking carriage of some prosecutions and investigations. A priority has been reducing the use of outside counsel and developing the capacity of internal litigation counsel. In 2023, Professional Regulation:

- spent 39% less on outside counsel retainers than in 2022 and 48% less on outside counsel retainers than in 2021.
- slightly increased the number of retainers for outside counsel to investigate or prosecute cases by 1.5%, compared to the number of retainers in 2022, due to staff turnover and the impact of the transformation process; however, since 2020, the number of retainers has decreased by 47%.

This workload was instead borne by internal staff in Litigation Services. The efficiency of internal staff drove the increased productivity reflected in the Litigation Services statistics below.

Much of the work of outside counsel involves addressing the unauthorized practice of law / provision of legal services. In this area in 2023, outside counsel were responsible for obtaining two court ordered injunctions and findings of guilt in relation to two contempt proceedings.

Key Statistics for Litigation Services

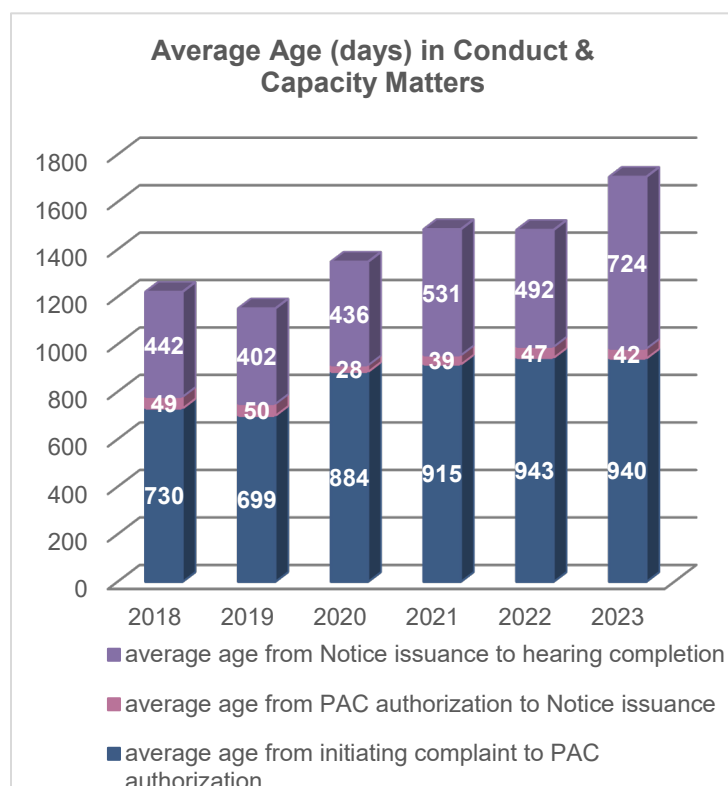
280 new cases were transferred into the department, involving 142 new matters and 135 licensees/applicants.

17 additional matters re Summary Hearing and Motions for Interlocutory Suspensions were assigned to Discipline Prosecutors

131 Notices were filed with the Tribunal, involving 93 lawyers, 26 paralegals, and 12 paralegal or lawyer applicants.

Professional Regulation continued to meet the National Discipline Standard for Notices filed and also improved its performance against that benchmark.

National Discipline Standard – Notices Filed	2022	2023
75% of all citations or notices of hearing are issued and served upon the lawyer or Quebec notary within 60 days of authorization	87%	91%
95% of all citations or notices of hearing are issued and served upon the lawyer or Quebec notary within 90 days of authorization	96%	97%

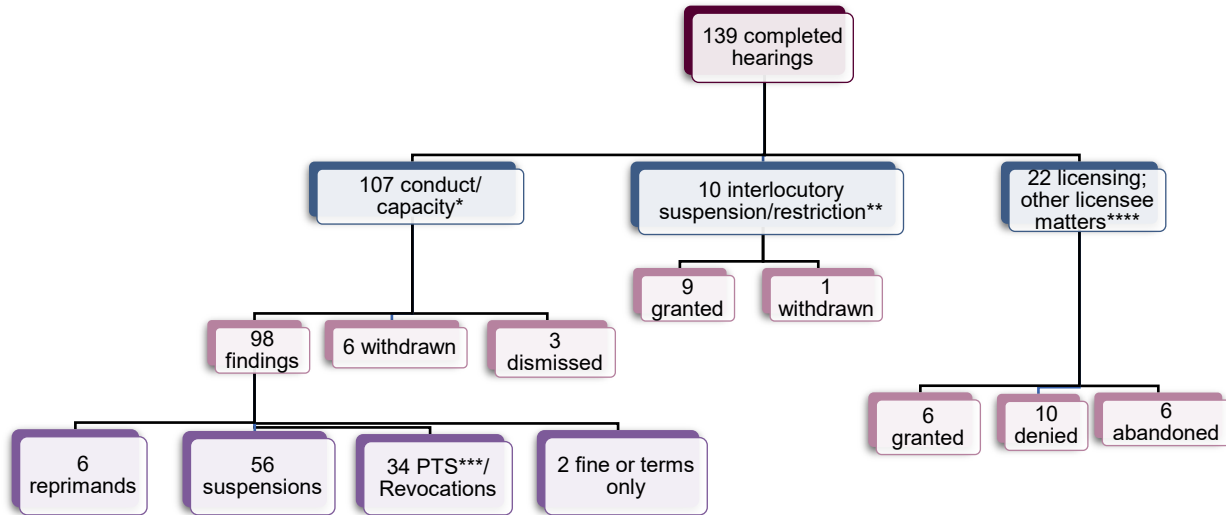


Professional Regulation was able to slightly reduce the time required for cases to be investigated and prepared for hearing, up to the issuance of a notice of hearing. The average duration of capacity and non-summary conduct matters completed increased. This reflected a greater proportion of older cases being completed. Many factors contributed to the overall duration of these proceedings including the number of motions by licensees, the number of prehearing conferences and prolonged hearings on the merits, combined with significant delays in some cases in receiving a decision. However, the time for completion of motions for interlocutory suspensions declined to 45 days after issuance of a notice, its lowest level since before 2018. The

reduction of the age of regulatory matters, throughout the regulatory process, continues to be a priority in 2024.

139 hearings were completed⁶ before the Hearing Division:

97 involving lawyers/ lawyer applicants; 42 involving paralegals/ paralegal applicants.



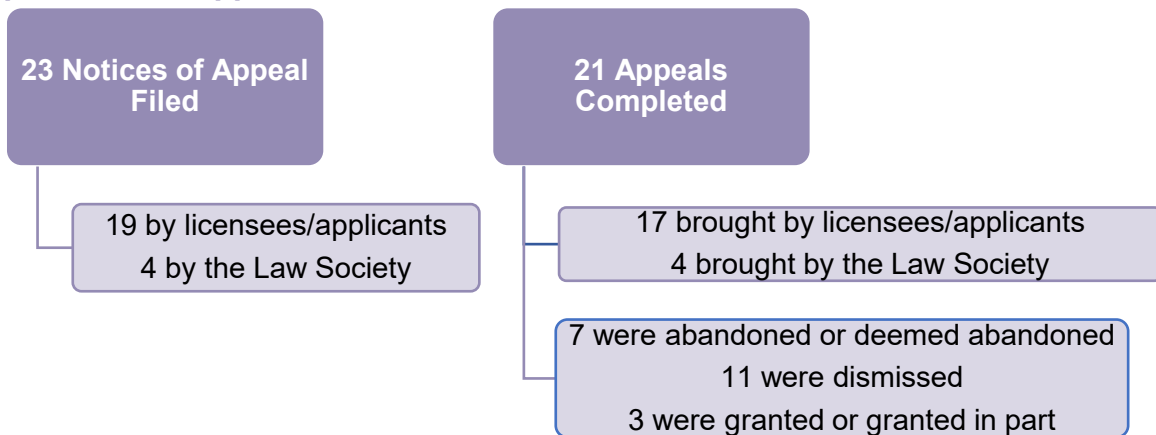
* There were 5 capacity hearings completed in 2022. One Notice was withdrawn by the Law Society. Findings were made of incapacity in the remaining 4.

** 1 of the 10 completed motions was a motion to vary/cancel an interlocutory suspension/restriction order, brought by the Law Society, which was granted

*** Permission to surrender licence.

**** Includes 1 application to appear as counsel, pursuant to Rule 7.7 of the *Rules of Professional Conduct*.

Appeals to the Appeal Division



⁶ A “completed hearing” for Professional Regulation is defined as one in which the Law Society Tribunal – Hearing Division has rendered a final order and the Tribunal is considered *functus*, or when a matter has been withdrawn, abandoned or deemed abandoned.

For a second consecutive year, the number of appeals by the Law Society from decisions of the Hearing Division increased, in response to a growing number of decisions that were considered to be at odds with the Law Society's mandate to protect the public. None of these appeals before the Appeal Division were successful. As noted above, one of these decisions was subsequently overturned by the Divisional Court. In that case, the issue was a failure by the Tribunal to abide by the requirements for the composition of a panel. At the same, a number of decisions of the Hearing Division were overturned by the Appeal Division, on appeal by licensees, for lack of procedural fairness by the Hearing Division.



Appeals / Judicial Reviews in the Courts in 2023

27 appeals, judicial reviews and leave motions filed in the various courts.

- 1 judicial review was filed in the Superior Court
- 3 appeals and 17 judicial reviews were filed in the Divisional Court and
- 6 motions for leave to appeal were filed in the Court of Appeal for Ontario.

The number of judicial reviews filed in the Divisional Court continued to be high in 2023. Eleven (11) judicial reviews to the Divisional Court were filed by lawyer applicants in relation to decisions rendered against them in the academic misconduct investigations.

With respect to the motions for leave to appeal to the Court of Appeal, 1 leave motion that was filed by the Law Society related to decisions rendered by the Divisional Court in relation to 20 lawyer applicant academic misconduct investigations.

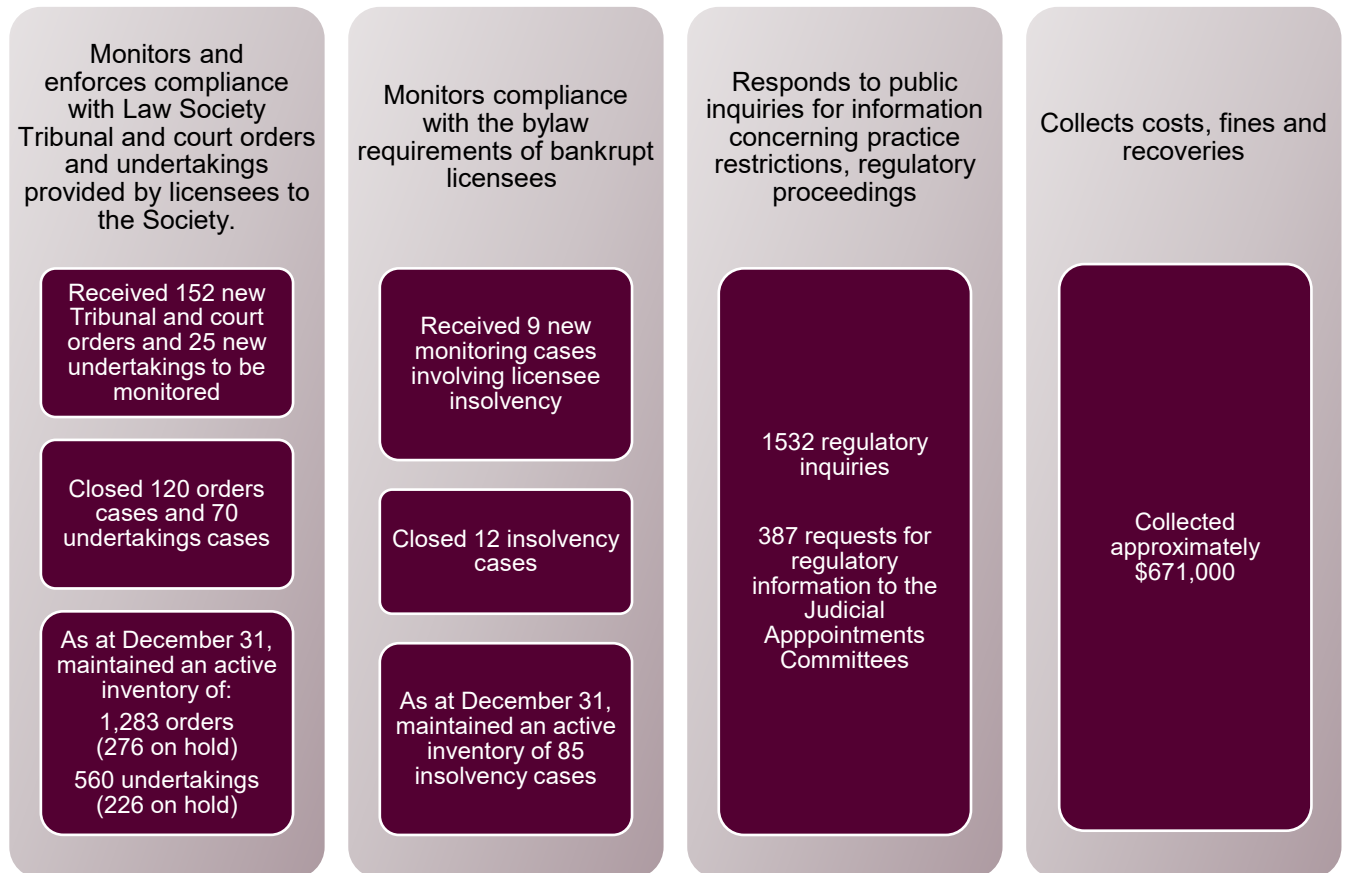
38 appeals, judicial reviews and leave motions were completed in various courts.

- 5 appeals (3 dismissed; 2 granted in part) and 27 judicial reviews (1 abandoned; 6 dismissed; 20 granted in part) were completed in Divisional Court. 1 of the appeals granted in part was brought by the Law Society. All of the remaining appeals/JRs were brought by licensees/applicants.
- 4 motions for leave to appeal to the Court of Appeal were completed. All of the leave motions were brought by licensees/applicants, and all were refused.
- 2 motions for leave to appeal to the Supreme Court of Canada, brought by licensees/applicants, were completed (both were refused).

REGULATORY SERVICES

Regulatory Services is responsible for a number of regulatory activities in Professional Regulation, which are distinct from, but not exclusive of, the complaints process. It is comprised of the Compensation Fund, Regulatory Compliance, and Trustee Services Departments, as well as the Unclaimed Trust Fund program.

Regulatory Compliance



Monitoring can take many forms depending upon the nature of the terms included in the Tribunal / court order or undertaking provided by a licensee / applicant to the Law Society. Some examples include:

- In relation to suspension orders, Regulatory Compliance provides information to the licensees about their obligations in order to assist in their compliance. Staff also will, among other things,
 - ensure that Law Societies across Canada and other relevant organizations (for example, LawPro) are aware of the suspension order,
 - obtain necessary information from the licensee including evidence that any trust account is closed and that another licensee has agreed to take over any active client matters, and

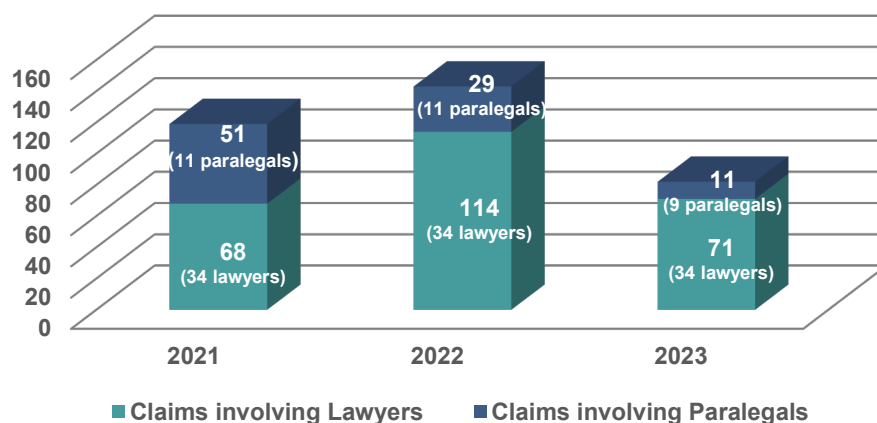
- monitor any terms from the order/undertaking that trigger upon the licensee's return to practice. If a period of supervision is required, staff will conduct necessary background checks on the proposed supervisor.
- Where there is a term to report to the Law Society (for example, to provide regular reports from a treating physician or monthly trust reconciliations), staff review any documentation provided to determine if compliance has been achieved. If the licensee fails to provide the required report, staff will follow-up and, where appropriate, seek a non-compliance order from the Tribunal.
- Where randomized drug/alcohol testing is a term, staff arrange for the testing through a third party.
- Where the Tribunal/court order contains a term to pay costs, and the licensee fails to pay costs as required by the order, staff will advise the licensee that they are suspended pursuant to s.45.1 of the *Law Society Act* and initiate other enforcement steps.

Regulatory Compliance regularly assists other staff in the division in developing the terms to be included in an order or undertaking. Department staff continue to focus on ways to standardize the language used to ensure enforceability and consistency. As an example, staff worked closely with the Capacity Advisor and counsel in the Executive Director's office to standardize oversight and monitoring of undertakings and order templates in order to ensure that the provisions were enforceable and adequately protected the public.

Compensation Fund

The Compensation Fund receives and processes claims from clients who have lost money because of a lawyer's or paralegal's dishonesty.

In 2023, 82 applications for compensation were received by the Fund.



Staff receive and investigate claims and assess the merits of the claims based on a set of Guidelines approved by Convocation.

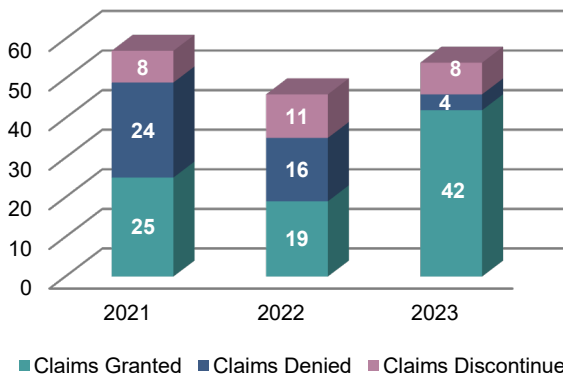
Evidence may need to be gathered from various sources to supplement the information provided by the claimant. Staff will often reach out to other departments in the Division for assistance.

- Forensic auditors in Investigation Services assist by reviewing financial documents in complex files obtained during the course of the investigation of the licensee that may be relevant to the related claim.
- If there is an ongoing Tribunal hearing involving the licensee, Compensation Fund may wait for the completion of the hearing for findings of professional misconduct. Staff will liaise with staff in Litigation Services regarding evidence submitted during the hearing, as well as the Tribunal’s reasons and order to assist with grant recommendations.
- If Trustee Services have dealt with, or are currently dealing with, a licensee, they will inform staff in Compensation Fund about background information and assist with banking information and client files obtained as a result of a trusteeship.

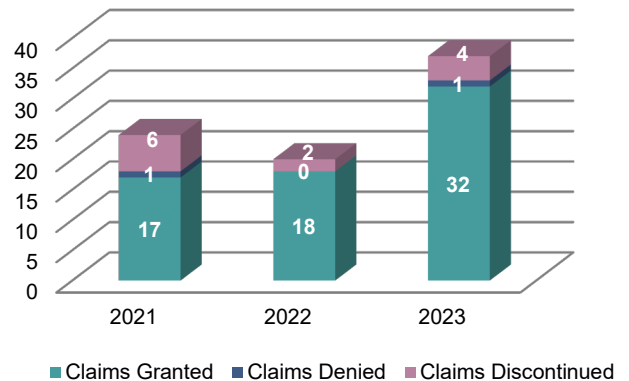
If a claim meets the Guidelines, staff may make a grant recommendation to either Senior Management or the Compensation Fund Committee, depending on the amount of the grant.

Currently, the maximum amounts payable for claims are: \$500,000 for claims involving lawyers and \$10,000 for claims involving paralegals. In 2023, the Fund closed 54 claims involving lawyers (with approximately \$2.7 million paid out) and 37 claims involving paralegals (with approximately \$82,000 paid out).

Claims Involving Lawyers



Claims Involving Paralegals



Trustee Services

Trustee Services strives to protect the interests and property of clients of incapacitated, deceased, suspended or revoked licensees, or licensees who have abandoned their practices or who have otherwise ceased to practise or provide legal services.

Trustee Services:

- ❖ May take possession of client property (including client files and trust funds), to preserve and/or distribute the property, either
 - by agreement with the licensee or the licensee's representative, or
 - by formal trusteeship order pursuant to section 49.47 of the *Law Society Act*.

Recovery of a law practice, including client files, computers and confidential client information, is an important component of Trustee Services' work. Files are recovered from offices, unheated storage units, outbuildings, garages and basements. Staff work in often challenging physical environments, encountering environmental hazards and a spectrum of organization and storage handling practices, to identify active files and original client documents in an effort to assist clients.

In 2023, Trustee Services collected 780 boxes of files and other materials, all of which were reviewed. In addition, Trustee Services continued to assess the materials that had been recovered and were maintained in storage. Following a diligent review of the recovered items, including the age of the closed client files, the department has been able to reduce the number of stored boxes in 2023 by 4,600 (from 5,500 at the end of 2022 to only 900 at the end of 2023). Since late 2020, the department has reduced the number of stored boxes from more than 21,000, which corresponds to a 96% reduction in the cost to the Law Society for off-site storage.

- ❖ Provides information, support, guidance and facilitation services to licensees or their representatives to assist
 - in the wind-up of practices where formal intervention is not required, or
 - licensees with the development of succession and contingency plans.

Trustee Services' work helps licensees, their families and colleagues wind down law practices co-operatively. Frequently, urgent requests for assistance are received when a licensee is facing health challenges and they have no succession plan in place. There is often a real risk to clients with pending court dates or transaction closings and no licensee to assist. In these situations, Trustee Services works closely with the licensee, family, staff and/or colleagues to orchestrate a backup plan to transition active

Court-Order Trusteeships in 2023

5 obtained

2 discharged

52 active files at December 31st

Practice Wind-Up Assistance in 2023

67 new cases

131 completed cases

45 active files at December 31

files to other licensees and minimize the potential risk to clients, as reflected in the following examples.

- Trustee Services assisted a licensee who had suffered a stroke and was experiencing memory issues to wind up his trust account. Trustee Services staff found a legal bookkeeper to complete the final trust reconciliation, update all the client ledgers, and return trust funds to the clients; the one remaining active file was transferred to the licensee's colleague to complete.
 - In conjunction with Investigation Services counsel, Trustee Services attended the office of an elderly licensee who was experiencing health issues. Trustee Services staff introduced the licensee to the "Contingency Planning Guide for Lawyers", providing him with a hard copy and answering questions to assist in preparing one for his practice. Trustee Services staff also provided the licensee with a hardcopy of the Will clauses for a Succession Plan for his practice, provided him with information to help with the destruction of very old, closed client files and met with his staff and provided them with strategies for managing closed client files.
 - The colleague of a deceased licensee, who was a signatory on the deceased licensee's trust account, was being refused access to operate the trust account by the bank. Persistent Trustee Services staff got the bank to reinstate the signatory on the deceased licensee's trust account. The colleague was able to wind-up the practice without the necessity of a court order.
- ❖ Maintains practice disposition information with respect to former licensees and responds to thousands of practice disposition inquiries from clients, licensees, and others, every year (including trust distribution matters).
- In 2023, the department received **2,607** requests from public/licensees looking for files, wills and funds or for practice disposition and trust distribution matters. Approximately 75% of these requests were received via the online inquiry form on the Law Society's website. The relevant webpage also provides useful information for locating wills, client files and other legal documents. While it is not possible to know how this recent addition to the Law Society's website has impacted the number of actual requests received by Trustee Services, web traffic was steady through the year.

Unclaimed Trust Fund

Trustee Services also receives, reviews and determines

❖ Applications from licensees to remit monies to the Unclaimed Trust Fund (“UTF”).	❖ Claims from clients to obtain monies from the UTF.
In 2023:	In 2023:
233 new applications were received from licensees to remit monies to the UTF.	6 new claims were received from client to obtain monies from the UTF.
200 applications were completed.	5 claims were completed.
\$284,518 was received in the UTF.	\$24,282 was paid out of the UTF.

As of December 31, 2023,

- ❖ 104 applications from licensees to remit monies to the UTF were awaiting assessment.
- ❖ 3 claims from clients to obtain monies from the UTF were awaiting assessment.
- ❖ There was a total of approximately **\$8.06 million in the UTF.**

CASE & DATA MANAGEMENT

Case & Data Management focuses on the evaluation, development and maintenance of solutions to meet Professional Regulation's electronic and data management needs.



In 2023, staff participated in the planning and launch of the new case management system that replaced the almost 20 year-old existing system, which involved the following work.

- ↳ Working closely with subject matter experts from the departments within Professional Regulation, the external and internal leads on the project, and counterparts in the IT division.
- ↳ Assisting with the migration of a massive amount of data and documents from the previous system (including over 85,000 cases).
- ↳ Creating novel document and data management solutions including assistance with metadata tagging, as well as the use of document sets to assist in the bulk upload of documents.

- Becoming part of the HelpDesk ticketing system to manage bulk uploads (greater than 50 documents) for Professional Regulation
- Creation of an inventory document to maintain a record of original folder structures in documents provided

August to December 2023
141 individual requests for bulk uploads

↳ Working on business process maps and business process documentation related to the new case management system.



Ensuring the custodial control and maintenance of security for digital and physical evidence gathered during regulatory investigations. In 2023, staff scanned case materials, resulting in approximately \$121,000 in savings to scanning costs.



Being responsible for the production flow, quality control and adherence to legal procedures regarding Professional Regulation’s electronic evidence seizure and handling. In 2023,



a) There was an ongoing need for assistance from the department’s Computer Forensics and E-Discovery Advisor, many of which he was able to resolve without the involvement of the division’s external service providers. Requests received were grouped in the following areas:

- ↳ Data collection / preservation and data hosting,
- ↳ Device scanning and storage,
- ↳ Digital searching,
- ↳ General questions about specific case-related matters.

The Computer Forensics & E-Discovery Advisor received 111 requests for assistance, and handled 62% internally

Professional Regulation’s Computer Forensics External Service Provider was required to assist in relation to **47 unique matters in 2023** and 40 unique matters in 2022



b) Educational sessions for staff were held on various issues related to digital literacy, computer forensics and e-discovery were provided, including sessions data sources in an investigation, the role of our external service providers and services they offer, and the bulk upload process and SharePoint tips.

KEY INITIATIVES IN PROFESSIONAL REGULATION

Managing Risk

Professional Regulation aims at fulfilling its mandate to protect the public through a risk-based approach to regulation, which involves (i) assessing the likelihood and impact of harm to the public, including harm to the public confidence in the legal professions, the Law Society, and the administration of justice, and (ii) taking action proportionate to the identified risk. The key to

effective risk assessment is early and continuous assessment. An appropriate regulatory response is principled, proportionate, consistent, justifiable, and transparent.

In 2023, the division utilized different tools to effectively manage the risk identified during an investigation or at the prosecutorial phase:

- Motions for interlocutory suspension or restriction is an effective tool to protect the public on an interim basis. In 2023, 8 interlocutory suspension orders were obtained.
- The summary hearing process continues to be a successful tool in protecting the public where an investigation is impeded because a licensee is not cooperating. Summary hearings can be brought quickly, and they incentivize licensees to cooperate and respond or risk suspension. In some of these matters, the failure to cooperate may be the result of capacity issues, and summary hearings, or the use of proactive investigation tools and the involvement of duty counsel, can assist in earlier identification of such issues.
- The use of trained employees to answer separate phone lines for complaints from First Nations, Inuit and Métis peoples, as well as complaints about sexual misconduct, allows for more consistent and appropriate handling of these matters. It is recognized how difficult it can be for individuals to make complaints in these circumstances. The Law Society staff will listen, assist in making complaints (which can often be high-risk), and work to combat any risks of revictimization of complainants.
- The creation of a risk questionnaire within the new case management system which focuses on the nature and impact of the conduct, and the licensee's insight and regulatory history with the Law Society. The risk questionnaire allows staff to assess risk early, consistently, and continuously throughout the lifespan of a case and assists in ensuring a regulatory response proportional to the risk.

In 2023

29 summary hearing conduct Notices of Application were filed in the Hearing Division.

32 summary hearings were completed.

22 indefinite suspensions were ordered (pending receipt of a complete response or materials requested)

Interim Risk Management meetings are held regularly for staff to obtain the advice of counsel in cases in which an identified risk or risks may require specific action, so that decisions can be made. At these meetings, consideration is given to factors such as the impact of the alleged conduct, the licensee's regulatory history and complaints to determine what solution would best mitigate the identified risk. Possible options include:

- no interim action is required as other available safeguards address the identified risk,
- further investigation is required before any decision can be made, or
- an undertaking or interlocutory suspension/restriction motion should be pursued.

In 2023

21 Interim Risk Management meetings were held during which possible interim measures were discussed about 26 licensees.

Coordination between departments to craft a solution that is viable and proportionate to the identified risk has proven effective. The involvement of Trustee Services to obtain a trusteeship where a licensee is unable to cooperate due to capacity issues is one example. Another is ongoing co-ordination with the Licensing and Accreditation Department in the Professional Development & Competence division in addressing the prohibited conduct by lawyer licensing applicants on the online licensing examinations.

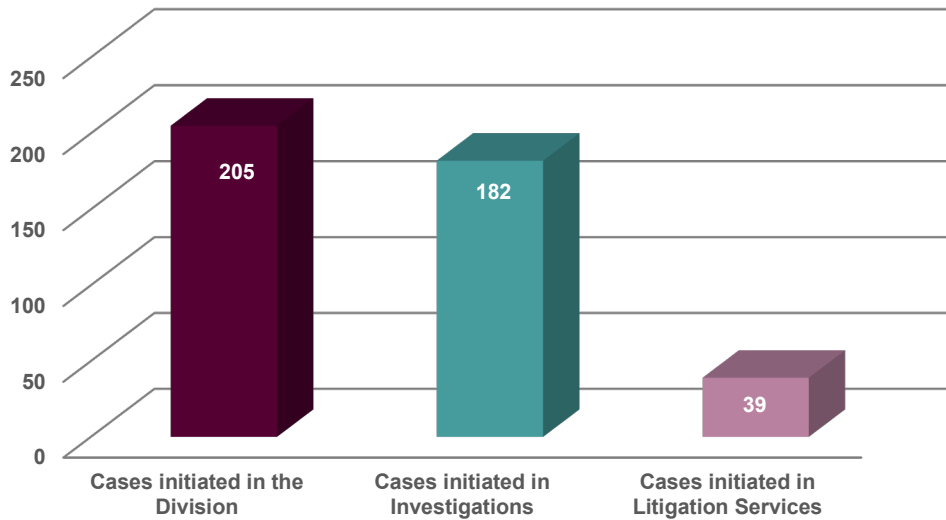
Capacity

While cases raising issues of licensee capacity represent only a small number and proportion of the cases addressed by Professional Regulation, they are very challenging and resource intensive. Capacity cases involve past or current incapacity, or both, and the reasons underlying the incapacity often involve multiple co-existent issues. Where these cases involve multiple complaints about conduct as well, the complexity increases.

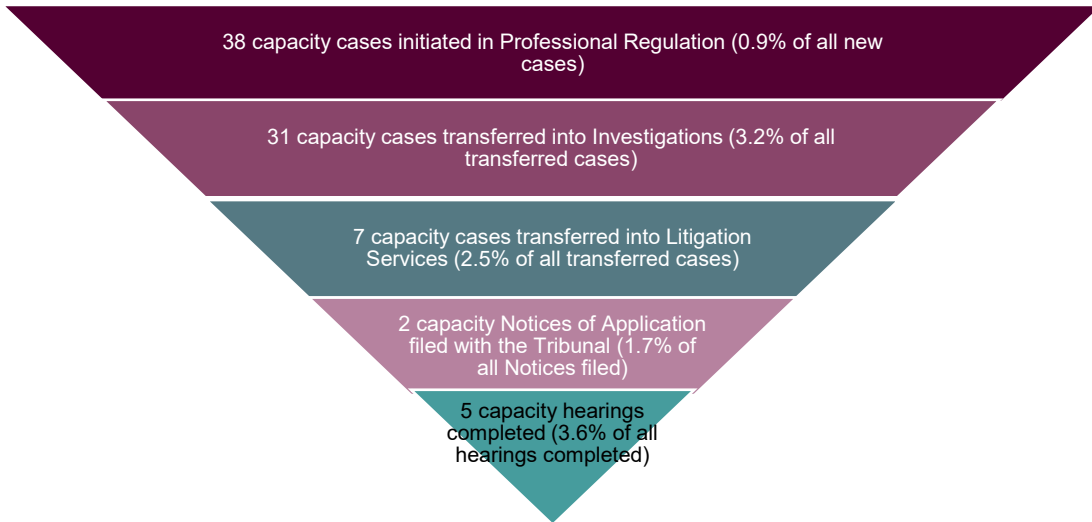
The Professional Regulation departments work to understand the nature of incapacity, relying on the regular updating of capacity resource materials, education and training, and the unique resource of the division's Capacity Advisor. They remain committed to managing these cases effectively and with compassion, including considering diversion and alternative solutions, while ensuring the public remains protected.

In 2023, division staff continued to utilize various approaches to best address capacity issues among licensees, including assisting licensees to close out their practices appropriately where they recognized the need, and were willing, to cease providing legal services. Where licensees with capacity issues have insight into their conditions, are willing to engage in treatment or have a positive record of compliance with treatment, and they address any issues underlying apparent conduct issues, Investigation Services staff can develop appropriate resolutions without the need for a capacity proceeding. Cases may be closed with undertakings that remain in effect for cumulative periods while terms such as ongoing care and treatment by regulated professionals and regular reporting by those professionals are met, together with other terms such as practice restrictions or testing. Such undertakings typically provide that if certain terms are not met, the licensee will immediately cease practice until the terms are addressed. These undertakings allow licensees with past or current capacity issues to practise while ensuring the Law Society effectively manages risk to the public.

Total Number of Capacity Cases - 2019 to 2023



Capacity Cases in 2023



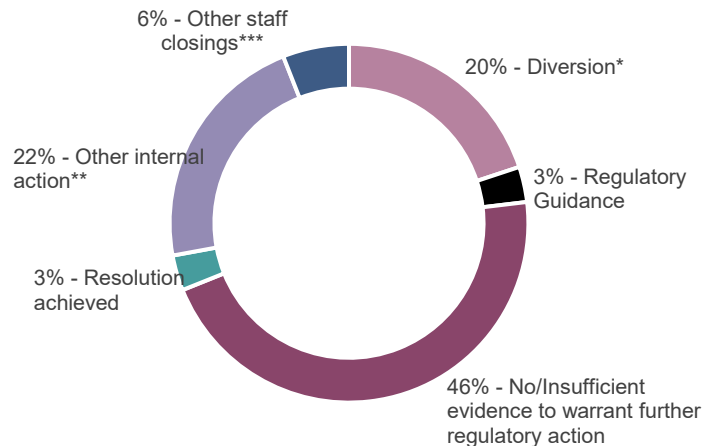
Capacity Investigations

In 2023: 28 capacity investigations were closed without a transfer to Litigation Services.

- 1 was closed with the subject rectifying any issue
- 1 was closed with regulatory guidance
- 3 were closed with another form of staff closing
- 4 were closed with diversion.
(4 undertakings were provided, all of which included terms to undergo any recommended treatment, and 1 of which also contained a term for drug/alcohol testing;)
- 6 were closed as other regulatory action was being taken with respect to the licensee
- 13 were closed as there was no or insufficient evidence to warrant further regulatory action.

In 2023, there were also 3 investigations closed after transfer to Litigation Services, and before any determination by the Proceedings Authorization Committee.

Between 2019 and 2023: 152 cases with a capacity issue have been closed:



* Regulatory Meeting, Invitation to Attend, Letter of Advice, practice/spot audit recommendation, undertaking

** Closed as other related regulatory action was being taken with respect to the licensee

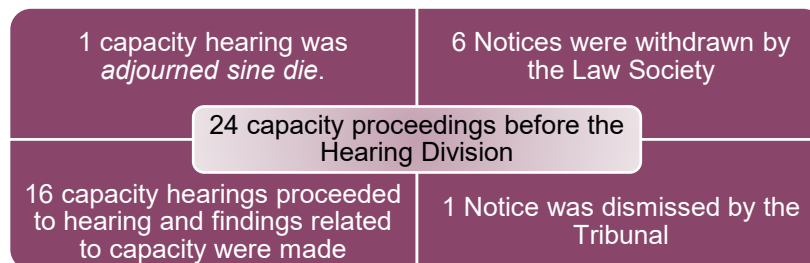
*** Includes discontinued complaints and complaints outside the jurisdiction of the Law Society

Capacity Hearings

From 2019 to 2023, Litigation Services have closed 17 capacity cases without issuing a Notice to proceed to a hearing before the Tribunal.

- 15 were closed before a referral to PAC for insufficient evidence.
- 3 were closed before a referral to PAC for exceptional or other reasons.
- 1 was closed by PAC with an undertaking obtained from the licensee.

With respect to the 24 capacity proceedings brought before the Hearing Division between 2019 and 2023:



Capacity Advisor

The division's Capacity Advisor continues to provide invaluable support, information and assistance to all staff in Professional Regulation on files where mental health and other capacity issues arise.

This assistance takes many different forms, including, but not limited to

- reviewing medical or other case-related information
- assisting staff in assessing threats of self-harm and harm to others
- participating in interviews
- assisting in obtaining medical assessments of licensees under investigation, and
- recommending possible approaches in investigations.

In 2023, the Capacity Advisor

- consulted with staff from I&R, Investigation Services, Litigation Services and Regulatory Compliance
- consulted regarding 147 unique cases
- in relation to 128 unique individuals (this can include subjects, complainants, or witnesses)

First Nations, Inuit, Métis

Professional Regulation continues its initiatives with respect to complaints that have an element involving First Nations, Inuit and Métis (FNIM) peoples, whether the subject, complainant or witnesses identifies as FNIM or issues raised in the case relate to FNIM issues. The division continues to build its capacity in this area through training and directed staffing. Continuing refinements to the approach taken at all stages of the handling of complaints involving Indigenous complainants or licensees focus on ensuring that the process is guided by *Gladue* principles and the Law Society's commitment to reconciliation with FNIM peoples. Efforts have included:

- the addition of a restorative justice model to the potential responses to complaints, either in conjunction with or as an alternative to statutory regulatory processes
- the availability of *Gladue* reports throughout the process, where a licensee is amenable
- enhanced communication with Indigenous complainants, and
- additional specific training for staff working with complaints involving Indigenous peoples.

Between 2013 and 2023, there have been **173 complaint cases investigated, involving 79 subjects** (67 lawyers, 6 paralegals and 6 non-licensees / licensing applicants) identified as involving issues relating to FNIM Peoples.

In 2023, there was a continued increase in the number of calls to the Law Society's phone line from FNIM persons. In Investigations, staff closed 19 complaints in which the complainant and/or the licensee subjects identified as FNIM or FNIM issues were involved. In these cases, staff sought to apply reconciliation and *Gladue* principles by

- Ensuring that issues identified by FNIM candidates in their licensing applications are assessed through an approach consistent with *Gladue* principles to avoid unwarranted good character hearings. As an example, in determining that a good character hearing was not required, staff considered the applicant's family history (parents were children of residential school survivors with the resulting intergenerational trauma), volunteer work with incarcerated Indigenous youth, as well as involvement in creating various programs that benefitted Indigenous persons, and applicant's desire to dedicate himself to assisting with litigation that impacted First Nations communities across Canada.
- Taking into consideration the provision of pro bono services to members of an Indigenous community who are unable to pay for legal services by FNIM licensees in determining the appropriate outcome in a complaint.
- Following, where appropriate, a trauma-informed approach when communicating with the FNIM complainant / witnesses.
- Ensuring that potential supports / accommodation are provided for the FNIM complainant / witness / licensee.