



TAB 8

**Report to Convocation
May 24, 2018**

Professional Regulation Committee

Committee Members

William C. McDowell (Chair)
Malcolm Mercer (Vice-Chair)
Jonathan Rosenthal (Vice-Chair)
Fred Bickford
John Callaghan
Gisèle Chrétien
Suzanne Clément
Seymour Epstein
David Howell
Carol Hartman
Michael Lerner
Brian Lawrie
Virginia MacLean
Susan Richer
Raj Sharda
Jerry Udell

Purpose of Report: Information

**Prepared by the Professional Regulation Division
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COMMITTEE PROCESS

1. The Professional Regulation Committee met on May 10, 2018. In attendance were Will McDowell (Chair), Malcolm Mercer (Vice-Chair)(by telephone), Jonathan Rosenthal (Vice Chair), Fred Bickford, Gisèle Chrétien, Seymour Epstein, David Howell, Michael Lerner, Virginia MacLean, Susan Richer, Raj Sharda, and Jerry Udell.
2. Law Society staff members Lesley Cameron, Juda Strawczynski, and Matthew Wylie were also in attendance.

TAB 8.1

FOR INFORMATION

NATIONAL DISCIPLINE STANDARDS

Issue for Consideration

3. The National Discipline Standards project of the Federation of Law Societies of Canada (the “Federation”) seeks to strengthen and harmonize complaint and discipline processes across the country by developing a set of standards against which each Law Society’s performance in these areas can be assessed. A copy of the National Discipline Standards (the “Standards”) is attached at **Tab 8.2**.
4. The Law Society of Ontario has been involved in this project since its initial launch in 2010, and has reported annually to the Federation about our performance against the Standards, as required by Standard #9.
5. In March 2018, the Law Society provided a report to the Federation outlining our 2017 performance. A copy of that report is attached at **Tab 8.3**.
6. A copy of this report will also be provided for information to the Paralegal Standing Committee and the Tribunal Committee at their May meetings.

National Discipline Standards

7. The Standards consist of 21 benchmarks, which are aspirational in nature and are designed to promote high standards for complaint and discipline processes for members of the legal profession.
8. The benchmarks are separated into 6 categories: i) timelines; ii) hearings; iii) public participation; iv) transparency; v) accessibility; and vi) qualification of adjudicators and volunteers.
9. According to the Federation, the Standards are “a tool designed to help maintain and improve timely, transparent, and consistent investigation of complaints and disciplinary hearings”.¹
10. From the outset of this project, the Standing Committee on National Discipline Standards has recognized that not all law societies will be able to achieve all of the Standards. However, the decision was made to set “challenging standards with the goal that they

¹ See National Discipline Standards, Frequently Asked Questions available at <https://flsc.ca/wp-content/uploads/2014/10/NDSFAQpublicE.pdf> (question #2).

would promote a culture of performance improvement, including recognition and adoption of best practices.”²

The Law Society’s Performance in 2017

11. The Law Society’s performance in 2017 was largely consistent with our performance in 2015 and 2016, meeting all of the applicable benchmarks in the Public Participation, Transparency, Accessibility and Qualification of Adjudicators and Volunteers categories. The Law Society also met many of the benchmarks in the Timelines and Hearings categories. In those instances where the Law Society did not meet a benchmark it was either by a small percentage or due to significant institutional constraints or operational decisions to work toward a different standard.
12. In a number of the areas within the Timelines and Hearings categories where we did not meet the benchmark, the Law Society’s performance was within 5% of meeting the set standard. For instance, the timeline to resolve or refer a complaint for a disciplinary or remedial response sets a benchmark of 80% for referrals within twelve months and 90% within eighteen months. The Law Society’s performance for this timeline was 76% and 86% respectively. In both cases, the Law Society’s performance was slightly better than 2016 and appears to be moving toward meeting the benchmarks, which we did in 2015. Similarly, within the Hearings category we issued 93% of Notices less than 60 days after authorization by the Proceedings Authorization Committee, which is essentially what was achieved in 2016 and 2015, and is only 2% below the 95% benchmark in that category.
13. Within the Timelines category, the Law Society’s performance for the benchmarks relating to internal reviews or appeals varied significantly depending on the nature of the complaint and, therefore, the department conducting the review of the complaint. For instance, review requests in the Complaints & Compliance department of the Client Service Centre, where complaints that are not within the Law Society’s jurisdiction are closed, significantly exceeded the benchmark. However, the length of time required to conduct a review increased in the Intake & Resolution and Investigation departments of the Professional Regulation Division, where staff conducting the review must consider the merits of the complaint, often times in the context of complex fact scenarios and voluminous submissions.
14. The Law Society also did not meet the benchmark in Standards 4 and 5 of 90 days within which to contact complainants and licensee subjects during the investigation stage.
15. The Law Society has made a decision that contact with complainants and subjects within a 90-day period is not optimal. Given the volume of complaints that we receive, contact within that time period does not always serve to advance the process for either the

² National Discipline Standards, Frequently Asked Questions (FAQs), question 9, available online at <https://flsc.ca/wp-content/uploads/2014/10/NDSFAQpublicE.pdf>.

complainant or the licensee subject. Moreover, it would not be reasonable for the Law Society expend the resources necessary to meet this benchmark.

16. In fact, since 2013, the Law Society has advised the Federation that these benchmarks have not been met and in 2016, the Law Society advised the Federation that this benchmark is not realistically attainable and suggested that it be adjusted.
17. The Law Society advised the Federation that a benchmark of 120 to 150 days would be more reasonably attainable given the volume of complaints that we receive that are addressed in the Investigation departments, as well as the number of staff members in those departments.

Factors Affecting Performance

18. The Law Society of Ontario is by far the largest law society in the country, both in terms of the number of licensees that we govern, as well as the number of complaints that we receive and regulatory matters we process.
19. The chart at Appendix A provides a comparison of a number of the law societies across the country based on the number of licensees in each jurisdiction, the complaints received and the approximate number of Law Society staff members. While each jurisdiction has different complaint and discipline handling processes, as well as differences in how complaint and regulatory information is classified and counted, the comparison provides useful context with respect to the ability of law societies to meet various of the Standards.
20. For instance, Ontario has over 4 times as many practising licensees as the second largest jurisdiction, British Columbia, and almost 38 times as many as the smallest jurisdiction considered, New Brunswick. In addition, Ontario received 5 times as many complaints as British Columbia in 2016, and 49 times as many as New Brunswick, while we only have about 3 times as many staff members as British Columbia and 20 times as many staff members as New Brunswick.³ When complaints are considered in the context of overall staffing, we receive approximately 10.6 complaints per staff member, as compared to approximately 6.6 in British Columbia and 6.5 in New Brunswick. In order for this Law Society to reach a comparable complaint to staff ratio as those 2 provinces, we would need to hire over 300 additional staff members.
21. Of the provinces considered in Appendix A, only Alberta appears to have had a greater complaint to staff ratio in 2016. However, the complaint process in Alberta is significantly different to the process in Ontario, with complaints divided into “informal” and “formal” streams. Complaints in the “formal” stream appear to be subject to a similar process as complaints that are referred to our Investigations department. When Alberta’s 269 formal complaints are compared to the 2,018 complaints that were referred

³ The number of staff members are estimates based on publicly available information.

to our Investigation department in 2016⁴, the staff to complaint ratio is similar to what is seen when compared with the other provinces.

22. Given the significant differences in the number of licensees we regulate, the complaints we receive, and our current staff levels, there are certain benchmarks that will remain difficult to meet, while others, such as the 90 day contract rule, are simply not attainable absent considerable increases in staff and resources and may not be desirable operationally. In addition to these institutional aspects that challenge performance against certain benchmarks, starting in 2015 there were a number of significant changes and transitions within the Professional Regulation Division that may have impacted performance.
23. It is also important to note that none of the law societies are meeting all of the standards. According to the Federation, on average law societies are meeting 72% of the standards.⁵

Next Steps

24. The Law Society will continue with its participation in the National Discipline Survey and will monitor our performance with respect to these and other standards with the goal of providing the best possible levels of service to licensees, members of the public, and other stakeholders while ensuring that the public interest is protected.

⁴ See the Law Society of Upper Canada, 2016 Annual Report, Key Trends, available at <http://annualreport.lsuc.on.ca/2016/en/key-trends/>

⁵ See National Discipline Standards, Frequently Asked Questions (FAQs), question 8, available online at <https://flsc.ca/wp-content/uploads/2014/10/NDSFAQpublicE.pdf>.

Appendix A

Province	Number of Licensees ⁶	Number of Complaints Received (in 2016, unless otherwise noted)	Number of Employees (current estimate based on publically available information)
Ontario	54,580 (41,857 practising) 8,880 paralegals (6,114 providing legal services)	6387 (6313 new complaints and 74 re-opened)	-600
British Columbia	14,052 (11,527 practising)	1253 (938 plus 315 that were closed "unsubstantiated intakes")	-190
Alberta	14,696 (9675 practising)	269 formal complaints and 1438 informal complaints (1350 from Jan-Nov; 88 from Nov-Dec)	-130
Saskatchewan	2,642 (2118 practising)	703 complaint contacts; 187 complaint files opened	-40
Manitoba	2,312 (2033 practising)	356 written complaints (312 were resolved)	-50

⁶ The number of licensees are taken from the 2015 Statistical Report of the Federation of Law Societies of Canada available at <https://flsc.ca/wp-content/uploads/2014/10/2015-Stats-Report-FIN.pdf>. The total number of members may include non-resident and non-practising members as well as suspended members, students-at-law, life members and honorary members.

New Brunswick	1,717 (1303 practising)	130	-20
Nova Scotia	3,308 (1957 practising)	87 Complaints received in year 2015/2016	-30

Federation of Law Societies
of Canada



Fédération des ordres professionnels
de juristes du Canada

NATIONAL DISCIPLINE STANDARDS

(Approved June 2016)

Timeliness

1. **Telephone inquiries:**
75% of telephone inquiries are acknowledged within one business day and 100% within two business days.
2. **Written complaints:**
100% of written complaints are acknowledged in writing within three business days.
3. **Timeline to resolve or refer complaint:**
 - (a) 80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.

90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.
 - (b) Where a complaint is resolved and the complainant initiates an internal review or internal appeal process:
80% of all internal reviews or internal appeals are decided within 90 days.

90% of all internal reviews or internal appeals are decided within 120 days.
 - (c) Where a complaint has been referred back to the investigation stage from an internal review or internal appeal process:
80% of those matters are resolved or referred for a disciplinary or remedial response within a further 12 months.

90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.
4. **Contact with complainant**
For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.
5. **Contact with lawyer or Québec notary:**
For 90% of open complaints there is contact with the lawyer or Québec notary at least once every 90 days during the investigation stage.

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NATIONAL DISCIPLINE STANDARDS

(Approved June 2016)

Hearings

6. 75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.

95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.
7. 75% of all hearings commence within 9 months of authorization.
90% of all hearings commence within 12 months of authorization.
8. Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.
9. Each law society will report annually to its governing body on the status of the standards.

Public Participation

10. There is public participation at every stage of discipline; e.g. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.
11. There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.

Transparency

12. Hearings are open to the public.
13. Reasons are provided for any decision to close hearings.
14. Notices of charge or citation are published promptly after a date for the hearing has been set.
15. Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process allows.
16. There is an ability to share information about a lawyer or Québec notary who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer or Québec notary to disclose to all law societies of which he/she is a member that there is an investigation underway.
17. There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.

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NATIONAL DISCIPLINE STANDARDS
(Approved June 2016)

Accessibility

18. A complaint help form is available to complainants.
19. There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.

Qualification of Adjudicators and Volunteers

20. There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often than once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.
21. There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.



National Discipline Standards

Law Society Annual Status Report

January to December

Instructions for completing the Annual Status Report:

In order to ensure that the reporting is as accurate as possible, and to help law societies and the Standing Committee on National Discipline Standards track progress, we ask that you follow these instructions when completing your 2017 report:

1. In the Current Status column, please write 'met', 'not met', or 'not applicable' (or N/A). For example, if you did not fully meet the standard, write 'not met' instead of 'partially met'. Comments such as 'being monitored' or 'under review' should not appear in the Current Status column but can be included in the Comments column.
2. Where there are two or more parts to a standard (e.g. standards 1, 3, 6 and 7), report on each part of the standard separately. The template has been revised accordingly.
3. Where possible, provide your law society's performance against the standard, whether or not you met it. For example, if you did not meet the first part of Standard 7 (*75% of all hearings commence within 9 months of authorization*), indicate "not met" in the Current Status column, and in the Comments column include the actual performance: e.g. *62% of hearings commenced within 9 months of authorization*. Similarly, if you met the first part of Standard 7, indicate "met" in the Current Status column and the actual performance in the Comments column: e.g. *78% of hearings commenced within 9 months of authorization*.
4. Provide a brief explanation for not meeting the standard, when possible. Reasons may include that a rule or legislation amendment is required or that process changes are required before the standard can be met.

National Discipline Standards

Status Update: January to December 2017

(Submission deadline: March 1, 2018)

Law Society of Ontario

STANDARD	CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD
Timeliness		
1.	<i>Telephone inquiries:</i> 75% of telephone inquiries are acknowledged within one business day.	MET
	100% of telephone inquiries are acknowledged within two business days.	MET
2.	<i>Written complaints:</i> 100% of written complaints are acknowledged in writing within three business days.	MET
3A.	<i>Timeline to resolve or refer complaint:</i> 80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.	NOT MET 76% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD
	90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.	NOT MET	86% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months
3B.	Where a complaint is resolved and the complainant initiates an internal review or internal appeal process: 80% of all internal reviews or internal appeals are decided within 90 days.	NOT MET	The Law Society has three types of internal reviews: (1) In the 44 internal reviews completed by the organization's first intake department, for cases closed in that department, 100% were completed within 90 days. (2) In the 83 internal reviews completed by the Professional Regulation Division Intake & Resolution department, for cases closed in that department, 17% were completed within 90 days. The average age of completion was 151 days. (3) In the 142 reviews conducted in the complaints review process, in which there is public participation for complaints that are investigated and disposed of without going to the Proceedings Authorization Committee, 0% of all internal reviews were completed within 90 days. The average age was 479 days. If all three types of reviews are combined then 58 of 269 reviews (22%) were completed within 90 days.
	90% of all internal reviews or internal appeals are decided within 120 days.	NOT MET	Using the numbering system above: (1) 100% were completed within 120 days (2) 30% were completed within 120 days (3) 0% were completed within 120 days

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD
			If all three types of reviews are combined then 79 of 269 reviews (29%) were completed within 120 days.
3C.	Where a complaint has been referred back to the investigation stage from an internal review or internal appeal process: 80% of those matters are resolved or referred for a disciplinary or remedial response within a further 12 months.	MET	100% of further investigations were resolved or referred for a disciplinary or remedial response within 12 months of the referral back from the Commissioner.
	90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.	MET	100% of further investigations were resolved or referred for a disciplinary or remedial response within 12 months of the referral back from the Commissioner.
4.	<i>Contact with complainant:</i> For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.	NOT MET	For 68% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage. As advised, the LSO is working toward a standard of 120 to 150 days. For 78% of open complaints, there is contact with the complainant at least once every 150 days during the investigation stage.
5.	<i>Contact with lawyer or Québec notary:</i> For 90% of open complaints there is contact with the lawyer or Québec	NOT MET	For 57% of open complaints there is contact with the subject of the complaint at least once every 90 days during the investigation stage.

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD
	notary at least once every 90 days during the investigation stage.		As advised, the LSO is working toward a standard of 120 to 150 days. For 73% of open complaints, there is contact with the subject of the complaint at least once every 150 days during the investigation stage.
Hearings			
6.	75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.	MET	87% of Notices are issued less than 60 days after authorization from the Proceedings Authorization Committee.
	95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.	NOT MET	93% of Notices are issued less than 90 days after authorization from the Proceedings Authorization Committee.
7.	75% of all hearings commence within 9 months of authorization.	NOT MET	138 files had their first hearing in 2017. A hearing commences when the adjudicative body first convenes to hear evidence or preliminary motions. Motions for interlocutory orders or practice restrictions are not included. 95 of the 138 files (69%) commenced within 9 months of authorization.
	90% of all hearings commence within 12 months of authorization.	NOT MET	108 of the 138 files (78%) commenced within 12 months of authorization.
8.	Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.	NOT MET	In 2017, 90 of 124 reasons (73%) were provided within 90 days from the last date the panel received submissions.

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD
			Reasons include reasons for decision on finding and penalty at the Hearing Division and on the appeal at the Appeal Division. Reasons provided for motions, including motions for interlocutory suspension or practice restriction or motions for stay pending appeal, or reasons provided only on the issue of costs are not included in this statistic.
9.	Each law society will report annually to its governing body on the status of the standards.	MET	A status report is provided to Convocation yearly, usually in April, following the report to the Federation in March.
Public Participation			
10.	There is public participation at every stage of discipline; e.g. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.	MET	There is one public representative on every disciplinary panel except for single adjudicator hearings. In 2013, the By-Laws were amended to permit public representation on the Proceedings Authorization Committee.
11.	There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.	MET	Under the <i>Law Society Act</i> , Convocation appoints a Complaints Resolution Commissioner who, upon request of the complainant, reviews the Law Society's investigation and outcome. Complaints review is only available for complaints investigated and closed by staff without referral to the Proceedings Authorization Committee.
Transparency			

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD
12.	Hearings are open to the public.	MET	Hearings are open to the public unless the panel exercises its discretion pursuant to Rule 18.02 of the <i>Rules of Practice and Procedure</i> .
13.	Reasons are provided for any decision to close hearings.	MET	Pursuant to the Hearing and Appeal Division's <i>Rules of Practice and Procedure</i> , reasons are required for a decision or order in a capacity proceeding, for decisions to allow or dismiss an appeal, and upon request.
14.	Notices of charge or citation are published promptly after a date for the hearing has been set.	MET	Notices are published as soon as they have been served.
15.	Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process allows.	MET	
16.	There is an ability to share information about a lawyer or Québec notary who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer or Québec notary to disclose to all law societies of which he/she is a member that there is an investigation underway.	MET	Information is shared with other law societies as required, except for investigations information which is protected under section 49.12 of the <i>Law Society Act</i> .

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD
17.	There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.	MET	
Accessibility			
18.	A complaint help form is available to complainants.	MET	
19.	There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.	MET	
Qualification of Adjudicators and Volunteers			
20.	There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often than once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.	MET	
21.	There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.	N/A	No volunteers are involved.