



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

March 31, 2010

Chief Executive Officer

Osgoode Hall
130 Queen Street West
Toronto, Ontario
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The Honourable Madam Justice Heather Forster Smith
Chief Justice of the Superior Court of Justice
Osgoode Hall
130 Queen St. W.
Toronto, ON M5H 2N5

Dear Chief Justice Smith:

Re: Referrals of misconduct and requests for mentoring regarding lawyers conduct

I am writing to set out our understanding regarding the making of requests by judges and masters of the Superior Court of Justice for mentoring or the referral of incidents of misconduct regarding lawyer members of The Law Society of Upper Canada.

It is our understanding that although there is the authority to make a finding of contempt by a judge, it is unlikely that this authority would be exercised except for the most serious situations of misconduct. A more likely option for a judge who experiences misconduct by a lawyer in court would be to refer the misconduct of the lawyer to The Law Society of Upper Canada.

However, it has come to the Law Society's attention that judges who experience misconduct on the part of lawyers are often reluctant to refer incidents to the Law Society for discipline purposes. This is usually as a result of the judge feeling that the lawyer's conduct, while inappropriate, is not serious enough to merit discipline on the part of the Law Society. As a result, the Law Society has made arrangements for lawyers who do not merit some form of disciplinary action by the Law Society to be mentored by senior counsel from mentoring panels drawn from the Criminal Lawyers' Association, the Advocates' Society, the Ministry of the Attorney General, or as may be otherwise appropriate given the area of law engaged in by the lawyer at the time the conduct took place. As a consequence, a judge will have the option in referring a lawyer's misconduct to the Law Society to request that the lawyer be mentored rather than investigated for misconduct.

A judge when referring matters of misconduct or requesting mentoring should provide a description of the lawyer's conduct together with extracts of the relevant portions of the transcript reflecting the conduct and the judge's comments thereon. In addition, any reasons by the judge touching on the misconduct, copies of any written submissions or other relevant documents and the names of any witnesses who may be of assistance should be provided.

All referrals of misconduct or requests for mentoring to the Law Society should be made through the Office of the Chief Executive Officer in writing. Contact may be made by mail, email, and fax or courier delivery to:

Malcolm L. Heins
Chief Executive Officer
The Law Society of Upper Canada
Osgoode Hall
130 Queen St. W.
Toronto, ON M5H 2N5
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On receipt of the referral of misconduct or request for mentoring, a regulatory file will be opened with a specific case number and an acknowledgement will be provided to the judge and to the Office of the Chief Justice. At the file initiation stage, Law Society staff may contact the judge to obtain any necessary additional information for this stage of the process.

Requests for mentoring will be considered in the context of the lawyer's complaint history. The lawyer's complaint history with the Law Society may indicate that mentoring is not the appropriate disposition of the matter in question. If this is the case, the matter will be assigned to the Law Society's normal regulatory process.

Where mentoring is appropriate, the Law Society will report the conduct of the lawyer to a member of the mentoring panel assembled by the Criminal Lawyers' Association, the Advocates' Society, the Ministry of the Attorney General, or as may be otherwise appropriate. Arrangements will then be made for a senior member of the appropriate organization to contact the lawyer in question and arrange a mentoring meeting, at which point the lawyer's conduct will be discussed and the lawyer mentored about the conduct in question. The judge and the Office of the Chief Justice will be advised the matter was referred for mentoring. The matter will then be considered closed.

Where the matter is considered to be of a regulatory nature, it will be assigned to Complaints Resolution or Investigations depending on the nature of the allegations, the lawyer's history and any other current opened files. The Law Society will provide the judge and the Office of the Chief Justice with periodic status reports as to the progress of the matter. Not all regulatory matters have a public disposition and in

these circumstances, the judge and the Office of the Chief Justice will be advised as to the disposition of the matter. In the case of those matters that go to hearing or have a regulatory meeting, the judge and the Office of the Chief Justice will be advised as to the time and date of the hearing or regulatory meeting in the event a representative of the court wishes to be in attendance. The judge and the Office of the Chief Justice will be advised of the final disposition of all matters.

The Law Society understands that an advisory committee of judges has been struck to assist or provide advice to judges who are contemplating referring a lawyer's misconduct to the Law Society. In the event that it is the committee or a member of the committee who refers the matter to the Law Society, the Law Society will communicate with the judge of the committee as if he were the judge making the referral.

I believe this letter outlines our understanding and a process for the management of misconduct referrals by judges of the Superior Court of Justice.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Mal Heins". The signature is written in a cursive, flowing style.

Malcolm L. Heins, LSM
Chief Executive Officer