



***PROTOCOL FOR TRIBUNALS REPORTING COMPLAINTS AGAINST LAWYERS AND
LICENSED PARALEGALS TO THE LAW SOCIETY OF UPPER CANADA
December 2012***

Introduction

1. Administrative tribunals have the statutory authority to control their own processes and to address the behaviour of lawyers and licensed paralegals who represent parties appearing before them. Some may even have powers to sanction conduct in a manner roughly analogous to the exercise of a judicial contempt power.
2. Lawyer or paralegal misconduct, such as incivility and unprofessionalism in the context of a tribunal proceeding, may also be the subject of a complaint best addressed by the Law Society as regulator of the legal professions. The Law Society also receives and addresses complaints about unauthorized practice / unauthorized provision of legal services.
3. The intention of this protocol is to create a coordinated process for bringing complaints to the attention of the Law Society, for tribunals that wish to adopt such a process. It is expected that the protocol will also improve communications between the Law Society and Tribunals.

The Protocol

1. Any person may make a complaint to the Law Society about misconduct or conduct unbecoming involving a lawyer or licensed paralegal, or about unauthorized practice or unauthorized provision of legal services (UAP) by a non-licensee. This protocol addresses situations in which a tribunal prefers to develop a standard process for making complaints to the Law Society. In such situations, complaints about lawyer or paralegal misconduct or UAP from a tribunal may be referred by tribunal adjudicators and staff to the Executive Chair or Chair of the Tribunal, or such other person as he or she may designate for this purpose (e.g., an Associate Chair, a tribunal's General Counsel, Registrar, Chief Executive Officer, etc.).
2. The tribunal shall notify the Law Society of the name and title of the individual responsible for dealing with the Law Society on regulatory complaint matters. This will enable the Law Society to maintain an active contact list, when addressing complaints involving tribunals.
3. The Tribunal Chair or other person designated for this purpose shall advise the Law Society of the complaint regarding the alleged misconduct or UAP and shall be considered the Complainant.

4. The Complainant provides a description of the lawyer or paralegal's conduct or alleged UAP together with any relevant materials from the record including extracts of the relevant portions of any transcript. In addition, the Complainant may supply other relevant information, including reasons by a tribunal adjudicator 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.
5. Depending on the nature of the complaint, the Law Society may seek additional information and documentation regarding the complaint from the Complainant.
6. In some circumstances, it may be necessary for the Law Society to seek to interview a tribunal adjudicator or staff member regarding a complaint of which he or she has knowledge. In such circumstances, the Law Society will request an interview by contacting the Complainant.
7. The Law Society encourages all Complainants to use the Complaints Help Form, which is available at www.lsuc.on.ca and may also be obtained from Complaints Services. A Tribunal complaint is identified as an adjudicative complaint and managed pursuant to this protocol.
8. Where a complaint from any source 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 licensee's past history and any other current opened files.
9. The Law Society will provide the Complainant and the tribunal adjudicator or other source of a complaint with periodic status reports as to the progress of the matter and its eventual disposition. Not all regulatory matters have a public disposition. Where a complaint is resolved without a public disposition, the Complainant and the tribunal adjudicator or other source of a complaint will nonetheless be advised as to the basis on which the matter has been closed. Where a matter is authorized for formal discipline or a regulatory meeting, the Complainant and the tribunal adjudicator or other source of a complaint will be advised as to the time and date of the hearing or regulatory meeting in the event a representative of the tribunal wishes to be in attendance.

APPENDIX TO THE TRIBUNAL COMPLAINTS PROTOCOL

How the Law Society Handles Complaints

The Mandate: Regardless of source, the Law Society opens files on all issues of professional misconduct, conduct unbecoming or licensee incapacity that come to its attention. In assessing and dealing with complaints the Law Society must determine what is in the public interest and also what serves the administration of justice. Complainants are not parties per se, but they are important stakeholders and vital sources of information to assist the Law Society in carrying out its regulatory mandate.

Screening for Jurisdiction: Complaints are initially screened to determine if they are within the Law Society's jurisdiction. For instance, the Law Society generally does not deal with issues involving professional negligence or disputes regarding fees.

Intake and Substantiation: Complaints within jurisdiction are assigned to the Law Society's Intake Department. Intake attempts to substantiate complaints, usually by obtaining additional information from the complainant or other source of information. Once a complaint has been substantiated, the Director of Professional Regulation or her designate will be asked to instruct a formal investigation. This instruction enables the Law Society to use specific investigative powers that are given to it under the *Law Society Act*.

Mentoring: Occasionally, either at the suggestion of a complainant (such as a member of the judiciary or a Tribunal) or on the Law Society's own initiative, a licensee may be referred for mentoring. Mentoring is considered a diversion from the Law Society's regulatory stream. Both the mentor and the licensee must consent to the referral. Mentoring is only available as an alternative to regulatory processes when it serves the public interest and does not place the public, including clients of the licensee, at risk.

Complaints Resolution: Apart from those that qualify for mentoring, complaints that raise less serious regulatory issues (for instance, failure to serve or to follow a client's instructions) will be streamed to the Complaints Resolution department for investigation and possible resolution. This may require staff to obtain additional information from the complainant and other individuals with knowledge of the case, as well as the licensee. Provided the licensee is cooperative, available outcomes include closure of the file, closure with a staff letter of advice, transfer to the Investigations department or possibly an Invitation to Attend (which is entirely private) or Regulatory Meeting (which is private but with a published summary). These are informal and non-disciplinary corrective measures authorized and conducted by Law Society benchers. Where the licensee is not cooperative, the Law Society may seek permission from the benchers to initiate a summary hearing to address the failure to cooperate.

Investigations: Complaints that raise more serious regulatory issues (for instance, misappropriation or fraud) will be streamed or transferred to the Investigations Department. Investigators will use various means to gather oral and written evidence that will be evaluated and may be used in subsequent discipline proceedings. Files in Investigations may be closed if the evidence does not warrant further proceedings, or they may result in letters of advice, or they may be subject to Invitations to Attend or Regulatory Meetings, as discussed above.

Discipline: Where an Investigation has revealed sufficient evidence of serious misconduct, staff will recommend to a committee of benchers that formal discipline proceedings be authorized.

Discipline is then initiated by Notice of Application and formal hearings are conducted, usually in public, before a three-member panel composed of benchers or a combination of benchers and non-bencher adjudicators. Hearings are conducted pursuant to the Statutory Powers Procedures Act and the Rules of Practice and Procedure adopted by the Law Society. Approximately 150 new hearings are commenced each year, in comparison to about 5000 complaints.

Discipline Outcomes: If a licensee is found guilty of professional misconduct or conduct unbecoming, the Discipline Hearing Panel may impose a penalty ranging from a reprimand, to a suspension, to revocation (formerly disbarment) or permission to surrender a licence (formerly permission to resign). The Panel may also order restitution, fines and/or payment of the Law Society's costs, pursuant to the Act.

The Discipline process is also used to address issues of incapacity, and to ensure that lawyers or paralegals with mental health or substance abuse issues affecting their ability to provide legal services or practise law receive appropriate treatment, while not placing clients or other members of the public at risk. In some instances, this will require voluntary or involuntary withdrawal from, or restrictions on, practice until the risk is fully addressed.

Confidentiality: Under the Law Society Act, most Law Society regulatory activity is required to be kept strictly confidential and private, in part because it may involve privileged and/or confidential client information. Once a regulatory matter is authorized for a Discipline prosecution, however, it becomes public, subject to whatever safeguards are necessary and appropriate to protect the privacy of clients and others.

Unauthorized Practice / Unauthorized Provision of Legal Services: The Law Society has the statutory mandate to help ensure that only those who are qualified practise law or provide legal services. Complaints about alleged UAP are addressed at first instance by staff. The aim is to stop behaviour that places the public at risk. Under the Law Society Act, someone who has engaged in UAP may be prosecuted in Provincial Offences Court or may be the subject of an application for an injunction, with the possibility of future contempt proceedings if the UAP persists or recurs.