

COMPLAINTS INVESTIGATION COMMITTEE

Orientation Manual

A. Introduction

The purpose of this manual is to give you a sense of what the Complaints Resolution Department does on a day-to-day basis, and of the respective roles that the department staff and the Complaints Investigation Committee (the "Committee") play in our process.

The Complaints Resolution Department receives, on average, 400 written complaints, 200 early interventions and at least 1500 telephone inquiries per year. In our department we have three lawyers (the director and two legal counsel), one paralegal and one administrative support position. We also have a fee arbitration coordinator.

B. Work by Complaints Resolution Department Staff

Telephone inquiries are fielded by everyone in the department, with the vast majority being addressed by the paralegal, who attempts to resolve the complainants' concerns prior to receiving a written complaint. In addition to the telephone inquiries listed above, all three legal counsel receive phone calls from members of the profession in which we try to address their concerns or provide advice and direction.

Where a written complaint is received, a file is opened and assigned to one of the three investigating lawyers in the department. We can resolve or dismiss those complaints on the following basis:

- If the complaint is without merit or is outside our jurisdiction, we close the file without conducting an investigation.
- If appropriate, we try to resolve the complaint on an informal basis, usually by telephone conciliation.
- In other cases, after conducting an investigation, we can close the file on the basis that the lawyer has provided a satisfactory response to the concerns raised, on the basis that the substance of the complaint cannot be proven, or on the basis of issuing a reminder or a recommendation to the lawyer.

When we decide to dismiss a complaint without conducting an investigation, a complainant can appeal that decision to the Complaints Review Commissioner (a non-lawyer), who can uphold our decision or direct us to investigate the matter.

Similarly, after an investigation when a staff lawyer decides to close a file without referring it to the Committee, the complainant can appeal that decision to the Complaint Review Commissioner. When reviewing such a staff decision, the

Complaints Review Commissioner can either confirm our decision or direct that the matter be considered by the Committee.

The rules relating to the investigation of complaints and the options available to Complaints Resolution Department staff are set out in Part 5, Division 6, from Rule 5-60 to Rule 5-68. (Tab 7)

C. Work by the Complaints Investigation Committee

The jurisdiction of the Committee is set out in Division 7, ss. 66 - 69 of *The Legal Profession Act* (the "Act") and Part 5, Division 7 of the Law Society Rules. (Tab 6 and Tab 7)

1. Authorizing Charges

Where possible, we like to take a remedial approach when we find breaches of the *Code of Professional Conduct*, the Act or Law Society Rules. As a result, we resolve the vast majority of complaints without referring them to the Committee. Accordingly, you will find that with a few exceptions, we try to bring only the most serious matters to the attention of the Committee and you will find that, in almost all cases, we are recommending that the Committee authorize charges of professional misconduct, incompetence or conduct unbecoming a lawyer against the member.

After considering our report, the Committee has a wide range of options available to it. These options are set out in Rule 5-74. At one end of the spectrum the Committee can take no further action and at the other end of the spectrum, the Committee can authorize charges of professional misconduct, incompetence or conduct unbecoming a lawyer. Notably, the Committee can take more than one action under the Rules.

In some cases, the Committee may determine that it is appropriate to offer a formal caution to a member, pursuant to Rule 5-77(1). In that instance, the Committee must consider that the member's conduct is serious enough that the Committee would authorize a charge of professional misconduct, incompetence or conduct unbecoming a lawyer. However, for other reasons (for example, a long unblemished history with the Society and a recognition by the member of the impropriety of his/her conduct), the Committee may determine that something short of a disciplinary proceeding is appropriate.

In that regard, the Committee is censuring the member's conduct and, if the member accepts the caution, it does not form part of the member's public discipline history. It would form part of the member's history, though, in the event that concerns regarding the member are brought to the Committee at a future time.

If the member refuses to accept a formal caution, the Committee must authorize a charge of professional misconduct, conduct unbecoming a lawyer or incompetence against the member.

2. Competence/Practice Review

If we are concerned about the competence of a member, we might also ask that the Committee direct a practice review of the member's practice to identify and address any competence concerns. In those cases, we will seek the assistance of two volunteers from the profession who will attend at the member's office to review his/her practice. The volunteers will prepare a written report with recommendations which will be submitted to the Committee and the Committee can take any action on the recommendations, or any other action permitted by the Rules. Please see Rules 5-82 to 5-92.

3. Bankruptcies/Criminal Charges/Complaints against Benchers

Other matters which we bring to your attention include matters where a lawyer has made a proposal or assignment in bankruptcy or in some cases, where he/she has been charged with a criminal offence under a federal statute. If we receive a complaint regarding a bencher of the Law Society, we are required to refer it to an outside investigator and the investigator's recommendations regarding disposition will have to be considered and determined by the Committee as well.

4. Personal Appearance to Further Investigation

There are occasions where we are concerned about a member's competence or where the member's responses to our written inquiries are so convoluted, evasive or confusing that we may ask the Committee to direct that the member attend a Complaints Investigation Committee meeting. Such an appearance would be for the purpose of furthering our investigation pursuant to Rule 5-72(4). With one exception noted below, only the Committee has the jurisdiction to direct that a member appear before the Committee.

There are other occasions where the member is not responding at all to our inquiries. In those cases, the C.E.O. has the jurisdiction to lay charges of professional misconduct against the member and to direct the member to respond to the outstanding inquiry. If the member continues to be unresponsive, the C.E.O. can direct the member to attend a Complaints Investigation Committee meeting. As with the situation described immediately above, the purpose of such attendance is to further our investigation.

5. Urgent Meetings

There are some rare occasions where we become aware of certain facts which suggest that the public may be at risk by the member's ongoing and unrestricted practice of law. In most instances, these situations arise from a spot audit or a complaint which causes us to believe that the member has misappropriated trust funds. These instances may also arise from criminal charges, substance abuse concerns, or where someone is flouting the authority of the Law Society.

On those occasions, we will contact the Chairperson of the Committee and advise of the concerns. Based upon the information received, the Chairperson can direct

that we hold an urgent meeting to which the member will be invited to appear. Depending, of course, on the information obtained in the interim and the position advanced by the member, the Committee will have to consider first, whether or not charges ought to be authorized against the member and, if so, whether or not the public is at risk by the member continuing to practice unrestricted while a determination on those charges is pending.

If after authorizing charges against the member, the Committee is of the view that the public is at risk, the Committee can suspend the member on an interim basis (pending resolution of the charges) or impose other restrictions to protect the public, pursuant to s. 68 of the Act.

As an interim suspension is a draconian measure which is used sparingly, we have prepared a separate guideline for the Committee's reference (Please see Tab 2).

D. Process

We have regularly scheduled meetings throughout the year, usually held on Wednesday mornings (please see the 2016-2017 schedule near the front of this manual). Corinne Penner, our legal assistant, will contact each of you by e-mail approximately one week before the meeting to determine if you will be attending.

For those who indicate that you will be attending the meeting, you can expect to receive a binder of materials in advance of the meeting, in which we will include memoranda to the Committee regarding specific investigations, including our analysis and recommendations.

Where possible, we will try to identify any conflicts of interest for Committee members and in those cases, those materials will not be included in the binder sent to that Committee member. However, in some cases, we will be unaware of a conflict and we would ask Committee members to advise Corinne Penner at 204-926-2044 or cpenner@lawsociety.mb.ca of any conflicts in which they find themselves.