

From Stigma to Support: ***Modernizing Mental Health Policies in Licensure***

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With Gratitude to Alison Luke, Alternative Discipline Counsel, for her invaluable contributions to this work

Law Society of BC Initiatives

Mental Health Task Force (MHTF) struck in 2018 with mandate to:

- review regulatory policies;
- increase awareness; and
- reduce stigma.

The MHTF issued 10 reports, including 5 unanimously adopted recommendation reports.

National Study

- Phase 1 of the National Study on the Health of Legal Professionals in Canada, released October 2022, reinforced LSBC's findings and approach. [EN_Report_Cadieux-et-al_Universite-de-Sherbrooke_FINAL.pdf \(flsc.ca\)](#)
 - Nearly 50% of legal professionals do not use support resources available even where they believe they could benefit from doing so.
 - Most common reason provided (40%) = fear that regulator would find out.

National Study Recommendations

Based on work of MHTF:

- Develop alternative discipline processes for professionals dealing with health issues.
 - Avoids using punitive system that marginalizes and stigmatizes lawyers experiencing health issues that impact ability to comply with professional obligations (hurtful not helpful).
 - Alternative discipline processes important for reintegrating professionals with health issues into profession.

The Alternative Discipline Process

[Alternative Discipline Process \(lawsociety.bc.ca\)](https://lawsociety.bc.ca)

May 2022 – Three-year pilot project

Process Overview

1) **Complaint File Identified:**

- a) the lawyer acknowledges the existence of a health issue that may have contributed to an alleged discipline violation by the lawyer;
- b) the lawyer consents in writing to the Executive Director proceeding under this division (of the rules); and
- c) the Executive Director is satisfied, in all the circumstances of the alleged discipline violation, including whether it involved substantial harm to the complainant or another person, that it is likely to be in the public interest to proceed under this division.

2) **Additional Health Information Collected:** That health issue may have contributed to alleged discipline violation; lawyer could benefit from remedial initiatives; in public interest for lawyer to engage in remedial measures

3) **Eligibility Assessment:**

- Alleged violation sufficiently serious to warrant public oversight through investigation and discipline process;
- Available evidence supports determination that access to treatment will meaningfully address underlying causes
- Lawyer displays sufficient level of insight and trustworthiness = disclose relevant information and comply with consent agreement

Process Overview cont'd

4) Threshold Eligibility Met:

- ADP Staff and lawyer negotiate ADP consent agreement
- Complainant provided opportunity to tender impact statement
- Executive Director approves – ADP Staff supports lawyer to satisfy agreement

ADP Guiding Principles

- 1) **Public interest:** Lawyers will only be eligible so long as their participation is, and remains, in the public interest.
- 2) **Confidentiality:** ADP records are kept confidential and separate from other Law Society programs and processes, including from the regular disciplinary process.
- 3) **No risk:** If a lawyer chooses or ceases to be eligible to continue in the ADP, matter will be returned to regular disciplinary process and both lawyer and Law Society will be in the same position as they would have been had the ADP never been attempted.
- 4) **Voluntary:** Participation in the ADP is voluntary, and eligible and participating lawyers are provided with sufficient information at every stage of the ADP to make informed decisions about participation.

Progress Report

- Midway report March 2024: [2024ADPReport.pdf \(lawsociety.bc.ca\)](https://lawsociety.bc.ca/2024ADPReport.pdf)

- Statistics as of October 2024:
 - **12** have met eligibility criteria
 - **11** have not met eligibility criteria
 - **8** have successfully entered into consent agreements
 - **5** of these have completed their requirements, remaining **3** fulfilling terms
 - **2** are negotiating terms of consent agreement
 - **2** have been returned to the regular discipline process (unable to come to a consent agreement).
 - **6** are at eligibility assessment stage

Participants

- more men than women (6 men, 2 women)
- 36-69 years of age and from 2 to 40 years of practice experience
- sole practitioners, junior associates and partners working in public (government) and private sector (sole practice, to mid-size and national firms)
- approximately half of originating complaints were self-reports by the lawyer, and all lawyers disclosed that a mental health issue was a contributing, or primary, factor for their misconduct almost immediately upon responding to the complaint
- conduct issues include: falsifying documents/timekeeping, failure to take action on files, conduct unbecoming, technical breaches of Law Society requirements, failure to respond to communications
 - more serious conduct is not reflected in the statistics as those matters would be unlikely to meet the eligibility criteria
- mental health/addiction issues include: opioid addiction, alcohol use disorder, psychiatric disorders, depression, anxiety, eating disorder, panic disorder
- in approximately half of cases, lawyer was asked for, or voluntarily provided, health information from an independent medical examiner (IME)
- signed ADP agreements range in duration from 3 months to 3 years, with terms that include both practice and health “action plans” tailored to the lawyer’s particular circumstances that focus to stabilizing g, improving and monitoring their health and practice
- all ADP agreements include regular check-ins with ADP counsel and, in most cases, medical professionals

Case Studies

Case A - Lawyer profile: 40-year-old male government solicitor, 12-year call, with opioid addiction

Case B - Lawyer profile: 42-year-old lawyer from an equity-seeking group (woman, ethnicized), NCA graduate, 2-year call, sole practitioner

Case C - Lawyer profile: 69-year-old male lawyer, 40 year call, sole practitioner in a small community

A Success Story!