



NOVA SCOTIA BARRISTERS' SOCIETY

THE COMPLAINTS RESOLUTION AND INVESTIGATION PROCESS

A Lawyer's Guide

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Navigating the professional responsibility and complaints process can be challenging and intimidating. The purpose of this guide is to help you understand how these processes work and what to expect when the Society receives and, if necessary, investigates a complaint against you. We deal with all complaints in a fair and timely manner. Your cooperation makes a difference.

The objectives of the professional responsibility process are to protect the public and preserve the integrity of the legal profession. As part of this mandate, the Nova Scotia Barristers' Society ("the Society") has the responsibility to enforce the [Legal Profession Act](#) ("the Act"), regulations, rules of ethics and professional conduct and practice standards, thereby enhancing the competence of lawyers practising in Nova Scotia. The rules of ethics are currently published online as the [Code of Professional Conduct](#) ("the Code").

The complaints and investigation process is set out in Part III of the Act and Part 9 of the Regulations. This Guide clarifies the process and identifies the responsibilities of lawyers and the Society in the course of investigation of a complaint.

Complaints can be received at the Society by phone or in writing. The Society receives about 400 complaint calls each year. Telephone complaints are handled by the Complaints & Investigations and Compliance Officers. Many are resolved with little or no contact with lawyers.

The Society receives an average of 200 written complaints each year; approximately 85% of these are dismissed or resolved. A complaint may be dismissed if it is outside the Society's jurisdiction (e.g., legal issues), if it is made for an improper purpose, if it is not supported by evidence, or if its allegations involve conduct that would not constitute a breach of the Code if proven.

WHAT HAPPENS WHEN THE SOCIETY RECEIVES A WRITTEN COMPLAINT

When the Society receives a written complaint against a lawyer, the Director of Professional Responsibility assesses whether the complaint sets out potentially valid concerns with a lawyer's ethical conduct, and whether the subject of the complaint is within the Society's jurisdiction to resolve. If the complaint does not set out a potentially valid concern with the lawyer's ethical conduct or does not fall within the jurisdiction of the Society it will be dismissed. In these cases, the lawyer will only become aware of the complaint when they are notified it has been dismissed. If the complaint is found to warrant investigation then the lawyer will be notified and given 10 business days to respond. This is the lawyer's opportunity to provide Professional Responsibility with their side of the story.

NOTICE OF A COMPLAINT TO THE LAW FIRM

Law firms may designate a lawyer in the firm to receive notice of complaints against lawyers of the firm, pursuant to [Regulation](#) 7.2.1. A designated lawyer of the firm will receive a copy of a complaint, information about the outcome of the complaint and, occasionally, information at interim stages of the investigation process. A designated lawyer may also be asked to participate in informal resolution efforts early on.

AFTER RESPONSES RECEIVED

After hearing from both sides, the complaint may be dismissed, informally resolved or investigated, in accordance with [Regulation 9.2](#).

At any point during an investigation, Professional Responsibility staff may close the file and issue a lawyer a Letter of Advice, where staff determine that while the lawyer may not have clearly violated the Code of Professional Conduct, they could benefit from guidance and advice to improve their practices. If appropriate, an attempt may be made to resolve the matter through mediation. This is frequently the case where the issue relates to quality of service and there is an ongoing relationship between the complainant and the lawyer. This can include referral of the complaint to the designated lawyer of the lawyer's firm, where applicable (see above). Staff can also obtain undertakings from a lawyer to do or cease doing something as a means of resolving a complaint or as an interim measure prior to completion of an investigation.

REQUESTS FOR REVIEW

When a complaint is dismissed by the Executive Director, [Regulation 9.3](#) provides that a complainant may request a review of the dismissal within 30 business days of receipt of the decision. Requests for review are considered by the Complaints Review Committee, which is normally chaired by a Public Representative. This committee may do one of three things:

1. uphold the decision of staff to dismiss the complaint,
2. direct that an investigation be commenced, or
3. direct that an investigation be completed.

Lawyers are notified when a request for review is received, and subsequently contacted if further investigation is required and/or notified if the dismissal has been upheld. Note that an average of 15% of staff dismissals result in requests for review, and approximately 95% of reviews result in the staff's dismissal being upheld.

If the CRC orders 2 or 3, the matter is ultimately referred to the Complaints Investigation Committee for final determination.

COMPLAINTS INVESTIGATIONS COMMITTEE

If mediation is not successful or not appropriate, and the complaint is not dismissed, then after reviewing the complaint and the lawyer's responses, and following the conduct of a thorough investigation, the complaint is referred to the Complaints Investigation Committee (CIC) with a recommendation from Professional Responsibility staff regarding how it should be addressed. The CIC can then decide to do one or more of the following:

1. dismiss the complaint;
2. conduct an interview with lawyer;
3. refer the lawyer to the Fitness to Practise Program with the lawyer's consent;
4. counsel the lawyer;
5. arrange for mentoring or practice supervision, with or without the lawyer's consent;
6. caution the lawyer;
7. conduct a practice review;
8. order a medical assessment;
9. issue a reprimand with the lawyer's consent;
10. conduct an interim hearing to determine if the lawyer should be suspended or have practice conditions or restrictions; or
11. refer the complaint to formal hearing.

An interview with the CIC involves a lawyer meeting with a smaller group of lawyers of the Committee, to discuss the complaint. After the interview, the CIC can then decide to proceed with the complaint in any of the ways set out above.

If the complaint is not sufficient to constitute a breach of the *Code* but is sufficient to warrant professional guidance, the lawyer may be counselled. A counsel will come in the form of a letter from the CIC and provide the lawyer with direction on how to better address the subject matter of the complaint to avoid issues in the future.

If the complaint is founded but does not constitute professional misconduct, conduct unbecoming, professional incompetence or incapacity, the lawyer may be issued a caution. The caution will be provided in writing and set out the breach and ways a similar situation can be addressed in the future. Cautions are not public but can be considered when reviewing future complaints, as can Letters of Advice and counsels.

In some cases, a practice review is conducted by a lawyer appointed by the Society known as a practice reviewer. The reviewer will enter the lawyer's practice and review the records, files and any other information that may affect the lawyer's ability to practise ethically. The reviewer will then provide the CIC with a report. The CIC may then direct the lawyer to comply with any reasonable requirements specified by the CIC based on the contents of the reviewer's report, open a new complaint based on the report or take steps to resolve the concerns set out in the report, if any.

Similarly, the CIC may order a forensic audit where there are serious concerns regarding the lawyer's or firm's management of trust monies.

A reprimand is a sanction that is the result of a finding by the CIC that a lawyer's conduct may amount to professional misconduct, conduct unbecoming, incapacity or professional incompetence. With the consent of the lawyer, a reprimand is provided to the lawyer in writing and also available to the public through Society's website.

If a complaint raises concerns about a lawyer's capacity or the lawyer self reports, a referral can be made to the Fitness to Practise program, provided the lawyer provides consent (see below).

REFERRAL TO THE FITNESS TO PRACTISE PROGRAM

The ***Fitness to Practise Program*** is available through the professional responsibility process to address capacity-related issues. In cases where the Society receives a complaint that concerns a lawyer's capacity, where a person raises concerns about a lawyer's capacity to the Society, other than through a complaint, or if a lawyer self-reports to the Society, the Executive Director may refer a lawyer to the Fitness to Practise Program. The Complaints Investigation Committee also has the authority to refer a matter to the Fitness to Practise Program at any stage of the investigation process if there are concerns about capacity.

Capacity is a defined term in the ***Legal Profession Act*** and means a lawyer's ability to practise law with reasonable skill and judgment that is not substantially impaired by a physical, mental or emotional condition, disorder or addiction. This program is completely voluntary on the part of the lawyer involved.

The Fitness to Practise Program can require the consenting lawyer to undergo a medical assessment and enter into an interim agreement respecting conditions or restrictions on the lawyer's practise. After completion of the medical assessment, a remedial agreement may be entered into if it is in the best interests of the public and the lawyer consents. A remedial agreement may include provision for further medical assessments, the lawyer's undertaking to complete a course of treatment, authorization for the Fitness to Practise Committee to receive reports from the medical assessments and treatment as well as practise restrictions or conditions.

The goal of the Fitness to Practise Program is to identify and support a lawyer in dealing with incapacity impacting the lawyer's ability to practise law with reasonable skill and judgement. For more information, refer to the Society's website.

REFERRAL OF MATTERS TO HEARING

A hearing is a quasi-judicial, formal adjudicative process arising from charges of professional misconduct, professional incompetence, incapacity or conduct unbecoming a lawyer. Please see Sections 44-54 of the Act for details.

If a lawyer is found guilty of charges by a hearing panel, it can impose one or more of the sanctions under s. 45 of the [Act](#), including the following:

1. order the lawyer to pay all or any part of the costs incurred by the Society in connection with any investigation or proceedings relating to the matter in which the lawyer was found guilty;
2. order that restitution be made to any person;
3. order the lawyer to pay an amount not to exceed \$20,000 to the Lawyers' Fund for Client Compensation;
4. reprimand the lawyer;
5. suspend the lawyer's practising certificate;
6. impose restrictions and/or conditions on the lawyer's practice;
7. expel an articled clerk, or defer or add conditions to the clerk's call to the Bar; and
8. disbar or permit the resignation of the lawyer.

Hearings are open to the public, subject to any panel's order for closure or a publication ban, and decisions of hearing panels are published. In some cases the matter may be resolved by means of a Settlement Agreement (refer to [Regulation](#) 9.9 and the Policy on Settlement Agreements), which must have been recommended by the CIC and approved by a Hearing Panel at an open hearing.

RETAINING COUNSEL

Lawyers are encouraged to seek the advice of counsel at the earliest stages of an investigation, in particular where the allegations of the complainant are serious in nature. In the event that the complaint is referred to a hearing, lawyers are strongly urged to retain counsel.

The Society has compiled a [list of practitioners](#) who have volunteered to represent lawyers in the professional responsibility process of the Society on a *pro bono* or reduced fee basis. The Society publishes this list on its website, and a copy may also be obtained by calling (902) 422 1491.

WHAT WE EXPECT FROM THE LAWYER UNDER INVESTIGATION

Lawyers have a duty to cooperate with an investigation of the Society, pursuant to rule 7.1-1 of the [Code](#) and [Regulation](#) 9.2.5, and a breach of this duty may lead to an additional complaint being initiated against the lawyer.

Lawyers must respond to communications of the Society in a timely manner and must submit all information that is requested by the deadline provided by the Society. If it is not possible to provide a response by the deadline provided, it is the lawyer's responsibility to contact the Professional Responsibility department to request additional time to respond. Some extensions may require approval by the CIC.

When responding to a complaint, lawyers should deal with all of the issues raised in the complaint, provide copies of all relevant documents and refrain from personal attacks on the complainant. A calm, rational response can often assist in resolving a complaint. A well-documented file can significantly assist a lawyer in responding to complaints.

The Society has a duty to protect solicitor-client privilege, which attaches to information submitted by the lawyer in the course of an investigation, pursuant to s. 77 of the [Act](#). A lawyer has a duty to provide a complete response to the Society and will not be considered to have breached solicitor-client privilege by doing so. However, the lawyer should attempt to restrict the information provided to what is pertinent to the complaint. Where the complainant is not a client, any solicitor-client privileged information submitted in response to the complaint will be protected by the Society and used only for the purpose of the Society's investigation.

WHAT A LAWYER CAN EXPECT FROM THE SOCIETY

The Society will advise a lawyer of any written complaint received against the lawyer, either at the commencement of a mediation or investigation, or at the time that the complaint is dismissed. Complaint inquiries received by phone, which do not result in a mediation or any further action by staff, will not be communicated to the lawyer.

The Society will provide updates to the lawyer about the progress of an investigation at intervals of approximately 30 days.

During an investigation, the Society adheres to relevant duties of fairness, and applicable administrative law procedural standards. The lawyer will be provided with sufficient information to enable the lawyer to be fully informed of the allegations requiring a response.

If a matter is referred to formal hearing, the lawyer will be provided with full and timely disclosure, in accordance with the provisions of the *Legal Profession Act*.

REPORTING TO THE LAWYERS INSURANCE ASSOCIATION OF NOVA SCOTIA

Responding to a complaint does not relieve a lawyer of their obligations to report matters to the [Lawyers' Insurance Association of Nova Scotia](#), in accordance with the lawyer's insurance policy and their duties under the *Code of Professional Conduct*. Complaint and claim information is not shared between these two entities.

CONTACT US

If you have any questions or concerns about the process, please visit [the Society website](#) or contact the Professional Responsibility department at (902) 422 1491 for further information.