



Law Society of Alberta  
**Conduct Protocol**  
Revised January 13, 2020

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# CONDUCT PROTOCOL

## Introduction

1. Section 53 of Part 3 of the *Legal Profession Act* (the “Act”) and Part 3 of *The Rules of the Law Society of Alberta* (the “Rules”) give the Executive Director the authority to review the conduct of a lawyer that comes to the attention of the Law Society of Alberta (the “Law Society”).
2. This Protocol sets out how the Executive Director assesses and reviews the conduct of a lawyer under section 53 of the Act (“section 53 review”) and rule 85.
3. In this Protocol, a reference to:
  - a. “complaint” means information about a lawyer’s conduct that comes to the attention of the Law Society and is referred to the Executive Director under section 53 of the Act for review;
  - b. “complainant” means a person who brings a lawyer’s conduct to the attention of the Law Society; and
  - c. “Executive Director” includes Law Society staff lawyers to whom the Executive Director’s powers and duties in section 53 of the Act to conduct a review of a complaint have been delegated.
4. When the complainant is the Law Society, the steps in this Protocol to communicate or otherwise deal with a complainant are not applicable.
5. The processes set out in this Protocol are summarized in the chart in Appendix A.
6. Nothing in this Protocol supersedes or replaces any provision of the Act or the Rules.

## Receipt of Complaint

7. The Executive Director will receive a complaint through the intake process or open a complaint.
8. A complaint will typically be in writing and accompanied by supporting documentation. If the complaint is not in writing, the Executive Director either:
  - a. obtains the information about a lawyer’s conduct that is the basis of the complaint in writing from the complainant; or
  - b. prepares a memorandum summarizing the complaint or other information about a lawyer’s conduct (Rule 85(8)).

## Independent Counsel

9. Before proceeding with the section 53 review of a complaint, the Executive Director will determine if the matter is appropriate for a review by Independent Counsel.
10. The Executive Director or the President of the Law Society may refer the section 53 review of the complaint to Independent Counsel when:

- a. the lawyer who is the subject of the complaint is an agent or Bencher of the Law Society, or a staff member of the Law Society; or
  - b. the Executive Director is of the view that it is not appropriate that he or she conduct a section 53 review.
11. The Executive Director does not proceed with the section 53 review once the complaint is referred to Independent Counsel.

## **Abeyance (Suspension of the Section 53 Review)**

12. The lawyer, complainant or Executive Director may apply, in writing, to the Chair or Vice-Chair of the Conduct Committee for an abeyance of the section 53 review of a complaint. The section 53 review may be suspended pending the outcome of other relevant proceedings or in other circumstances, such as illness where the lawyer may not be in a position to fully respond.

## **Dispute Resolution – Section 53(2) of the Act**

13. Before starting a section 53 review, the Executive Director may try to resolve a complaint when it involves a dispute between a lawyer and another person.
14. If the dispute is resolved, the Executive Director either may direct that no further proceedings be taken with respect to the complaint (s. 53(2)) or may proceed with a section 53 review.
15. If the dispute is not resolved, the Executive Director proceeds with a section 53 review of the complaint.

## **Section 53 Review**

### **Factors Considered During Review**

16. During the section 53 review, the Executive Director considers:
  - a. the allegations and information set out in the complaint;
  - b. the Law Society's internal records about the lawyer in question;
  - c. additional information that may be required to complete the section 53 review and how that information will be obtained; and
  - d. the risk and seriousness of the complaint, and how it is to be prioritized.
17. At any stage of the section 53 review, the Executive Director may determine that the matter warrants:
  - a. an interim suspension application; or
  - b. a referral to the Practice Review Committee.

## Interim Suspension

18. If the assessment of the complaint indicates that:
  - a. there is a *prima facie* case supporting the allegation; and
  - b. the public requires immediate protection,

then the Executive Director may determine that an application for interim suspension of the lawyer under section 63 of the Act (“interim suspension application”) is warranted. The Executive Director can refer to the *Interim Suspension/Conditions Guideline* for further guidance.

19. The section 53 review proceeds concurrently with the interim suspension application.

## Referral to Practice Review Committee

20. The review of the complaint may identify that the lawyer concerned has practice management or other issues that may be addressed by a referral to the Practice Review Committee. If the Executive Director determines that this referral is warranted, a brief report to the Committee is prepared describing why the lawyer is being referred.
21. The section 53 review proceeds concurrently with a referral to the Practice Review Committee.

## SUMMARY DISMISSAL

22. Summary Dismissal means a dismissal under section 53(4)(a) of the Act that occurs where one or more criteria, set out in Rule 85(6), are met that indicate that the complaint should be dismissed.
23. When conducting a review, the Executive Director may direct a summary dismissal in accordance with s.53(4)(a) of the Act and subrule 85(6) of the Rules when one or more of the following criteria are met:
  - a. the complaint falls outside the Society’s jurisdiction;
  - b. the complaint is premature;
  - c. the complaint alleges a technical breach of the Act, the Rules or the Code of Conduct but has no substantive consequence or is of insufficient regulatory concern;
  - d. the complaint is made for a collateral or improper purpose;
  - e. the complaint lacks substance or a factual basis;
  - f. there has been significant delay in bringing the complaint forward: *Note: If the complaint alleges conduct that occurred more than three years ago, the Executive Director will dismiss the complaint unless there were exceptional circumstances to explain the delay, or*
  - g. the complaint is about Society, or other, regulatory processes.

24. A non-exhaustive list of examples of when the Executive Director may direct a summary dismissal include circumstances where:
- a. the conduct falls within the jurisdiction of another tribunal, court or organization, including civil claims for damages, as well as fee disputes that may be heard by Review Officers at the Court of Queen's Bench;
  - b. the conduct has not yet occurred;
  - c. the Law Society is required to wait for the outcome or finding of an external tribunal or court proceeding;
  - d. the complaint does not disclose unethical or unprofessional behaviour;
  - e. the complainant is using the Law Society complaint process to circumvent or relitigate an external tribunal proceeding or finding;
  - f. the delay in making the complaint raises issues of procedural fairness or the deterioration of evidence; and
  - g. the complaint is not about a lawyer's professional conduct but about the regulatory process of the Law Society or another agency.
25. If the Executive Director directs a summary dismissal of the complaint, the Executive Director:
- a. sends the lawyer:
    - i. written notice of the decision to dismiss, and
    - ii. a copy of any reasons given; and
  - b. sends the complainant:
    - i. written notice of the decision to dismiss,
    - ii. a copy of any reasons given,
    - iii. instructions on how to appeal the direction to dismiss under Rule 86, and
    - iv. the deadline for submitting an appeal under Rule 86 (Rule 85(13)).

## **Review Process**

26. The Executive Director reviews the complaint and supporting documents and, where there is a complainant, may:
- a. write a letter to the complainant to confirm the issues raised in the complaint when the issues are unclear or not specific;
  - b. provide the complainant with information about the section 53 review process; and
  - c. request the complainant provide at the outset all relevant information and supporting documentation regarding the complaint.

27. The Executive Director provides a written copy of the complaint or memorandum, as set out in Rule 85(8) to the lawyer. This is commonly done by a letter, copied to the complainant, requiring the lawyer to answer inquiries or furnish records as set out below.
28. The Executive Director may:
  - a. alter the copy of the complaint provided or otherwise withhold the identity of the complainant or the source of the complaint or other information; or
  - b. postpone furnishing the lawyer with a copy of the complaint or memorandum (Rule 85(9)).
29. During the review, the Executive Director provides periodic updates to the complainant and the lawyer.

### **Requesting Answers or Records – Section 53(3)(a)**

30. During the review, the Executive Director may require the complainant or the lawyer to answer any inquiries or to furnish any records relevant for the review (s. 53(3)).
31. If the Executive Director requires additional information from the complainant or the lawyer, the request will include a deadline to reply and a brief description of the information required.

### **Lawyer's Full or Summary Response to the Complaint**

32. When the lawyer provides a response to the complaint, the Executive Director provides the complainant with:
  - a. a full or partial copy of the response; or
  - b. a summary of the response (Rule 85(11)).
33. Once the lawyer's response is provided to the complainant, no further information is requested or exchanged. However, the Executive Director retains discretion to request additional information.

### **Investigation – Section 53(3)(b)**

34. An investigation may be formal or informal. The Executive Director may, before formally directing an investigation, request that an investigator gather information during the review.
35. During the review, the Executive Director may formally direct an investigation of the lawyer's conduct.
36. The Executive Director may consider the following factors when deciding if a matter should be directed for a formal investigation:
  - a. the existence of any gaps in the available evidence or other information that, in the Executive Director's view, is needed to complete the review and how that information will be obtained;
  - b. the urgency, risk and seriousness of the complaint; and

- c. whether the lawyer has failed to respond to inquiries for information or the response is inadequate.
37. The Executive Director directs an investigation and sets out its initial focus. However, an investigator may investigate any other conduct of the lawyer that arises during the investigation (s. 55(6)).
38. If an investigator directs a lawyer pursuant to section 55(2) to
  - a. answer any inquiries;
  - b. produce records or other property;
  - c. give up possession of the records or other property to allow the investigator to take it, make copies and return it; or
  - d. attend before the investigator;and the lawyer fails to do so, the Executive Director may apply to the Court of Queen's Bench for an order directing the lawyer to do so (s. 55(3)).
39. If the requested records are within the control of a non-lawyer third party, an investigator can request those records from the third party. If the records are not provided, the Executive Director may apply to the Court of Queen's Bench for a production order (s. 55(3)(b)(i) or (ii)).
40. The Executive Director may also apply to the Court of Queen's Bench for an order directing any person to attend before an investigator to answer inquiries relating to the investigation (s. 55(3)(c)).
41. Once the investigation report is prepared, the Executive Director gives the lawyer a copy and requires the lawyer to review it and provide a response by a specified deadline.
42. The investigation report is not provided to the complainant.

### **Admissions and Undertakings**

43. During a review, the Executive Director may propose to the lawyer that the lawyer provide admissions and/or undertakings ("Admissions/Undertakings") to the Law Society. If the lawyer is prepared to do so, the Admissions/Undertakings will be drafted by the Law Society for the lawyer's review, comment and agreement.
44. The admissions and undertakings process is designed to ascertain the lawyer's understanding of their ethical obligations in the circumstances, permit a lawyer to admit to the alleged conduct and to provide the lawyer who is the subject of a complaint with the opportunity to accept undertakings to avoid similar issues in the future.
45. If the lawyer signs Admissions/Undertakings that are acceptable to the Executive Director, they may be considered as part of the Executive Director's review of the complaint, including as part of the decision regarding the disposition of the complaint.
46. After consideration of the Admissions/Undertakings, the Executive Director may:
  - a. dismiss the complaint;



- b. refer the complaint to the Conduct Committee with a recommendation to dismiss the complaint; or
  - c. refer the complaint to the Conduct committee with another recommendation.
47. If a complaint is referred to the Conduct Committee, the Executive Director may rely on the Admissions/Undertakings in recommending the next step in the regulatory process.
48. Admissions/Undertakings are a flexible alternative to a hearing that can be tailored to the specific circumstances of the lawyer and complaint.
49. Admissions/Undertakings will not form part of the lawyer's disciplinary record but may, in some circumstances, be relied upon by the Law Society in subsequent conduct proceedings or regulatory processes. In addition, any undertakings related to the practice of law given by the lawyer will form part of the lawyer's public role (Rule 39) and will be published on the Society website (Rule 40.1).

## **Disposition of the Complaint**

50. Once the review is complete, the Executive Director either:
- a. dismisses the complaint (s. 53(4)(a)); or
  - b. refers the complaint, together with a report pursuant to section 53 of the Act:
    - i. to the Practice Review Committee,
    - ii. to the Conduct Committee, or
    - iii. to both Committees (s. 53(4)(b)).
51. The Executive Director will apply the Threshold Test set out in the *Threshold Test Guideline* when deciding to either dismiss or refer a complaint to the Conduct Committee.

## **Direction to Dismiss – Section 53(4)(a)**

52. If the Executive Director directs a dismissal of the complaint, the Executive Director:
- a. sends the lawyer:
    - i. written notice of the decision to dismiss, and
    - ii. a copy of any reasons given; and
  - b. sends the complainant:
    - i. written notice of the decision to dismiss,
    - ii. a copy of any reasons given,
    - iii. instructions on how to appeal the direction to dismiss under Rule 86, and
    - iv. the deadline for submitting an appeal under Rule 86 (Rule 85(13)).

## **Referral of Complaint**

53. If the Executive Director refers the complaint to the Conduct Committee, the Executive Director notifies the complainant and the lawyer (Rule 85(12)).
54. If a referral to the Practice Review Committee is warranted, and the lawyer has not already been referred to the Practice Review Committee by the Executive Director, the Executive Director will ordinarily recommend to the Conduct Committee that it do so rather than refer the lawyer to both Committees at the same time.

## **Executive Director's Report to Conduct Committee**

55. The Executive Director prepares a report pursuant to section 53 to refer a complaint to the Conduct Committee. The report is a privileged and confidential memorandum containing legal opinion. It includes:
  - a. a summary of all relevant information;
  - b. an analysis of and a legal opinion on the issues;
  - c. a legal opinion as to whether the Threshold Test is met;
  - d. a recommendation as to the next steps in the regulatory process;
  - e. any proposed citations;
  - f. the lawyer's regulatory history; and
  - g. a copy or excerpts of relevant material relied upon during the section 53 review.
56. The Executive Director provides the report only to the Conduct Committee. It is not provided to the lawyer, the lawyer's counsel, or the complainant.
57. The Executive Director can recommend in the report that the Conduct Committee direct one or more of the following:
  - a. a mandatory conduct advisory;
  - b. a referral to the Practice Review Committee;
  - c. a hearing;
  - d. a dismissal of the complaint; or
  - e. the Executive Director to advise the Minister of Justice and Solicitor General pursuant to section 78 of the Act.
58. The Executive Director orally presents the report to the Conduct Committee.
59. The Executive Director advises the lawyer and the complainant of the Conduct Committee's decision.

## **Single Bencher Hearing**

60. If the lawyer under review is prepared to admit guilt to conduct deserving of sanction before a complaint is directed to a hearing, and if the Executive Director is satisfied that would be appropriate, a Statement of Admitted Facts and Admission of Guilt is drafted for the lawyer's review.
61. If the lawyer signs a Statement of Admitted Facts and Admission of Guilt acceptable to the Executive Director, it is presented to the Conduct Committee for approval instead of a report. If accepted by the Conduct Committee, the section 53 review ends.
62. The Executive Director advises the lawyer and the complainant of the Conduct Committee's decision.

## **National Discipline Standards**

63. The Executive Director will use best efforts to meet the timelines set out in the National Discipline Standards, established by the Federation of Law Societies of Canada, and approved by the Benchers:
  - a. 80% of all complaints are to be resolved or referred to the Conduct Committee for a disciplinary response or to the Practice Review Committee for a remedial response within 12 months of receipt; and
  - b. 90% of all complaints are to be resolved or referred to the Conduct Committee for a disciplinary response or to the Practice Review Committee for a remedial response within 18 months of receipt.

# Appendix A – Conduct Process Chart

