

Resolution and Early Intervention Protocol

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Resolution and Early Intervention Protocol

Introduction

1. The purpose of this Protocol is to describe the Law Society of Alberta (“Law Society”) Resolution and Early Intervention Process.
2. The Resolution and Early Intervention (EI) Process means the review process used where the alleged conduct of a member that comes to the attention of the Society appears to the Executive Director to be conduct that, if proven, would not be conduct deserving of sanction but raises the possibility of intervention. Intervention includes working with the member to improve practice or service delivery or providing supports or guidance to benefit the member and his or her practice.
3. In the EI process, the Executive Director reviews complaints under section 53 of the *Legal Profession Act* (the “Act”) and rule 85 of *The Rules of the Law Society of Alberta* (the “Rules”).
4. In this Protocol:
 - a. “complaint”, “matter”, “concern” and “information” are used interchangeably to mean information about a lawyer’s conduct that comes to the attention of the Law Society;
 - b. “complainant” means a person who brings a lawyer’s conduct to the attention of the Law Society;
 - c. “Early Intervention (EI) activities” are activities that provide education, guidance and/or recommendations for practice and service improvements to lawyers. EI activities include, but are not limited to, direct coaching, self-reflection tools, referrals to educational resources and courses, referrals to the Practice Management Department, requesting undertakings and any other activity that furthers a lawyer’s understanding of practice and legal service concerns;
 - d. “Executive Director” includes any lawyer employed by or contracted by the Law Society to review the conduct of lawyers;
 - e. “lawyer” means Law Society members, students-at-law, foreign legal consultants, visiting lawyers and any other individuals who are subject to the conduct provisions of the *Legal Profession Act* and *Rules of the Law Society of Alberta*; and
 - f. all legislative section references refer to sections in the Act.
5. The processes set out in this Protocol are summarized in the chart in Appendix A.
6. This Protocol is intended to be followed in conjunction with other Law Society protocols.
7. Nothing in this Protocol supersedes or replaces any provision of the Act or the Rules.

Section 53 and Rule 85 Review

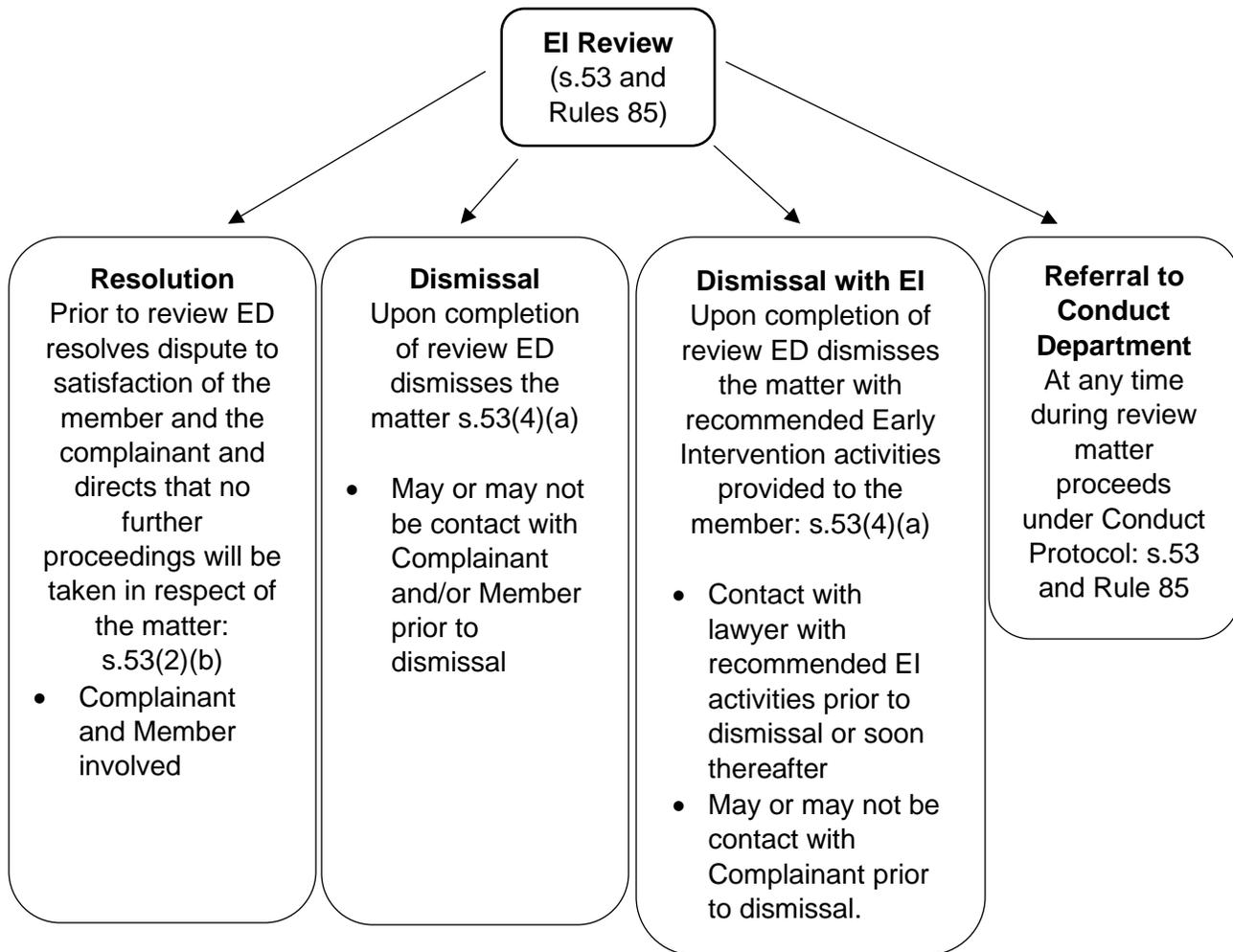
8. Upon receiving a complaint or information, the Intake Specialist, as defined in the *Intake Protocol*, and Executive Director will follow the *Intake Protocol* to conduct an initial review of the complaint or information.

Resolution

9. Following the collection of information but before commencing a review of the matter, the Executive Director may attempt to resolve the matter pursuant to s. 53(2) of the Act.
10. If the Executive Director resolves the matter between the lawyer and the complainant in accordance with s. 53(2)(b) of the Act, he or she will communicate to the complainant and to the lawyer that:
 - a. the Executive Director understands that the matter has been resolved to the satisfaction of the complainant and lawyer; and
 - b. the Executive Director confirms that no further proceedings will be taken in the matter and that the matter will be closed.

Options on Review

11. Once a complaint is directed into the Resolution and Early Intervention review process, the Executive Director may do one or more of the following:
 - a. upon completion of the review, dismiss the complaint pursuant to s. 53(4)(a) of the Act;
 - b. upon completion of the review, dismiss the complaint pursuant to s. 53(4)(a) of the Act and communicate with the lawyer to:
 - (i) provide reminders about his or her obligations under the Act, the Rules, the Code of Conduct;
 - (ii) provide guidance and referrals to educational resources, if any,
 - (iii) provide recommendations for practice of service improvements, if any, and
 - (iv) request undertakings, if any; or
 - c. at any time during the review, refer the matter to the Conduct Process for review under s. 53 and rule 85.



Factors Considered During Review

12. The Executive Director uses a holistic approach to assess the seriousness of the allegations about the lawyer's conduct. Many factors are considered to determine the seriousness of the alleged conduct and the potential risk to the public. The factors are interlinked and are not considered individually, nor are they weighted. Some of those factors include:
 - a. the information and concerns about the lawyer's alleged conduct 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 s. 53 review and how that information will be obtained;
 - d. whether the matter can be resolved without further proceedings under s. 53(2);
 - e. the risk and seriousness of the complaint, and how it is to be prioritized; and
 - f. level of cooperation of the lawyer with the Law Society.

Summary Dismissal

13. Summary Dismissal means a dismissal under section 53(4)(a) that occurs where one or more criteria, set out in Rule 85(6), are met that indicate that the complaint should be dismissed.
14. 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.

15. 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.
16. If the Executive Director directs a summary dismissal of the complaint, the Executive Director will:
 - a. send the lawyer:
 - i. written notice of the decision to dismiss, and
 - ii. a copy of any reasons given; and
 - b. send 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)).
17. The Executive Director may, in his or her sole discretion withhold the identity of a complainant or the source of the complaint or other information.

Review Process

18. The Executive Director may gather information, in addition to what has been provided by the complainant, where such additional information will assist in reviewing and assessing the matter. Information gathering may include:
 - a. requests for written materials from the lawyer or complainant or both;
 - b. requests for a written or verbal response from the lawyer to some or all of the information contained in the complaint;
 - c. direct contact with the complainant or the lawyer or both;
 - d. communication with other parties, for example, where the complainant's current lawyer is not the subject of the complaint but has relevant information to the complaint; and/or
 - e. information from internal Law Society sources.
19. The Executive Director has discretion as to the manner of communication with complainants and lawyers.
20. The Executive Director will provide the lawyer with a full or partial copy of the written complaint, Information Concerning a Lawyer ("ICAL") Form completed by the complainant or a memorandum summarizing the complaint. This will be provided during the review or with the dismissal letter. The Executive Director may also provide the lawyer with other materials provided by the complainant. In the sole discretion of the Executive Director, where he or she considers it appropriate, the Executive Director may redact portions of the complaint or ICAL Form.
21. The Executive Director may, in his or her sole discretion withhold the identity of a complainant or the source of the complaint or other information.
22. If the lawyer provides the Executive Director with information or documents that address the complaint, the Executive Director may provide the complainant with the information or documents prior to dismissal of the matter, if such information requires further answer and response from the complainant.
23. The Executive Director may refer the matter to the Conduct Process at any time during the review process based on information discovered while conducting the review and the criteria in the *Intake Protocol*.

Dismissal and Dismissal with EI Activities

24. If not already directed to a Summary Dismissal, the Executive Director will consider the *Threshold Test Guideline* when deciding whether to dismiss a complaint pursuant to section 53(4)(a).
25. If the Executive Director dismisses a complaint, he or she:

- a. will send to the lawyer:
 - i. written notice of the decision to dismiss, including any reasons given, and
 - ii. a copy of any reasons given;
- b. may send to the lawyer:
 - i. reminders of the member's obligations under the Act, the Rules and the Code of Conduct, if any,
 - ii. guidance and referrals to educational resources, if any,
 - iii. recommendations for practice or service improvements, if any, and
 - iv. requested undertakings, if any; and
- b. will send to the complainant:
 - i. written notice of the decision to dismiss,
 - ii. a copy of any reasons given,
 - ii. instructions on how to appeal the direction to dismiss under the Rules, and
 - iii. the deadline for submitting an appeal under the Rules.

Withdrawals

- 26. If a complainant seeks to withdraw a complaint, the Executive Director will review and assess the information provided to determine if the alleged conduct requires action by the Law Society.
- 27. If no action is required by the Law Society or if the concern does not meet the threshold test as set out in the *Threshold Test Guideline*, the Executive Director may close the file as withdrawn.
- 28. If action is required by the Law Society, where possible, the matter will proceed as a Law Society complaint.
- 29. The Executive Director will confirm in writing to the complainant that
 - a. in accordance with their request, the complaint review has ceased and no further steps will be taken; or
 - b. if the concern may meet the threshold test as set out in the *Threshold Test Guideline*, the Executive Director will communicate to the complainant that the Law Society may need to take further steps, but, where possible, will proceed with a Law Society complaint. The complainant may also be advised that he or she may be required as a witness at a future date.

30. A file being closed as withdrawn does not prevent the Complainant from submitting another complaint about the same concern at a later time.
31. Where the matter proceeds as a Law Society complaint, any future complaint from the Complainant about the same concern may be used as evidence for the Law Society complaint.

Abandonment

32. If a complainant ceases contact with the Law Society, without indicating a desire to withdraw the complaint, the Executive Director will review and assess the information provided to determine if there is sufficient information to determine if the alleged conduct requires action by the Law Society.
33. If there is insufficient information to proceed with a review, the complaint may be deemed abandoned.
34. If there is sufficient information to proceed with a review, at the sole discretion of the Executive Director, the complaint may
 - a. be dismissed;
 - b. be deemed abandoned; or
 - c. proceed as a Law Society complaint.
35. A complaint may be deemed abandoned if:
 - a. the complainant has ceased contact with the Law Society; and
 - b. attempts to reach the complainant have failed.
36. If a complaint is deemed abandoned, upon recommendation of the Early Intervention Manager, the Executive Director may cease any further review of the complaint.
37. Deemed abandonment of a complaint does not prevent the Complainant from submitting another complaint about the same concern at a later time.

Early Intervention Activities

38. The Executive Director will consider the following factors when deciding whether to engage in EI activities with a lawyer:
 - a. if there has not been a breach of the Code of Conduct or other relevant standard, or there is a breach that is technical or without consequence, whether the lawyer could have better served the client or handled the matter better in the circumstances;
 - b. lawyer's complaint history;

- c. lawyer's history with Early Intervention resources;
 - d. lawyer demographics (e.g. years in practice, personal circumstances);
 - e. practice demographics (e.g., area of law); and
 - f. level of cooperation with the Law Society.
39. The Executive Director has complete discretion in deciding which EI activities to employ. The Executive Director's decision to engage in EI activities is not a sanction that is subject to an appeal. EI activities provide education, guidance and recommendations for practice and service improvements to lawyers.
40. The EI activities undertaken will not be communicated to the complainant.

National Discipline Standards

41. 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, as amended from time to time.

Appendix A: Resolution and Early Intervention Process Chart

