

# Intake Protocol

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# Intake Protocol

## Introduction

1. The purpose of this Protocol is to describe the Law Society of Alberta (“Law Society”) Intake process, which is the first step in the complaint process.
2. Intake is the process through which information about a lawyer is received, gathered, collated and triaged by the Law Society.
3. The Intake process uses a holistic analysis of regulatory risk that includes the early identification of opportunities to support lawyers while simultaneously protecting the public.
4. The goals of the Intake process are:
  - a. to triage in a quick, efficient, effective and assertive manner;
  - b. to provide early resolution for matters where possible; and
  - c. to identify matters that may be summarily dismissed.
5. 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 through a complaint or otherwise;
  - b. “complainant” means a person who brings a lawyer’s conduct to the attention of the Law Society;
  - c. “Executive Director” includes any lawyer employed by or contracted by the Law Society to review the conduct of lawyers;
  - d. “Intake Specialist” means an employee of the Law Society tasked with receiving complaints and information about the conduct of a lawyer, gathering and collating information, and conducting triage.
  - 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 of the *Legal Profession Act*.
6. The processes set out in this Protocol are summarized in the chart in Appendix A.
7. Nothing in this Protocol supersedes or replaces any provision of the *Legal Profession Act* (the “Act”) or the *Rules of the Law Society of Alberta* (the “Rules”).

## Receipt of Information

8. Information may come to the Law Society's attention from members of the public, lawyers, other Law Society departments, the judiciary or other sources.
9. Information may come to the Law Society by mail, email, telephone, through media or other means.
10. If the information is not in writing, the Executive Director or an Intake Specialist will either:
  - a. request that the complainant complete an Information Concerning a Lawyer ("ICAL") form, in writing, regarding the lawyer's conduct; or
  - b. summarize the information about a lawyer's conduct in a memorandum.
11. If the information is in writing, it must:
  - a. be submitted using an ICAL form;
  - b. not include more than 50 pages of supporting material, enclosures and attachments; and
  - c. not include any video or audio recordings, unless specifically requested by the Law Society.
12. Written information that does not meet the submission requirements set out in paragraph 11 may be deleted, if submitted electronically, or may be returned, if submitted in hard copy, and no record will be kept of the information if such action is taken.
13. If information is deleted or returned, the Executive Director or an Intake Specialist will:
  - a. notify the complainant that the information has been deleted or returned because it did not comply with the Law Society's submission requirements for the receipt of information; and
  - b. advise the complainant as to how to resubmit the information in a manner that complies with the Law Society's submission requirements, if applicable.
14. The Executive Director or an Intake Specialist may gather information, in addition to what has been provided by the complainant, where such additional information will assist in considering risk and triaging matters. Information gathering may include direct contact with complainants, lawyers, law firm staff, family members, the judiciary, other members of the public and/or internal Law Society sources.

## Repetition

15. When information about the alleged conduct of a member comes to the attention of the Executive Director, the Executive Director, in his or her sole discretion, may determine that the information is a repetition of, or substantially the same as, one or more previous

or current complaints and cease any further consideration or review of the information. The Executive Director will notify the individual who brought the information to the attention of the Executive Director that the information has been classified as repetition and no further action will be taken.

## **Triage**

16. Following the collection of information, an Intake Specialist may recommend to the Executive Director that a matter be directed into one of two streams, using the approach established further in this Protocol.
17. Following the collection of information, the Executive Director will direct matters into one of two streams, using the approach established further in this Protocol.
18. The two streams into which a matter may be directed are:
  - a. Referral to Resolution and Early Intervention – s. 53 and rule 85; or
  - b. Referral to Conduct – s. 53 and rule 85.

## **Early Resolution**

19. Following the collection of information by an Intake Specialist or an initial review by the Executive Director but prior to directing a matter into one of the streams set out in paragraph 14, the Executive Director or an Intake Specialist may take steps to resolve a matter between a lawyer and a complainant where no legal analysis is required and the concern relates to:
  - a. amounts owed by a lawyer to the complainant or other party;
  - b. a lawyer who has failed to take a step in an action or transaction that is pending; and/or
  - c. a matter involving anything that can be resolved through remedial measures.

## **Review Process**

### **Approach**

20. 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. At triage, the Executive Director considers all relevant factors together to direct the matter into the appropriate stream within the Law Society.

21. The factors considered include:
- a. information about the lawyer's alleged conduct, including whether there has been a breach of the Code of Conduct or other relevant standard, and whether the breach is serious or technical/minor in nature;
  - b. whether the lawyer's alleged conduct is part of a pattern of behavior or regulatory concerns. The Executive Director may consider information about the lawyer and/or previous complaint(s), if any, that is available in the Law Society's records;
  - c. the context in which the lawyer works, including level of experience and practice environment; and
  - d. other factors that may be relevant to the consideration of the information received in order to determine how to deal with the concerns about the lawyer's conduct.

### 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. Upon completion of information gathering, an Intake Specialist may identify criteria that indicate that a Summary Dismissal is appropriate and may recommend a Summary Dismissal to the Executive Director.
24. Upon completion of a review, the Executive Director may direct a summary dismissal in accordance with section 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.

25. The criteria for summary dismissal are set out, with examples, in the *Conduct Protocol* and the *Resolution and Early Intervention Protocol*.

### **Referrals to the Resolution and Early Intervention Process**

26. Resolution and Early Intervention 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.
27. Following an initial review, the Intake Specialist may recommend a referral and the Executive Director may refer the matter to the Resolution and Early Intervention process for review under section 53 and rule 85 when:
- a. the alleged conduct, if proven, would not be conduct deserving of sanction when considering the factors outlined in paragraph 15 above;
  - b. resolution of the complaint may be possible under section 53(2); and/or
  - c. the lawyer may benefit from proactive resources and other Early Intervention activities as defined in the Resolution and Early Intervention Protocol.

### **Referrals to the Conduct Process**

28. Conduct 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 be conduct deserving of sanction.
29. Following an initial review, the Intake Specialist may recommend a referral and the Executive Director will refer the matter to the Conduct Process for review under section 53 and rule 85 when one or more of the following criteria is present:
- a. the alleged conduct, if proven, appears to be conduct deserving of sanction when considering the factors outlined in paragraph 17 above;
  - b. the alleged conduct poses an imminent risk to the public;
  - c. the alleged conduct is criminal in nature;
  - d. the information has come from a lawyer who is making a self-report under section 105 of the Rules;
  - e. the information discloses allegations of physical, sexual or other assault, and/or sexual or other harassment;
  - f. the alleged conduct includes a trust safety breach;
  - g. the alleged conduct is a breach of an undertaking provided to the Law Society;

- h. the alleged conduct includes a failure to cooperate with the Law Society;
  - i. the information is about a lawyer with an open complaint file in another matter where a hearing has been directed; and/or
  - j. the information is about a lawyer who is currently under a disciplinary suspension.
- 30. Following an initial review, the Intake Specialist may recommend a referral and the Executive Director may refer the matter to the Conduct Process for review under section 53 and rule 85 when one or more of the following criteria is present:
  - a. the information is about a lawyer who has one or more open files in Conduct review concerning the same or similar alleged conduct;
  - b. the information is about a lawyer who has been sanctioned concerning the same or similar alleged conduct; and/or
  - c. the information is about a lawyer who has been directed to attend a Mandatory Conduct Advisory in the past two years concerning the same or similar alleged conduct.

## **National Discipline Standards**

- 31. 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: Intake Process Chart

