

The Complaint and Discipline Process

If you think a lawyer has acted unprofessionally or unethically, you may complain to the Law Society. Other lawyers and the Council of the Law Society (its governing body) may also lay complaints. This will explain the highlights of the discipline process to you. It does not explain all the procedures or the law involved, but it may be of assistance in understanding the complaints process.

Ethical Standards

A characteristic of a profession is the right to regulate its own members and the responsibility to require that members live up to standards expected of members of that profession.

The standards of ethical behavior for the legal profession have developed over the years. These standards are contained in the *Code of Professional Conduct* that lawyers in our province have adopted. Other standards are contained in the *Legal Profession Act and Regulations*, court decisions and Discipline Committee decisions. Proper behavior may be outlined as well in textbooks and journals and in rulings by the Law Society's Ethics Committee. Each lawyer has the responsibility to be guided by ethical principles in the practice of law. The Law Society may discipline lawyers if they breach those professional and ethical standards.

Purpose of Discipline

The purpose of discipline is to protect the public and to preserve the reputation of the legal profession. If you lay a complaint against a lawyer, the Law Society can look into your complaint to see whether the lawyer is guilty of professional misconduct.

Limits of the Discipline Process

The discipline process deals with the *professional* conduct of lawyers in Prince Edward Island. There are some things that the discipline process is not able to handle.

- The discipline process cannot retry your court case or alter a judge's decision. If you are unhappy with a court decision, you may appeal to a higher court.
- It cannot conduct a trial if you think that a lawyer was negligent or that you have a claim for damages against a lawyer. The discipline process cannot award damages to the person complaining. You must sue the lawyer through the civil court system, just the same as suing any other person. If this is your situation, you should seek legal advice about your claim. While a person may complain to the Law Society and sue the lawyer about the same facts, the two things are different and are decided on a different basis.
- The Law Society can only look at fees charged by a lawyer when those fees would indicate professional misconduct. A court official called the Prothonotary offers a mediation service to clients and lawyers regarding fees. For more information, contact the Prothonotary at the Charlottetown Courthouse, (902)368-6000.

Generally, if you are dissatisfied with your lawyer's conduct, or if you do not understand what is happening with your case, the best solution may be to have a frank and open discussion with your lawyer about the whole situation. In many cases where a client loses confidence in the lawyer, grounds for discipline action do not exist.

The Discipline Process

If you have a concern about the conduct of a lawyer which you want the Law Society to investigate, you must first write a letter to the Law Society giving details about the lawyer's conduct. Include your name, address and phone number. Send the letter outlining the situation, along with any supporting documents, to:

The Secretary-Treasurer
Law Society of P.E.I.
P.O. Box 128
Charlottetown, PE C1A 7K2
Telephone: (902) 566-1666
FAX: (902) 368-7557

Your letter starts the discipline process. It has three stages:

An exchange of letters and other documents through the Secretary-Treasurer;

An investigation by a discipline committee; and

A formal hearing by a second discipline committee.

Each of these steps is explained next.

1. Exchange of Letters

After receiving your letter of complaint, the Secretary-Treasurer will forward a copy of your letter to the lawyer and ask for a response within two weeks. The lawyer's response is mailed to you when the Secretary-Treasurer receives it.

If you are satisfied with an explanation offered in the lawyer's response, or if your complaint has been resolved in the meantime, this will usually end the complaint as far as the discipline process of the Law Society is concerned. If the complaint has not been resolved, the Secretary-Treasurer may gather further details and will review the file to see whether the complaint should be dismissed as being without foundation, etc. If this is the case, the Secretary-Treasurer will write to you to explain why the complaint is being dismissed.

2. Investigation by a Discipline Committee

If a complaint is not concluded by the exchange of letters process, the Secretary-Treasurer sends the complaint file to one of two Discipline Committees for an investigation. Each Committee has six lawyer members and two lay members. The

Committee gathers information for its investigation by doing some or all of the following:

- It reviews your letter of complaint, the lawyer's response, and other supporting documents submitted by you or by the lawyer.
- It may contact you, the lawyer, and anyone else who knows about the situation, or ask them to meet with a member or all members of the Committee.
- It may check relevant court transcripts, court files, or other documents.

Once the Committee has all the information it needs, it meets and reviews all the information, and makes one of the following decisions:

- The complaint should be dismissed because the information gathered does not support a finding of professional misconduct. This ends the discipline process.
- The lawyer is to receive a reprimand or some counseling from the Committee. This concludes the discipline process.
- The person laying the complaint should get legal advice about a possible court case against the lawyer.
- A formal complaint is to be laid against the lawyer, in the name of the Law Society, charging the lawyer with professional misconduct, and a formal hearing held into the lawyer's conduct.

The Committee's decision is sent to you, and to the lawyer. The Committee concludes its investigation within four months of receiving the complaint file, unless the Council of the Law Society grants more time to finish the investigation.

3. Formal Hearing

If the Discipline Committee decides that a formal complaint is to be laid and a formal hearing held, this means that the Law Society itself is prosecuting the lawyer for unprofessional conduct. The Society hires a lawyer to prosecute the complaint and to draft a formal complaint outlining what misconduct the lawyer is alleged to have committed. A copy of the formal complaint is sent to you, and to the lawyer.

The formal hearing takes place before the second Discipline Committee of the Law Society. There will be at least five members of this committee consisting of lawyers and lay members. The formal hearing is like a trial, with testimony given under oath.

You will be told when the hearing takes place and you may attend the hearing. The prosecutor or the defence lawyer may call you, and others, as witnesses. The formal hearing is open to the public, unless an application is made to the Discipline Committee

asking that all or part of the hearing be closed for a good reason. It is up to the Committee to decide whether or not the hearing will be closed.

At the end of the formal hearing, after hearing the witnesses and reviewing relevant documents, the Discipline Committee adjourns to reach a decision. It must decide on the evidence, whether or not the lawyer is guilty of professional misconduct. If the Committee finds the lawyer guilty, after reconvening to hear submissions it may impose the following penalties:

- reprimand and counsel the lawyer;
- fine the lawyer in an amount up to \$10,000.00 (paid to the Law Society);
- impose conditions or restrictions on the lawyer's practice;
- suspend the lawyer's right to practise law for a period of time; or
- cancel the registration of the lawyer as a member of the Law Society and strike the lawyer from the Barristers' Roll (this is commonly called being disbarred, and means that the lawyer can no longer practice law).

The Discipline Committee issues a written decision within sixty days which explains its findings and the penalty imposed on the lawyer, if any. A copy of the written decision is sent to you.