Law Society of Saskatchewan
Practice Review Program – *An Update*

[*This article has been updated and amended by Perry D. Erhardt, Q.C. from an article originally prepared by Donna Sigmeth, Q.C. in 2009*.]

Complaints against members received by the Law Society from members of the public often relate to lawyer delay, failure to respond, lack of communication and quality of legal services provided. Lack of attention to proper file and office management procedures regularly appears to be a source of the problem for the member. Section 40 of *The Legal Profession Act*[1] provides Complaints Counsel with the

[1] **Preliminary review**

40 (1) Where the society:

(a) receives a complaint with respect to a member, alleging conduct unbecoming;

(b) otherwise becomes aware of conduct by a member that is or may be conduct unbecoming;

(c) receives a complaint questioning the competence of a member but not alleging conduct unbecoming; or

(d) otherwise becomes aware of conduct by a member that may display incompetence, but that does not constitute conduct unbecoming;

a person designated by the benchers shall review the conduct of the member.

(2) If, on completion of a review pursuant to subsection (1), the person designated by the benchers is of the opinion that:

(a) the matter raises an issue of competence, the person shall refer the matter to the chairperson of the professional standards committee;

(b) the matter raises an issue of discipline, the person shall refer the matter to the conduct investigation committee; or

(c) the matter does not raise an issue of competence or discipline, the person may:

(i) refer the matter to the ethics committee; or

(ii) direct that no further action be taken.

(3) The person designated pursuant to subsection (1) shall notify the complainant, if any, of the decision taken on review pursuant to this section.

(4) If the chairperson of the committee to which a matter is referred pursuant to subsection (2) is of the opinion that the matter is more appropriately dealt with by another committee mentioned in subsection (2), the chairperson may refer the matter to the chairperson of that other committee.

(5) Notwithstanding subsection (4), where the conduct of a member raises an issue of competence, it may nevertheless be referred by the person designated pursuant to subsection (1) or the chairperson of the professional standards committee to the conduct investigation committee to be dealt with through the discipline process.

authority to refer these matters to the Chair of the Professional Standards Committee. The Professional Standards Committee is a committee of the Law Society with the primary function of ensuring that the standards of competency prescribed by the Benchers are upheld.

In 1999, a survey of the membership revealed a desire that the Law Society 'do more' about lawyer competence and move toward more remedial rather than disciplinary action against members. The Professional Standards Committee with the support of Saskatchewan Lawyer's Insurance Association (S.L.I.A.), responded with the establishment of the Practice Advisor Program in 2003. The purpose of the Program was not disciplinary, but rather educational and supportive to address problems with practice proactively to ensure that members bring adequate skills and knowledge to the practice of law.

Exit interviews conducted with members who completed the original program revealed positive feedback. We anticipated that the implementation of advice received from the Practice Advisors would result in a reduction in complaints, and very likely resulted in fewer members going through the disciplinary process and fewer insurance claims to (S.L.I.A.)

Despite the Program's initial success, it was not reaching all members who required assistance from a Practice Advisor. The program was 'complaint driven', in that only matters referred by Complaints Counsel to the Professional Standards Committee were referred to the Program. The Committee, for many years, sought to improve upon and add to the options available to it to assist members in maintaining appropriate standards of practice. With this "gap" in mind, a more proactive program was developed to protect the public by identifying problems before a complaint arises.

In more recent years, the program has been amended and rebranded as the Practice Review Program, and enables Practice Advisors to conduct a practice review based on risk-based criteria rather than being solely 'complaints driven'. Specifically, access to the Practice Review Program is now offered to new sole practitioners and small firms upon commencement, with the goal being that the review will assist these members with establishing best practices, to prevent problems from arising in the future.

New sole practitioners include both junior lawyers commencing as a sole practitioner and more senior lawyers who move to sole practice from a larger firm environment. 'Sole practitioners' also includes members who are in a loose association of a few members where expenses are shared but there is no real 'firm management' or consistency of procedures.

These criteria were selected in response to an audit conducted by the Law Society of all complaints received. For example, this audit found that a significant number of complaints referred to the Professional Standards or Discipline Committees involved sole practitioners. Sole practitioners and small firms must employ office management skills and are very hands-on with the business of the firm, in addition to the practice of law.

The Program now utilizes the services of three senior practitioners each of whom has extensive knowledge in the practice of law and experience in office management. When a matter is referred to one of Mr. Vic Dietz, Q.C., Mr. Brent Gough, Q.C. or Mr. Jeff Scott, as Practice Advisor, the assigned advisor will arrange and conduct an on-site, hands-on review of the member's office procedures, accounting, file organization, file opening and closing practices, case advancement and general management of office, staff and clients. The second step is for the Practice Advisor to provide practical, concrete advice for improvement. Lastly, he follows up with the member from time to time as required.
The Practice Review Program will be available for all members who fall into any of the following risk based criteria:

1. New sole practitioners
2. Number of SLIA claims
3. Number, nature, seriousness and timeframe of complaints
4. Number of accounting issues
5. Concerns raised by the Courts and/or members
6. Failure to meet mandatory professional development requirements

Clauses 10(l) and (m) of *The Legal Profession Act*[2] empower the Benchers to make rules to prescribe standards of competency and establish procedures to review competency. In addition to the power prescribed by the *Act*, there is an obligation to take measures to assess and monitor the competence of the membership. Other professional bodies are taking much more stringent measures to ensure competence and the Law Society needs to take similarly proactive steps. This is especially important as self-regulation is under serious scrutiny and other Commonwealth jurisdictions have already lost the power to self-regulate. The Practice Review Program demonstrates the Law Society is taking its role to protect the public seriously while assisting our membership in creating efficient and healthy practices.

Should you have any questions about the Practice Review Program, you may contact any member of the Professional Standards Committee or the Law Society's Complaints Counsel, Donna Sigmeth, Q.C. and Valerie Payne. The current composition of the Professional Standards Committee is: Ron Parchomchuk (Chair), Dr. Sanjeev Anand, Q.C. (Vice-Chair), Thomas Healey (Vice-Chair), David Rusnak (Vice-Chair), Della Stumborg (Vice-Chair), and Jay Watson (Vice-Chair).

[2] **Rules**
10 The benchers may make rules:
…
(l) prescribing standards of competence;
(m) establishing procedures relating to the methods of assessment and review of competence, and generally providing for carrying out the powers of the professional standards committee pursuant to section 41;

Law Society of Saskatchewan
Complaints Process and Professional Standards Stream
Valerie Payne, Complaints Counsel

The mandate of the Law Society of Saskatchewan is:

(a) to act in the public interest;
(b) to regulate the profession and to govern the members in accordance with this Act and the rules; and
(c) to protect the public by assuring the integrity, knowledge, skill, proficiency and competence of members.[1]

In its execution of these duties, the Law Society receives and handles complaints against Members of the Society. Complaints come in to the Law Society from members of the public, from other lawyers, and from the Courts. The Law Society has the ability to open its own complaint matters against Members if conduct or competency issues come to the attention of the Law Society through some means other than a complaint.

When a new complaint comes in to the Law Society, Complaints Counsel will first determine whether the complaint falls within the jurisdiction of the Law Society. Specifically, does the matter relate to the conduct or competence of a lawyer who falls within the regulatory jurisdiction of the Law Society of Saskatchewan? Except for exceptional circumstances, the Law Society does not consider complaints related solely to a client's dissatisfaction with the amount they have been billed by or paid to their lawyer. Instead, those complainants are informed of the Assessment Process available through the Courts and the office of the Local Registrar. Further, the Law Society will rarely become involved in a complaint relating to a matter which is currently before the Courts, often holding the complaint matter in abeyance pending the conclusion of the Court action. Also, the Law Society does not involve itself in matters relating purely to the civil matter of professional negligence, unless it raises an issue of competence/quality of service which requires further examination. Negligence matters are more appropriately dealt with by the Courts through the civil process.

[1] *The Legal Profession Act, 1990* , s. 3.1.

After determining that the content of the complaint lies within the jurisdiction of the Law Society, Complaints Counsel will consider whether further information is needed from either the Complainant or the Member about whom the complaint has been lodged. An exchange of information/responses will often occur. Once Complaints Counsel feels they have obtained sufficient information, they must make one of four determinations:

1) No further action is warranted (there is no issue of ethics, competence or discipline);
2) Referral to the Ethics Committee;
3) Referral to the Professional Standards Committee ("PSC"); or
4) Referral to a Conduct Investigation Committee (discipline stream).

Section 40 of *The Legal Profession Act, 1990* ("the *Act*") and Rule 300 of *The Rules of the Law Society of Saskatchewan* make the threshold for referral quite low; <u>if there is an issue of ethics, competence or discipline</u>, the matter may be referred to a Committee of the Benchers (Ethics, PSC, Conduct Investigation). Once it has been determined that there is some issue to be addressed, Complaints Counsel must determine the appropriate Committee to which to refer the Complaint matter. As the focus of the current discussion is the role of the PSC and its associated Practice Advisors, the remainder of this paper will focus on the procedures related to this Committee.

Complaint issues which are typically involved when a complaint is referred to the PSC (instead of a Conduct Investigation or Ethics Referral) include (but are not limited to):

1) Undue delay;
2) Not responding to clients in a timely or efficient matter;
3) Failure to respond to clients or other lawyers;
4) Missing deadlines, limitation periods or court dates;
5) Losing documents or other materials;
6) Significant errors in correspondence, pleadings, etc.; and
7) General competence/quality of service concerns.

Typically, it would take a combination of some degree of several of these factors (or one serious instance of one of them) or a complaints 'history' to warrant a referral to the PSC (rather than a determination of 'no further action'). A single or isolated instance of one of these factors would not usually result in a referral to Committee without a previous 'history' of complaints. Other factors, such as the Member's history or a preponderance of practice-related problems can make it clear that this is not likely a "one-off" problem situation, resulting in a referral to the PSC.

Once Complaints Counsel determines that a complaint matter is to be referred to PSC, the PSC members are canvassed for conflicts and the ability to take on the file. PSC referrals are sent to a single member of the PSC (either a Chair or Vice-Chair) for consideration. Once that member is chosen following the canvass, Complaints Counsel forwards the full complaint file to the Chair or Vice-Chair for their review.

Following their review of the complaint materials, s. 41(1) of the *Act* empowers the Chair or Vice-Chair to either:

a) direct that no further action be taken if he or she is of the opinion that the matter does not raise an issue of competence; or
b) in any other case, conduct an investigation to review whether, in his or her opinion, the member is practising law in a competent manner.

Occasionally, the Chair or Vice-Chair may decide to conduct his or her own investigation in relation to the practice and/or competence of the Member, but the usual practice is to appoint one of the Law Society's Practice Advisors to conduct the investigation and report back to the Chair or Vice-Chair. Most often, a Practice Advisor is asked to review the specific file which led to the complaint matter being brought to the attention of the Law Society, and is further asked to complete a "Law Office Management Review" ("LOMR"). A LOMR consists of a general review of the Member's whole practice, usually including his or her filing and diarization systems, and an assessment of the office administrative supports.

The Law Society has retained the services of three members to act as Practice Advisors for the Professional Standards Committee; Victor Dietz, Q.C., Brent Gough, Q.C., and Jeffrey Scott. If a Chair or Vice-Chair of PSC wishes to appoint a Practice Advisor, one is selected based on location of the Member and availability of the Practice Advisor (following conflict searches). After the Practice Advisor is appointed, they proceed to contact the member directly to arrange for a visit.

Following the Practice Advisor's visit with the Member, they will provide Complaints Counsel with their report(s). Most often, two reports are prepared, one relating solely to the complaint matter resulting in their appointment, and one in relation to the LOMR. Usually, the reports will include recommendations for the Member's practice to assist them in preventing similar complaints from occurring in the future. Complaints Counsel then forwards the reports on to the Chair or Vice-Chair of PSC who appointed the Practice Advisor. The Chair or Vice-Chair reviews the Practice Advisor's reports and indicates to Complaints Counsel whether they accept the reports and the recommendations made by the Practice Advisor. The Chair or Vice-Chair may, if they wish, make their own recommendations to the Member as well. Occasionally, the Member may be asked to agree to Undertakings which will formalize their willingness to comply with the recommendations.

Following approval by the Chair or Vice-Chair, both reports are sent to the Member and the complaint-specific report is sent to the Complainant (if the complaint report contains privileged or confidential information, the Complainant may just be provided with a summary of the report). In most cases, the Member is asked to confirm to the Practice Advisor and/or Complaints Counsel that they intend to comply with the recommendations made in the report(s). Occasionally, the Practice Advisor will have recommended a follow-up visit with the Member, to assess the status of their implementation of the recommendations for improvement. In these cases, the Law Society will diarize the file to after the follow-up date, to receive any further report from the Practice Advisor. If no follow-up is recommended the file is generally closed at this point.

The Chair or Vice-Chair of PSC also has the ability to determine, upon review of the information provided by the Practice Advisor, that the matter (or a portion of the matter) would be more appropriately dealt-with by one of the other Committees – either Ethics or Conduct Investigation. The Chair or Vice-Chair has the power to make a referral to one of these other Committees.

<u>Suggestions on How to Have and Maintain a Well-Organized and Efficient Law Practice</u>

Prepared by: Vic Dietz, Q.C. and Jeff Scott
Practice Advisors, Law Society of Saskatchewan

1. Have a good working knowledge of the ***Code of Professional Conduct*****.**

2. Decline work which does not interest you.

3. Keep current with respect to your preferred area(s) of practice by regularly attending CPD seminars. Volunteer to give a presentation at a CPD seminar.

4. Carefully review the instructions you receive from clients, financial institutions, etc. If you cannot accept the instructions, immediately inform the client, financial institution, etc. (this is a frequent practice issue for real estate practitioners).

5. Have a plan in place for each file (i.e. where is the file at and where is it heading). If tomorrow you are no longer able to practice, will the lawyer taking over carriage of the file be able to ascertain what needs to be done on the file in order to move it forward to completion?

6. Adequate supervision and training of support staff (this is a frequent practice issue for real estate practitioners given the amount of work delegated to support staff on real estate files).

7. Use of checklists (particularly important for real estate practitioners given the amount of work delegated to support staff on real estate files).

8. Contemporaneous and dated attendance notes with clients, opposing counsel, etc. placed on the file.

9. Diarize all open files:
   i) current diary date for each open file; and
   ii) review status of each file on the diarized date.

10. Timely communication with:
    i) clients (including financial institutions for real estate practitioners); and
    ii) opposing counsel.

11. Neat and organized files:
    i) correspondence filed in chronological order; and
    ii) correspondence filed separately from, for example, Court documents.

12. Appreciate extent of trust conditions and do not accept any, where you do not have the control to comply.

13. Conduct yourself with civility and integrity at all times not only with other lawyers but the general public as well.

14. Verify instructions in writing by letter, or e-mail.

15. Know when the solicitor-client relationship is at an end and withdraw.

16. Don’t be afraid to ask for help when unsure how to proceed whether within the firm or from outside contacts.

17. Regularly communicate with your client to update status of a matter.

18. Don’t be afraid to tell the client why the work is not done.

19. Don’t give the client a false sense of time to complete the work.

20. Be generous to yourself in estimate for client as to time to complete.

21. Use retainer agreements to avoid later conflict over accounts.

22. Use brads, elastics, sub files for proper organization.

23. Update file continuously so if someone has to take it over, it will be obvious what next thing to be done is.

24. Have a succession plan for your files and if a solo practitioner, a Power of Attorney over general and trust accounts.

25. Take holidays and more than a day at a time.

26. Practice stress relief; whether by exercise, hobbies or whatever.

27. Remember all consumption should be in moderation.