



## PROFESSIONAL REGULATION

### Report: Update on Judicial Complaints

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## INTRODUCTION

This report provides a brief analysis of the judicial complaints received by the Law Society since the implementation of the Civility Complaints Protocols between the Society and the Ontario Courts (the “Protocols”) to 31 December 2014.

The Protocols were developed by the Law Society in consultation with the Chief Justices of the Court of Appeal, the Superior Court of Justice and the Ontario Court of Justice. Formalized in September 2009, the Protocols set out a procedure for trial judges and justices of the peace to refer incidents of misconduct to the Law Society. They also provide for a process whereby judges can request that lawyers receive mentoring from a panel of senior members of the bar.

### Number of Complaints Received

While the Protocols were not finalized until in and around 31 March 2010, the Law Society and the Courts began following these Protocols in the late summer, early fall of 2009. Hence, complaints from judges which were received after 1 September 2009 are considered to be part of this joint endeavour and are the focus of this report.

Between 1 September 2009 and 31 December 2014, the Law Society received **124 complaints** from judges in various courts (“judicial complaints”): 5 were received in 2009; 32 were received in 2010, 20 were received in 2011, 21 were received in 2012 and 26 were received in 2013 and 20 were received in 2014. The following chart sets out the number of judicial complaints received in Professional Regulation, by calendar year, since 2000.<sup>1</sup>

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<sup>1</sup> In and around September 2009, when the Protocols were developed, a unique way to identify these complaints was developed in Professional Regulation’s case management system, IRIS. However, prior to that time, there was no ability to identify complaints received from judges. For this memorandum, IRIS complaints opened between 1 January 2000 and 1 September 2009 were identified as judicial complaints if the complainant or additional complainant in the case was identified as a judge. Those complaints which were lodged by someone on behalf of a judge have not been included as there is no way they could be identified.

YEAR	NUMBER OF COMPLAINTS
2000	1
2001	3
2002	2
2003	3
2004	13
2005	10
2006	1
2007	3
2008	5
2009*	18
2010	32
2011	20
2012	21
2013	26
2014	20

\* Note that 13 complaints were received prior to the implementation of the Protocols

### Analysis of the Judicial Complaints Received Post-Implementation of the Protocols

An analysis of the 124 judicial complaints received since 1 September 2009 reveals the following information.

#### (a) Types of Licensees

- 84 complaints were made against 78 lawyers;
- 26 complaints were made against 24 paralegal licensees;
- 1 complaints was made against 1 paralegal applicant;
- 1 complaint was made against 1 lawyer applicant; and
- 12 complaints were made against 12 non-licensees.

#### (b) Originating Court and Process Followed

Originating Court	Complaints Received in the Law Society		
	Total #	# Received through the CEO's Office	# Received Directly from the Judge
Ontario Court of Justice <i>In Toronto</i>	36 21 15	17	19

Originating Court	Complaints Received in the Law Society		
	Total #	# Received through the CEO's Office	# Received Directly from the Judge
<i>Jurisdictions outside Toronto</i>			
<b>Superior Court of Justice</b>	<b>83</b>	32	51
<i>In Toronto</i>	41		
<i>Jurisdictions outside Toronto</i>	42		
<b>Divisional Court</b>	<b>1</b>	0	1
<b>Court of Appeal for Ontario</b>	<b>1</b>	1	0
<b>Federal Court of Canada</b>	<b>2</b>	2	0
<b>Manitoba Court of Queen's Bench</b>	<b>1</b>	1	0
<b>TOTAL</b>	<b>124</b>	53	71

**(c) Mentoring**

In 15 cases (involving 14 licensees), the referring court made a formal request for mentoring.

- In 7 cases, it was determined that mentoring was not appropriate.
- In 7 cases, it was determined that mentoring was appropriate.
- In 1 case, the determination of whether mentoring was appropriate had not been made as at December 31, 2014.

In 3 other cases (2 involved the same licensee), it was also determined that mentoring was appropriate, although a formal request for mentoring was not made by the referring court.

**(d) Open/Closed**

Process	# of open complaints	# of complaints in abeyance	# of closed complaints
Intake	1	0	12
Investigations	22	1	56
Discipline	9 (re 7 licensees)	0	20 (re 18 licensees/applicants)
Executive Director's Office – Prosecutions	0	0	3
<b>TOTAL</b>	<b>32 complaints</b>	<b>1 complaints</b>	<b>91 complaints</b>

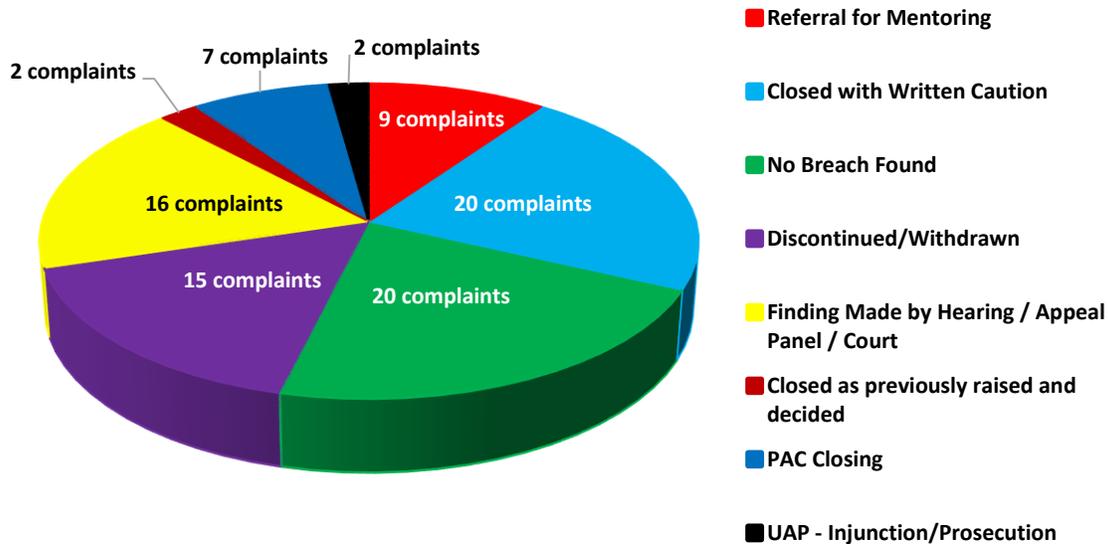
Of the 7 licensees currently in Discipline:

- 1 is subject to an interlocutory suspension order;
- 5 are not entitled to practise for other reasons (e.g. current discipline or administrative suspension, retired, etc.)

With respect to the status of the active 7 licensee matters in Discipline

- 2 matters are pending PAC,
- 4 matters (3 conduct matters; 1 capacity matter) are in the hearings process,
- In 1 matter (conduct), the Law Society's appeal to the Appeal Division was successful and a new hearing was ordered. That hearing has been adjourned *sine die* pending the licensee's appeal to the Divisional Court.

The following chart provides a breakdown of the dispositions for the 91 complaints that have been closed:



## (e) Timeliness

### (i) Closed Cases

With respect to the judicial complaints that have been closed:

- The average age of the 12 cases closed in Intake was 88 days. With respect to the 10 cases in which the licensee was referred for mentoring, the age at closure ranged from 3 days to 151 days and averaged 101 days.
- The average age of the 56 cases closed in Investigations was 282 days.
- The average age of the 18 matters (involving 20 cases) closed in Discipline was 975 days at the time of closure.

### (ii) Active Cases

With respect to 34 active cases:

- There was 1 active case in the Intake Department, in which mentoring was being arranged. It was 26 days old as at 31 December 2014.

- The average age of the 23 active cases in Investigations as at 31 December 2014 was 427 days (i.e. from date of case creation).
- The average age of the 7 active licensee matters (involving 9 cases) in Discipline as at 31 December 2014 (from date of case creation) was 1140 days.

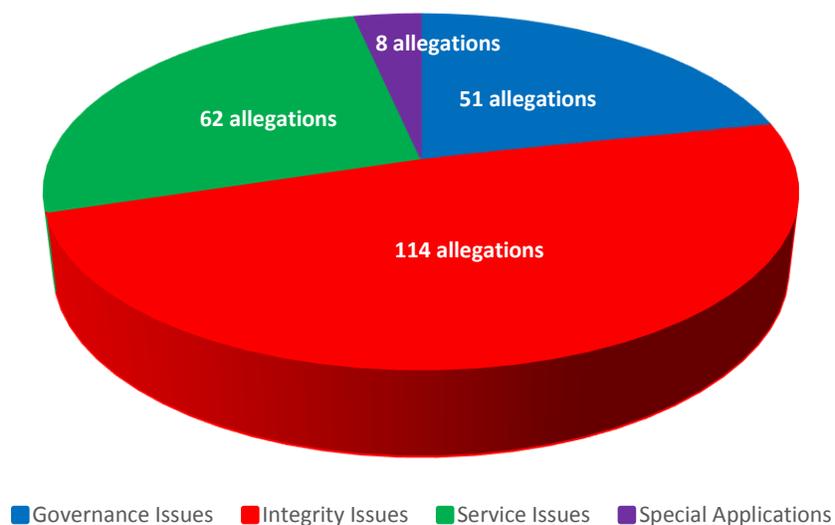
**(f) Area of Law**

The following chart breaks down the 124 judicial complaints by area of law:

Area of Law	# of Complaints	% of Judicial Complaints
Civil Litigation	50	40%
Criminal/Quasi-Criminal	44	35%
Matrimonial/Family Law	25	20%
Estates/Wills	2	2%
Administrative/Immigration	3	3%

**(g) Types of Complaints**

In the 124 judicial complaints received as at 31 December 2014, there have been a total of 235 allegations raised. The following graph shows the number of allegations by case type (Governance Issues, Integrity Issues, Service Issues and Special Applications) that have been received:



Integrity issues (114 allegations) were raised in 82 (66%) of the judicial complaints received as at 31 December 2014 and included:

- 52 allegations (46%) of counseling/behaving dishonourably
- 25 allegations (22%) of misleading
- 23 allegations (20%) of incivility

Services issues (62 allegations) were raised in 55 (44%) of the judicial complaints received as at 31 December 2014. Forty-five (45) of the 62 allegations (88%) were for failing to serve a licensee's client.

Governance issues (51 allegations) were raised in 42 (34%) of the judicial complaints received as at 31 December 2014 and included:

- 13 allegations (35%) were for practicing under suspension
- 13 allegations (25%) related to practicing outside the scope of a paralegal's licence / improper advertising
- 13 allegations (25%) concerned the unauthorized practice by a non-licensee or failing to prevent unauthorized practice.

Eight (6%) of the judicial complaints received as at 31 December 2014 involved special application issues, all of which raised capacity issues.