
PROTOCOL BETWEEN PROVINCIAL COURT OF BRITISH COLUMBIA AND LAW SOCIETY OF BRITISH COLUMBIA

Whereas:

- Lawyers, judges and judicial justices (JJs) have ethical duties to report misconduct to the appropriate disciplinary body; and
- In some cases a lawyer or a Judge or JJ may benefit from advice or assistance in making a complaint or deciding whether it is appropriate to do so.

Therefore, the following protocol has been mutually agreed upon between the Chief Judge of the Provincial Court of British Columbia and the President of the Law Society of British Columbia (Law Society). Nothing in this protocol is intended to discourage complaints or replace existing complaint processes.

A. Complaints by a Judge or JJ about a Lawyer

Where it appears to a judge that a complaint about a lawyer may be appropriate, and the judge desires assistance in making a complaint or deciding whether it is appropriate to do so, the judge may bring the matter first to the attention of their Regional Administrative Judge before a formal complaint is pursued. After discussing the matter with the judge, the Regional Administrative Judge may then raise the matter with the Chief Judge or an Associate Chief Judge, who will vet the complaint.

Where it appears to a JJ that a complaint about a lawyer may be appropriate, and the JJ desires assistance in making a complaint or deciding whether it is appropriate to do so, the JJ may first bring the matter to the attention of their Administrative Judicial Justice before a formal complaint is pursued. After discussing the matter with the JJ, the Administrative Judicial Justice may then raise the matter with the Chief Judge or an Associate Chief Judge, who will vet the complaint.

There may be situations where a formal complaint appears premature, does not appear to be necessary, or may not be the most constructive means of proceeding, such as where there are emotional problems or personal crises. In these cases, the Chief Judge, Associate Chief Judge or Regional Administrative Judge may consider approaching a Bencher or the Executive Director of the Law Society to discuss how to proceed in the matter to determine, for instance, whether an appropriately placed word of advice might suffice, in the best traditions of the Bar and Bench.

If, after it is vetted through the above process, a complaint appears warranted or appropriate, all relevant materials should be forwarded to the Chief Judge by the judge or JJ, including a court transcript, if available. The Chief Judge will then submit the complaint on behalf of the court, and future communications with the Law Society about the complaint will take place through the Chief Judge.

It is preferable, if possible, that such complaints proceed without the judge or JJ becoming a direct complainant or witness in the matter. The Law Society agrees that, where a formal complaint is

advanced by the Chief Judge after this vetting process, it will be given due consideration, if possible without the judge or JJ who brought it becoming a party to the proceedings or indeed being further involved at all.

B. Complaints by a Lawyer about a Judge

Where it appears to a lawyer that a judge's conduct may be in question, and the lawyer desires assistance in making a complaint or deciding whether it is appropriate to do so, the lawyer may raise the matter with a Bencher before lodging a written complaint to the Chief Judge. In such circumstances, the Bencher may consider discussing the matter with the Chief Judge prior to deciding whether a formal complaint should proceed, or whether some other intervention short of a complaint may be appropriate.

If it is determined, after consultation with a Bencher and/or the Chief Judge, that a formal complaint should be made, it should be submitted in writing to the Chief Judge, with a copy of the transcript if one is available. It is preferable that the matter proceed on a transcript or other available written material, rather than placing the lawyer in the position of being a direct complainant or witness. Lawyers may refer to the Provincial Court website at www.provincial.court.bc.ca under the "Complaints and Appeals" tab regarding the procedure for complaints.

C. Complaints by a Lawyer about a JJ or JP Adjudicator

Where it appears to a lawyer that a JJ or JP Adjudicator's conduct may be in question, refer to the June 12, 2009 Protocol between the Law Society and the Provincial Court of British Columbia in Appendix A.

D. Unauthorized Practice

When a judge or JJ becomes aware of a person who is not a lawyer holding themselves out to be a member of the Law Society or engaging in the unauthorized practice of law contrary to the Legal Profession Act, this may be the subject of an immediate complaint, either directly to the Law Society Unauthorized Practice Committee, or through the Regional Administrative Judge or Chief Judge if preferred. These complaints allow the Law Society to take action to protect the public from untrained, unregulated, and uninsured legal service providers.

Under s. 15(1)(e) of the Legal Profession Act and Rules 2-15 to 2-27 of the Law Society Rules (and any revised versions of those sections), and the National Mobility Protocol members of the law society of another Canadian jurisdiction may be entitled to provide legal services in British Columbia on a limited basis if they are practising members in good standing of that other law society. There is no requirement for such lawyers to confirm their attendance in British Columbia with the Law Society. However, the Law Society can confirm whether the lawyer is entitled to practise law as a visiting lawyer in British Columbia pursuant to the Rules.

Protocol Between Provincial Court of British Columbia and Law Society of British Columbia

Confirmation of whether a person is a practising member of the Law Society may be obtained by checking the Lawyer Directory on the Law Society's website at www.lawsociety.bc.ca, by telephone at (604) 669-2533, or by sending an email to: memberInfo@lsbc.org. Confirmation of whether a person is a lawyer in another jurisdiction in Canada and entitled to practise law in British Columbia on a limited basis may be obtained by contacting the Unauthorized Practice Department of the Law Society by telephone at (604) 669-2533 or by sending an email to: uap@lsbc.org.

The relevant Legal Profession Act provisions include:

(Section 1 definition of the "practice of law", s.15 and s.85(1) included)¹

In referring a matter of unauthorized practice or falsely holding out as a lawyer to the Law Society, the judge or JJ may include with the complaint, information regarding, or a copy of the transcript of, evidence given by the party, or the representative, as to the nature of their relationship and the amount of fees charged or paid, if any. They may also include copies of court documents prepared by the representative, together with any documents relevant to the representative holding themselves out as a lawyer or engaging in the unauthorized practice of law. If there is a recording of any of the representations made, or of the evidence given, a copy may be provided to the Law Society with the complaint. This evidence is important for the Law Society to establish the breach of the Legal Profession Act.

E. Holder of "No-Action" Letter From the Law Society

The Law Society has established a regulatory process called the "Innovation Sandbox" as described in Appendix B. The letter in Appendix B notes that this is "expected to enable individuals, businesses and organizations that are currently not authorized to practice law to provide services that address the unmet need for legal advice and assistance... the areas that are unmet or underserved in the current marketplace are consumer problems, money and debt issues, employment matters, welfare and social benefits, housing and land issues."

If a judge or JJ has a concern about whether someone is a holder of a "no-action" letter or that a holder of a "no-action" letter is providing services outside of the scope of the services permitted under the letter, notice may be made either directly by the Judge or JJ to the Law Society, or to the Chief Judge or their designate who will advise the Law Society by telephone at (604) 669-2533 or by sending an email to: innovation@lsbc.org.

This section is intended to provide a process for the Court to contact the Law Society if such concerns arise. Nothing in this section is intended to take a position on whether an individual with a "no-action" letter will be permitted to represent clients before the Provincial Court generally or in a particular proceeding. The Court has the right and may take a position on whether an individual with a "no-action" letter will be permitted to represent clients before the Provincial Court at anytime.

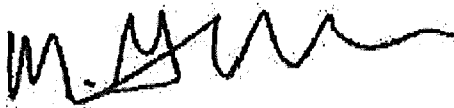
¹ These sections and any revised versions of those sections that may occur from time to time.

Protocol Between Provincial Court of British Columbia and Law Society of British Columbia

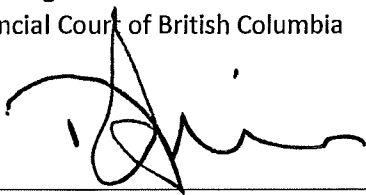
History of Protocol

- 1997: Protocol adopted by the Law Society referred to as the Maclean/Fraser protocol. This Protocol is intended to complement that protocol.
- October 2004: Protocol Between Provincial Court of British Columbia and Law Society of British Columbia created.
- September 2005: Addendum to the Protocol Between Provincial Court of British Columbia and Law Society of British Columbia updated regarding Unauthorized Practice Section to reference the National Mobility Protocol.
- July 2007: Protocol Between Provincial Court of British Columbia and Law Society of British Columbia created regarding Judicial Justices and Justice of the Peace Adjudicators.
- June 2009: Protocol Between Provincial Court of British Columbia and Law Society of British Columbia regarding Judicial Justices and Justice of the Peace Adjudicators updated.
- June 2022 – Updates to this Protocol include: position titles; legislative section references; remove duplicate information about unauthorized practice; refer in the document to the 2009 Protocol regarding JJs and JP Adjudicators; refer to process regarding holders of “No-Action” letters; and, adds history box.

Signed this 15th day of June, 2022.



Melissa Gillespie,
Chief Judge
Provincial Court of British Columbia



Donald Avison, QC
Executive Director / Chief Executive Officer
Law Society of British Columbia

Appendix A
Complaints by a Lawyer about a JJ or JP Adjudicator

PROTOCOL

Effective the 19th day of June, 2009

BETWEEN:

**THE LAW SOCIETY OF BRITISH COLUMBIA
845 CAMBIE STREET, VANCOUVER, BRITISH COLUMBIA
(the "Law Society")**

AND:

**THE PROVINCIAL COURT OF BRITISH COLUMBIA
#602 – 700 WEST GEORGIA STREET
VANCOUVER, BRITISH COLUMBIA
(the "Provincial Court")**

WHEREAS:

- A. The government of British Columbia has appointed part-time Judicial Justices, by Order-in-Council, from among the lawyers in the Province;
- B. The government of British Columbia has also appointed part-time Justices of the Peace Adjudicators ("J.P. Adjudicators"), by Order-in-Council, from among the lawyers in the Province to serve as adjudicators on certain Small Claims matters;
- C. The Law Society is obliged under the *Legal Profession Act* and the *Freedom of Information and Protection of Privacy Act* to protect information subject to solicitor client privilege and confidentiality and to deal with information in its possession in accordance with these statutes;
- D. The *Legal Profession Act* was amended effective April 1, 2008 to provide that the *Legal Profession Act* does not apply to a person who is both a lawyer and a part-time Judicial Justice in that person's capacity as a part-time Judicial Justice and, pursuant to s. 26.1 of the *Legal Profession Act*, to require the Law Society to provide written notification of an investigation by the Law Society of a part-time Judicial Justice to the Chief Judge of the Provincial Court;
- E. Both the Law Society and the Provincial Court wish to ensure that lawyers who also serve as Judicial Justices or J.P. Adjudicators exhibit the highest levels of integrity and professionalism; and

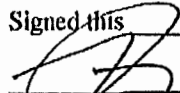
- F. Both the Law Society and the Provincial Court wish to clarify the processes to deal with complaints made about part-time Judicial Justices and J.P. Adjudicators who are also lawyers.

THEREFORE the following Protocol has been agreed upon between the Acting Chief Judge of the Provincial Court and the President of the Law Society, acting on behalf of their respective organizations:

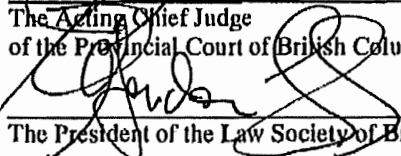
1. The Provincial Court will require any lawyer who is appointed as a part-time Judicial Justice or part-time J.P. Adjudicator to grant permission, in writing, for the Law Society and the Provincial Court to share any information or documents relevant to a complaint about that lawyer.
2. Subject to the Law Society's obligations to protect solicitor and client privilege and confidentiality under the *Legal Profession Act* and the *Freedom of Information and Protection of Privacy Act*, each party agrees that it will share with the other party information or documents relevant to a complaint made about a lawyer who is also a part-time Judicial Justice or J.P. Adjudicator when asked to do so by the other party. Each party will be at liberty to share information received from the other with the affected lawyer/judicial officer.
3. If a complaint is made about the conduct of a part-time Judicial Justice in his or her role as a judicial officer, the Chief Judge of the Provincial Court will be responsible for investigating the complaint. If the Chief Judge determines the complaint raises a matter of conduct within the Chief Judge's authority under the *Provincial Court Act*, the Chief Judge will inform the Law Society about the complaint and, at the conclusion of the Chief Judge's investigation of the complaint, the outcome of the investigation. For greater certainty, complaints which are not substantiated after examination, or complaints about the merits of judicial decisions, do not raise matters within the Chief Judge's authority and therefore will not be reported to the Law Society.
4. If a complaint is made about the conduct of a part-time J.P. Adjudicator in his or her role as a judicial officer, the Chief Judge of the Provincial Court will be responsible for investigating the complaint. If the Chief Judge determines the complaint raises a matter of conduct within the Chief Judge's authority under the *Provincial Court Act*, the Chief Judge will inform the Law Society about the complaint and, at the conclusion of the Chief Judge's investigation of the complaint, the outcome of the investigation. The Law Society may separately investigate the complaint or may decline to do so. For greater certainty, complaints which are not substantiated after examination, or complaints about the merits of judicial decisions, do not raise matters within the Chief Judge's authority and therefore will not be reported to the Law Society.

5. If a complaint is made about the conduct of a part-time Judicial Justice or about a part-time J.P. Adjudicator in his or her role as a lawyer, the Law Society will be responsible for investigating the complaint but will inform the Chief Judge of the Provincial Court of the complaint in the manner established under s. 26.1 of the *Legal Profession Act*. At the conclusion of the Law Society's investigation of the complaint, the Law Society will inform the Chief Judge of the Provincial Court about the outcome of the investigation. The Chief Judge of the Provincial Court may separately investigate the complaint or may decline to do so.
6. If a complaint is made about the conduct of a part-time Judicial Justice or a part-time J.P. Adjudicator that is unrelated to that person's role either as a judicial officer or as a lawyer, the party receiving the complaint will inform the other party about the complaint as soon as practicable and will also inform the other party if the party who received the complaint will investigate it. Each party agrees to advise the other on the conclusion of any investigation and, in accordance with paragraph 2 of this Protocol, to provide any information or documents related to the complaint.
7. If a part-time Judicial Justice or part-time J.P. Adjudicator ceases to be a member of the Law Society, the parties agree that the Chief Judge of the Provincial Court will be responsible for investigating any complaint within the Chief Judge's authority under the *Provincial Court Act* about the conduct of that person after his or her membership in the Law Society ceased unless it is a complaint that the former member of the Law Society has engaged in the unauthorized practice of law. The Law Society will be responsible for investigating any complaints that the former member has engaged in the unauthorized practice of law and will keep the Chief Judge informed about the status and outcome of any such investigation and will, in accordance with paragraph 2 of this Protocol, provide any information or documents related to the complaint.
8. Subject to s. 1.1 of the *Legal Profession Act*, the parties may agree to assign responsibility for investigating a complaint in a particular case to a party other than the party assigned such responsibility under any other paragraph of this Protocol. Any such agreement may include provision for a separate investigation by the unassigned party.

Signed this 12 day of June, 2009.



The Acting Chief Judge
of the Provincial Court of British Columbia



The President of the Law Society of British Columbia

Appendix B
Letter to Chief Judge from Law Society Regarding Innovation Sandbox



June 14, 2021

CONFIDENTIAL

Sent via e-mail

Chief Judge Melissa Gillespie
Office of the Chief Judge
Suite 337 - 800 Hornby Street
Vancouver, BC V6Z 2C5

Dear Chief Judge Gillespie:

Re: The Law Society of BC's Innovation Sandbox and Appearances before the Provincial Court

Donald J. Avison, QC
Executive Director of Access to Justice

This is further to our meeting on May 31st and your request that we provide you with further information about the particulars of our Innovation Sandbox initiative.

Background

The Law Society has established the Innovation Sandbox to foster innovation in the delivery of legal services to address the very evident unmet need for legal advice and assistance. The Innovation Sandbox is intended to facilitate innovation in the delivery of legal services by taking no action against individual and organizations, including lawyers and law firms, providing legal services that would otherwise be outside the Legal Profession Act, the Law Society Rules or the Code of Professional Conduct.

The Benchers approved the creation of the Innovation Sandbox in September 2020 following consideration of the Futures Task Force Report and the Licensed Paralegal Task Force Report.

The Futures Task Force recommended that "...the Benchers need to authorize regulatory sandboxes to allow innovations, which may be illegal or unethical under current regulations, to be piloted and evaluated in a controlled environment". The Licensed Paralegal Task Force observed "...that the amendments to the Legal Profession Act have been in a holding pattern for almost two years, and it is time to move forward with a program of expanded service provision with a path towards licensing. For the reasons contained in this report,

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the Task Force recommends the Law Society further develop what we call a grass roots sandbox approach...”

The Innovation Sandbox is expected to enable individuals, businesses and organizations that are currently not authorized to practice law to provide services that address the unmet need for legal advice and assistance within a structured environment that maximizes the benefits of the services while minimizing the risks associated with providing those services.

Based on surveys conducted by the Law Society and others, the areas that are unmet or underserved in the current marketplace are consumer problems, money and debt issues, employment matters, welfare and social benefits, housing and land issues.

Law Society Process

Individuals, businesses and organizations with an interest in providing legal services that assist with unmet legal needs are asked to submit a proposal outlining:

- what legal services they intend to provide;
- how those services will address the unmet legal needs of BC residents;
- who are the intended consumers of the legal services; and
- how the risk to the public arising from the legal services would be managed (including relevant credentials, education, training or experience).

Proposals are reviewed by a staff working group, including the Deputy Executive Director, the Sr. Director, Credentials, Professional Development & Practice Support and the Chief Legal Officer and if necessary, additional information is obtained to clarify the proposal.

Once the proposal is finalized, staff develop material for consideration by the Innovation Sandbox Advisory Group. The Advisory Group is comprised of:

Michael Welsh, QC, Elected Benchler

Dr. Jan Lindsay, Appointed Benchler

Shannon Salter, Chair, Civil Resolution Tribunal

Dr. Cristie Ford, Professor, Peter A. Allard School of Law

Caroline Nevin, CEO, Courthouse Libraries BC

Michele Ross, President, BC Paralegals Association

The Advisory Group considers each proposal and makes a recommendation to the Law Society's Executive Committee regarding acceptance or rejection of the proposal.

The final decision about whether to grant a "no-action" letter or not is made by the Executive Committee. The Committee consists of the President, the First and Second Vice-Presidents, the Second Vice-President-elect, three other Benchers elected from among the Benchers as a whole and one Appointed Bencher elected from among the Appointed Benchers.

Evaluation and Approval Process

The Advisory Group evaluates each proposal on the basis of whether:

- the proponent is likely to deliver the legal service proposed in a competent and ethical manner;
- the legal service is likely to benefit the public by enhancing the availability of legal services or the effectiveness or efficiency of the delivery of legal services, particularly with respect to the unmet need for legal advice and assistance in a number of areas; and
- the proposal likely presents significant risks that are not adequately addressed in the proposal.

For those proposals granted a "no-action" letter by the Executive Committee, the Law Society will not prosecute or seek an injunction against the proponent, so long as the proponent provides only those services set out in the "no-action" letter and the Law Society does not identify an increase in the risk that the services pose to the public.

"No-action" Letter

The "no-action" letter addresses:

- scope of service that will fall within the ambit of "no-action";
- any terms and conditions necessary to ensure that the proponent provides appropriate service;

- a regular monthly reporting schedule;
- a clear provision indicating that the “no-action” may be withdrawn if the proponent fails to abide by the terms and conditions;
- consent to be listed in a publically searchable directory on the Law Society’s website.

Proposals That Include Appearances Before The Provincial Court

When a proposal includes appearances before the Provincial Court, the proponent will be advised that the approval does not provide a right of audience before the Courts. The “no-action” letter will include the following term:

If you intend to represent clients before the courts or administrative tribunals, you acknowledge that you must request the permission of the presiding judge to do so and that this no-action letter does not grant you an audience to appear.

Proponents will also be advised that the “no-action” letter must be filed with Court in relation to any proceeding before the Provincial Court.

Disclosure of Approved Proposals

The Law Society will regularly provide the Provincial Court, through the Office of the Chief Judge or Associate Chief Judge, the names of those proponents in receipt of a “no-action” letter whose services involve appearance before the Provincial Court. The Law Society will also provide the Provincial Court with immediate notification if a “no-action” letter has been withdrawn.

In addition, confirmation of whether a person has received a “no-action” letter may be obtained by checking the Law Society website which will identify for the public the proponents and proposals that have been approved. The directory will provide information about the services the successful proponents may provide and what to do if there is a concern about their services.

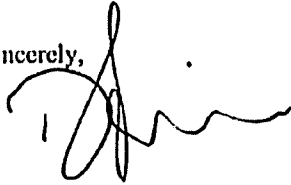
Protocol for Dealing with Concerns Regarding a Recipient of a “No-Action” Letter

In order to ensure the integrity of the “no-action” process, we expect that the Court will want to make the Law Society aware of any significant concerns that indicate a proponent is providing services outside of the scope of the approved activities or that identify an increase in the risk that the services pose to the public in order for the Law Society to move swiftly to protect the public.

Protocol Between Provincial Court of British Columbia and Law Society of British Columbia

The Law Society suggests an addition to the existing protocol regarding the process for dealing with concerns about a lawyer appearing in Provincial court. The protocol will establish a process for handling any concerns relating to a holder of a "no-action" letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don Avison', with a stylized flourish extending to the right.

Don Avison, QC (*he/him*)
Executive Director/Chief Executive Officer