

# The Law Society of British Columbia



## **INTERIM REPORT OF THE DISCIPLINE GUIDELINES TASK FORCE: CONDUCT ASSESSMENT & DISPOSITION GUIDELINES**

**For: The Benchers**  
**Date: June 2011**

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**Purpose of the Report:**

**Discussion and Decision**

**Prepared on behalf of:**

**The Discipline Guidelines Task Force**

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## 1. Executive Summary

The attached *Conduct Assessment and Disposition Guidelines* (the “Guidelines”) are presented for adoption by the Benchers. The Discipline Guidelines Task Force has developed these Guidelines in accordance with its mandate, to assist members of the Discipline Committee in reaching appropriate and consistent dispositions of the professional conduct matters that come before them.

In the course of its work the Task Force considered whether to develop a two-dimensional grid or classification system linking types of misconduct to specific disciplinary responses. The Task Force concluded, however, that the grid approach would not amount to a sufficiently fine-grained system, capable of considering each matter on its merits and taking account of all relevant circumstances.

Instead, the Task Force has opted for a set of guidelines with a systematic framework for analysis that can bring regularity to the assessment of disparate individual cases. The framework involves an express “Citation Threshold,” which is a new policy-level development for the Law Society of British Columbia. In these Guidelines, the Task Force attempts to promote reasoned and principled decisions by setting out a list of characteristic and potentially relevant circumstances and inviting the Discipline Committee to consider *all relevant circumstances* together with the important characteristics of each potential disciplinary response.

The approach of the Task Force has been to develop a process for guiding the exercise of the Discipline Committee’s discretion with references to broad principles, such as: a regard for the public interest in the effective regulation of the profession, a preference for consistent and principled decisions, a direction to consider and apply progressive discipline where appropriate, and an awareness that Citations are appropriate for provable discipline violations unless an alternative disciplinary action is consistent with the public interest and is a more effective regulatory response in the circumstances.

Throughout its work the Task Force has been aware that these Guidelines are a tool for the assistance of the Discipline Committee. Particularly as these are the first such Guidelines recommended for the Discipline Committee, it is reasonable to expect that they may be refined and improved in the future, in light of experience with their use and constructive criticism. These Guidelines are proposed as a good and pragmatic beginning, to provide the Discipline Committee with a reference resource it has previously lacked and to assist in the effective regulation of the profession.

## 2. Introduction

The Discipline Guidelines Task Force began its work in early 2010, after being created in response to a perceived need for an examination of aspects of the Law Society’s regulatory processes. The Taskforce has previously recommended policies on investigation abeyances and the publication of Conduct Reviews, both of which were adopted by the Benchers.

With the transition into 2011, there has been one change in the Task Force membership, as David Crossin, Q.C. has replaced John Hunter, Q.C. The other Task Force members remain Anna Fung, Q.C., Stacy Kuiack, and Herman Van Ommen (Chair).

The original mandate for the Task Force, adopted by the Benchers, included the following specific task:

To review the function and processes of the Discipline Committee and to make recommendations regarding the guidance and information that may be provided to members of the Discipline Committee to assist them in reaching appropriate and consistent dispositions of the professional conduct matters before them.

The Guidelines presented with this memorandum represent the Task Force's response to this particular aspect of their mandate.

### **3. Guidelines or Grid?**

In accordance with its mandate, the Discipline Guidelines Task Force has attempted to create some guidance for members of the Discipline Committee, to assist them in reaching appropriate and consistent dispositions of the professional conduct matters placed before them. In approaching this task, the Task Force was initially faced with the question of what form such guidance should take.

The Task Force was aware of significant and well-motivated support for the idea that it might be particularly useful if a misconduct classification "grid" could be created, associating specific types of misconduct with appropriate disciplinary outcomes or ranges of disciplinary outcomes. Upon significant reflection the Task Force concluded that attempting to provide guidance through the construction of such a grid was unlikely to be fruitful. Essentially, the number of significant variables occurring across the range of cases within a single conduct "type" undermines the usefulness of the classification itself.

Even where all may agree that a particular type of misconduct is serious by its own nature, for example a breach of undertaking, the variation between the cases that might fall within that classification requires that the Discipline Committee have access to the full range of available disciplinary actions. There may be an undeniable and relevant difference in the character of the conduct involved in two breach of undertakings cases. In one case the undertaking may be clear, well understood, and appropriate to the circumstances; the breach may be knowing and intentional, irreparably damaging, and motivated by a reckless desire to advance the client's interest at any cost. In another case, there may be a significant question as to whether a binding undertaking was in fact created; there may have been little or no appreciation by the lawyer of whether a breach of undertaking was at risk. Upon the lawyer's reflection, in a cooperative and timely manner, the issue may have been addressed and rectified at the lawyer's expense and with no resulting harm to the affected parties. The matter may even have been self-reported by the lawyer who was potentially in breach. While these two examples are chosen to suggest opposite ends of a spectrum, even within a single type of potential misconduct, it is difficult, if not impossible, to provide in advance a reliably exhaustive

list of the different ways in which potentially relevant circumstances may be combined within a given case. When the Task Force considered further that a single referral to the Discipline Committee may involve any number of different conduct issues in combination, and that any number of instances of potentially problematic conduct may be covered in a single investigation, the prospect of constructing a useful two-dimensional grid to connect types of misconduct with specific disciplinary outcomes appeared very remote.

Having concluded that a simple grid approach was not the solution to the task of providing meaningful assistance to members of the Discipline Committee, the Task Force turned its efforts to the construction of a set of Guidelines that would be of assistance in the appropriate assessment and disposition of professional conduct matters. In approaching the construction of the Guidelines, the Task Force has kept in mind the need for each case to be evaluated on its own merits and the fact that any guidance for the Committee should not fetter its proper discretion.

#### **4. The Guidelines**

In the process of creating the Guidelines, three significant aspects began to take shape. The first aspect is reflected in a few broad principles, which the Task Force recognized as important for informing the Discipline Committee's approach to its tasks. The second aspect is a framework for analysis. The proposed framework is intended to promote appropriate consistency in Discipline Committee decisions, including potential Citations, through a systematic approach to conduct assessment. The recommended approach involves a specific focus on a "Citation Threshold" (akin to a "charge approval standard") and an opportunity to consider, in light of all relevant circumstances, whether the public interest in the administration of justice would be better served if an alternative disciplinary response were chosen instead of a Citation. The third aspect includes express guidance on some of the kinds of considerations that may go into an assessment of "all relevant circumstances." Also included is a description of some of the salient aspects of the full range of disciplinary responses available, which the Discipline Committee may consider when it is selecting the appropriate response for a given case.

##### **a. Some Broad Principles**

The first four sections of the Guidelines bring some focus on the need for the Discipline Committee:

- i. to have regard for the public interest in the effective regulation of the legal profession,
- ii. to make consistent decisions on a principled basis and avoid arbitrariness,
- iii. to consider treating a lawyer's successive instances of problematic conduct as progressively more serious, but
- iv. to avoid the presumption that the seriousness of the conduct is the starting place for a determination of whether a Citation may be warranted and required as a response to the lawyer's conduct in the circumstances.

## **b. A Framework for Analysis**

The framework for analysis suggested in the Guidelines (beginning with section 5: Citation Threshold) is as follows:

- Would the alleged conduct amount to a discipline violation?
- If the alleged conduct would amount to a discipline violation, is there sufficient admissible evidence to satisfy the “Citation Threshold” (described below) of *a reasonable prospect of the lawyer receiving an adverse determination following a hearing*?
- If the alleged conduct would amount to a discipline violation and the Citation Threshold is satisfied on the admissible evidence, would an alternative disciplinary outcome be consistent with the public interest and a more effective regulatory response to the lawyer’s conduct?

### **i. Conduct Amounting to a Discipline Violation**

The first step in the analysis is simply to determine whether the alleged conduct may warrant a disciplinary response. Whether the conduct actually calls for a disciplinary response and, if so, what kind of response, are questions dealt with later in the analysis. Consequently, an initial assessment of the seriousness of the alleged conduct is not involved in *the beginning* of the analysis. Task Force members came to the view that the introduction of a subjective element, such as an assessment of seriousness, too early in the analysis would threaten the framework’s ability to promote consistent and principle-based results. The notion of a *discipline violation* as conduct that may warrant a disciplinary response is taken from the Law Society Rules (eg. Rules 3-5(2), 4-21 and 4-22). A “discipline violation” is described in the Guidelines in the following terms: “a breach of a provision of the *Legal Profession Act*, the Law Society Rules, or the Professional Conduct Handbook, including any conduct unbecoming.” This description accords with the use of the term in the Law Society Rules.

### **ii. The Citation Threshold**

If the alleged conduct would amount to a discipline violation, the next part of the analysis is analogous to the Crown’s charge approval standard. Roughly speaking, the question is: can we prove it? This part of the analysis involves an evaluation of the availability and admissibility of potential evidence. In practice, the issue of the Citation Threshold would be addressed in the Opinion Memorandum from investigating staff and the Discipline Committee would usually have an opportunity to discuss it with Discipline Counsel.

The precise terms in which the Citation Threshold is expressed may be extremely important. After considerable discussion, the Task Force has agreed that the appropriate Citation Threshold is: a “reasonable prospect” that the lawyer would receive an adverse determination at hearing (i.e. there is a reasonable prospect that the Citation would be made out). The standard of proof at a regulatory hearing is proof on the balance of probabilities and the burden of proof generally rests on the regulatory authority.

The Guidelines specify that the “reasonable prospect” itself may be less than a balance of probabilities. In other words, the decision to issue a Citation *does not require* the assessment that an adverse result for the lawyer is more likely than not to be proven at hearing. The Citation Threshold is set at this level to make allowance for certain foreseeable situations. For example, there may be cases where the outcome hinges to a significant extent on witness credibility, but where it is difficult to know how the witnesses and the lawyer will perform in the crucible of a hearing and under cross-examination. There may be other situations where there is some uncertainty as to the admissibility of specific evidence, but where it is clear that if the evidence is admissible then an adverse determination is a highly probable result. In some cases, the alleged conduct may be of such significance that it is in the public interest for a hearing to proceed, the evidence weighed, and a written decision issued, even though an adverse determination seems no better than a 50-50 proposition at the outset. The setting of the Citation Threshold in terms of “a reasonable prospect” is intended to allow the Discipline Committee sufficient latitude to make the decisions it needs to make in these difficult situations. However, the Citation Threshold as described in the Guidelines does not contemplate exceptions. If the Discipline Committee’s determination is that there is *no reasonable prospect* of achieving an adverse determination at hearing, then in accordance with the Guidelines *a Citation would not be issued*.

Quite apart from exactly where the Citation Threshold is set and the terms in which it is expressed, the fact that a particular Citation Threshold is recognized and given precise expression is an important development. The conversation between the Discipline Committee and Discipline Counsel, regarding an assessment of the risks and potential results of proceeding to a hearing, may be a crucial element in the Committee’s decision process. Agreeing on a Citation Threshold sets the terms of such conversations in advance, such that each participant has an opportunity to gain confidence and experience with the standards employed, and each can rely on coming to future similar conversations to discuss the same standards in the same terms. The propensity for this standard language to lead to greater consistency in the Discipline Committee’s Citation decisions will strengthen the Law Society’s efforts to regulate the

profession in the public interest and increase process fairness for the lawyers who may be potential respondents.

At the same time, an understanding of the Citation Threshold should clarify the limits on what conclusions, if any, may be drawn from a particular hearing where a Citation is not made out. The Law Society can be expected to gather the best evidence available and to make its case as persuasive as the evidence will allow. However, the Citation Threshold suggests that in some cases the Law Society may need to proceed to hearing despite some risk that the Citation will not be made out. And if, in those cases, the Citation is not made out, there need be no negative reflection on either the Discipline Committee or Discipline Counsel in the performance of their respective roles.

In passing, it is noteworthy that the adoption of a Citation Threshold would be a new step for the Law Society of British Columbia, which has never previously specified its Citation Threshold or settled the issue of how it should be expressed. In recommending a Citation Threshold, the Task Force is advocating that the Law Society take a step that many other regulators across the Country have already taken. The list of regulatory agencies with express analogous thresholds includes: the College of Physicians and Surgeons of British Columbia, the College of Teachers of British Columbia, and the Law Societies of Alberta, Saskatchewan, Upper Canada, and Nova Scotia.

A determination that the Citation Threshold is met in a given case means that in the view of the Discipline Committee the alleged conduct would amount to a discipline violation and that there is a reasonable prospect that a Citation regarding the conduct would be proven at hearing. However, even at this stage, the question of whether the Citation should be issued has yet to be determined.

### **iii. The Most Effective Action Consistent with the Public Interest**

The question of whether a Citation should be issued or whether some alternative disciplinary response should be preferred involves a consideration of *all relevant circumstances* of the matter in light of an understanding of the characteristics and significance of each of the available disciplinary alternatives. If the Discipline Committee concludes that the lawyer's conduct amounts to a reasonably provable discipline violation, then any disposition of the matter less than a Citation must be in the public interest and provide a more effective outcome. For example, in some cases a Conduct Review may be judged to be a more effective educational tool that would provide a better result than a hearing, with respect to the lawyer's future conduct and the value of the lawyer's practice, to clients and to the practice of law in British Columbia.

### **c. All Relevant Circumstances**

It is probably trite to say that the Discipline Committee should consider each case on its merits and consider all relevant circumstances in coming to an appropriate disposition of each matter. The Guidelines address the Committee's obligations in this regard in two different ways. First, the various subsections of Section 8 set out a number of characteristic and potentially relevant circumstances, combinations of which might weigh either for or against an alternative disciplinary outcome, depending on their applicability or inapplicability in an individual case. Second, sections 9 through 13 list the available disciplinary responses and attempt to set out a number of their salient characteristics, which may be relevant to choosing the most effective response for a given case. The list of potentially relevant circumstances is intended to be suggestive and not exhaustive, as it expressly allows for "Other Considerations," which may not be specifically described. If the Guidelines are adopted and used, the Discipline Committee and Law Society staff may discover other characteristic circumstances that could be added to the list. As this is the first incarnation of these Guidelines it is reasonable to expect that experience with using them may lead to their review and revision, as needed, at future intervals. There is no attempt to rank the relative importance of the listed circumstances. They are simply set out so that they may be applied where they fit and where they may assist in promoting a reasoned and fair basis for the disposition of a given matter.

Similarly, it is possible that the offered characterizations of the various disciplinary responses may be subject to improvement in light of some experience with using the Guidelines. In all aspects, the Guidelines are intended as a tool for the Discipline Committee and tools can be improved when they are found wanting. The view of the Task Force is that this set of Guidelines should be an improvement over the existing lack of guidelines and should be seen as a reasonable step along a path of continued improvement.

## **5. Notable Research and Consultation**

In the course of its consideration of the issues discussed in this memorandum the Discipline Guidelines Task Force had the benefit of earlier research on the "charge approval standards" or "Citation Thresholds" that have been used by a number of Crown and regulatory agencies from across Canada.

Other law societies indicated that they did not have written conduct assessment guidelines for their counterparts to our Discipline Committee. Consequently, the work of the Task Force on these Guidelines has been largely original conceptual engineering and drafting, as opposed to an evaluation of the work of others. The Task Force has drawn on the experience of its members, as current and former members of the Discipline Committee. Consultation with the current Discipline Committee has involved providing a draft of the Guidelines and the Committee's attempt to use them in complaint evaluation at a recent meeting. Members of the Discipline Committee offered many helpful comments and a number of their ideas have been incorporated in the attached version of the Guidelines. Discipline Counsel have been consulted, particularly on the

Citation Threshold issue, and the Law Society's Chief Legal Officer has been attending the Task Force meetings and taking an active part in the discussions.

The Task Force also had the benefit of comments from Geoffrey Gomery, after he had an opportunity to review a draft version of the Guidelines.

## **6. Recommendation**

The Discipline Guidelines Task Force recommends for adoption by the Benchers the *Conduct Assessment and Disposition Guidelines* attached hereto.

# CONDUCT ASSESSMENT AND DISPOSITION GUIDELINES

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## **I. PREAMBLE**

The purpose of the guidelines set forth in this document is to guide the members of the Discipline Committee in their evaluation and disposition of the various professional conduct matters referred for that Committee's assessment. These guidelines should be used as an aid and reference to balance and inform the deliberations of the Discipline Committee. The guidelines do not restrict the discretion of the Discipline Committee and do not prescribe limits on what circumstances may be relevant or what facts may be determinative in a given case.

## **II. SOME GENERAL GUIDELINES**

### **1. The Public Interest**

The Discipline Committee's assessment and disposition of investigations referred for its review should have regard for the public interest in the effective regulation of the profession and should be consistent with these guidelines.

### **2. Consistency**

The Discipline Committee should strive for consistency in its decisions. Consistency requires that decisions be made on a principled basis and not be made arbitrarily, capriciously or in an ad hoc manner. The underlying principles stated in these guidelines should guide the Discipline Committee in exercising its discretion in a consistent manner.

### **3. Progressive Discipline**

The Discipline Committee should consider and apply progressive discipline, whereby the Committee's successive reviews of relevantly similar conduct by the same lawyer result in a more significant disciplinary response. In addition, a pattern of failing to fulfill a lawyer's professional responsibilities may also warrant more significant disciplinary responses on successive referrals to the Discipline Committee.

### **4. Seriousness of Conduct**

While the most serious misconduct must attract a Citation, Citations should not be reserved exclusively for such misconduct. Any provable discipline violation (i.e. a breach of a provision of the *Legal Profession Act*, the Law Society Rules, or the Professional Conduct Handbook, including any conduct unbecoming) might warrant a Citation. However, a given provable discipline violation may not require a Citation, if an alternative disciplinary response is consistent with the public interest and would be a more effective response to the lawyer's conduct than the issuance of a Citation (see paragraphs 6 and 7(c) following).

### **5. Role of Discipline Committee**

The Discipline Committee should read opinions prepared by investigating counsel (internal or external) with a critical eye. In doing so, the Committee needs to exercise its independent judgment and:

- a) consider whether the relevant evidence has been gathered and assessed;

- b) evaluate the strength of evidence gathered and needed in each case having regard to issues of admissibility and overall credibility of the evidence and the disciplinary outcome(s) being considered;
- c) ensure the relevant issues have been addressed.

### **III. A FRAMEWORK FOR ANALYSIS**

#### **6. Citation Threshold**

In considering whether a lawyer's conduct may warrant a Citation, the Discipline Committee should first have regard to whether the Citation Threshold is met in the circumstances. The Citation Threshold will be met where:

- (a) the lawyer's alleged conduct amounts to a discipline violation; and
- (b) having regard to the available admissible evidence, there is a reasonable prospect that the lawyer would receive an adverse determination at a hearing. A conclusion that there is a reasonable prospect does not require a conclusion that an adverse determination is more likely than not.

#### **7. Assessing Complaints/Potential Citations**

If the Discipline Committee concludes that the Citation Threshold has been met, it should go on to consider whether an alternative disciplinary outcome would be in the public interest and a more effective response to the lawyer's conduct. In determining consistency with the public interest, however, the Discipline Committee should have regard to the fact that a Citation is the Law Society's most public disciplinary process.

#### **8. Alternative Disciplinary Outcomes**

- (a) The range of alternative disciplinary outcomes includes Conduct Review, Conduct Meeting, Conduct Letter from the Chair of the Discipline Committee, and No Further Action.
- (b) Where the Discipline Committee determines that the Citation Threshold is not met in the circumstances of a particular matter, it may direct an alternative disciplinary outcome.
- (c) Even where the Citation Threshold may be met in the circumstances of a particular matter, the Discipline Committee may choose an alternative disciplinary outcome, where it is in the public interest and a more effective disposition of the matter.

#### IV. POTENTIALLY RELEVANT CIRCUMSTANCES

##### 9. An Open-Ended List

The following factors or circumstances, alone or in combination, may be relevant to the Discipline Committee's assessment of whether an alternative disciplinary outcome should be preferred instead of a Citation in a particular matter:

- (a) Deterrence:
  - (i) The lawyer's conduct requires the specific and/or general deterrence provided by publication of a written decision and disciplinary sanctions following a hearing; or
  - (ii) The desire for specific and/or general deterrence may be addressed sufficiently through direct communications with the lawyer and/or a summary publication following a Conduct Review.
- (b) Experience:
  - (i) The lawyer was only recently called to the bar; or
  - (ii) The lawyer has been called for some years and has significant practice experience.
- (c) Record:
  - (i) The lawyer has practiced for a significant period of time with no significant conduct concerns; or
  - (ii) The lawyer has been the subject of other recent complaints and professional conduct concerns.
- (d) Support:
  - (i) The lawyer lacks supervision or other supportive professional relationships; or
  - (ii) The lawyer is supervised by a senior practitioner or has supportive relationships with other lawyers and ready access to informal advice on professional conduct issues.
- (e) Knowledge:
  - (i) There was a significant misunderstanding or lack of understanding component leading to the lawyer's problematic conduct; or
  - (ii) The lawyer appears to have acted despite understanding the nature and significance of his or her problematic conduct.

- (f) Voluntariness:
  - (i) There were involuntary or health-related factors leading to the lawyer's problematic conduct; or
  - (ii) The lawyer's conduct was voluntary and free from the effects of addiction, ill health, and duress.
- (g) Conduct After the Fact:
  - (i) The lawyer has, in a timely manner, voluntarily self-reported or acknowledged his or her error, accepted responsibility, and offered a genuine apology; or
  - (ii) The lawyer has been resistant, evasive or less than candid in responding and communicating in the course of the Law Society's investigation.
- (h) Resulting Harm:
  - (i) The lawyer's conduct resulted in significant harm to the interests of a client, to one or more members of the public, to the reputation of the legal profession, or to the administration of justice; or
  - (ii) The lawyer's conduct did not result in the suffering of a significant harm.
- (i) Recompense:
  - (i) Where possible, the lawyer has taken positive steps to remedy any loss or damage caused by his or her conduct; or
  - (ii) The lawyer has made no recompense in respect of the consequences of his or her conduct.
- (j) Remediation:
  - (i) Where potential repetition of the problematic conduct could be avoided by changes in the practices of the lawyer or his or her staff, such changes have been implemented; or
  - (ii) The lawyer does not appear to have changed any practices to prevent a repetition of the problematic conduct.
- (k) Risk:
  - (i) There appears to be little risk that the lawyer will engage in further problematic conduct; or
  - (ii) There appears to be significant risk that the lawyer will engage in further problematic conduct.

- (l) Rehabilitation Prospect:
  - (i) An alternative disciplinary outcome is likely to provide a superior rehabilitation or remedial result; or
  - (ii) An alternative disciplinary outcome is unlikely to have a significant effect on the lawyer's future conduct.
- (m) Other Considerations:
 

Other relevant factors or circumstances as determined by the Discipline Committee.

## **V. DISCIPLINARY OUTCOMES**

### **10. Citation**

The issuance of a Citation results in the Law Society's most public and transparent disciplinary process. Salient characteristics of the Citation include the following elements:

- (a) A Citation that is issued and not rescinded leads to a hearing, at which the allegations about the lawyer's conduct and any required facts must be proven or admitted, before disciplinary action may be ordered;
- (b) In addition to facing a potential costs assessment, a lawyer who receives an adverse determination upon the hearing of a Citation may be subject to one or more of the following disciplinary actions:
  - (i) a reprimand;
  - (ii) a fine;
  - (iii) a suspension;
  - (iv) disbarment.

### **11. Conduct Review**

The Conduct Review is the most significant of the alternative disciplinary outcomes. Its salient characteristics include the following elements:

- (a) Conducted by a subcommittee that must include at least one lawyer and must be chaired by a Bencher or Life Bencher;
- (b) May provide an opportunity for a complainant to discuss his or her views and concerns with the subcommittee;

- (c) Provides an opportunity for face-to-face communication between the subcommittee and the lawyer regarding the conduct in question and any issues of concern;
- (d) Provides an opportunity for the subcommittee to test and confirm the lawyer's understanding of the issues of concern to the Discipline Committee;
- (e) May provide a more effective remedial or rehabilitative opportunity to manage the lawyer's conduct in the legal profession (in contrast with a Citation and hearing process);
- (f) Results in the subcommittee's written report to the Discipline Committee, which may then direct that no further action be taken, that a Citation be issued, that the Conduct Review be rescinded in favour of a different alternative disciplinary outcome, or that the lawyer be referred to the Practice Standards Committee;
- (g) Unless subsequently rescinded, is reflected in the lawyer's "Professional Conduct Record," which may be considered at the disciplinary action determination phase of a subsequent hearing involving the same lawyer;
- (h) Unless subsequently rescinded, will likely be reflected in a summary publication, issued to the profession and made available to the public without naming the lawyer.

## **12. Conduct Meeting**

In contrast with the Conduct Review, the Conduct Meeting is a less serious alternative disciplinary outcome. Its salient characteristics include the following elements:

- (a) Conducted by one or more Benchers or lawyers;
- (b) When a Conduct Meeting is directed, the complainant (where applicable) is informed and provided with a general explanation of what a Conduct Meeting is; the complainant does not meet with the lawyer in question and the person(s) conducting the Conduct Meeting;
- (c) Aside from the notice to a complainant of the fact that a Conduct Meeting has been directed, there is no publication of the Conduct Meeting by the Law Society, the Conduct Meeting is held in private, and neither the fact of the Conduct Meeting nor any record of the Conduct Meeting, nor any record of the Law Society's investigation of the matter is recorded in the lawyer's "Professional Conduct Record";
- (d) Provides a direct opportunity for education and deterrence for the subject lawyer but not for the broader legal community;
- (e) Provides an opportunity for face-to-face communication between the person(s) conducting the Conduct Meeting and the lawyer regarding advice on conduct and any issues of concern;

- (f) Provides an opportunity for the person(s) conducting the Conduct Meeting to test and confirm the lawyer's understanding of the issues of concern to the Discipline Committee;
- (g) May provide a more effective remedial (educational) or rehabilitative opportunity to manage the lawyer's conduct in the legal profession (in contrast with a Citation and hearing process);
- (h) A Conduct Meeting is necessarily a final disposition of a matter, but does not result in a written report to the Discipline Committee.

### **13. Conduct Letter from the Chair**

Like the Conduct Meeting, the Conduct Letter from the Chair ("Conduct Letter") is also a less serious alternative disciplinary outcome than the Conduct Review. The Conduct Letter's salient characteristics include the following elements:

- (a) Issued in the name of the Chair of the Discipline Committee, to confirm that the matter has been reviewed by the Committee, to express the Committee's concerns regarding the matter, but also to confirm that no further action (beyond issuance of the Letter) will be taken in the matter;
- (b) When a Conduct Letter is issued, the complainant (where applicable) receives notice of the Discipline Committee's direction and a copy of the Conduct Letter;
- (c) Aside from the notice and copy of the Conduct Letter to a complainant, there is no publication of the fact or content of the Conduct Letter by the Law Society and neither the fact nor the content of the Conduct Letter, nor any record of the Law Society's investigation of the matter, is recorded in the lawyer's "Professional Conduct Record";
- (d) A copy of a Conduct Letter is placed on the lawyer's "Personal File" with the Law Society;
- (e) Provides an opportunity for an expression of the Discipline Committee's concerns in circumstances where it is determined that face-to-face communication is not needed;
- (f) A Conduct Letter is necessarily a final disposition of a matter and, in contrast with a Conduct Review, a Conduct Letter does not result in a subsequent written report to the Discipline Committee.

### **14. No Further Action**

- (a) Under Rule 4-4 of the Law Society Rules, the Discipline Committee also has the option of directing that a matter be concluded with no further action taken, where it determines that the circumstances of the matter do not warrant any disciplinary action.
- (b) A record of the complaint, though, along with the Discipline Committee's decision, is retained by the Law Society.

- (c) Although a direction for no further action does not impose any further disciplinary process, the investigation and complaint referral processes may have an impact on the future conduct of the subject lawyer.