

# Apology Guidelines for LSBC Professional Conduct and Disciplinary Matters

The Apology Guidelines apply to the Law Society’s investigation and discipline processes. They have been created by the Law Society to help lawyers and legal professionals apologize to clients for conduct that may occur in the practice of law.

## Important information

These guidelines do not apply to claims made to the Lawyers Indemnity Fund and do not absolve lawyers from their professional obligations set out in Division 5 of the Law Society Rules (Indemnification) and in rule 7.8 of the *Code of Professional Conduct for British Columbia* (Errors and Omissions). Lawyers must remember that they are required to report errors that could be the basis of a claim to the Lawyers Indemnity Fund and to co-operate with the Fund in all matters relating to the report.

## Background

An apology for a mistake, oversight, or harm (even unintentional harm) is something that we are taught at an early age is important, as it demonstrates taking accountability for one’s actions and demonstrates empathy.

In a legal sense, though, an apology could be construed as an admission of liability. Consequently, and especially in an adversarial system of justice, there have been risks to extending an apology for fear of creating or increasing a legal liability for the act. As explained below, the *Apology Act* SBC 2006, c. 19 has recognized this concern and has sought to ameliorate it.

[The Report of the Indigenous Engagement in Regulatory Matters Task Force](#) examined Law Society processes and commented on the differences between adversarial systems of justice and those of Indigenous cultures, which were described as “relational.” The Task Force commented that “[t]he relational approach seeks to restore relationships that have been harmed by a dispute, and involves collaboration to determine an appropriate outcome. While the adversarial approach assumes conflict, the relational approach attempts to minimize it.”

To this end, the Task Force recommended that “The Law Society should identify and remove unnecessary adversarial aspects of its processes” and, in particular, that “the Law Society should make it as easy as possible for lawyers to apologize without fear of further sanctions.”

## **Why do apologies matter?**

Mistakes can occur anytime during your legal practice. A lawyer’s mistake, whether it be through processes chosen, advice given, or conduct displayed, may have significant consequences for your client or other affected parties. Delivering a sincere apology for the mistake can restore trust and resolve conflict when an error or mistake has occurred. Further, law is a difficult profession, and legal disputes can lead to tensions. Things can be done or said that, on reflection, may have been better left unsaid or corrected. Being able to apologize in such circumstances can be viewed as a professional response expected in a civil society.

## **Is an apology an admission of liability?**

An “apology” is defined in the [Apology Act](#), as: “an expression of sympathy or regret, a statement that one is sorry or any other words or actions indicating contrition or commiseration, whether or not the words or actions admit or imply an admission of fault in connection with the matter to which the words or actions relate.”

The *Apology Act* states that an apology does not constitute an admission of liability and is not admissible in any court as evidence of fault.

An apology delivered by a lawyer in the course of the Law Society’s investigation and discipline process with respect to their conduct thus does not constitute an express or implied admission of fault or liability by the lawyer in connection with the matter. Any apology will also be considered inadmissible in court for the purposes of proving liability. However, giving an apology is not a means of avoiding fault or liability for the underlying conduct altogether—fault or liability can still be proven by other means, based on other available evidence.

The Law Society may consider an apology in assessing whether a lawyer is likely to repeat the misconduct, but the fact of an apology will not be determinative of the outcome of any investigation or hearing. The existence of an apology may be brought to the attention of the:

- Hearing Panel in disciplinary action hearings;
- Discipline Committee in their review of complaints; or,
- to the Chair of the Discipline Committee or any other decision-maker in any alternative discipline processes, including a consent agreement.

## Elements of an effective apology

How you offer an apology is up to you, but one that is not genuine or sincere will have a lower chance of being accepted or well received. The most effective apologies tend to include the following five elements:

1. **Recognition:** A description and recognition of the wrong and an acknowledgement of the harm caused.

*“I ignored your phone calls and emails when you attempted to contact me for updates on your file.”*

2. **Responsibility:** An acceptance of responsibility for the problem.

*“I know that by avoiding your communications I caused you frustration, stress, and concern over the status of your matter.”*

3. **Reasons:** An explanation of the cause of the problem, or a promise to investigate the cause.

*“I became overwhelmed with my workload and did not want you to know that I had not completed your request.”*

4. **Regret:** An expression of sincere regret.

*“I am sorry that I did not respond to you in a timely manner to explain what was going on.”*

5. **Remedy:** An explanation of what you are going to do to address the problem.

*“I have now completed your request and can provide you a full update on your file. This experience has taught me the importance of maintaining contact and providing regular updates to my clients even if I am behind on my work for them.”*

## Additional tips

- Avoid offering an apology that questions whether the person was really harmed.

- Avoid offering an apology in the passive voice, which avoids responsibility.
- Avoid offering an apology that does not identify the specific mistake or error that occurred.

## **Cultural sensitivity and trauma-informed lawyering**

Trauma-informed lawyering positions the client as the expert in their own experience (for example, in their own culture, religion, or gender) and invites the lawyer to think about their own biases and challenge their own sources of knowledge and what they think they know.

Understanding the effects of trauma that may be experienced by Indigenous people as a result of colonialism in Canada is also part of trauma-informed lawyering.

In making an apology, it is important to consider whether your actions might have been culturally insensitive or caused any further trauma or harm to the affected party. Acknowledgement of and recognition of this can be very meaningful for both you and the affected party.

Another important consideration is how the recipient would prefer to receive your apology. Some individuals may prefer a written apology while others might prefer an oral apology, either in-person or over the phone.