

Information

Information Sheet Rule 3-5 (3)

If you receive this information sheet, your file was closed under Rule 3-5(3) of the Law Society Rules 2015, which states:

The Executive Director may decline to investigate a complaint if the Executive Director is satisfied that the complaint

- (a) is outside the jurisdiction of the Society,
- (b) is frivolous, vexatious or an abuse of process, or
- (c) does not allege facts that, if proven, would constitute a discipline violation

The Law Society regulates the legal profession through the professional standards set in the *Legal Profession Act*, Law Society Rules and *Code of Professional Conduct for British Columbia*.

Only those complaints that are within our jurisdiction and show a breach of a professional obligation or misconduct by a lawyer will warrant investigation or further action by the Law Society. If the facts alleged, even if proven, do not constitute a discipline violation, we may decline to investigate your complaint.

Below is some additional information to assist you in understanding why your complaint is outside our mandate.

3-5 (a) Outside our jurisdiction

The Law Society does not have legal authority to provide legal advice, intervene in a case, change a court decision or insist a lawyer take a case, remain on a case or withdraw from a case. We cannot reduce the legal fees a lawyer charged you. Although not an exhaustive list, here are some examples of what the Law Society has no authority to do:

- Review the conduct of someone who is not a lawyer (the opposing party, police, legal assistant);
- Review a judge's conduct or a complaint about a judge;
- Review matters that are solely in the jurisdiction of the court;
- Question a lawyer's professional judgement as to how to proceed with a case; or
- Review complaints about Crown counsel's prosecutorial discretion. Prosecutorial discretion is the right of Crown Counsel to make decisions about how and when to prosecute someone for a criminal offence.

3-5 (c) Conduct that is not a discipline violation

The Law Society must determine whether the facts or circumstances put forward in your complaint show that a lawyer committed a discipline violation. A discipline violation includes:

- a breach of a professional obligation or an ethical rule contained in the *Legal Profession Act*, the Law Society Rules 2015, or the *Code of Professional Conduct for BC*;
- evidence that shows a lawyer lacks the necessary skills and knowledge to practice competently, either generally or in a particular area; and
- conduct by a lawyer in their personal life, unrelated to their work, that raises serious questions about the lawyer's honesty and integrity, or is harmful to the reputation of the legal profession.

However not every breach of an obligation or rule contained in the *Legal Profession Act*, the Law Society Rules 2015, or the *BC Code* is a discipline violation. Any breach must still meet the legal test which is whether the conduct is a marked departure from the standard we expect of a lawyer.

Although not an exhaustive list, common complaints we receive that are not discipline violations are listed below.

Complaints by opposing parties or third parties

Many complaints arise in the course of legal proceedings. Court proceedings are, by their nature, adversarial and can often be very personal and upsetting. Lawyers often advocate firmly and forcefully on behalf of their clients, making claims you may feel are wrong or unfair.

Lawyers have a professional obligation to put forth all information and arguments to advance their client's case. Lawyers are allowed to rely on information provided to them by their client and do not need to verify every statement made.

- *Demand Letters* - The purpose of a demand letter, is to state in assertive terms, the client's position, their demands, followed by an outline of the legal steps that may be taken if those demands are not met. It is appropriate to give a party notice of a potential claim so that the party has an opportunity to obtain independent legal advice and consider their options and legal remedies. While these types of letters can be perceived as threatening, the use of strong language to convey a client's position is not a breach of any professional standard.
- *Affidavits* - By witnessing a signature, the lawyer is not guaranteeing the truth of the evidence in the affidavit but is fulfilling their professional obligation of presenting their client's evidence. Unless there is evidence the lawyer knew the information was false

before presenting it to court, the Law Society will not review complaints about the truthfulness of affidavits.

- *Breach of Court Rules* - Court proceedings are regulated by the Rules of Court and the general practice of the Courts. If your complaint is that the other side did not follow the Rules of Court (i.e. disclosure obligations or serving documents), your remedy is through the Court, as the Court has the jurisdiction to control its own process.

Negligence

Lawyers, like everyone else, make occasional mistakes. The Law Society cannot order your lawyer to compensate you for losses resulting from negligent acts. All practising lawyers in BC are required to have professional liability insurance through the Lawyer's Indemnity Fund. If you believe your lawyer was negligent, you may want to get legal advice about your options. It is the court's role, and not the Law Society's, to decide whether a person has a valid claim for losses against a lawyer. If a lawyer is found by the courts to have acted negligently, that does not mean that the lawyer has practised unethically or incompetently.

3-5 (b) Frivolous, vexatious or abuse of process

We will close a file as frivolous, vexatious or abuse of process in exceptional circumstances where a complaint:

- contains language that is threatening, indefensible, discriminatory or otherwise offensive;
- contains insufficient grounds and is motivated by a desire to annoy and/or embarrass a lawyer; or
- is otherwise considered a misuse or abuse of the process.