

Expanding the Use of Alternatives to Discipline

To: Benchers

Purpose: Discussion & Decision

From: Executive Committee

Date: September 19, 2025

Issue

1. The Alternative Discipline Process (“ADP”) was unanimously approved by the Benchers in 2021 and operationalized in 2022, commencing as a three-year pilot project.¹ Designed to specifically address circumstances in which a lawyer’s health issue has contributed to conduct that has resulted in a complaint investigation, the ADP is a remedial program that focuses on resolving or managing the underlying health issue. In doing so, the program aims to place lawyers in a stronger position to meet their professional responsibilities and serve their clients, and to reduce the risk that a health issue may impact on the future delivery of legal services.² In this regard, the ADP serves the public interest. The success of the ADP led to Benchers making it a permanent program by unanimous approval on April 11, 2025.
2. The benefits of the ADP also prompted the Executive Committee to direct staff to assess the feasibility of expanding the program to include competency issues and non-health-related matters where remediation appears achievable on a more consensual and expedited basis. Achieving resolutions to concerns on a faster, more remedial and collaborative basis in appropriate matters serves the public interest.
3. Staff completed this assessment and provided two recommendations to the Executive Committee, which it now recommends to Benchers:
 - a. to expand the ADP to include health-related competency issues, and
 - b. to develop an Alternative Resolution Measures (“ARM”) framework to address non-health-related conduct issues where remediation or resolution is likely achievable.

Background

ADP

4. Information about the ADP and its operation was included in the April 11, 2025 report to Benchers.³ In short, the purpose of the ADP is to provide the Law Society with an opportunity to address misconduct outside of the regular discipline process in circumstances in which a lawyer’s health condition is a contributing factor. In diverting eligible lawyers into a voluntary, confidential program that serves as an alternative to discipline, the regulatory response is customized to focus on remediation and rehabilitation of the health issue, including treatment and practice interventions. If the health issue is successfully

¹ The ADP was to comport with the purpose, principles, design features and policy rationale as described in the Mental Health Task Force’s [Alternative Discipline Process Recommendation Report](#) (2021) (“ADP Recommendation Report”).

² Pursuant to section 3 of the *Legal Profession Act*, the Law Society’s duty to uphold and protect the public interest can be met in a number of ways, two of which are central to the ADP, namely: establishing standards and programs for the professional responsibility of lawyers; and supporting and assisting lawyers in fulfilling their duties.

³ [Bencher Agenda \(April 11, 2025\)](#) at 62.

resolved or managed, it is likely that the risk of the conduct reoccurring will be reduced, thus enhancing the protection of the public.

5. To be eligible to participate in the ADP, a lawyer must be experiencing a health issue that is impacting their ability to comply with their professional obligations. The Executive Director must also be satisfied, based on all the relevant circumstances, that a referral to ADP is consistent with the public interest. As part of this assessment, the Executive Director will consider all the circumstances of the case, including:
 - a. The nature and seriousness of the alleged misconduct;
 - b. The impact on the Law Society’s ability to protect the public; and
 - c. The impact on the public’s confidence in the profession and in self-regulation.

If, at any point during the lawyer’s involvement in ADP, the lawyer’s participation ceases to be in the public interest, the file will be returned to the regular disciplinary process.⁴

6. All aspects of the ADP are specifically designed to address health-related issues. This includes: the rules set out in Division 1.01 [Health Issues]; the eligibility decision and related guidelines; the collection of health information; the process by which ADP consent agreements are developed; and the suite of policies, protocols, and resources that support the program. The public interest rationale for maintaining a high degree of confidentiality within the ADP is also firmly rooted in the need to create a “safe space” for the disclosure of health concerns—helping to reduce stigma and alleviate lawyers’ fears about sharing sensitive health information with the regulator.
7. From both operational and policy perspectives, the ADP is therefore not designed for—nor well suited to—addressing non-health-related conduct concerns. However, as described in more detail in the next section of this report, the guiding principles and core design features of the ADP offer a valuable “blueprint” for developing additional, non-disciplinary alternatives for resolving complaints where remediation or resolution is appropriate.

Early resolution opportunities

8. The Law Society makes significant efforts to resolve complaints as early in the investigation process as possible. Recent data indicates that approximately 90% of complaints are closed at the staff level before disciplinary action is taken. Appendix “A” to this report provides an overview of complaint outcomes in 2022, 2023, and 2024.

⁴ See: [Alternative Discipline Process](#).

9. Rules 3-7 and 3-8 play a central role in early resolution and are as follows:

Resolution by informal means

3-7 *The Executive Director may, at any time, attempt to resolve a complaint through mediation or other informal means.*

[...]

Action on a complaint

3-8 (1) *After investigating a complaint, the Executive Director must take no further action if the Executive Director is satisfied that the complaint*

(a) is not valid or its validity cannot be proven, or

(b) does not disclose conduct serious enough to warrant further action.

(2) The Executive Director may take no further action under this division on a complaint if the Executive Director is satisfied that the matter giving rise to the complaint has been resolved.

(2.1) Subject to Rule 3-9.9 [Referral to complaint investigation process], the Executive Director must take no further action under this division on a complaint if the Executive Director has proceeded on the complaint under Division 1.01 [Health issues].

(3) Unless subrule (1) or (2.1) applies or the Executive Director takes no further action under subrule (2), the Executive Director must

(a) refer the complaint to the Practice Standards Committee,

(b) refer the complaint to the Discipline Committee, or

(c) impose an administrative penalty under Part 4, Division 6 [Administrative penalty].

(4) Despite subrule (3), the Executive Director may refer a complaint to the chair of the Discipline Committee if the complaint concerns only allegations that the lawyer has done one or more of the following:

(a) breached a rule;

(b) breached an undertaking given to the Society;

(c) failed to respond to a communication from the Society;

(d) breached an order made under the Act or these rules.

10. Under these rules, the Executive Director has the discretion to resolve a complaint through mediation or other informal means, and to take no further action on the investigation if satisfied that the matter giving rise to the complaint has been resolved. For example, a complaint about rudeness could be resolved by having the subject lawyer complete the [Communications Toolkit](#), or having the lawyer and the complainant attend a mediation. As set out in further detail in Appendix “A”, between 41 and 68 complaints per year are resolved.

Practice Standards

11. For years, the Practice Standards Committee (the “PSC”) and the Practice Standards Department (“PSD”) have addressed competency issues of all types at the request of other committees, departments and the Tribunal.⁵
12. As part of this work, the PSC and PSD regularly address issues that may have been caused, or contributed to by, underlying disabilities, including complex health issues. In some cases, the causal and temporal connections between the health issue and the underlying competency issues are unclear, not properly assessed and/or have not been asserted by the subject lawyer. Since 2021, 16 out of 101 files considered by the PSC had a health component noted by staff and the PSC,⁶ resulting in some involvement of a health care professional. In these 16 files, the nexus between the health concern and the underlying competency issue was not always well-established.⁷ Additionally, health issues are often not raised until the lawyer is well into the program.
13. In some cases, lawyers involved with the PSD exhibit a mix of competency and conduct issues (e.g. repeated procrastination/delay on client files or a breach of undertakings). PSD staff have also found that competency and conduct issues—and their underlying causes—cannot always clearly or easily be delineated or determined, partially due to the non-adjudicatory nature of the program, which allows for early interventions without a full fact-finding exercise.
14. The PSC utilizes various tools to address competency issues (and in some cases, competency *and* conduct issues), including directing a file or practice review, recommending steps that are necessary to protect the public pending a review, or approving recommendations to address competency issues after a review.

⁵ In undertaking this work, the PSD frequently coordinates with other Law Society departments, particularly where lawyers have multiple, overlapping files open in processes (e.g. more serious complaints may be under investigation for possible disciplinary action, while competency-based complaints are referred to the PSD).

⁶ Including cases where the PSC directed independent medical examinations and health professionals have been consulted at the direction of the Tribunal.

⁷ In at least one of these 16 files, the subject lawyer was assessed by ADP and did not meet the eligibility criteria.

15. Where the PSC directs a file or practice review, an experienced reviewer is retained. On straightforward files, this may involve a staff lawyer, however, on more complicated files, an experienced external reviewer and a staff lawyer may be co-reviewers.
16. Reviewers are drawn from a roster of diverse individuals, established by the PSD, with varied expertise, experiences and wide geographical representation. Careful consideration is put into reviewer selection. Once selected, the PSD provides reviewers with resources and information, including materials to review in advance, a detailed practice review checklist that is completed by the subject lawyer, a recent file list, a template report and any additional support that is required to ensure consistency and fairness in their approach.
17. Both file reviews and practice reviews are generally conducted at the subject lawyer's offices/premises, and can often take a full day. New issues —sometimes identified by the lawyers themselves— often become apparent during, and are examined during, the review. Reviewer(s) occasionally conduct further interviews, including with the subject lawyer and/or their current or former colleagues, or request further documents.
18. Reviewer(s) subsequently produce a report that, where appropriate, proposes recommendations to address any identified competency issues. The subject lawyer is provided with a draft of the report and opportunities to provide input, including on the proposed recommendations, and to flag issues that may have caused or contributed to any competency issues.
19. The draft report is then presented to the PSC, which then adopts, rejects and/or varies proposed recommendations. Notably, the PSC has the ability to issue a wide range of recommendations, including the completion of remedial steps, formal or informal mentorship agreements, supervision agreements, practice restrictions and other measures.
20. Recommendations adopted by the PSC form part of the licensees' professional conduct record ("PCR").⁸ Where practice conditions or limitations are imposed by the PSC, this information is available to the public and, so long as they remain in place, may be relevant to certain external requests (e.g. if a licensee applies to practice law in another province).
21. Only on rare occasions, where subject lawyers are repeatedly not procedurally compliant, and multiple follow ups and warnings have been unsuccessful, would utilizing tools such as an order be considered.⁹

⁸ See Rule 1, definition of "professional conduct record", subparagraph (f).

⁹ Orders are most frequently referred to, but not utilized, to encourage subject lawyers to avoid unduly delaying the process.

22. PSD staff are responsible for monitoring the implementation of the recommendations, which involves regular and ongoing communication with the subject lawyer. This is not always a linear process, and files are regularly returned to the PSC for further or other directions, often at the recommendation of staff or at the request of the subject lawyer.
23. Where new complaints are referred to PSD and/or where staff are concerned with non-compliance, a file can be brought back before the PSC and/or, in appropriate circumstances, a resolution can be negotiated with the subject lawyer.¹⁰

Analysis & Recommendations

Expanding the ADP to address health-related competence issues

24. The ADP has proven to be a highly successful, innovative, and flexible process for addressing health-related *conduct* issues. Where there is evidence that a lawyer has broader *competency* issues – including those in which there a nexus to a health issue - the matter is typically referred to the Practice Standards Committee.
25. This approach is consistent with the design of the ADP, which included an emphasis on not conflating discipline issues with competency issues where there was no actual connection.
26. Diverting lawyers with health-related conduct issues into the ADP, while those with health-related competence issues are not currently eligible for such diversion, may create inconsistencies in how unwell lawyers are handled in the Law Society's processes. Given the Law Society's growing expertise in addressing health-related issues with the additional safeguards of voluntariness and confidentiality, and in an effort to take a more integrated approach to mental health and substance use issues impacting lawyers' professional conduct, expanding the ADP approach to include health-related competency concerns is an appropriate next step.
27. This expansion would also align with the on-the-ground experience of staff, which indicates that competency and conduct issues cannot always be clearly delineated. In this regard, expanding the ADP to address competence issues would allow for a more consistent approach that would also better respond to circumstances where the issues to be addressed are not clearly conduct or competence, or may be both.
28. The ADP's current eligibility criteria is guided by the public interest, which is informed by a number of factors. If the ADP was expanded to address health-related competence issues, the eligibility criteria would need to be revised to clarify when a matter is appropriate for ADP or, alternatively, should be addressed by the PSD. Guided by the overarching principal of the public interest, further work would also be required to develop clear guidance on when it

¹⁰ For example, staff may negotiate additional recommendations with the subject lawyer to address new complaints. These must, however, be approved by the PSC.

would be in the public interest to refer licensees with health-related competence issues to ADP versus the PSD. In developing these guidelines, particular consideration should be given to the PSD's expertise with file and practice reviews and associated compliance monitoring.

29. A review of the Rules and associated procedures for referring files to both the ADP and the PSD will also be required to ensure consistency with the proposed changes. A preliminary assessment suggests that neither Division 1.01 [*Health issues*] nor Division 2 [*Practice Standards*], as currently drafted, present barriers to moving certain health-related matters that would currently be addressed by the PSD to an expanded version of the ADP.¹¹ If Rule amendments are required, those will be brought back to Benchers for consideration and decision.
30. Additionally, as the ADP is currently operating at capacity from a resourcing perspective, the increased diversion of files resulting from the proposed expansion will require additional staffing and financial resources.

Development of an Alternative Resolution Measures (ARM) Framework to address non-health related conduct issues

31. Ensuring that the ADP is applied only in circumstances where a health issue has contributed to the lawyer's conduct is critical to maintaining the program's integrity. Not only do these parameters align with the ADP's original public interest rationale, they also provide clarity about the program's purpose, maintain transparency and reduce the risk that eligibility decisions are perceived as overly discretionary. Requiring a clear nexus between a health issue and the conduct in question also preserves a program design and staffing model that is specialized in health-related matters. This specialization is a hallmark of the ADP and has been central to its success—drawing interest from other legal regulators within Canada and internationally.
32. That said, there are other circumstances in which it may be in the public interest to address lawyer misconduct through alternative, expedited, remedial processes rather than traditional disciplinary sanctions. Accordingly, consideration has been given to how the principles underlying the ADP could be adapted or applied.
33. As discussed above, a sub-set of complaint investigations are currently resolved using tools such as mediation or suggested remedial measures, which rely on the Executive Director's exercise of discretion to seek resolution. While a useful tool, the breadth of this discretion—intended to provide flexibility and responsiveness to individual circumstances—can result in a lack of transparency with the public at large. While complainants are kept apprised of how matters to which they are a party are resolved and why, for those external to the process it

¹¹ See in particular Rule 3-4(3), Rule 3-8 (2.1) and (2), Rule 3-17(1).

may be difficult to understand how or why certain matters are resolved in this manner. Transparency is a key pillar of earning and sustaining the confidence of the public – it is not sufficient for the decisions to be objective and fair, they also must be seen as such, and being clear about the principles and processes underlying decisions is important in this regard.

34. Additionally, while both Conduct Reviews and consent agreements are undoubtedly crucial and beneficial aspects of the Law Society’s discipline processes, these processes can take more time to resolve matters, and present some degree of less flexibility in the nature of the resolutions.
35. Accordingly, developing a framework in which to implement alternative resolution measures — or “ARM” — is proposed to address non-health related conduct issues where a resolution or a remedial approach is in the public interest. The ARM would be available for general use by any member of professional conduct staff where it was deemed appropriate. Developing and publishing the ARM will allow the public and the profession to better understand what sort of matters can be resolved and how, which will increase the public’s confidence and allow lawyers to better understand Law Society processes in hopes of decreasing disproportionate fear of the regulator. The ARM would also specifically contemplate the involvement of the Law Society’s monitoring and enforcement functions to ensure that the required measures are carried out, which would further increase the public confidence.
36. General guidelines would be created that identify factors to guide the Executive Director’s exercise of discretion to utilize tools such as mediation or suggested remedial measures, similar to the eligibility criteria developed for the ADP. The guidelines would include:
 - a. an overarching requirement that the Executive Director must be satisfied it is in the public interest for a matter to proceed by way of ARM;
 - b. the enumeration of relevant factors will allow the Law Society to assess each matter’s suitability on a case-by-case basis; and
 - c. outline the types of conduct that are generally unsuitable for resolution—for example, conduct that causes serious harm to the complainant or others, or conduct likely to result in a severe disciplinary outcome, such as suspension or disbarment.¹²
37. The ARM framework would also specifically address:
 - a. a non-exhaustive list of the possible general remedial measures that could be deployed;
 - b. the parameters of the lawyer’s role in participating in, and reporting on, remedial

¹² These same factors are included in the ADP Eligibility Guidelines. Other factors that might be transferrable to the guidelines for ARM include: history of misconduct, lawyer character/cooperativeness, evidentiary concerns (e.g. the investigation is not advanced enough to attempt alternative remedial measures) or competency issues.

- actions;
- c. the role of the complainant;
 - d. monitoring by the monitoring and enforcement team; and
 - e. the potential outcomes of proceeding on a matter through ARM.
38. Although further work is required to fully develop the operational details, it is proposed that the ARM will be guided by the following four principles—drawn from, and in many respects mirroring, the approach taken in the ADP:
- (i) Confidential: To support confidentiality in the resolution of appropriate matters, a decision to employ ARM would occur at a staff level, with successful resolution involving no further action and closure of the investigation file. Pursuant to Rule 3-3(1), information in a complaint file is confidential.¹³ There would be no public record of the complaint or how it was resolved, and it would not form part of the lawyer's professional conduct record.
 - (ii) Consent-based: A variety of consent-based remedial measures may be employed to resolve a complaint through ARM. For example, lawyers may be asked to participate in a meeting or mediation with the complainant, consent to restrictions on practice or changes to practice status,¹⁴ complete professional development activities or obtain coaching or mentorship. If a lawyer is unwilling or unable to commit to the proposed remedial actions, the matter will proceed in the regular investigation and discipline process.
 - (iii) Public interest: The public interest will inform all aspects of ARM, commencing with the Executive Director's decision to proceed with the ARM, to proposing alternative remedial measures to address the conduct, through to monitoring the lawyer's compliance with the measures they consent to.
 - (iv) No risk: As in the ADP, if a matter is successfully resolved through ARM, the complaint file will close and no further disciplinary action will be taken. If it is determined that proceeding by way of ARM is not in the public interest, or an alternative resolution is not possible, other measures will be employed. Because there are no disciplinary consequences for attempting ARM and not succeeding, the approach is "no risk" to either party—the Law Society and the lawyer will be in the same position they would have been in had ARM not been attempted.

¹³ Rule 3-3(1) The Society must treat as confidential all information and records that form part of the investigation of a complaint [...] except for the purpose of complying with the objectives of the Act or with these rules.

¹⁴ The restrictions or changes in practice status would need to be published, but the complaint process and use of ARM that underpins the restriction would remain confidential.

39. In short, the ARM would represent a codification of the Law Society's current approach to matters where remediation or resolution is possible, informed by the success of the ADP, and guided ultimately by the public interest. Establishing and publishing the ARM is intended to increase public confidence and lawyer understanding of Law Society processes through further clarity and transparency. The ARM would also demonstrate publicly the Law Society's commitment to proportionate regulation, and its commitment to resolving issues when it is in the public interest.

Conclusion

40. The ADP has positioned the Law Society at the forefront of a broader shift among legal regulators to develop alternatives to discipline for addressing health-related lawyer misconduct. Expanding the ADP to encompass health-related competence issues, strengthens the current approach while preserving the integrity of the existing program. Additionally, the proposed ARM framework provides a vehicle to resolve non-health-related conduct issues before the discipline process is engaged. In doing so, ARM further entrenches the suite of alternative pathways available to the Law Society to regulate the profession in the public interest.

41. If the resolutions outlined below are approved by the Benchers, staff will begin the process of implementing the necessary operational changes. While this work will be significant, it is achievable. Key steps will include: reviewing and amending existing rules and policies to support both the integration of competency issues into the ADP and the development of the ARM framework; expanding ADP staffing resources to support the program's broader scope, and; developing guidelines for the application of ARM, along with the necessary procedures to formalize the use of alternative remedial measures. If Rule amendments are required, those will be brought back to Benchers for consideration and decision.

Resolution

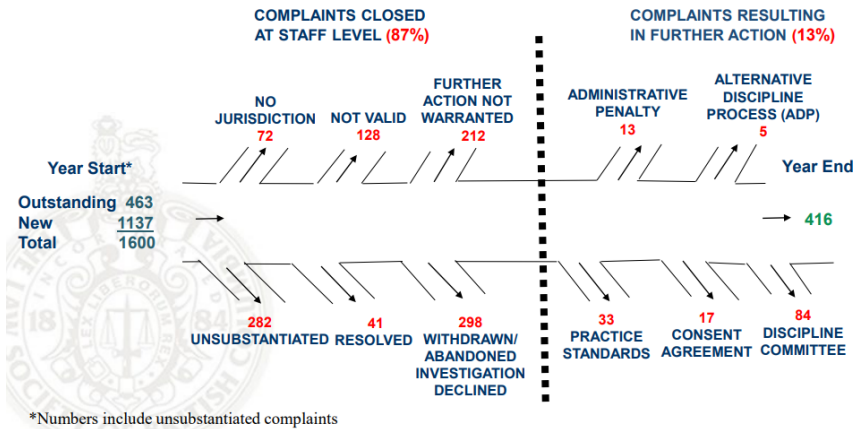
42. Based on the analysis provided in this report, the Executive Committee presents following resolutions are provided for Bencher consideration and decision:

BE IT RESOLVED that Benchers approve, in principle, expanding the Alternative Discipline Process (ADP) to include health-related competence issues as described in this report.

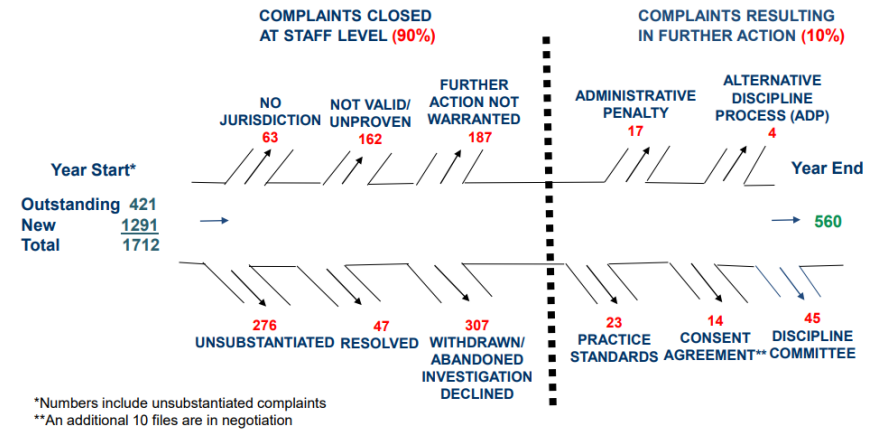
BE IT RESOLVED that Benchers approve, in principle, establishing the Alternative Resolution Measures (ARM) framework as described in this report.

Appendix “A” – 2024-2024 Complaints Outcomes

2022 Complaints Results



2023 Complaints Results



2024 Complaint Outcomes

