

Defending Professionals in Disciplinary Complaints

Course Summary: This course provides an in-depth overview of the procedure and legal issues that counsel must navigate when representing regulated professionals. Whether your client is a healthcare professional, a lawyer or paralegal, or a real estate agent, you must understand the legislative scheme that governs each profession in order to provide strategic legal advice, make effective written submissions, or advocate on your client's behalf to protect their professional reputation and licence to practice. This course will examine the investigation stage, written submissions before complaints committees, discipline hearings, appeals and judicial reviews, as well as ethical considerations involved in representing regulated professionals.

Course Outline:

1. Introduction and course objectives
2. Overview of legislative framework(s)
 - The *Regulated Health Professions Act & Health Professions Procedural Code*
 - The *Law Society Act*
 - The *Real Estate and Business Brokers Act*
3. Investigations and audits
 - The duty to cooperate with regulators – where does it begin/end?
 - Requests for records from third parties (i.e. private insurance companies)
 - Client/patient consent and confidentiality
 - Protecting against self-incrimination and the use of compelled evidence
4. Responding to written complaints and reports of investigation
 - Key differences between complaints and reports of investigations (notice periods, time to respond, etc.)
 - Written submissions before the Inquiries, Complaints and Reports Committee (“ICRC”) for healthcare professionals
 - Written submissions for lawyers/paralegals/real estate brokers before their respective Complaints Committees

- Outcomes and dispositions – what can the ICRC/Complaints Committees do?
- Appealing ICRC/Complaints Committee decisions

5. Discipline hearings

- Disclosure and the Pre-Hearing Conference
- Preparing for a Discipline Hearing
 - Defence disclosure obligations
 - Strategic issues and defence evidence (i.e., should the client testify?)
- Agreed Statements of Facts (“ASF”), Joint Submissions on Orders (“JSO”), and resolutions
- Contested Discipline Hearings
 - The Hearing process
 - Pre-Hearing applications/motions
 - Highlight of common evidentiary issues (hearsay, expert evidence, assessing credibility, etc.)
 - Submissions
- The Penalty Hearing
 - Common issues on penalty hearings
 - Range of penalties
 - Unique penalties (i.e., restrictions on ownership or managerial roles)
 - Costs

6. Appeals and Judicial Reviews

- Divisional Court procedure/review
- Highlight of recent SCC *Vavilov* case (2019 SCC 65) and reformulation of standard of review for Judicial Review
- When is a decision unreasonable?
- Denials of procedural fairness and natural justice

7. Ethical considerations related to unbundled legal services, responding to investigations, and the duty to cooperate

- Legal services under limited scope retainers
- Client’s informed consent
- Reasonable limitations of your retainer
- Lawyer-client relationship
- Managing client’s expectations
- When client is an organization; and
- Confidentiality and permitted disclosure of private health information

8. Ethical considerations related to discipline hearings

- Conducting hearings with integrity and ethical issues with defence evidence (i.e. a client who you believe will mislead the tribunal)
- Permitted disclosure
- Avoiding and navigating conflicts and breakdowns of the solicitor-client relationship
- Cross-examining sexual assault complainants and other vulnerable witnesses
- Civility

9. Question and answer period