

Hire a litigation lawyer in disciplinary proceedings: Stilman

By Jennifer Pritchett, Associate Editor



For licensed professionals facing disciplinary/regulatory proceedings, it's critical to hire litigation counsel who has extensive trial experience, Toronto lawyer [Jacob Stilman](#) tells AdvocateDaily.com.

“Litigation lawyers, particularly those who have practised in criminal law, appear in court and regularly cross-examine witnesses, call evidence and know how to present and attack a case,” he says.

“They have the on-your-feet, day-in, day-out experience in the courtroom dealing with witnesses and responding to changing circumstances.”

Stilman, a partner with the litigation and criminal law firm [Lo Greco Stilman LLP](#), explains that disciplinary proceedings can fall into different categories, including: long-established self-governing bodies such as the Law Society of Ontario or the College of Physicians and Surgeons of Ontario, and the Ontario College of Teachers.

More recently, a large number of complementary health disciplines have been designated as Regulated Health Professions in Ontario, so that professionals such as acupuncturists, massage therapists, midwives and naturopaths all have a disciplinary tribunal mechanism in place to deal with professional misconduct allegations, he explains.

Similarly, other licensed occupations such as insurance brokers, real estate agents and investment advisors have disciplinary councils, Stilman adds.

“Any profession or occupation that requires a licence will have a complaints process, and where the matter is deemed serious, it may ultimately result in a disciplinary proceeding that can affect your ability to practise,” he says.

There are two ways a professional can find themselves before a tribunal, Stilman says.

“One is through a complaint process that works its way up to a tribunal, where the issue is not resolved in advance of a hearing,” he says. “The other way is through a criminal complaint and there is a parallel proceeding where you’ve got a charge such as fraud or sexual assault.”

Stilman says if someone is facing a criminal charge, they will undoubtedly have contacted a lawyer for the matter.

“Their counsel should also be aware of the fact that the accused may be successful on the criminal charge but still face consequences from a disciplinary tribunal, because the legal standard is different and the rules of evidence aren’t the same,” he says.

“People have to be mindful that there is a lower standard of proof at the disciplinary level than there is in criminal court. An allegation of professional misconduct is proven on a balance of probabilities in a tribunal, as opposed to beyond a reasonable doubt. The rules of evidence in a disciplinary matter are also much less stringent than they are in criminal court.”

Professionals may also face a disciplinary proceeding if a member of the public who, in their view, is being ill-served by a professional initiates a complaint to the governing body, Stilman says.

“The vast majority of those complaints are dealt with well short of having to come before a disciplinary tribunal,” he says.

The decision to call a lawyer for advice after a professional learns they are the subject of a complaint by a member of the public depends on the nature of the allegations, Stilman notes.

“They have to be able to determine whether it is significant and substantive, or whether it’s simply a nuisance accusation by an unhappy customer that shouldn’t attract licensing consequences,” he says.

“For example, most lawyers have probably been at the receiving end of a complaint from a client who believes they were inadequately represented. In the vast majority of cases, the complaint can be dealt with by the lawyer himself, and it will not advance out of the initial investigation stage,” Stilman says.

“But if the lawyer is handling a real estate file and the complaint is that there’s \$50,000 unaccounted for and funds have been diverted, counsel ought to be getting some outside help because the matter is going to have to be handled carefully.”

Stilman says a huge concern these days arises where there is a complaint of sexual impropriety or assault, especially within regulated health professions.

“Anyone facing such a complaint, even if there has not been a criminal charge, would be well advised to consult with a lawyer to see how best to fashion a response,” he says. “Those kinds of accusations can spin off in all sorts of different directions civilly and/or criminally.”

Once a file does get to the disciplinary tribunal stage, all professionals are advised to have legal counsel, Stilman says.

“There are all kinds of possible ways it could go and there’s going to be witnesses called, cross-examination of those witnesses and the opportunity to make legal argument,” he says.

“At that point, it has become effectively a trial — what we call a quasi-judicial proceeding. The difference is that it’s your licence and livelihood at stake and not your personal liberty, as it would be in a trial.”

For that reason, litigation counsel with courtroom experience is a must, Stilman says.

The consequences of losing a licence can be severe, he adds.