



Koninklijke Notariële
Beroepsorganisatie

imparcialidad **calidad**
examen par les pairs **jurídica**
la ética
l'imparzialità **revisión por pares**
deskundigheid **integrità**
compétence **impartiality**
etica **jakość**
tervikkliikust **Ethik** **la qualité**
Intégrité-juridique
pericia **revisión**
Legal **expertise**
qualità **integridad**
ethics **bezstronność** **review** **Unparteilichkeit**
imparzialità **legal security ethics**
rechtssicherheit **competenza**
Intégrité-juridique **legal security ethics**
senpartieco **juridische expertise** **Qualitu**
etika **integralność**
peer review **Intégrité-juridique**
revisión **integreco**
peer review **etika** **Quality** **Sachverstand**
Qualität **peer review** **compétence**
nestrannost **impartiality** **onpartijdigheid**
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Integrität **etyki** **kwaliteit**
impartiality

Peer review within
the notarial profession
in the Netherlands



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Quality and integrity

Civil-law notaries have an important role in legal matters. Given the important function of the notarial profession in society, the public is right to expect its practitioners to demonstrate a continuing commitment to the quality of the services they provide and the integrity of the office.

As legal advisers, civil-law notaries assist the general public and companies at crucial moments in their lives. The general public and companies need to be able to rely on civil-law notaries to translate and record their wishes and interests correctly and with integrity. In addition to compliance with the rules, this requires the ability to make balanced evaluations, contribute ideas and find the optimum solution to the relevant legal issues.

Scrutiny and supervision

Most notarial practices are subject to a form of financial and rule-oriented supervision. This compliance monitoring is often outsourced. A supervisor may impose penalties, often through a disciplinary law body. Supervision is normally of a reactive nature.

Based on the view that the profession should itself play an active role as regards the promotion of quality, the notarial profession in the Netherlands also has a peer review system which is strong on quality and development, constructive, but not free of obligation.

Promotion of quality by the professional organisation

The notarial profession in the Netherlands has undergone far-reaching liberalisation since 2000. As a result, the civil-law notary has become much more of an entrepreneur than was previously the case, whilst continuing his or her official duties unabated. The legal complexity of society is increasing, as is diversity. Continuous practice development has become a constant.

The professional organisation has been helping the notarial profession to develop quality for decades, and there is an increased focus on the substantive side and on the integrity aspects of the profession.

Opting for peer review

Following the development of a number of instruments which firms were able to implement voluntarily, in 2007 the time was ripe for a mandatory quality assurance system. The question was which form would best respect the autonomy of the notarial profession. Members rejected a proposed process-driven tick-box evaluation because they found it lacked sufficient substance.

However, the proposal involving a content-based peer review system was accepted, as was its experimental nature. The starting point was that professional colleagues would carry out the review, based on their ability to recognise aspects related to professional practice. An experienced professional colleague is able to quickly assess the nature of the practice he or she is visiting and, on that basis, to determine the direction the review should take and thus establish where development is possible or improvements are required.

Robust and consistent

It was agreed that the system should not be designed on a voluntary basis: if the quality level is below what is required, follow-up action must be taken. In exceptional cases, such action could also include a complaint. In a number of cases, the review resulted in the termination of a weak practice. This also sends a powerful signal to external interested parties. The system as a whole was therefore consistent with the core task of the professional organisation, namely to monitor and promote the quality of the profession.

Development of the peer review system

To start with, a series of reviews was carried out on a voluntary basis. There was sufficient interest in this process, which meant experience was gained and feedback received, enabling rapid improvements to be made to the system.

The system was developed further in collaboration with active members of the professional group and the reviewers. This is a never-ending process: developments concerning the profession and within society constantly throw up new challenges and issues. With a constant focus on substantive development, it remains a dynamic system.

Statutory basis

Initially, the peer review system was based on regulations governing internal monitoring of compliance with anti-money laundering regulations. However, this was not sufficient to provide the peer review system with a solid basis. That is why a 'Quality Regulation' was adopted.

Inspections of case files and interviews are a crucial component of the peer review. The question of whether the civil-law notary would be infringing his duty of confidentiality if client's case files were inspected led to a lively debate within the notarial profession, as did matters to do with right of non-disclosure and the inferred duty of confidentiality incumbent upon the reviewers.

Since 2013, the peer review has been legally enshrined in the Civil-Law Notaries Act. One-third of the roughly 840 firms are assessed annually.

The reviewers

The group of reviewers comprises 30 professional colleagues with an average of approximately 15 years of practical experience. Former civil-law notaries may also take part, provided they have not ceased practising for more than one year. They register to take part themselves; once a selection has been made, a group of ten new people are trained every year. The training takes four days. They replace ten experienced reviewers and, in principle, are appointed for three years.

They carry out reviews at firms which are some distance away geographically from their own practices. A firm may always request a different reviewer from the one selected. This happens occasionally. The reviewer is always accompanied by an assistant, often a colleague involved in the process.

Performance of the reviews

The reviews and the training of the reviewers are organised by a small department within the professional organisation (1.5 posts). All the work is fully digitised.

The reviewers receive a fee which is paid out of annual contributions made by the members (at present, EUR 550 per civil-law notary per year). The contributions are also used to meet most of the administrative overheads.

What shape does a peer review take?

The firm of civil-law notaries receives an email notifying it when it will be its turn for a review. In principle, this should be once every three years. The reviewer makes an appointment in consultation with the firm in question. A brief questionnaire is completed and returned. Among other things, the firm is asked to select a particular case file from which it learned something, because the was difficult or problematic, or because it was handled successfully.

The day begins with an introductory interview during which the practice's position is discussed. The reviewer then determines which topics he or she intends to examine and the people he or she wishes to speak to.

Interviews with a cross section of the firm and an audit of the procedure take place throughout the day.

Ten case files are selected and assessed, both in respect of obligations and also in terms of content. It is not always possible to address all the issues. Just like the interviews, the examination of the case files can reveal much about the firm's working methods, due diligence and the technical level of the firm. The reviewer discusses the pre-specified case file with the case officers.

The day's findings are discussed and the final questions answered in the concluding interview. No conclusion is drawn at that stage.

Reporting

The reviewer draws up a report. It starts with a description of the firm's characteristics: strong points, type of firm, scope for improvement and, sometimes, the necessary improvements.

It was decided that the structure should be kept flexible, but five aspects are always covered:

- ▶ internal organisation;
- ▶ engagement process;
- ▶ professional competence;
- ▶ continuity and development;
- ▶ instruction.

A description is given of what else the examination of the case files revealed; this should also cover the legal solutions chosen.

A number of topics from the concluding interview are mentioned.

A reviewer may also include recommendations in the report, to a limited extent. In a number of cases, it is recommended that external assistance or coaching be sought.

The report concludes with three positive points, three areas requiring attention and, if applicable, the areas where improvement is necessary and the time allowed to remedy the situation or for a reassessment.

Opportunities to object

The report is emailed to the firm. The civil-law notary is given six weeks to object to the reviewer's conclusion. The professional organisation acts as intermediary between the reviewer and the firm. Should that process fail, there is an appeals board which will hear both sides and rule on the question of whether the reviewer was justified in coming to the conclusion he or she recorded.

The appeals board has had to make a ruling twice in the last ten years.

Since it is provided for by statute, a firm cannot refuse to allow a review to be carried out. It may, however, request an alternative reviewer.

What happens to the findings?

When a subsequent review is carried out, the reviewer does not receive the previous report in its entirety, only the positive points and the areas requiring attention. The report is destroyed after seven years.

The external supervisor does not receive any details relating to the firm, but will be given accumulated details and trend reports. Exceptional cases or integrity infringements are reported to the supervisor, though.

A report describing trends and developments is drawn up every six months, and several noteworthy cases are summarised in anonymous form. The report is published on the intranet. Policy information from the findings is also distilled.

At a collective level, the reviews draw attention to current or special topics. At the moment, these include, for example, information security, data leaks and the protection of data in a digital environment.

Acceptance and communication

In the early years in particular, acceptance of the peer review system was a point requiring attention. Many people did not know what was expected of them, and were sometimes reluctant to discuss case files or issues having a legal subject matter. Some people also saw it as a hidden form of supervision and the long arm of the external supervisor. Communication dwelt on those aspects in particular.

When it became clear that this was a move from a formal system to one which is based more on legal subject matter, and that the reviews often lead to practice being improved, acceptance of the peer review as part of notarial practice grew.

Finally, positive outcomes include the fact that various professional groups have set out to examine how the notarial profession put the peer review system into practice, and have regularly used it as an example on which to base their own system.

Evaluation and the future

The system was evaluated in 2016. This resulted in a number of policy intentions which will be fleshed out further in the time to come. One thing that is in any event certain is that there will be a move towards specific reviews of specialist firms. As an initial step, reviewers who are due to carry out reviews in respect of firms involved in international consultancy and transaction practice will receive training.

Publication details

Contact information

If you would like to know more about the structure, development or implementation of peer reviews, please contact:

Lineke Minkjan

Advisor international affairs
l.minkjan@knb.nl

or

Alexander Diks

Quality Assurance Advisor
l.diks@knb.nl

Koninklijke Notariële Beroepsorganisatie

Postbus 16020
2500 BA Den Haag
The Netherlands
+31(0)70 330 71 11

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