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Practice Material

Professionalism: Practice Management

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PROFESSIONALISM: PRACTICE MANAGEMENT

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Chapter 1

Practice Management

[§1.01] Introduction

A law practice must be properly organized in order to create a basis for the efficient management of client files and all aspects of a law firm. The following material outlines the responsibilities of the lawyer and support staff, introduces law office systems and procedures and examines basic concepts of client file management, timekeeping and productivity, client relations, trust accounting, and financial management.

Each law office is unique in terms of its composition, its structure, its systems and procedures, and the responsibilities assigned to each participant. Nevertheless, there are a number of common practice management concepts and principles which a lawyer can and must learn in order to maintain a competent practice.

In addition, a lawyer must continually assess and respond to changes in technology, areas of practice, strengths and weaknesses of personnel, and any other factors that may affect the efficiency of existing systems and procedures used in the firm. In particular, a lawyer must remain current and explore emerging technologies to see how they may improve their practice.

For guidance around how to increase the effectiveness and profitability of your practice, and for designing and implementing file management systems, see the Law Society of BC publication Opening and Maintaining Client Files (February 2002, updated June 2006) found on the website at Quicklinks > Publications and Resources > Practice Resources > Client Files: (http://www.lawsociety.bc.ca/page.cfm?cid=2001&t=Client-Files)

[§1.02] Loss Prevention

The term "loss prevention" refers specifically to insurance losses. In addition, the term is commonly used to refer to the systems, procedures and practices necessary to ensure that client matters are competently and completely attended to. It is concerned with the effective management of all aspects of the law practice.

About 65% of all insurance claims arise from practice management defects. That is, most claims arise from inadequate office systems and client file management errors, not from failure to know the law or poor legal judgment.

In order that lawyers may continue to obtain errors and omissions coverage at an affordable cost, it is essential that lawyers increase their awareness of common practice pitfalls, and that they recognize the need to improve, organize and document the procedural aspects of delivering legal services.

Lawyers, in their own interests, are expected to identify practice problems and implement more effective office procedures. To assist, the Law Society makes available to members practice advisory services. The Practice Management Advisor, Dave Bilinsky, develops educational programs and materials on practice management issues, with a special emphasis on technology and will answer questions including those regarding setting up and maintaining office systems (daveb@lsbc.org or 604.605.5331 or 1.800.903.5300). The Law Society’s Practice Advisor, Barbara Buchanan, is available to give confidential advice concerning a wide variety of professional conduct issues, including questions about undertakings, confidentiality and privilege, conflicts, courtroom and tribunal conduct and responsibility, withdrawal, solicitors’ liens, client relationships, lawyer-lawyer relationships and other ethical and practice questions (604.669.2533; 1.800.903.5300) and directing lawyers to other persons or facilities who can help. In addition the Practice Advice group provides useful materials that may be accessed via the Law Society of BC website.

Finally, the Canadian Bar Association’s Practice Advisory Panels, consisting of senior practitioners, are prepared to assist all lawyers with practical advice on a volunteer basis.

[§1.03] Lawyer’s Responsibilities and Support System

Managing a practice includes the proper delineation of duties among the participants. The following outline of the lawyer’s responsibilities and support system sets out one way in which law office responsibilities may be divided where the law office includes a lawyer, a paralegal and a legal administrative assistant. It should be noted, however, that the potential scope of the roles of paralegals and articled students are likely to shift once the requisite legislative amendments are made.

In order to enhance the public’s access to competent and affordable legal services, the Benchers have approved a plan to increase the roles that paralegals and articled students can perform under the supervision of a lawyer. The recommendations came from the Delivery of Legal Services Task Force, which can be downloaded from the Law Society website. The Benchers accepted the Task Force’s recommendation that articled students be allowed to perform enhanced functions.

Under a recent amendment to s. 60 of the Evidence Act, R.S.B.C. 1996, c. 124 articulated students are now allowed to act as commissioners for taking affidavits.

Law Society Rule 2-60 permits articled students to provide certain legal services to the public, provided they are well supervised by a principal or another lawyer. The following Benchers’ Bulletin article gives lawyers and articulated students more information on the expanded functions articulated students can now perform under the supervision of a lawyer.
STUDENT RULE CHANGES

Firms encouraged to take advantage of new rules

Supervised students permitted to provide legal services and provide a lower-cost option to clients

ON SEPTEMBER 1, 2011, new rules take effect that allow articled students to provide certain legal services to the public, provided they are well supervised by a principal or another lawyer.

The changes were approved by the Benchers in May 2011 and stem from ongoing efforts by the Benchers to help make legal services more accessible and affordable for the public.

President, Gavin Hume, QC and others have brought this initiative to the attention of the Provincial and Supreme Courts and have received encouragement to proceed. Discussions are continuing to ensure the expanded role for articled students aligns with judicial requirements.

It is well known that it is becoming increasingly difficult for many to obtain legal services for a number of reasons, including the limitations on eligibility and availability of legal aid and the inability of some people to find legal services they can afford. Others believe that they can get a better result by self-representing. The result has been an increase in the number of self-represented litigants and a reluctance of others to seek the justice to which they are entitled.

According to new Law Society Rule 2-32.01, an articled student may provide all legal services that a lawyer is permitted to provide, with some exceptions, but the supervising lawyer is responsible for ensuring the student is competent and properly prepared.

One exception is appearing as counsel in complex litigation, but subject to approval of the courts, which the Law Society hopes to secure in due course, students will be allowed to appear as counsel if they are directly supervised by a practising lawyer in the following proceedings:

- an appeal in the Court of Appeal, the Federal Court of Appeal or the Supreme Court of Canada;
- a civil or criminal jury trial;
- a proceeding on an indictable offence, unless the offence is within the absolute jurisdiction of a Provincial Court judge.

Students are also allowed to give or accept an undertaking if the supervising lawyer has also signed or accepted the undertaking.

Since the authority granted to practising lawyers under s. 60 of the Evidence Act does not extend to articled students, they are not permitted to act as commissioners for oaths. (The Law Society has requested that the Act be changed to allow it.) Also, the rule changes do not expand the roles for students enrolled in temporary articles who will continue to be governed by Law Society Rule 2-43.

PRINCIPALS AND SUPERVISING LAWYERS RESPONSIBLE FOR STUDENT WORK

Lawyers have always been responsible for supervising staff, including articled students. However, now that students can perform enhanced functions, the issue of proper supervision by a lawyer becomes even more critical.

It is essential that supervising lawyers understand that they are responsible and accountable for the actions of articled students performing legal services and that failure to properly supervise a student can lead to the full range of disciplinary processes and potential sanctions.

The supervising lawyer is also liable for any mistakes made by the student while under supervision, and the financial consequences of any paid claim will flow through the lawyer’s professional liability insurance. Lawyers who fail to provide any supervision jeopardize their insurance coverage.

Lawyers must also ensure that students and all other employees understand the importance of solicitor and client confidentiality and privilege. Communications made by or on behalf of the client to an articled student for the purposes of obtaining or giving legal advice will attract solicitor and client privilege (see Descôteaux v. Mierzwinski, [1982] 1 S.C.R. 860 at 873).

Privilege extends to communications “made to the solicitor in person or to a clerk or subordinate of the solicitor who acts in his place and under his direction” (see, Wheeler v. Le Marchant (1881), 17 Ch.D. 675). Supervision and direction of the articled student by the lawyer is also critical to the preservation of solicitor and client privilege.

The Delivery of Legal Services Task Force continues to work on changes to the Professional Conduct Handbook regarding expanded roles for paralegals and, until they are finalized, lawyers should not be using paralegals to perform the expanded functions now available to students.

For more information on the new rules, please contact a Practice Advisor.
The Benchers also accepted the Task Force’s recommendation that paralegals be allowed, in certain circumstances, to give legal advice under the supervision of a lawyer. The Law Society will hold future consultations with the province’s courts to determine whether, and if so in what circumstances, paralegals should be permitted to act as advocates.

1. The Lawyer’s Responsibilities

Lawyers are responsible for legal services. A lawyer has complete professional responsibility for all business entrusted to him or her. A lawyer must maintain direct supervision over staff and assistants to whom particular tasks and functions may be delegated (Code of Professional Conduct for BC (the “BC Code”), Chapter 6, Rule 6.1-1).

Direct supervision required

1. A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

A lawyer must not permit a non-lawyer to act finally, without reference to the lawyer, in matters involving professional legal judgment. A lawyer must not permit unauthorized persons to give legal advice (BC Code, Rule 6.1-3(b)).

The lawyer’s tasks, as outlined in Rule 6.1-3 of the BC Code, read as follows:

3. A lawyer must not permit a non-lawyer to:
   (a) accept new matters on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;
   (b) give legal advice;
   (c) give or accept undertakings or accept trust conditions, except at the direction of and under the supervision of a lawyer responsible for the legal matter, providing that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;
   (d) act finally without reference to the lawyer in matters involving professional legal judgment;
   (e) be held out as a lawyer;
   (f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a supporting role to the lawyer appearing in such proceedings;
   (g) be named in association with the lawyer in any pleading, written argument or other like document submitted to the court;
   (h) be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer’s firm, unless the non-lawyer is an employee of the lawyer or the law firm;
   (i) conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;
   (j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;
   (k) sign correspondence containing a legal opinion;
   (l) sign correspondence, unless:
      (i) it is of a routine administrative nature,
      (ii) the non-lawyer has been specifically directed to sign the correspondence by the supervising lawyer,
      (iii) the fact the person is a non-lawyer is disclosed, and
      (iv) the capacity in which the person signs the correspondence is indicated;
   (m) forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer’s knowledge and direction;
   (n) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or
   (o) issue statements of account.

4. The limitations imposed by Rule 6.1-3 do not apply when a non-lawyer is
   (a) a community advocate funded and designated by the Law Foundation;
   (b) a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and
   (c) with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.

Professionalism: Practice Management
With respect to the tasks **articling students** may perform, see the “Articling” section of the *Members’ Manual* and the Law Society Rules.

2. The Paralegal’s Responsibilities

Paralegals have legal training and knowledge of the substantive and procedural aspects of law. The BC Code provides the following definition of a “paralegal”: “means a non-lawyer who is a trained professional working under the supervision of a lawyer” (BC Code, Rule 6.1-2).

In short, the lawyer has full professional responsibility for the paralegal’s work. However, a trained paralegal can perform a range of tasks. See the BC Code, Section 6.1 for guidelines as to what a non-lawyer can and cannot do, and the responsibilities of the lawyer with regard to a non-lawyer’s work.

The BC Code, Rules 6.1-3.2 and 6.1-3.3 state:

6.1-3.2 A lawyer may employ as a paralegal a person who
(a) possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;
(b) possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and
(c) carries out his or her work in a competent and ethical manner.

6.1-3.3 Despite rule 6.1-3, where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal
(a) to give legal advice; or
(b) to represent clients before a court or tribunal, as permitted by the court or tribunal.

For clarity, Commentary [1]-[3] to Rule 6.1-3.2 was added:

[1] A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner.

[2] In arriving at this determination, lawyers should be guided by Appendix E.

[3] Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

Within this framework, here are some examples of tasks that a paralegal may undertake:

(a) Collecting information
   (i) interviewing clients and witnesses (the lawyer must advise and take instructions from clients on substantive issues),
   (ii) collecting information from other sources (e.g., the Land Title Office);
(b) Conducting correspondence relating to routine administration;
(c) Preparing draft pleadings and other court forms;
(d) Researching the law and preparing legal memoranda;
(e) Organizing documents; and
(f) Drafting statements of account.

3. The Legal Administrative Assistant’s Responsibilities

The legal administrative assistant works under the supervision of the lawyer or paralegal. The legal administrative assistant’s tasks include more routine office procedures and clerical tasks like the following:

(a) Organizing files
   (i) opening files,
   (ii) organizing components of files,
   (iii) securing all file contents on fasteners and ensuring that files remain organized (see also chapter 4);
(b) Making appointments for the lawyer and referring potentially urgent matters to the lawyer for assessment;
(c) Preparing correspondence not involving legal expertise (e.g., requests for information and strictly informative correspondence);
(d) Sending copies of relevant file material to clients;
(e) Taking telephone calls when the lawyer is not available, ascertaining the nature of the problem and providing non-legal assistance to the client, if possible;
(f) Maintaining bring forward and diary systems (see chapter 4);
(g) Screening incoming mail
   (i) highlighting areas of potential urgency,
(ii) dealing with all items of a routine nature,
(iii) noting any dates for bring forward and
diary systems;
(h) Arranging examinations for discovery
(i) preparing and sending out appropriate
demands,
(ii) taking out necessary appointments,
(iii) taking care of conduct money and travel
expenses;
(i) Arranging trials
 (i) setting trial dates,
 (ii) preparing trial records,
 (iii) arranging for attendance of witnesses;
(j) Preparing standard form legal documents for
the lawyer’s review (e.g., most land title
documentation); and
(k) Organizing the lawyer’s trial briefs, books of
documents, and books of authorities.

4. Accounting and Technology Management
   Responsibilities
   The level and scope of technology used to manage
   accounting, office, billing and file systems in firms
   vary widely. These systems are critical to the
efficient operation of a law firm, not only for
accounting and case management but also for legal
research, legal drafting, and document production.
In addition, different types of practice suggest
different approaches. Unless the lawyer is
knowledgeable in these areas, he or she should
consult with experts and experienced colleagues
before instituting an accounting system or selecting
file, office and case management software and
systems. Contact Dave Bilinsky, the Practice
Management Advisor at the Law Society, for
guidance and direction on practice management,
case management and accounting issues.

5. Information Resources
   (a) Library
   While more and more legal offices are relying
   on subscriptions to online versions of resources,
some still maintain at least some form of a paper
library. If they do, all loose-leaf updates must be
regularly inserted to keep pace with changes in
the law. Legal administrative assistants or
paralegal staff can be responsible for this.
   Support staff should be aware of the importance
   of updating loose-leaf services both accurately
   and on a regular basis.
   Electronic subscriptions also need to be
   maintained and clerical or paralegal staff can
   be responsible to ensure that these are available
   and current when the lawyers need them.
   Further assistance can be obtained by speaking
   with the librarians with the Courthouse Libraries
   of BC (for example, the Vancouver Courthouse
   Library staff) and by contacting the Vancouver
   Association of Law Librarians. Finally, also look
to lawyer Catherine Best’s website
http://www.legalresearch.org/electron.html for a
comparison of electronic research tools.
   (b) Research and Opinion File
   The practice of law generates many opinion
letters and research memoranda. These can
become a valuable resource. To ensure that
your efforts are not duplicated in the future,
catalogue and file in a way that makes them
readily accessible. There are many ways to
save and organize electronically retrieved
research, and to organize legal research
memoranda and opinions. For optimal benefit
to all lawyers in the practice, and to make these
documents easy to retrieve later, consider the
software that you are using for office and case
management and be sure to create a system for
filing these valuable resources that best
matches those existing systems. Often it is
easiest to organize by author, title and subject
with cross-referencing.
   (c) Precedents
   Most materials that are prepared and relied on
in practice should be retained as precedents.
A simple manual method of organizing
precedents is to retain them in file folders or in
an indexed binder. However, the more
effective method is to create electronic files
and store them using whatever filing system
fits best with your office, file and case
management software. It is important to use an
off-site storage and back-up system for which
you have developed a document retrieval
system that allows for easy identification of
each document.
   One important warning about saving
documents—ensure that you know how and
that you do remove the metadata before storing
the precedent.

[§1.04] Lawyer Training
   Most lawyers recognize the need for continuing lawyer
training. Traditional views such as “sink or swim” have
yielded to a more positive and realistic view that better
training creates better lawyers. Law school, PLTC, and
CLE courses are only part of the answer. The other part
is the commitment of senior lawyers and partners to train
junior lawyers, and the commitment of junior lawyers to
devote the necessary time to learn.
The emphasis of lawyer training should be introduced but not “finally” covered in law school and PLTC. Skill training is probably the best example. All lawyers need continuing training in the areas of negotiating, legal writing and drafting, leadership, time management, research, conducting meetings, and dispute resolution.

Skills training can be done formally through seminars and workshops, organized in-house or through outside organizations, and even more importantly, on an informal basis—when lawyers are working together on files, teaching and learning by example. By being aware of the skills and the importance of them in our practice, we can be alert to cultivating them in others.

All practising lawyers in BC are required to complete 12 hours of continuing professional development. See the website for details about approved educational activities.

**Benchers Approve Rules Implementing Continuing Professional Development**

*What’s New, posted July 8*

At their July meeting, the Benchers approved amendments to the Rules [Rule 3-26](#) to implement the new continuing professional development program, starting January 1, 2009.

The Benchers’ decision marks the first time that a Canadian law society has introduced a comprehensive continuing professional development requirement for all lawyers. This will assure the public that the Law Society is committed to establishing, maintaining and enhancing the standard of legal practice in the province.

Effective January 1, 2009 the new Rules will require all practising lawyers — both full-time and part-time — to complete no fewer than 12 hours a year of continuing professional development in approved educational activities. Not less than two of the 12 hours must pertain to any combination of professional responsibility and ethics, client care and relations, and practice management.

The Benchers have already approved a wide variety of education activities for the Continuing Professional Development Program and will be considering other activities as well.

Attendance in person, as well as online or by telephone, provided there is an opportunity to ask questions, at courses offered by the Continuing Legal Education Society of BC, the Trial Lawyers’ Association of BC, the Canadian Corporate Counsel Association, the Canadian Bar Association, the Federation of Law Societies of Canada, the Law Society of BC, or a Canadian law school. As the Law Society continues to consult with course providers and local Bar associations, this list of course providers will expand.

Attendance in person, as well as online or by telephone, provided there is an opportunity to ask questions, at Law Society approved, law-related courses offered by other organizations.

Video repeats of an approved course provided it is done with one or more other lawyers so there is an opportunity for discussion.

Completion of an online self-study course offered by a provider approved by the Law Society, provided that a testing component is included in the course.

Teaching a law-related course (one hour of teaching will equal three hours of reporting credits to take into account preparation time).

Attending CBA section meetings or education-related activities offered by a local or county Bar association.

Participation in (including teaching at) a legal education program offered by a lawyer’s firm or employer provided the program is offered in a group setting.

Participation in a study group of two or more people provided the group’s study focuses on law related activities. Guidelines for study groups are still being developed.

Writing law books or articles relating to the study or practice of law for publication.

As well as skills, lawyers need training in legal analysis, professional responsibility, dealing with staff, and business development. Most in-house training programs involve substantive law issues (such as new legislation) and practice issues. To develop a continuing training program for yourself or your firm, you will need to:

(a) plan your personal training objectives carefully;

(b) create a budget as part of the plan;

(c) identify the priorities (and when you set the priorities, make sure they are realistic and appropriate);

(d) survey the available resources (you may be pleasantly surprised by the expertise and other in-house resources available at your firm); and

(e) evaluate your program critically over time.
Chapter 2

Opening a Law Practice""

[§2.01] Overview

This chapter reviews some basic considerations that apply to the opening of a law practice.

BC lawyers who enter into a solo law practice, or who join a small law firm, are required to complete the “New Firm Practice Course.” This course is offered free of charge and delivered online. The course covers the essentials of setting up and operating a practice.

While the New Firm Practice Course is a requirement for lawyers moving into solo or small firm practice, it is available to all other BC lawyers on a voluntary basis. Designed to be self-paced and self-testing, the course allows lawyers to measure their own progress and understanding of key practice issues—ranging from practice management to trust accounting to technology issues and various pitfalls of practice. A lawyer completes each self-testing component of the course before moving to the next, and the entire course takes six to eight hours to complete. There are no course examinations.

In addition to the online course, the article entitled “Getting Started: Opening Your Law Office and Trust Accounting”, available on the Law Society website Quicklinks > Publication and Resources Forms > Practice Resources > Office Organization, (http://www.lawsociety.bc.ca/page.cfm?cid=351&t=Office-organization), provides useful information about starting a law office and a very useful Suggested Reading List appears at the end of the article.

Forms and general information on incorporating a law practice are available from the Law Society of BC, member services (phone: 604.669.2533; fax: 604.687.5232; TTY 604.443.5700). For assistance with the tax aspects and business decisions regarding incorporation, contact Dave Bilinsky, Practice Management Advisor at the Law Society of British Columbia (daveb@lsbc.org).

A Checklist for Incorporation, a sample Incorporation Agreement for John Smith Law Corporation, and sample Articles of John Smith Law Corporation can be found in the Practice Resources area of the Law Society of BC website. Also available on the website (in PDF) are two related papers: “A Comparative Study of Business Structures Used by Professionals” and “Business Relationships within the Professions: Selected Business and Legal Issues.” You may download any of the Law Society of BC articles in PDF from the website in Quicklinks > Publication and Resources Forms > Practice Resources > Incorporation Precedents.

1. Alternative Forms of Practice

Before establishing a law practice, a lawyer should consider the alternative forms of practice. Different types of arrangements exist. The following are the most common.

(a) Sole Practitioner

This consists of one lawyer working with support staff.

(b) Informal Association or Group Practice

Many arrangements exist, ranging from a sole practitioner assisted by one or more salaried lawyers to a group of lawyers associated together with arrangements for remuneration ranging from a fixed salary to a percentage of billings.

(c) Space-Sharing Arrangements

This arrangement consists of two or more lawyers practising within one suite of offices, but carefully maintaining separate identities as sole practitioners. Note the distinction between this type of practice and an informal association (see §2.04). See Rules 3.4-42 and 3.4-43 of the BC Code.

(d) Partnership and Limited Liability Partnerships

A partnership consists of two or more lawyers practising under a common firm name and bound together by either an informal arrangement or a formal partnership agreement (see §2.05). Partnership means a sharing of responsibilities, expenses and profits.

A limited liability partnership (“LLP”) is a modified form of general partnership. LLPs have many of the same advantages as limited partnerships, with the added benefit that the members of an LLP can take an active role in the business of the partnership without exposing themselves to personal liability for the acts of their other partners above the amount of their investment in the partnership (See §2.06).

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1 This chapter was prepared and is regularly updated by staff lawyers, accountants or auditors of the Law Society of British Columbia.
Multi-disciplinary Partnership

Lawyers may form partnerships with non-lawyers in limited circumstances. Lawyers must have actual control over the delivery of legal services and the services provided by non-lawyers must support or supplement the delivery of legal services to clients of the law partnership. The new rules are effective on July 1, 2010, following development by the Credentials Committee of the necessary forms by which partners of a firm may apply to become a multi-disciplinary partnership. (See Chapter 6, Rule 7.1, Chapter 9, Rules 6 and 6.1, Chapter 12, Rules 1, 3, 4, 5, 5.1 and 6, Chapter 13, Rule 5 and Chapter 14, Rules 10, 23 and 24.)

2. Business and Personal Factors when Selecting the Arrangement

A number of business factors must be taken into account when selecting the appropriate form of business organization, to avoid regulatory and client difficulties. These are beyond the scope of these materials but they include considerations such as lawyer compatibility (e.g., on marketing philosophy, areas of interest, lifestyle), income tax factors, and client perceptions (e.g., some institutional clients will not deal with sole practitioners).

The most appropriate form of business organization for a lawyer will also be influenced by personal factors such as:

(a) preferred area of interest;
(b) desire to practise part-time only;
(c) income security;
(d) family commitments;
(e) proximity of ancillary services; and
(f) motivation.

3. Lawyer Incorporation

Part 9, ss. 80–84 of the Legal Profession Act (the “Act”) permits the incorporation of law practices. Authorization to practise is by way of permit issued by the Executive Director (Act, s. 82 and Rule 9-4).

A law corporation that has a single shareholder is analogous to a sole proprietorship and one with two or more shareholders is analogous to a partnership. The corporation’s name must include the words “law corporation”, and all the voting shares must be legally and beneficially owned by the following:

(a) one or more practising lawyers;
(b) one or more law corporations.

All directors must be practising lawyers. All the non-voting shares must be legally and beneficially owned by practising lawyers, a corporation all the shares of which are beneficially owned by one or more practising lawyers or certain defined persons, usually relatives (Act, s.82).

Incorporation may be beneficial for many reasons. Generally, there will be income tax advantages that will be more significant for the individual or small firm. Tax considerations include potential for income splitting and longer-term estate planning and succession advantages.

For more information, see David G. Thompson, “A Comparative Study of Business Structures”, published in 1995 by the Canadian Tax Foundation and available on The Law Society of BC website.

4. Starting a Practice

The most common approaches to getting started in the practice of law are:

(a) establishing a practice;
(b) acquiring an established practice (opportunities arise upon the death, retirement or disbarment of a practitioner); or
(c) acquiring or earning an interest in a practice over a period of time, by working as an associate with an established practitioner.

§2.02] Pre–Opening Checklist

(a) Order telephone, voice mail, switchboard, fax and internet installation and service. Investigate long distance carriers and discount packages. Consider how your telephone answering system will work when you or your assistant are not available.
(b) Consider reserving a website name and designing a website for your law practice.
(c) Consult Chapter 4 of the BC Code regarding marketing of legal services.

The Law Society strongly recommends that you carefully proofread all written advertisements that you prepare, to ensure that they comply with Chapter 4. You may in fact wish to ask someone else to read your advertisement before it is published to get their thoughts on its suitability.
(d) Order announcements, letterhead, other stationery.
(e) Advise the Law Society (Member Information) in writing of: firm name; names of firm members; business address; telephone fax numbers, email address, and date of opening.
(f) Decide on and set up the accounting system to be used. Seek an accountant’s advice about which system you should use. Do so before ordering cheques. Refer to chapters 6 and 7 for alternative accounting systems.

(g) Open a trust and a general account at an appropriate savings institution and order cheques. Refer to chapter 6.

(h) Confirm instructions for opening the trust account in writing with the savings institution and the Law Foundation. Refer to §6.02.

(i) Obtain a local business licence if you need to.

(j) Obtain a GST number from the Canada Revenue Agency (CRA) for remitting taxes collected on legal fees. To set up an account call 1.800.959.5525 anywhere in Canada.

(k) Register with the provincial Registrar of Companies if you are going to operate under a business name as a sole proprietor, partnership or limited company.

(l) Obtain an employer account number for remitting employer’s federal and provincial income tax deductions, employment insurance premiums and CPP contributions. Contact the CRA and ask for an Employer’s Kit.

(m) Determine the fiscal year end date for the practice. Note the advantages of month ending in the first quarter of the calendar year.

(n) Determine and advise the Law Society of the year-end for Trust Report filing purposes. Remember that your practice and insurance fees are payable in December and June.

(o) Consider obtaining excess liability insurance and any optional coverage (see chapter 5 of Professional Responsibility, for what is covered by the Lawyer’s Professional Liability Insurance).

(p) Adopt privacy policies to comply with privacy legislation. (The Law Society of BC has drafted model privacy policies: see Quicklinks>Publication and Resources Forms>Practice Resources>Model Policies http://www.lawsociety.bc.ca/page.cfm?cid=1002&t=Model-Policy:-Privacy)

[§2.03] Opening Checklist

1. Firm Name

Your firm name must not mislead or communicate false impressions to clients or the general public. You may give your firm a name such as “The XYZ Street Law Group”, as long as the name does not offend Chapter 4 of the BC Code. Only members in good standing may be included on the firm letterhead. The firm name is not limited to the surname of the sole proprietor or partners.

If you intend to incorporate, you must apply to the Law Society for approval of the corporate name (Rule 9-2 of the Law Society Rules). Otherwise, Law Society approval of a firm name is not necessary.

The Ethics Committee has said a member will be prohibited from using a law corporation name that refers to a geographic location within British Columbia if the name refers to the member’s geographical area.

A sole practitioner should refer to the Annotations to Rule 4.2-5 of the BC Code regarding restrictions on the firm name, see: http://www.lawsociety.bc.ca/page.cfm?cid=2672&t=Annotations-to-Chapter-4---Marketing-of-Legal-Services##a4.2-5.

2. Financing

It is common to need to obtain financing to run your office. Before approaching potential lenders you should have prepared a budget and a business plan, looked at space, and met with an accountant.

Remember that you will need at least two bank/savings institution accounts: a general account and a trust account. The general account is your account for money belonging to your practice, and the trust account is for money belonging to your clients. Your choice of lender may have a significant impact on where you place your accounts.

You may borrow from any lender you choose, including a bank, trust company, credit union or your family. A general account may be placed with any bank, trust company or credit union; however, your lender will usually expect your general account to be kept at the lending institution.

Your trust account must be placed only in a designated savings institution.

For convenience, you may want to choose as your lender a designated savings institution so that you can keep your accounts in the same place. You will find it less time-consuming to do all of your banking in one place especially when you are starting a practice, and if you have part-time or no staff.

Consider whether the institution may be a source of business for you. Discuss that possibility with the loans officer or manager.

The type of financing that you may be considering will include, first, a loan at a fixed rate, or a fixed loan at a variable rate (usually to pay for start-up costs) and, second, a line of credit at some percentage over prime rate to cover your monthly operating deficits.
The lender will expect you to provide, in addition to your budget proposal, a statement of your assets and liabilities. If you have no assets, the lender may require a guarantor before agreeing to lend you any money.


3. Secure Space
   (a) Location
   What type of practice will you have? Should you be near the courthouse or the Land Title Office, in the business district, or in the suburbs? Or do you intend to dedicate a part of your living space to your work and rent boardroom space for meetings?
   (b) Office Size and Shape
   How many people will you have in your firm? What will the ratio of support staff to lawyers be? More space is needed for a “paper practice” than a “people practice”, in that support staff requirements are heavier and there is more paper to file. When you plan your layout, consider using an architect or a design consultant. Keep in mind the potential for future growth.
   (c) Negotiating the Lease
   You will want to consider the following:
   - Will the lessee be the partnership or a management company?
   - Is it possible to take over space which is already suitable for a law practice?
   - What is the difference between net and gross rent per foot?
   - To what extent will the landlord construct leasehold improvements to minimize your initial outlay? What services will the landlord provide with the space? Will the landlord provide a renovation allowance?
   - What security is provided and during what hours?;
   - What is the length of lease and is there an option to renew?
   - What quality and frequency of building maintenance is provided and is your office included in building maintenance?
   - are there proper cabling and outlets for telephones and other electrical equipment (e.g. computers, copiers, printers)?
   - are there provisions in the lease regarding signs for the building and your office entrance?
   (d) Consider the BC Code
   If you are offered space in a client’s premises or by a landlord who wants to make an arrangement that includes referrals, be careful. If there is any potential impact on rent payments as a result of the referrals, you may offend the BC Code.
   Rule 3.6-7 says
   A lawyer must not:
   (a) directly or indirectly share, split or divide his or her fees with any person other than another lawyer, or
   (b) give any financial or other reward for the referral of clients or client matters to any person other than another lawyer.

   Note the exception in Rule 3.6-8:
   **3.6-8** Despite rule 3.6-7, a lawyer permitted to practise in a multi-disciplinary practice (MDP) under the Law Society Rules may share fees, profits or revenue from the practice of law in the MDP with a non-lawyer member of the MDP only if all the owners of the MDP are individuals or professional corporations actively involved in the MDP’s delivery of legal services to clients or in the management of the MDP.

   Be careful also if a client offers you rental or use of an office with or without secretarial or receptionist services. Note that Rule 6.1-1 says:
   **6.1-1** A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

   You must ensure that whatever arrangements you make you maintain the supervisory role and that you do not compromise the confidential environment you must have for clients.
4. Staff

Determine what staff you will require. Do you need a full complement of receptionist, legal assistant, paralegal, and accounting staff, or will you start out with just one assistant? If you are starting a larger firm, consider whether the support staff should specialize in particular practice areas and the degree to which they should be teamed with individual lawyers.

Consider whether you have the capacity to hire an articled student. Note the provisions of the Law Society Rules regarding articled students.

Organize a payment system for your staff. Remember that you will be responsible for deductions such as income tax. When you plan your budget, consider your obligations to pay EI, CPP, Workers’ Compensation premiums, and vacations.

Be mindful of the crucial role support staff will play in the success of your practice of law.

<table>
<thead>
<tr>
<th>How to Keep Your Assistant²</th>
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<tbody>
<tr>
<td>(a) respect him or her as your equal;</td>
</tr>
<tr>
<td>(b) take him or her to lunch occasionally;</td>
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<tr>
<td>(c) ask rather than demand;</td>
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<tr>
<td>(d) when overtime is required, be sensitive to personal needs;</td>
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<tr>
<td>(e) be open to suggestions;</td>
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<tr>
<td>(f) show that you appreciate him or her;</td>
</tr>
<tr>
<td>(g) involve your assistant more in your work;</td>
</tr>
<tr>
<td>(h) give your assistant raises, bonuses and new titles periodically;</td>
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<tr>
<td>(i) invest in training and retraining;</td>
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<tr>
<td>(j) recognize him or her as a professional;</td>
</tr>
<tr>
<td>(k) offer profit sharing on a percentage basis;</td>
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<tr>
<td>(l) allow him or her to grow in responsibility and take initiative;</td>
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<tr>
<td>(m) give him or her ample opportunity to communicate with you;</td>
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<tr>
<td>(n) provide a comfortable salary and benefits package; and</td>
</tr>
<tr>
<td>(o) give periodic reviews and raises.</td>
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</tbody>
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5. Legal Administrative Assistants and Paralegals

Consider whether you will have the type of practice in which legal assistants/paralegals can be useful (e.g., conveyancing, litigation). Many lawyers use legal administrative assistants and paralegals to help with the procedural and administrative aspects of a client matter. The lawyer is ultimately responsible for the work performed by the law practice regardless of whether part of it was delegated to non-lawyers.

Chapter 6 of the BC Code gives an indication of the types of functions that may be performed in part by a non-lawyer. The extent to which a lawyer may use the services of a non-lawyer to perform some of these functions is, of course, dependent upon the skill and competence of the particular assistant.

When work is delegated to a paralegal, a checklist of procedures should be used. Too often the lawyer is reluctant to insist that a senior legal administrative assistant, who may have substantial experience within a particular area of law, complete a checklist. However, since the lawyer is ultimately accountable for the quality and completeness of the work, a properly completed checklist can provide the best evidence that the required tasks have been performed.

Using a non-lawyer is not a substitute for the lawyer giving the proper direct attention to the client. If clients are left with the feeling that they are dealing solely with the assistant, problems may develop in collecting an appropriate fee or ensuring client satisfaction with the service.

Also ensure that you train your staff. Each year the Continuing Legal Education Society of BC (CLE) offers courses, and publishes guides, to help with the professional skill development of legal support staff.

6. Furniture

You may find it useful to consult an office interior consultant or architect when determining your space and furniture needs. Consider the allocation of space to:

| (a) reception area; |
| (b) kitchen or lunchroom; |
| (c) secretarial and accounting staff; |
| (d) lawyers’ offices; and |
| (e) conference room. |

Determine whether it is better for you to have smaller offices and a conference room or larger offices and no conference room.

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² Reprinted from the A.B.A. journal Law Practice Management (July/August 1991) with modification.
Consider whether you need to acquire any of the following:

(a) library shelving;
(b) shelving for printed forms;
(c) coffee, tea and lunchroom/boardroom equipment;
(d) mail baskets;
(e) fireproof filing cabinets;
(f) artwork, if desired; and
(g) subscriptions for reception area reading material.

7. Office Equipment

Decide whether you should purchase or lease your office equipment and analyze whether or not you need a service contract.

(a) Hardware, Software, Wireless Environment

Technology is essential to the practice of law. There is a wide variety of choice now, making the decisions exciting but sometimes complex. Essential peripherals include access to the internet for electronic legal research, access to government registries and services, and email. You will also need a laser printer. You will also need to purchase software to create the best efficiencies for your type of practice and type of organization. For example, if you are thinking of creating a virtual firm that is paperless, your planning will be different than a one-person operation with no staff when you begin.

One helpful source of information is CLE, which annually holds courses to familiarize the legal profession with advances in technology. Also, The Pacific Legal Technology Conference takes place annually and session papers can be purchased: http://www.pacificlegaltech.com.

The Law Society’s Practice Management Advisor, Dave Bilinsky (dbilinsky@lsbc.org) offers advice to lawyers who want to set up or upgrade to an integrated automated environment. For helpful papers regarding technology issues, look to the Law Society website publications at Publications and Resources > Practice Resources > Technology. For example, see: Building an automated practice: it’s not so tough (http://www.lawsociety.bc.ca/page.cfm?cid=356&t=Technology)

Technology consultants who specialize in law office systems also can offer advice to lawyers who want to set up or upgrade to an integrated automated environment.

(b) Dictation equipment/ Voice Recognition

Note the importance of having compatible equipment for use outside the office. Voice recognition systems are becoming more popular. This system can be portable when used with a laptop.

(c) Photocopier/Facsimile machine

Either purchase or lease your own or arrange to use the facilities of an adjoining office and set up a system for costing the production of copies. Allow yourself enough time to consider your choices. Much will depend on how paper-intensive your practice is, or what your ambitions are in terms of going “paperless.” Consider when purchasing a photocopier, whether a direct facsimile facility and scanner are appropriate to your practice. Also consider the compatibility issues and networking issues when selecting. Newer technologies are emerging all the time that integrate a number of functions. Cost varies enormously with each of the options and providers.

(d) Telephone system

Be sure your equipment is also appropriate for use outside normal business hours. You might also consider a phone system that allows staff in different location to use the same phone line and system (e.g. VoIP with Iristel provider).

(e) Miscellaneous equipment

If setting up a more traditional office practice, you will need items such as filing cabinets, file fasteners, staplers, three hole punch, two hole punch, etc.

8. Stationery

(a) Letterhead

Determine the format of your letterhead and the quality of the paper. Will you need a special second page? Consider whether you can maintain the image you want for less by designing your own stationery.

(b) Office supplies

You will need envelopes, copy paper, account forms, note pads, diaries for assistants and lawyers (consider the extent of automation desirable), pencils, pens, paper clips, rulers, rubber bands, labels, tape, scissors, files (thin and accordian), dividers, binders, record books, post-its, legal seals, and many other supplies.

Before you buy your supplies, check with the CBA-BC Member Services for suppliers who offer discounts.
9. Announcements

(a) Deadlines

Note the deadlines for appearing in the White Pages, Yellow Pages, the B.C. Lawyers Directory, as well as in national lists such as the Canada Law List and the Canadian Legal Directory.

(b) Announcement List

Prepare an announcement list. Note that it may be possible to arrange mailings through the Canadian Bar Association—BC Branch.

10. Library

Should you dispense with a library, maintain a bare bones library or start to develop a complete library? Consider the nature of your practice, as well as your proximity to a Courthouse Libraries BC. Also consider whether your new library will be mostly electronic subscription.

The cost of establishing and maintaining your own law library can be high. Consider alternatives such as time-sharing or periodic use with larger firms, reciprocal arrangements with adjacent firms, or maximum use of Courthouse Library facilities. However, do consider buying texts and practice manuals that are central to your practice area. The Continuing Legal Education Society of BC has an advisory service to help lawyers who are setting up their practices purchase CLE materials at a discount. Call Karen Kerfoot at 604.669.3544.

Consider CLE Online, LexisNexis and Westlaw access and set up accounts with those that match your familiarity and expected use.

11. Filing System

What filing system will you use? Consider practice and document management software, which helps you manage the information, people, schedules, communications, and documents on your client files. Develop a system for file organization and retrieval. Should you assign special numbers or names to files? If you are keeping paper files, should they be kept in one central location, organized within a practice group, or within offices of individual lawyer?

Create a system for opening, closing, storing and destroying files. Explore the possibility of using a storage firm to store and retrieve old files. Consider how you will manage security over both your electronic and paper files.

Create a system for keeping track of files as lawyers and other staff remove them from the system for use. If sharing automated files and working collaboratively, consider how you will keep track of multiple versions. Become intimately familiar with your automated document protection options and standardize your practices. Be sure to train staff and professionals and retrain as new options come on board.

Further information on filing and bring forward systems is in chapter 4 of the Practice Material: Practice Management.

12. Accounting System

Consider the requirements under Part 3, Division 7 of the Law Society Rules.

Seriously consider obtaining assistance from a professional accountant. Accounting functions also can be contracted out to a bookkeeping organization. For more information on accounting and bookkeeping see §7.01 to §7.09.

Open a general account and a trust account. For more detailed information regarding trust accounting see §6.01 to §6.07. Determine a policy relating to writing trust cheques.

Determine the fiscal year for partnership.

Arrange a system for following up on overdue accounts. At what point should you send out reminders? At what point should you send the matter to a collection agency or commence an action to recover your fees?

Consider the various timekeeping systems and consider practice management software to centrally manage billing.

Consider whether to have partnership credit cards for partnership business.

Appoint auditors for the firm.

13. Budgeting

A budget is a financial forecast that guides a business into the future and makes it possible to establish hourly rates. It will set the tone for the whole financial operation of the firm. Each month the actual expenses can be compared with the budgeted expenses. Differences should be noted and the causes of the important variations determined. Income is budgeted in the same way.

The start-up capital budget will be as important as the yearly budget. The start-up of a law practice involves commitments of a number of capital expenditures. This budget will be used to determine the amount and type of financing that is required.

Prepare a budget for the first year of operation. Set billing goals for lawyers and legal assistants based on required income and establish billing policies for the firm.
Determine the amount of contribution by each partner and the extent to which bank financing will be required.

For a sample worksheet, see the Law Society publication Twelve-Month Law Practice Cash Flow Budget Worksheet in Publications and Resources>Practice Resources>Office Organization (http://www.lawsociety.bc.ca/page.cfm?cid=351&t=Office-organization/Budget.xls)

14. Insurance
Consider obtaining the following types of insurance:
(a) errors and omissions insurance. Note that this is compulsory (see chapter 5 of the Practice Material: Professional Responsibility);
(b) special riders to cover loss or damage to valuable papers and corporate records;
(c) public liability insurance;
(d) tenant’s liability insurance;
(e) life insurance for lawyers and other staff;
(f) disability insurance to cover continuing overhead and loss of income; and
(g) additional medical and dental coverage.

§2.04 Cost-Sharing

Before entering into a cost-sharing arrangement (or a partnership or association, for that matter), there should be a full and frank discussion among the participants of all the issues, rights and duties. In particular, all of the potentially contentious issues should be addressed and policies defined. Individual philosophies on firm style, work habits, and expenses are often the most contentious items.

(a) Define what is the basis for charging common expenses.
(b) Define the basis for allocating and being reimbursed for individual expenses.
(c) Define how frequently working capital cash requirements are to be made or surplus cash paid out.
(d) Agree on telephone answering and message taking arrangements.
(e) Make an inventory of all assets of each party at the inception of the arrangement.
(f) Enter into a formal agreement to
   (i) review the main lease to determine term, restrictions, and so on;
   (ii) define the duration of the agreement, renewal, cancellation provisions, dissolution procedures, valuation, resolution of assets; and
   (iii) consider a first refusal clause or buy-out provisions on termination of one of the parties.
(g) Define policy on and responsibility for referred work and billing procedure.
(h) Define policy on administrative duties, such as arranging maintenance and repairs, staff hiring and supervision.
(i) Consider whether the lawyer participants should have consistent levels of Errors and Omissions coverage.
(j) Clarify a public relations policy. Avoid activities that suggest a “holding out” of an association if such is not your arrangement.
(k) Define precisely what is included in the amenities available to each participant. Some items are usually provided in the base rental.
   • Lawyer’s office space
   • Support staff office space
   • Use of reception area
   • Use of boardroom
   • Use of file storage/archives
   • Coffee service, magazines
   • Use of library
   • Use of stationery supplies
   • Use of receptionist
   • Use of messenger/courier
   • Use of articling or summer student
   • Use of and charges for photocopier or printers
   • Use of filing cabinets
   • Use of archive storage
   • Use of legal forms
   • Use of precedents
   • Allocation of telephone costs
(l) Optional items to include in a cost-share agreement would include the following:
   (i) whether the sharers are required to be co-guarantors on equipment leases;
   (ii) whether a telephone should be shared or separate lines installed;
   (iii) what fill-in responsibilities follow when a lawyer is absent or on vacation;
   (iv) whether bookkeeping services will be used periodically;
   (v) whether certain staff can be used for occasional relief;
(vi) whether participants’ credit accounts can be used temporarily for charging expenses like office supplies, couriers, etc.;

(vii) who bears responsibility for costs of library subscriptions and other library resources.

Lawyers Sharing Space, available on the Law Society website at Publications and Resources>Practice Resources>Confidentiality/privacy/conflict of interest, compiles information from a number of Law Society sources providing a useful review of some of the considerations regarding office sharing arrangements.

§2.05 Virtual Firm

As an alternative to the traditional office, you may be considering a Virtual Firm. You will need permission from the Law Society to deliver online legal services. Many virtual firms use what is called cloud computing, which involves accessing data processing and storage applications via the internet. Multi-member virtual firms may use cloud computing to, for example, share documents among lawyers. In 2010, the Law Society’s Executive Committee struck a working group to look into what rules and policy the Law Society will need for BC lawyers who are using cloud computing and/or remote processing and storing of business records; and consider BC lawyers’ use of electronic storage, both in and outside of the province. The report of the working group was released in 2011. One of the recommendations was to publish guidelines to assist lawyers in performing due diligence when deciding whether or not to use a third party service provider for electronic data storage and processing, including cloud computing. Lawyers and law firms considering cloud computing should consult the Law Society’s new Cloud Computing Checklist available on the Law Society’s website at Lawyers>Practice Support and Resources>Technology.

Advice Department if they have concerns or questions about how to meet their obligations to their clients.

It is important for any lawyer considering a virtual law firm to recognize that the standards and risks surrounding virtual firms are evolving, as is the technology that enables them. The attractions of virtual firms must be balanced by consideration of their limitations. Lawyers must ensure they are meeting their obligations in accordance with the Law Society Rules, Code of Professional Conduct for BC and the law. Some important considerations include:

- lawyers should apply the same scrutiny to the risks they manage in a physical office and recognize the heightened risks of connecting to a network;
- as with traditional firms, client information must be secure and confidentiality maintained (see Chapter 5 of the Code of Professional Conduct for BC, regarding confidentiality):
  - if clients are logging onto the firm’s website to exchange information with their lawyers, then the site’s security, among other things, needs to be scrutinized;
  - the site needs to be protected from hackers and fraudsters;
  - the server should ideally be in the lawyer’s office, and if not, it should be with a major provider in Canada with an air tight confidentiality agreement that also covers such matters as who owns the stored data, data backup and destruction, etc.;
  - if the server is an American one there is a significant risk to the security of the clients’ information, as the US government could invoke the USA PATRIOT Act;
  - consider the impact of privacy legislation, generally;
- the client identification and verification rules require meeting with the client in person to verify identity, if there is a financial transaction (see Law Society Rules 3-98 to 3-109);
- you must discharge your obligation to ensure the client has the mental capacity to instruct and has not been the subject of undue influence; and
- trust accounting rules require lawyers to store records at their chief place of practice (Rule 3-75).
- The Law Society is examining certain aspects of practice that would generally apply to a virtual firm.

§2.06 Partnership

If the style of practice chosen is a partnership, then a number of matters should be considered.

You may want to incorporate a management company, which will be the lessee of the space. A management company may be useful to protect tangible assets of the law practice, such as computers and furniture, from the claims of potential creditors of the practice, and to split income with low tax rate family members. Consult your accountant about whether a management company would be beneficial to you. Should the partners create a management company or a partnership of management companies? If so, consider:

(a) share ownership—should it be equal or in proportion to partnership interest;
(b) payment of support staff;
(c) who will be the
  (i) lessee of office space,
  (ii) lessee or owner of office equipment,
  (iii) owner or lessor of cars to partners;
(d) what the banking arrangements will be;
(e) how to document the role of the management company or partnership of management companies;
(f) the need for a shareholders’ agreement to establish the principles of profit distribution, admission of new shareholders and the management contract with the firm;
(g) the appointment of one lawyer as a managing partner.

Note that in most firms the items in this section are continually re-examined and re-discussed. Answers given in the initial months and years of the practice will be modified as time passes.

Consider whether lawyers ought to specialize and, if so, determine areas of specialization and method of assigning work.

Consider the desirability of weekly or bimonthly partnership meetings. For each meeting

(a) prepare an agenda;
(b) determine the time and stick to it;
(c) establish a time limit for meetings;
(d) record important decisions in writing, either by a file containing occasional memos or by a minute book recording major decisions of each meeting. Allow individual lawyers to memo the file from time to time with their ideas and matters for discussion.

If partners contribute insufficient capital to finance the partnership, arrange bank financing.

**[§2.07] Limited Liability Partnership**

BC lawyers and law corporations may participate in limited liability partnerships (“LLPs”); see the *Partnership Amendment Act, 2004*, sections 30, 83.1 and 84 of the *Legal Profession Act* and Rules 9-12 through 9-20 of the Law Society Rules, as amended.

A limited liability partnership structure shields an individual partner from personal liability for the debts of the partnership or for negligence and wrongdoing of other partners, except to the extent of the partner’s share in the partnership’s assets. Individual partners continue to incur personal liability for their own negligence or wrongful acts and those of the persons they directly supervise or control.

Before applying to register as a limited liability partnership under the *Partnership Act*, law firms must apply and be approved by the Law Society. To receive a statement of approval, the firm must satisfy the Law Society that the intended name of the LLP complies with Chapter 4, Section 4.2 of the BC Code (marketing provisions) and that all partners of the partnership are members of the Law Society or a recognized legal profession in another jurisdiction (Rule 9-15(3)). Rule 9-15(4) states:

Despite subrule (3), an LLP that is an MDP in which a lawyer has permission to practise law under Rules 2-38 to 2-49 may include non-lawyer members as permitted by those Rules.

When a law firm offers services as an LLP it must ensure that all of its advertising indicates that it is offering legal services through a limited liability partnership. In accordance with requirements of the *Partnership Act*, the firm must also take reasonable steps to notify existing clients in writing that it has registered as an LLP and the resulting changes in the liability of the partners. To guide firms in meeting this disclosure requirement, Law Society Rule 9-17 sets out a form of notification statement.

The partners of an LLP are personally liable for a partnership obligation if and to the same extent that they would be liable if the obligation was an obligation of a corporation and they were directors of that corporation (*Partnership Act*, s. 105(1)); however, the partners are not subject to the duties imposed on directors of a corporation by common law or under s. 142 of the *Business Corporations Act*.

**[§2.08] Termination of Practice**

Part 3, Division 7, Rule 3-80 of the Law Society Rules governs withdrawal from practice.

A lawyer must advise the Law Society in writing of the lawyer’s intention to withdraw from practice and as to how the lawyer intends to deal with the disposition of files, trust money and other valuables and documents. The information to be included is the following:

(a) effective date;
(b) address for future contact;
(c) telephone number;
(d) disposition of open files;
(e) disposition of closed files;
(f) disposition of corporate records;
(g) disposition of wills, duplicate titles and valuable documents; and
(h) disposition of wills index.
The lawyer must also file the final Trust Report for the period from the date of the last Trust Report to the date of termination.

Finally, the lawyer must advise the Law Society within three months of termination of the disposition of any trust balances existing at the date of termination. See the two Law Society checklists—Winding Up a Sole Practice: A Checklist and Winding Up a Firm: A Checklist—at Quicklinks—Publication and Resources Forms—Practice Resources—Preparing to leave of move your practice (http://www.lawsociety.bc.ca/page.cfm?cid=355&t=Preparing-to-leave-or-move-your-practice).

§2.09 Termination of Employment

Rule 3.1-7, Commentary 4 to 7 of the BC Code govern the situation where an employed lawyer leaves a law firm to practise independently or to join a firm. The Rules place a responsibility on both the lawyer and the firm the lawyer is leaving to inform clients for whom the departing lawyer is primarily responsible (as soon as practicable) that the client has the right to choose which lawyer will continue the matter. However, when the departing lawyer and the firm agree, notice to the client can be dispensed with if the firm continues to represent the client.


A departing lawyer has a duty, upon receiving client authorization to take a file, to deliver a copy of the authorization to the firm, arrange security for outstanding fees and disbursements on any file taken, and abstain from removing a file until reasonable attempts to fulfill these duties have been made (Verlief Anderson v. Nelford (1992), 67 B.C.L.R. (2d) 365 (C.A.)).

§2.10 Lawyer Referral Service

The B.C. Branch of the Canadian Bar Association operates the Lawyer Referral Service in the Lower Mainland on behalf of the Bar. The service helps the public locate a lawyer practising in the field of law that their concern is in and gives the public the opportunity of having the first half-hour of consultation with the lawyer for a minimal fee.

With more than 67,000 referrals per year being processed throughout the province, the Lawyer Referral Service continues to be very active. With the growth of the appeal of the Service, there is a concern that members avoid unnecessary exposure to claims, and that a Legal Referral Service referral be treated in the same manner as any other professional undertaking.

For example, when a member of the public first makes contact with a lawyer through the Legal Referral Service, the lawyer should take notes so that there is a record of at least the following information:

(a) the name, address and telephone number(s) of the person dealt with and the date of interview;
(b) the nature of the problem(s) involved;
(c) any potential limitation date;
(d) the substance of any conversation and advice given; and
(e) disposition of the matter.

A further prudent practice would be to confirm, in writing, the questions the individual raised during the interview and the advice given. After the initial interview the lawyer is free to decide whether he or she will accept instructions and open a new file for the particular individual. For further information, contact the BC Branch of the Canadian Bar Association at 604.687.3221 in the Lower Mainland and outside the Lower Mainland Toll Free 1.800.663.1919.

§2.11 Legal Services Society

The Legal Services Society of British Columbia (“LSS”) is an independent, non-profit organization that provides legal help to people in BC who have limited income. LSS provides legal aid to eligible applicants by way of services, information and referral. Staff lawyers provide some services, while lawyers in private practice provide others on a referral basis. As well, LSS provides free legal information and education to the public.

LSS funds legal representation—provide legal fees and disbursements—for financially eligible people who face criminal charges (but not minor breach of probation, failure to appear and breach of bail), have “serious” family issues (which generally only include threats of violence, chronic denial of access, or threats to remove children), or serious immigration issues such as deportation. LSS also provides emergency telephone services for criminal matters through the “Brydges line”, funds duty counsel lawyers in criminal, family and immigration, as well as family advice through lawyers.

LSS provides self-help material and information publications in plain language (some are available in other languages) in print, online and by online video. A new LSS telephone advice line for family law clients was launched in 2010. Every weekday between 9:30 a.m. and 12:30 p.m., family lawyers give brief “next step” advice over the telephone to callers who do not qualify for other services.

To keep current about issues and services funded by LSS, see: http://lss.bc.ca.
Chapter 3

Law Office Systems and Procedures

§3.01 Introduction

Office systems are necessary to keep the work in a law office organized, timely, consistent and completed. Since many important functions and tasks are delegated to non-legal staff, established office systems and procedures assist both staff and lawyers.

Delegation must be done responsibly. Each system must be supervised. Often, a system is successfully implemented but ultimately breaks down because no one is ensuring that lawyers and staff understand the purpose and that they are following the system.

The practitioner must also ensure that new or temporary employees are properly instructed. Periodic internal review and testing of the operation of systems is necessary and will reveal any breakdowns.

For further details on all topics in this chapter, see Managing Your Law Firm (Vancouver: CLEBC, updated to 2001 only). See also Jackie Morris, Gayle Myers and Dave Bilinsky, “Opening and Maintaining Client Files” (LSBC, February 2002, updated 2006) and the Loss Prevention Planning Checklist, both available on the Law Society website at Publications and Resources>Practice Support>Client Files and >Office Organization.

§3.02 General Office Procedures

1. Office Manual

   It is important to take the time to establish an office policy, procedure and system manual. The existence of such a manual often distinguishes the well-organized firm from the survivor. It helps ensure that systems will be implemented. A well-documented manual ensures consistency. It enables everyone to use time more effectively since lawyers and staff can refer to it easily. Interruptions concerning less important matters are avoided.

   In addition to outlining firm policy matters, the manual should explain office systems and procedures and how to perform particular procedures. It should also include copies of any applicable forms or documents annotated with explanations for their use. Lawyers and staff should then be required to familiarize themselves with the documents, systems and procedures and to update themselves when the manual is updated.

   Many firms have electronic manuals and forms. One person can be given computer access to edit and update the master copy of a manual or form, while others can view it and print from any terminal. Remember to set an annual review date.

2. Filing System for Open Files

   Create a system for opening, closing, storing and destroying files. Keep active files separate from closed files. Explore the possibility of using a storage firm to store and retrieve old files.

   How should files be arranged and where should they be located in the office? There are several options. Files are commonly arranged alphabetically, numerically or alpha-numerically, often by area of law and by responsible lawyer. They can also be colour-coded by practice area. Files can be located centrally within the office or near the responsible lawyer or legal administrative assistant. The least desirable location is within a lawyer’s office (access is often impeded), unless there are security or confidentiality concerns (as there may be in a space-sharing or packaged office situation). Consider creating a system for keeping track of files as they are temporarily removed for use by the lawyers and other staff. Sign-out sheets are common and often are brightly colour-coded to remind staff and lawyers to sign files out: some place the sheet in one folder, while others insert the sign out sheet where the file is normally stored. You should also consider an annual file to keep track of one-time consults.

   Consider how you will store electronic files. Most firms have both paper and electronic format files. Systems vary from storing documents in specific electronic folders by client to using case management software, to creating a system within which all incoming and outgoing documents are scanned, digitized, and filed electronically (for a “paperless office”).

   As the responsible lawyer, you must consider individual and network security and how to protect client confidentiality by using adequate network access protections and by updating these as more advanced technologies become available. Educate yourself: the time spent up-front should enhance your efficiency.

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1 This chapter was prepared and is reviewed regularly by staff lawyers at the Law Society of British Columbia.
3. Closed File System

Keep active files stored separately from closed files and “non-client” files. Usually a minimum of two (2) years of closed files are stored at a firm with the older files stored off-site. The best organization is to assign and store by a new closed file number. See Felicia Folk, Jacqueline Morris and Karen Munro, “Closed Files? What Shall We Do With Them?” in (May 1996) 54:3 The Advocate for more details on closed files procedures and suggested file destruction dates. See also Closed Files: Retention and Disposition on the Law Society website at Publications and Resources>Practice Support >Client Files (http://www.lawsociety.bc.ca/page.cfm?cid= 2001&t=Client-Files)

4. Accounting System

Consider Part 3, Division 7 of the Law Society Rules.

Seriously consider obtaining assistance from a professional accountant. Accounting functions also can be contracted out to a bookkeeper. Ensure that your accountant or bookkeeper is familiar with the Law Society accounting procedures.

You will need to consider two basic types of accounts: general accounts and trust accounts. The general account is the basic operating account for the law firm business. The trust accounts include both a pooled trust account and separate trust accounts. Funds received from a client in trust will usually be placed in a pooled trust account. For some clients, the firm will set up a separate trust account so that interest may be earned on those funds. Since all withdrawals from trust accounts must be by way of trust cheques, you will need to determine a policy relating to writing of trust cheques.

Accounting records should be established for each client matter when the file is opened, whether or not a monetary retainer has been or will be received.

Arrange a system for following up on overdue accounts. At what point should you send out reminders? At what point should you send the matter to a collection agency or commence an action to recover your fees?

For more detailed information regarding trust accounting, see §6.01 to §6.10 of these materials.

5. Timekeeping Systems

Consider the various timekeeping systems for lawyers. Most often now lawyers use software that tracks billing and time.

Consider the merits of an integrated accounting and case (practice) management software for preparing the following statements monthly:

(a) accounts receivable (classified by age);
(b) fees billed by individual lawyers;
(c) work-in-progress summary;
(d) summary of cash received and cash disbursed;
(e) reconciliation of trust account; and
(f) reconciliation of general account.

For more information on accounting and bookkeeping see §7.01 to §7.07.

6. Handling Incoming Messages

A common thread runs through many complaints to the Law Society: the client is unhappy over the lawyer’s failure to communicate. Among other things, a failure to communicate may give the client a false impression that the lawyer has been inactive (or has done inadequate work), and may compound the effect of some other lawyer default, such as a failure to act promptly or a clerical error.

The Benchers’ concern over this problem is expressed in Rule 3.2-1 of the BC Code. You are required to serve your clients in a conscientious, diligent, and efficient way, and that service is measured by many factors, including whether you keep your clients reasonably informed.

Fax machines, email and voicemail might be used in the office to transmit inter-office or outside messages. All staff need to become familiar with the methods in use in the office. They also need to appreciate the confidentiality and privacy risks that attach to each form of technology in use.

Here are some suggestions for handling incoming telephone communications:

(a) if you are not available, the receptionist should forward all calls to your assistant (even if you have voicemail) who will usually be more familiar with the client and may be able to help;
(b) your assistant must be instructed to make a memo of each incoming phone call;
(c) your assistant should be given the authority to screen your calls, as well as to book your appointments;
(d) tell your client that it helps to leave the purpose of the call with any message. If the client is just looking for a copy of a document or some specific information, you can tell your assistant to help out
right away. You can then follow up with your return call later when you have time;

(e) wherever possible, have your receptionist tell clients you will call back “as soon as possible” rather than at a specific time. If you promise to call at a certain time, do it. If you do not call when promised, you appear disorganized and uninterested in the client;

(f) if for some reason you cannot call as promised, have your staff call and explain why you are unable to phone;

(g) give your staff permission to book client appointments when a client has called a number of times and has not been able to reach you; and

(h) if your assistant is not available, your calls can go through your voicemail. Adjust your message regularly for court days, holidays, etc. so clients know where you are.

7. Handling Mail

Avoid confusion by setting up separate baskets for incoming mail, outgoing mail, mail for hand delivery and mail for pick-up.

(a) Incoming

Set aside a specific time each day to deal with the mail—both print and email. Some lawyers review mail daily with their assistants, because much can usually be delegated and this is a good opportunity to coordinate client file work and workload. Follow these practices:

(i) establish procedures in your office and with your assistants for managing email messages and document attachments;

(ii) date/time stamp all incoming print mail and documents to establish the important fact of when the correspondence was received;

(iii) do not stamp original documents, but affix a slip for stamping, or stamp on the back;

(iv) attach incoming print mail to the front of the appropriate file and give it to the lawyer;

(v) the lawyer should read and take all necessary steps to respond to all correspondence before it is distributed to others or filed and make an immediate decision on all other mail;

(vi) the lawyer should promptly note all items that need to be diarized and BF the files that do not need immediate action and have the assistant note these dates also;

(vii) establish procedures in your office for filing incoming correspondence, documents, etc. in the main file and in the sub-files; and

(viii) the assistant should create replies, make necessary copies, and file all correspondence and documents in the main file or appropriate sub-file before returning the file to the filing cabinet.

(b) Outgoing Mail

Usually, the lawyer should sign the letters. If staff are authorized to sign certain correspondence, they should sign either with their own name or per the lawyer or firm. Note Rule 6.1-3 of the BC Code, which states, in part:

6.1-3 A lawyer must not permit a non-lawyer to:

…

(k) sign correspondence containing a legal opinion;

(l) sign correspondence, unless

(i) it is of a routine administrative nature,

(ii) the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,

(iii) the fact the person is a non-lawyer is disclosed, and

(iv) the capacity in which the person signs the correspondence is indicated;

Ensure that “Encl.” is included on letters whenever there is an enclosure. Staff responsible for mail preparation must then ensure that documents are enclosed before mailing.

Make a copy of all outgoing correspondence to be retained in the appropriate file and for a paper bring forward system, if it is being used. Clients should be copied with relevant documents and this should be noted on the documents.
Email and Electronic Messaging

Some of the same considerations for organizing, “filing” and responding to “mail” (with and without document attachments) apply equally to messages received electronically by various means (handheld devices or portable devices as well as desktop systems). For example, you must develop systems to manage the flow of these communications (who receives, has access, has authority to reply, etc.) and how you will store and retrieve these (e.g., print and file, store electronically using some file management software). You also want to consider the expectations of clients given the near instantaneous nature of e-mail and manage those. It may not be practical to deal with email at the same time as traditional mail but it also is not efficient to respond to mail as you receive it since it can seriously interrupt your work flow. Standardize your approach so that it best suits your practice and work style. Perhaps most critically, there are unique security issues that you need to appreciate and deal with.

Two articles provide some useful guidance around the use and practices relating to email and messaging.

**Benchers’ Bulletin**

2009: No. 3 Fall

**Practice Tips**, by Dave Bilinsky, Practice Management Advisor

**Email and security issues**

♩ Communication’s never been as easy as today
...Now time and distance melt away
No digital delay
And some things can be written down that we’re too shy to say… ♩

Lyrics and music by Pet Shop Boys.

Email technology is a double-edged sword — offering speed and ease of reply, but carrying with it a litany of possible problems and miscommunications, which multiply quicker than you can click “send.”

This column identifies some of the practice problems presented by email and computing resources, and offers practical tips on how to handle them.

**Do you have all the emails?**

It is unusual for anyone to have just one email account. As such, you may have client emails on the office network, on web-based email such as Gmail or Yahoo, and on home email accounts. It is important to gather all those email messages together in one place — either a paper file or an electronic one on your network — ensuring that file contains all communications with the client and other parties.

**Password protection**

Do you change passwords regularly and immediately change all passwords for employees who have left? It is not unknown for ex-employees to come back into the office network via remote access protocols to delete information on the system, including any emails they can find. Test your passwords against password checkers (Microsoft has a good one) to ensure that you are using strong passwords. Use a password storage application in order that you are not reusing the same password for multiple applications.

**Email security**

We take email privacy for granted, but there are situations when unencrypted email may not be appropriate. Consider taking the text of the communication and placing it inside an encrypted document that is attached to a covering email which does not say anything other than “please see attached.”

**Lost in translation**

You may assume that an email was received, but it may have been misaddressed or caught by a spam filter used by the intended recipient. Don’t assume that silence in the face of an email is tacit acceptance of what was set forth. Follow up unanswered emails with a telephone call.

**You’ve got mail**

Don’t let your email pile up in your inbox. Email applications may have a fixed amount of storage; once over this limit, you may lose all your messages. In some cases there is no warning that this is about to occur. Set up a folder structure on your network and move your email into the appropriate client folder (“save as”) rather than keeping it in your email application.

**Capture real-time conversations**

Do you use instant messaging to communicate with clients or other lawyers in your office? These IMs may not be logged by your system, and as such these discussions will be lost as soon as you close the application. Consider how to capture these communications in the same way that you capture emails.

**Back-up your portable**

Emails and other documents stored on laptops or other portable devices could vanish if the device is lost or stolen. Take steps to ensure that these communications are automatically copied to or stored on your office network. Also ensure that they have robust security (such as hard drive encryption) as well as remote “wiping” software to protect client confidentiality.

**Protect your system**

Ensure that you have trusted and up-to-date anti-virus and anti-malware installed on your system. You do not want to be accused of inadvertently transmitting a virus or trojan to a client or lawyer via email.
For the record
Emails are subject to discovery and can be actionable. Ensure that your staff only uses your email system for your office-related matters. Have an authorized use policy for your office that details appropriate (and inappropriate) use of your email and internet resources.

Metadata
Don’t email electronic documents without first removing the metadata. Consider using a metadata removal tool or converting documents to PDF (and using the metadata removal tool in Adobe) to ensure that you are only sending information you wish your client or other parties to see. Read the December 2008 “Practice Tips” for more information about metadata.

Clean slate
Securely delete all data on computers that are being retired. You don’t want to see a news headline about lawyer and client data turning up on a discarded computer.

Remote connections
Do not have file sharing applications on any computer that connects to the office network. There is simply no reason for these applications to be within an office network. Ensure that your remote access implementation meets current state of the art -security and encryption.

Yours truly…
Create an email signature block containing your contact info that is automatically attached to every message. In that signature block, assert a claim of privilege over the contents of the email and attachments.

Clear the air
Firm up your retainer before you give any advice via email.

Mind your manners
While email is very easy and convenient, as lawyers we still need to maintain a professional approach. Most importantly, we need to guard against saying something in an email that we would not consider saying face to face with someone or, worse yet, not like to see in print in the Vancouver Sun.

Additional tips on email, were provided in Insurance Issues: Risk Management, “Email: Preventing a mailstrom.” Following is an extract from that article.

Email: Preventing a mailstrom

Mailstrom: a restless, disordered, or tumultuous state of affairs
Mailstrom: where email is the source of that restless, disordered or tumultuous state of affairs

Email — it’s fast, convenient and, to the dismay of a number of lawyers, also at the centre of a spate of reports to the Lawyers Insurance Fund. In this risk management issue, we first set out the different ways in which a lawyer’s use of email has triggered a report to us. The examples of “what went wrong” are from actual claim reports. We then offer some practical risk management advice that will help you avoid similar mistakes. There are real advantages to email, and incorporating the risk management tips into your personal and firm email routines will help you enjoy the benefits while staying safe from the “mailstrom

Risk management tips
How can you avoid making these — or other — mistakes in using email? Here are some tips that you, as well as your staff, may find helpful:

- Read each incoming message carefully and thoroughly. Be sure to read to the end as there may be previous messages below, and look for attachments. Even if it’s a “string” in which you’ve participated, check through the earlier messages to make sure there aren’t any you’ve overlooked. And if there are several attachments, appreciate that this fact may not be obvious from the display; you may need to use the scroll bar to see the complete package.

- When you’re drafting a message, proofread carefully for any clerical errors. And use “spell-check,” but watch that it doesn’t also create new problems. The feature isn’t designed for the legal world, and inadvertent acceptance of the wrong word will make your message either a bit nonsensical or possibly more of a problem.

- If you’re not able to effectively read (or proofread) a message by reviewing it on screen, don’t try and save paper. Print it out.

- Type your message first and don’t add the address field until it’s ready to go. This practice will help you avoid sending a message before you’re ready by inadvertently hitting “send.” Alternatively, if you want to use the “reply” function, consider drafting your message separately and then pasting it into the message field only when it’s in final form.

- Pay particular attention to use of the “reply all” command. Do you really want all of the recipients named privy to your reply? Also, remember that if you were blind-copied on a message, using “reply all” or “forward” may inadvertently disclose your receipt of the message to the recipients.

- Make sure that you have selected the correct address if your email program offers you a choice when you begin to type, or you use the “check names” feature. Turn off the “auto-complete” function in your email program; people have similar names and lawyers have inadvertently sent confidential information to the wrong parties courtesy of their program wrongly auto-completing an email address.

- Stop before you hit “send.” This is your last chance to make sure that you are sending the message you really should send to the people who really should receive it. Carefully review the list of addresses. Read through your message once again. And if it’s a message fueled by charged emotions, check in with a colleague or save as a draft until the following day, if possible, so that you have the benefit of a cooler head before you decide to send.

- Appreciate that sending an email is no guarantee that your message has been received or reviewed. If you’re facing a deadline, pick up the phone. If you do send an email on a
matter that’s urgent or otherwise time sensitive, or you need instructions, say so in the subject line and in the message itself, and speak to a live body to confirm your message was received and reviewed. If you’re using an address that you have located through a source other that the intended recipient, call to make sure that the address is correct and current. Internally, if you send an email reminder to your secretary to take a critical step such as filing a writ, make sure that you set up a system through which your secretary confirms that the message has been received, reviewed and acted on.

- Use the subject line to state the purpose of the message clearly and, as noted above, any time sensitivities. Do not deal with different matters in the same message. Ask your client to do the same.

- Consider setting up a protocol with your client to avoid missing a critical message. And if you set up a system, test it to make sure that it works. If you are exchanging emails in a retainer in which similar instructions or messages are repeated, use numbers, dates and/or other identifying features in the subject line that will clearly flag the emails as separate and distinct.

- Set up a system to manage those times when you will not be checking your messages. Whether you are away on vacation, tied up in court or otherwise occupied, implementing a system will also catch other critical or time-sensitive materials you might receive by email, such as faxes or litigation proceedings. Either arrange for someone to check your email or receive copies, or use the “Out of Office Assistant” tool so that anyone sending a message receives clear notice of your absence and how to reach you (or your assistant) if the matter is urgent. Consider acquiring a wireless device that will allow you to access email from outside your office. And when you are able to check your messages, remember to read them all through before responding to any so that you have a complete picture.

- In appropriate cases, particularly if the message requires more formality or is going to be of any length, use a letter rather than an email to communicate your message (and use email to send the letter — rather than the content — if you wish). One lawyer, who no longer uses email for certain exchanges, advises: Be very careful to treat emails like other legal correspondence, and do not use this method of correspondence without a reflection between composition of the correspondence and the act of pushing the “send” button.

- Recognize that email’s utility is also limited because of the risk of miscommunication (studies have shown that email use actually increases this risk). If the matter you’re dealing with involves a particularly critical or sensitive matter in which there’s no room for potential miscommunication, face to face meetings are best (even phone to phone is preferable).

- Deal with the issue of communicating by email upfront, and as part of your written retainer. Ensure that your client provides informed consent as to whether or not you can deal with them by email and at what address. Advise them that they may wish to set up a private email address to which only they — not, for instance, their employer or family members — have access. Let your client know if you only review or reply to email messages at certain times.

- And remember first principles: a series of email exchanges doesn’t lessen the need for a retainer letter, initial client interview, written opinion or any other fundamentals that must be addressed on every matter you undertake. You must still manage the legal issues through a comprehensive review of all facts and issues, communicate effectively and keep all the balls in the air. Beware of trying to cobble telephone calls and emails together to decipher a matter in order to reduce costs. One lawyer who was caught when this piecemeal approach failed to clearly set out the division of responsibility between the client’s lawyer and accountant, advises: Obtain a full explanation in a written document. And don’t let the sense of urgency that email can create cause you to stray from your usual good practices. A lawyer who forgot to make an offer sent by email “without prejudice,” no longer “allows other lawyers to accelerate the pace” through email.

The electronic world has also created risks of a more technical nature, from “metadata” (the invisible ink in computer files through which you may inadvertently disclose confidential information) to hackers (creating the need to encrypt certain documents). Email is no exception, with the technical aspects of the process creating risks such as spam filters that trap messages you want to see, systems that inadvertently direct new messages straight to a “junk” folder, and changes in servers that result in losing some messages, both incoming and outgoing, with no ability to identify those lost. And as with any form of communication, there are other issues you will want to consider and manage in using email (e.g. protecting privilege; record retention).

Although the tips we offer will help save you from the email traps that caught your colleagues, you will want to be aware of other risks such as these, and educate yourself on how to use electronic tools in a safe, secure and appropriate way.

8. Confidential Information

Read Section 3.3 of the BC Code (discussed in ch. 6 of the Practice Material: Professionalism: Ethics). Note particularly Rule 3.3-1 and Commentary 8 to that Rule: a lawyer should avoid indiscreet conversations and other communications, even with the lawyer’s spouse or family, about a client’s affairs and should shun any gossip about such things even though the client is not named or otherwise identified. Similarly, a lawyer should not repeat any gossip or information about the client’s business or affairs that is overheard or recounted to the lawyer. Apart altogether from ethical considerations or questions of good taste, indiscreet shoptalk among lawyers, if overheard by third parties able to identify the matter being discussed, could result in prejudice to the client. Moreover, the respect of the listener for lawyers and the legal profession will probably be lessened.

While you must not violate the client’s confidence and must preserve solicitor-client privilege, you must also instruct your staff on these obligations. Some staff may be unaware that the client’s name,
or the fact that the client is a client of the firm, is confidential. Remind staff not to discuss client matters outside the office as they may be overheard. Include this reminder in your office manual.

9. Office Security

Office security is often overlooked or presumed. It deserves attention and a defined policy. The Law Society receives a number of errors and omissions claims relating to lost or missing documents. Remember there is always a danger of sensitive documents coming into the wrong hands.

(a) Physical Security

Access by the public to your office must be restricted and/or supervised. Fire exits often give unsupervised access to file storage or other critical areas.

Where space sharing-arrangements exist with other tenants, ensure that files are secured and maintain locked filing cabinets.

Firms need to be familiar with all electronic privacy issues and to install and implement systems for maintaining security of the office network, desktops and remote access capabilities. Accounting records, precedents, work in progress, and other material stored in electronic systems should be backed up daily, if possible, and the backup copy stored off-site. The off-site copies will prove invaluable if the computers are stolen or destroyed by fire.

Be careful not to throw away entire legible documents at the photocopier or in recycling boxes. Use a paper shredder.

(b) Custody of Valuable Documents

Lawyers often have temporary or permanent custody of valuable documents (e.g., original wills, power of attorneys, bonds, etc.). Ensure that a “Valuable Property Record” for such items is kept in a permanent bound book. Physically verify the existence of these items from time to time.

Keep these documents in a fire-proof locked safe or filing cabinet or in a safety deposit box.

Generally no document should be released to a client or others without the lawyer’s specific knowledge and approval.

Develop a special policy which provides for (1) storage in a locked place, (2) maintenance of an alphabetical list, and (3) a lawyer’s signature before a document can be released.

(c) Security of Corporate Records

Corporate records, agreements, and other documents are often filed together in one binder. For this reason, from time to time, unauthorized parties may inadvertently have access to privileged information. Section 42 of the Business Corporations Act lists those documents to be retained at the company records office. However, certain documents are excluded from those that can be examined by the public and even by shareholders. The lawyer must be careful to allow the person who wants to review the corporate records to only review that which they are entitled to review, and must remove all privileged, restricted, and excluded documents from view by those not entitled.

§3.03 Conflicts System

Understanding how to recognize conflicts of interest, how to prevent them from occurring, and what might happen if they do occur is essential.

A conflict of interest is a situation that impedes the lawyer or firm’s ability to provide a client undivided loyalty. Each law firm must have a system for determining whether there is a conflict of interest before starting to act for a client. Whether manual or electronic, the system requires a centralized index, book or database. A conflict check should be performed a minimum of twice during the course of a file: when a potential client contacts the firm, and again after the first interview.

For the first check, your assistant or receptionist should, at a minimum, obtain the client’s and opposing party’s names and any former names when a potential client contacts you initially. This check is done to eliminate a potential client before that person discloses any confidential information. Once a client discloses confidential information, you and the whole firm may be unable to act for anyone in the matter.

The second check is a much more detailed one after you interview the client about all relevant parties and witnesses. Check further whenever a new party enters the case, such as when a new defendant is added. Finally, enter “one-time consultations” in whatever system you are using.

Each conflict index should contain the following (provided the information exists):

- the client name (including alias);
- current and former clients;
- affiliates or partners of the client;
- directors or officers of the client;
• affiliated corporations/entities of a corporate client;
• adverse parties;
• co-plaintiffs or co-defendants;
• known relatives of the client as well as other parties;
• common law spouses of the client and others;
• one-time consultations;
• name of counsel representing any party to the matter; and
• name of lawyers and staff in the firm.

There are several different conflict systems available. An integrated electronic accounting and case management system with a conflict checking system component is the most reliable method. Failing that, the following procedures will assist in checking for conflicts:

(a) completing the file opening sheet including identifying your client, the opposing party(ies) and any other interested person(s);

(b) circulating (weekly) the file opening sheet to all lawyers in the firm, or a list of new clients and other related parties; and

(c) checking client and opposing and interested party names periodically in the alphabetical client and opposing party indexes.

Remember that you are responsible for identifying conflicts between multiple clients on the same file. This identification requires a review of the ethical issues and often substantive law.

Assign the responsibility for ensuring that conflicts are checked to someone and establish a method for recording that the checks are completed. Record whatever procedure you are using in your office manual. For a system to work, everyone in the firm must understand how the system operates and participate in its operation.

You should also develop a policy around action taken when a conflict arises, include that policy in your office manual and ensure that staff understand what steps to take when one occurs.

A model conflicts of interest checklist is available on the Law Society of BC website, by following the Practice Support link.

[§3.04] Use of Checklists

1. General

Checklists are useful not only for dealing with administrative procedures in a law practice, but also for substantive client matters. For many procedures, it is useful to create separate checklists for lawyers and non-lawyer staff.


These may be used as a basis for creating firm procedural checklists.

The general purpose of checklists is to ensure that:

(a) all required procedures are identified and then performed consistently, systematically and completely;

(b) there is maximum efficiency in handling routine functions; and

(c) the lawyer has evidence that work delegated has been performed.

2. Checklist Preparation

Checklists are designed by the lawyer and/or staff, or adapted by them from other sources, to suit a particular purpose. Checklists are different from client interview forms and separate interview forms can also be prepared. Checklists should be easy to read and review, and contain designated areas for the initials, dates, and other data for the user to complete. Functions or procedures should be listed in the order of occurrence, where practical. To ensure that the checklist is as versatile as possible, set aside additional space at appropriate places for additions or explanations. Checklists should be reviewed regularly and revised.

[§3.05] Creating a Precedent System

Surveys indicate that approximately 80% of law office document work is based on the use of precedents. It is important to spend adequate time setting up the precedent system and establishing procedures to ensure routine functioning even under time pressure.

All lawyers should have access to and be required to refer to the precedents that have been adopted by the firm. Sometimes it is best for a firm to develop a standard set of precedents in the discrete areas of law and have lawyers work from the standard precedent. This ensures that users begin from a common point each time. Users can then add any special clauses to the precedent bank separately, as they are developed, so that the standard precedent is not distorted or corrupted by the client situation that gave rise to the special clause.

When the precedent system is established, or added to, each precedent should first be edited, preferably by two lawyers. Accordingly, precedents should be included in
the precedent file or electronic file only after a responsible lawyer has formally approved them for quality and appropriateness.

An “approval” and “date” stamp or electronic equivalent should be put on the precedent before it is added to the precedent system (this eliminates garbage and assists in determining whether a precedent is consistent with current law and is appropriate for general use).

The precedent should be purged of specific names, dates, amounts, and other information unique to the originating file. Instructions should be inserted at appropriate locations for subsequent users of the precedent.

Precedents should be stored in a centralized location. A comprehensive precedent index will facilitate the ongoing use of precedents. The precedents and the precedent index may be stored in hard copy (i.e., printed copy), electronically, or in both formats. Ensure that only one master hard copy of each precedent and precedent index is in circulation.

Ideally, the precedent index will be arranged by title, and where appropriate, by practice area, by type (e.g., all “directors’ resolutions”), and by transaction in the sequence in which they are usually required. If the index is maintained electronically, the data entered into the precedent index can be used to print out the different types of precedent indices that are needed. In addition, the precedents indicated in the database can be retrieved by keyword, date, author, client and whatever other way that suits a particular practice area. A database also makes it possible to access a larger bank of “informal precedents”, which might include lawyer’s “bottom drawer” precedents, fact-specific precedents or files, opinion letters and research memoranda. The database might store the “full text” of precedents, indexed summaries of the precedents, or both.

In some firms, frequently-used precedents are sometimes made part of a document production system or expert system. In an expert system, the user creates the first draft of a document or set of documents by responding to a series of questions about the client and the file: the software program then completes the draft precedent using the answers.

It may be desirable to create a drafting style guide for documents produced by the firm to ensure consistency of style and to enhance the quality.

1. **Document Production**

   Procedures are required to ensure control over document drafting, document processing and control and updating of precedents.

   Standard instruction forms can be created to enhance control over the procedures. These forms should help lawyers to avoid ambiguity; for example, if a date is important, they should state “date required”, “date prepared”, etc., rather than simply “date.” The forms should also help staff to interpret priorities. If time is an issue, lawyers should indicate “a.m.” or “p.m.”, and avoid phrases such as “Hot”, “Rush”, “A.S.A.P.”, and “Urgent”, which will only cause staff confusion in times of crisis.

   Each time a new draft is produced, ensure that the operator stamps it with a control stamp indicating the draft number (if done manually), the date, his or her initials and the file number. The draft number and file number can be inserted simply using software features.

   After changes have been made, purge the system and electronic backup copy of earlier drafts to avoid confusion with the master approved document.

   When creating and revising electronic documents lawyers and non-lawyer staff need to guard against inadvertent exchange of confidential information. Remember that when you create an electronic document you are also creating metadata, some of which you may not see on your monitor. That metadata can include previous versions of a document. This is even more critical when documents are being exchanged outside the firm. Make sure you understand the metadata in your software and how to remove it from documents. To learn this, check the software manufacturer’s website.

2. **Proofreading**

   Documents should be proofread, not just spell-checked by software. Where performed by two individuals, the more experienced should read and review the finished document.

   The final draft should be read in entirety—not for exceptions only—since technology errors and omissions can occur at any stage.

   Use an “approval” stamp or an equivalent electronic version, which should be initialed by a lawyer before duplication and/or release of documents or inclusion in an electronic bank.

   When documents produced include accounting information, ensure that a calculator is used to re-add amounts to supplement proofreading and identify errors (e.g. transposition of numbers) in the case of manual calculations.

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Professionalism: Practice Management
Securing PDF documents

🎵 if you wanna be in my world
You’ve gotta know the password (password)
To make it right...🎵

Recorded by Kylie Minogue, “Password.”

I recently learned of a situation where a client received an advice letter from a lawyer in Microsoft Word format, modified the contents and then attempted to claim that the law firm had given them erroneous advice.

Fortunately, the law firm was able to produce a copy of its original letter, which documented their (correct) advice. But this entire situation would have been avoided if the firm had sent out a secure Portable Document File (PDF) instead.

How does one secure a PDF? According to John Simek, computer forensics technologist, legal technology expert and frequent speaker at the Law Society’s Pacific Legal Technology Conference, securing a PDF is not complicated but it does have to be done correctly.

“Many people believe that setting a password using Adobe Acrobat will secure their document. But type ‘Adobe Password Cracker’ into Google and you will find a whole host of programs to break into them,” says Simek. For example:

[name of product] can be used to decrypt protected Adobe Acrobat PDF files, which have “owner” password set, preventing the file from editing (changing), printing, selecting text and graphics (and copying them into the Clipboard), or adding / changing annotations and form fields. Decrypted file can be opened in any PDF viewer (e.g. Adobe Acrobat Reader) without any restrictions — i.e. with edit/copy/print functions enabled.

These password hacking products work by removing the “flag” that Adobe’s password function applies to the document. It does not depend on the “strength” of your password. Once the “flag” is gone, the document is completely open to be edited, printed, etc.

In order to properly secure a PDF, Simek advises a two-step process. First, apply a “Change Permissions Password” to restrict any changes to the document. Second, apply an “Open Document” password to prevent anyone but the intended recipient from reading it.

Using this dual password method, the software used to “crack” the Adobe document password cannot get at the “flag” and therefore cannot break the security of the document (at least at this time).

This system also safeguards against the situation described above. By providing your client with the “Open Document” password but not “Change Permissions Password,” they can view the contents of the document but they have no ability to edit it.

Simek advises making both passwords robust i.e. not vulnerable to a “dictionary attack,” for example, to prevent someone trying to guess the passwords and defeat the security of the document. As Kylie Minogue might say, you gotta know the password(s) to make it right.

3. Off-Premises Storage

When back-up copies are stored off the premises, ensure that there is a procedure for having them periodically updated. If there is a fire in the office, it will be crucial that the off-premises back-up is current.

§3.07 [§3.07] Breakdown of Office Systems

Too often an office system or procedure is implemented but later abandoned for the following reasons:

Abandoned by Staff

(a) New employees are often instructed by the employees they are replacing. Usually this results in poor instruction from the outgoing employee who, at the time, is not fully motivated. Place written instructions about the system in your office manual.

(b) The system may have been inappropriate in the first place. For example, it may have been inherited from a large firm or the lawyer’s articling firm and be cumbersome and of little use to a sole practitioner. Discuss the problem with your staff and develop a new system.

(c) The procedure may be unnecessarily time-consuming.

Abandoned by Lawyers

(a) There may be a reluctance or inability to implement systems which will be followed by all lawyers. After the implementation of the system, lawyers may not take the time to understand the system in order to cooperate in the working of it.

(b) There may be a failure to identify one person in the office with authority to enforce adherence to a system.

(c) Lawyers may not take the time to supervise the procedures to ensure they are working or being followed.

(d) The proper procedures may not have been set out in an office manual.

(e) Lawyers may be reluctant to document matters which they perceive to be done only for their own purposes.
Chapter 4

Client File Management and Timekeeping

[§4.01] Introduction

1. The Importance of Systems

Good file management includes developing a good rapport as well as an appropriate relationship with the client from the start. (See chapter 5 for more information on client relations). Having robust file management procedures, document practices, and diary systems is critical to ensuring you meet the quality service that is expected of a lawyer.

Some of the most important systems and procedures are:

(a) the file opening procedure (§4.02);
(b) the file organization (§4.03);
(c) the limitation reminder/bring forward system (§4.04);
(d) time recording and billing systems (§4.05);
(e) the retainer (discussed in Chapter 5 at §5.05); and
(f) the file closing procedure (§4.07).

Each new client should have a separate file except for “one-time consultation” clients. The materials from the single visit matters (such as independent legal advice material, powers of attorney, and notarial work) may reasonably be filed together in an annual folder, provided these files are indexed and closed at the end of each year and the client names are entered into the office conflicts system.

As with other office systems, merely implementing a client file management system is not enough. The system must be managed. This includes periodic review, supervision and reinforcement by the lawyer.

For further details on all topics in this chapter, see Opening and Maintaining Client Files available on the Law Society’s website at Quicklinks > Publications and Resources > Practice Resources > Client Files: http://www.lawsociety.bc.ca/page.cfm?cid=2001&t=Client-Files).

2. Integrated Client File Management, Timekeeping Billing and Accounting Systems

Much of this chapter discusses the systems for file management and timekeeping. While some firms still use manual, or a combination of manual and automated systems, many lawyers and managers of law practices recognize the benefits and economies of using automated systems to streamline work and increase productivity. Lawyers need to educate themselves to the technology that is available.

In most cases each individual case management software program goes much further when interconnected. For example, Amicus Attorney has features that allow you to integrate your telephone call slips and messages and your email and will link to Outlook and associate all these calls, messages and emails with your files in Amicus. An integrated accounting and case management system can include calendaring, contact management and communications, document management, conflict searches and research, as well as other features. Some examples of integrated accounting and practice management software packages available are: PC Law, Billing Matters with Time Matters, LawStream, RainMaker, SmartWeal, Tabs III + PracticeMaster, ProLaw.

[§4.02] File Opening

1. File Opening Sheet

A properly completed file opening sheet helps to prevent critical questions from being overlooked. Ultimately, this information will affect the quality of the representation given. At the same time, the file opening sheet provides a checklist to ensure that all the incidental, administrative, and file index procedures involved in file opening are accomplished. However, it does not take the place of a comprehensive client information interview form.

Also remember that you may be required to obtain and retain documents to fulfill your obligations under the client identification and verification Rules. Law Society of British Columbia Rules 3-98 to 3-109 require lawyers to follow client identification and verification procedures when retained by a client to provide legal services,

1 Reviewed annually from 2002 by PLTC. Reviewed annually from February 1994 to March 1999 by Jacqueline Morris and Gayle Myers, then staff lawyers at the Law Society of B.C. Reviewed annually since 2002 by PLTC.
subject to various exceptions. The client identification rules require that lawyers make reasonable efforts to obtain basic identification information about clients. Additionally, client verification rules apply when a lawyer receives, pays or transfers money on behalf of a client, or gives instructions on behalf of a client in respect of the receipt, payment or transfer of money.

The rules specify timing for identification and verification procedures (Rules 3-105 and 3-106), procedures for clients who are individuals not present before the lawyer (Rule 3-104), information and documents to be recorded or copied (Rules 3-100 and 3-102), and retention periods (Rule 3-107). The rules also require lawyers to withdraw if, while retained or when obtaining client identification and verification information, they know or ought to know that they would be assisting in fraud or other illegal conduct (Rule 3-109).

To help lawyers, the Law Society has produced a Client Identification and Verification Checklist. This checklist may be used to record information required under the client identification and verification rules. However, lawyers should refer to the rules themselves when determining the information necessary to identify clients and verify their identity. Lawyers are encouraged to pay close attention to all of the definitions in Rule 3-98 as they may not be consistent with common usage, and identification and verification requirements vary according to the type of transaction and entity. (Defined words and phrases are bolded in this checklist.)

For details about these obligations, see the Rules and see the Client Identification and Verification Checklist available on the Law Society of BC website at Quicklinks>Publications and Resources >Practice Support>Client Identification and Verification (http://www.lawsociety.bc.ca/page.cfm?cid=943&t=Client-Identification-and-Verification).

While file opening sheets vary, they should include space for:

- the client’s name (previous name or alias);
- home address and phone numbers;
- business phone number and address;
- alternate addresses and phone numbers (especially important if the client may be moving, has no fixed address or is living in shelter or temporary accommodation such as a shelter);
- occupation;
- opposing party name(s);
- other possible conflicts;
- opposing lawyer name;
- subject matter of the file;
- responsible lawyer’s name;
- date the file is opened;
- applicable limitation and other critical dates; referral sources;
- billing information;
- file closing date and file destruction date.

Among other things, the file opening sheet should also help you to

(a) record special instructions and keep them highlighted (i.e., don’t give out client’s address);
(b) record a critical limitation date or closing date on the file;
(c) ensure that you communicate your understanding of the instructions directly back to the client, particularly if you have received your instructions from a party other than the client;
(d) help ensure that there is no conflict of interest in acting in the matter; and
(e) provide evidence that these procedures have been completed or information recorded.

The responsible lawyer should complete the file opening sheet at the initial client interview. Once completed, the lawyer should pass it quickly to the staff member responsible for opening files, who will fasten it to the communications side of the file as the first document in a manual file and/or file it appropriately in the automated filing system. The responsible staff member should then make the necessary entries: file opening book; automated client file management system or client index; opposing party database or index; accounting system; limitation date system; bring forward system, and so on. Finally, the staff member will perform a conflicts check.

Some lawyers who are working with paper files prefer to have “blank” files prepared in advance of initial interviews. These files contain the file opening sheet, procedural checklists, interview forms, a retainer letter and other forms or documents peculiar to an area of law but which are required at the outset.

When, after the initial instructions, you indicate that you will “get back” to the client, you should ensure that this is done. You can do this by noting a call back date in your reminder system.
2. File Opening Book/Record

The file opening “book” provides a chronological record of all files opened. Historically the “book” was a looseleaf binder; however, the essential entries are now most often made on the file opening lists created in accounting programs, case management software, or spreadsheet programs and stored on a backup system.

The electronic folder or manual book should contain the following information: a sequential file number; the file name; the date the file is opened; the responsible lawyer’s name; the client’s name, address and phone number; the reference or subject matter; the opposing party name(s); blank spaces for the date the file is closed and the closed file number, and perhaps, for the file destruction date.

Among other functions, the records provide valuable management information such as:

(a) the number of files being opened per month;
(b) the number of files categorized by area of law; and
(c) the files still open beyond a reasonable time (particularly those indicating limitation dates).

Once a master list is created, several useful sublists should be created. An active file list (updated monthly) can be used for billing and managerial purposes, as well as a bring forward (BF) reminder, and an opposing party list.

Consider how you will incorporate “one-time consultation” clients into your file and client systems.

3. File Management Index Systems

The type of index system used will depend in part on the size and diversification of the law practice. Typically, the file indices are used to enable staff to deal with various administrative and other matters arising from the files, to provide a means of maintaining control over the files, and to assist in identifying missing or misfiled files.

When considering the file naming system, look at the accounting system or case management software and consider what file numbering and classification systems can be automated by this software.

Files are typically indexed in one or more of the following ways. With search technologies this is simple since the program captures critical information when opening a file.

(a) Alphabetical Index by Client Surname
This index enables you and your staff to find reference details of the file without referring to the file itself. This index might contain much of the information entered in the file opening record, such as the client’s and opposing party’s names, the file number, the matter, the date the file is opened, and the date the file is closed.

(b) Alphabetical Opposing Party Index/List
This index helps you and your staff to respond to queries from opposing parties and facilitates conflict searches by providing cross-references to the client file name.

(c) Custodial Index
This index, which is usually filed alphabetically by client name, provides a separate inventory control record for wills and other valuable documents that are in the custody of the firm.

(d) Chronological Index
This index is usually arranged by date—a manual index will have separate dividers for each month and year. The chronological index is used for high volume matters such as corporate annual report filing.

4. Accounting Records

Accounting records should be established for each new file matter when the file is opened. This should be done even if no retainer or other trust money has yet been received from the client. The records are:

(a) individual client trust ledger card or electronic file record;
(b) individual client accounts receivable/disbursement ledger card or electronic file record; and
(c) individual client time billing record.

The initial information to be recorded would include the following:

(a) name of client;
(b) address;
(c) file number;
(d) matter; and
(e) responsible lawyer.

The trust ledger record is often combined with the accounts receivable/disbursement ledger record.
**FILE OPENING SHEET [§16.67]**

*Client identification and verification.* Rules 3-98 to 3-109 require lawyers to take reasonable steps to identify their clients and where “financial transactions” are involved, to verify their clients’ identity. Lawyers must comply with the rules in all new matters commenced on or after December 31, 2008 regardless of whether the client is an existing client or a new client. See the Client identification and verification checklists at [http://www.lawsociety.bc.ca/page.cfm?cid=943&t=Client-Identification-and-Verification](http://www.lawsociety.bc.ca/page.cfm?cid=943&t=Client-Identification-and-Verification)

---

### FILE OPENING INFORMATION

| File opening date: ____________________ | Limitation date: ____________________ |

#### CLIENT INFORMATION

New Client? YES [ ] or NO [ ]  If NO, existing Client #: ____________________

Client Full Name: ____________________________________________________________

Client Home Address: _________________________________________________________

Client Business Address: _____________________________________________________

Telephone Numbers

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<th>Business local:</th>
<th>Home:</th>
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<td>Cell:</td>
<td>Cell:</td>
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<td>Pager:</td>
<td></td>
</tr>
<tr>
<td>Fax:</td>
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</tbody>
</table>

Assistant’s name: ____________________________________________________________

Company YES [ ] or NO [ ]

Business Type: ____________________________________________________________

Web Page: ____________________

Individual YES [ ] or NO [ ]

Occupation: _______________________________________________________________

Employer: ____________________

Spouse’s Name: ____________________________________________________________

---

#### MATTER INFORMATION

Brief Description: ____________________________________________________________

Opposite Party:

<table>
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<tr>
<th>Address:</th>
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©The Continuing Legal Education Society of British Columbia. This form appears as [§16.67] in the *Managing Your Law Firm Practice Manual* and is reprinted and modified here with permission. All rights reserved.
Opposing Lawyer’s Name: _____________________________________________________________
E-mail: ____________________________________________________________
Fax: ________________________________________________________________
Address: ________________________________________________________________
Postal Code: __________________ Telephone: __________________
Assistant’s name: _________________________________________________________

OTHER INFORMATION
(including other parties to the matter)
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

ADMINISTRATION (initial when done)

____ Client index checked for conflict  ____ Client advised of conflict (if appl.)
____ Retainer/engagement letter sent  ____ Retainer/letter returned & approved
____ Limitation/BF dates diarized and entered on system

BILLING INFORMATION

Responsible lawyer: ____________________________
Billing Frequency:  Monthly [ ]  Quarterly [ ]  Annually [ ]  On Completion [ ]
Agreed fee ($) : ___________________________________________________________
Or Fee Basis:  [ ] Hourly Rate  OR [ ] Contingency OR [ ] Other Explain:
____________________________________________________________________________
Fee agreement signed? [ ] Yes [ ] No - Why Not:
____________________________________________________________________________
If hourly, note estimate if given: __________________________________________________

BRING FORWARD DATES
Is there a limitation period?  YES [ ]  What is it? ________________________________
or NO [ ]  Lawyer’s initials: ____________________________________________

Diarized by: ________________________________________________________________

IMPORTANT DATES

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<thead>
<tr>
<th>LIMITATION/BF DATES</th>
<th>REASON</th>
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FILE CLOSING DATE: ____________________________

Professionalism: Practice Management
File Organization

1. Introduction

Arranging documents and papers in files in an orderly sequence ensures that information can be readily obtained. Unless rigid procedures are established for filing of documents, there is a real danger that papers and documents will be lost or mislaid, or at the very least, lawyer and staff time will be wasted in finding materials. The procedures must be easy for all staff to use.

Staff lawyers of the Law Society who conduct practice reviews under s. 37 of the Legal Profession Act occasionally find that a lawyer’s files are a jumble of notes, correspondence, documents and pleadings. This problem is often one of the underlying triggers for a practice review. On rare occasions, lawyers fail to establish a file storage system. Files should be kept in filing cabinets in either alphabetical or numerical order.

An increasing number of active client files exist in paper and electronic format, or completely electronic. Content of electronic files ranges from storing client documents on specific files, to adopting a case management program, to complete electronic filing of all incoming and outgoing documents, emails, negotiations, communications, etc. in the “paperless office.”

2. Organization of the File Folder

A properly organized file folder should be created for each new matter. You should select the appropriate type of file folder, determined in part by the complexity of the matter:

- manila file folder;
- pocket file;
- plastic folder;
- multi-file folder (with divided sections);
- concertina file.

All file papers should be

- fastened down (Acco or equivalent fasteners);
- securely fastened in file pockets; or
- placed in an envelope which is itself fastened.

Use of fasteners is essential to keeping correspondence, notes and documents in order, and to prevent loss or misplacement.

The remainder of this section illustrates how some paper files may be organized. Obviously, the software you use will determine how electronic files might be organized in a standardized way. However,

3. Organization of Simple Files

**Left-hand side: Communications (all in chronological order)**

- file opening sheet
- retainer letter or contingency fee agreement
- client information checklist
- dated notes of conversations
- other correspondence and memos to file

**Right-hand side: Documents or Pleadings**

- legal documents
- searches (e.g., for real estate files or corporate agreements in company/commercial files)
- all other matters chronologically
- top document—procedural checklist

Both sides make up the main file in a simple client matter. If you receive additional documents, expert reports, or appraisals, they should be ordered chronologically and may be fastened to a separate sub-file. Moreover, if the file becomes more complicated, sub-files should be prepared and an expandable file used to house the sub-files.

4. Organization of Complex Files

Use a multi-file folder or a concertina file. Use divider tabs or sub-files. Some lawyers find that using coloured sub-file folders or sub-file labels makes identification clearer. For instance, in a personal injury file, the main file could be white, the pleadings sub-file blue, medical reports red, etc. Attach a detailed index if possible. Organize as appropriate for the particular area of law. A main file and sub-files should be prepared. The main file will contain all the communications contents described above.

(a) Commercial Files

The sub-files commonly used in commercial files are “searches” (including letters to and from various taxing authorities and registrars) and “drafts” and “final documents”, especially if there are numerous documents. This last sub-file is useful when preparing the brief of documents for the client after the transaction closes.
(b) Family Files

These files commonly have sub-files labelled “client documents”, “opposing party documents”, “pleadings” (if litigation is commenced) and “agreements” (if any). When family matters are highly contested, you may wish to consider further sub-files such as “assets”, “liabilities”, “maintenance”, “custody/access”, “case law”, “expert reports” and “pensions.”

(c) Civil Litigation Files

Litigation files often contain the following sub-files: “pleadings”, “client documents”, “opposing party documents”, “case law”, and, if it is a personal injury case, “medical evidence” and “wage loss evidence.” Other sub-files may include “expert reports”, and “appraisals.” Alternatively, consider the following organization using a trial book.

(i) Correspondence File

(ii) Pleadings file or binder

(iii) Trial Book—organized and segregated with tabs

- index
- trial plan
- pleadings
- opening comments to the court
- statements of witnesses (separately tabbed)
- direct and cross-examination questions
- briefs of law on anticipated evidentiary problems; liability questions, quantum (separately tabbed)
- discovery questions (to be read in or used in cross-examination) (separately tabbed)
- outline of argument
- closing statement

[§4.04] Keeping Track of Dates//Bring Forward Systems

1. Introduction

Each lawyer needs a suitable reminder system for limitation dates and routine bring forward (BF) matters, along with clear, written instructions for its maintenance and supervision. The importance of a formal reminder system cannot be overemphasized; it is a key to a well-organized office and less stressful practice.

Limitation dates are those for which you or your client are statutorily, contractually or otherwise committed. A high proportion of claims under the Lawyers Insurance Fund arise from alleged missed limitation dates.

For current information about commonly missed limitations in each area of practice, see the Law Society publication, Beat the clock: Timely lessons from 1600 lawyers, on the Law Society of BC website at: http://www.lawsociety.bc.ca/page.cfm?cid=3823&t=Limitations-and-deadlines.

Missed limitation dates are almost impossible to defend as the Lawyers Insurance Fund Claims Counsel can rarely dispute liability. It may be possible to argue that liability was acknowledged at a more recent date and therefore the limitation period has no expired, under s. 24 of the Limitation Act. If not, it may be possible to argue that it has not expired because the first day on which the claimant knew or ought to have known about the claim was later than was first thought or that one of the special circumstances apply, under sections 8 through 12. If successful, the lawyer must pay for the cost of “repairs” which is usually within the lawyer’s deductible ($5,000 for the first paid claim, $10,000 for the second). In short, the lawyer will pay for the mistake, not the insurer.

If avoiding the claim is not possible, the only other defence to a missed limitation date involves limiting quantum. The client’s case may then go to court under the umbrella of a lawyer’s negligence lawsuit to determine the amount the client would have received if the lawyer hadn’t missed the limitation period. In this circumstance, legal fees for the defence may easily exceed the client’s original damages. These cases often settle out of court; the Lawyers Insurance Fund Claims Counsel has the authority under the insurance policy to settle without the lawyer’s consent.

Very few claims arise from ignorance of the law, rather they tend to be systems failures and slips. “Systems failures”, i.e., ignoring the office systems that have been put into place, are seen most often in shorter limitations (e.g., Notices to Admit under the Supreme Court Rules and Local Government
Act notice requirements). “Slips” include communication problems, within the office, with outside agents and with the client (e.g., “who” is responsible for filing “what”), and simple mistakes, such as limitation reminders becoming buried on the lawyer’s or secretary’s desk. Law firms are extremely vulnerable to limitation errors when lawyers or secretaries in the firm depart or arrive.

**Bring forward dates** are those on which all files in progress and specific matters are routinely reviewed and followed up. Specific matters include responses to correspondence, receipt of instructions, reminder to do work, etc. Every file should have at least one bring forward notice in the system in order to ensure that no file is neglected.

Over 50% of complaints made to the Law Society each year may directly or indirectly relate to failures of reminder systems, including failure by lawyers to act on the reminders.

2. **Characteristics of Good Reminder Systems**

There are several reminder systems available, depending on your preferences and that of your staff. While the system or systems implemented to track both limitation and other bring forward dates may address each separately, many of the same concerns underlie the system design; hence, they will be discussed together here.

Regardless of the system selected, it should be designed so that reminders are not only brought to the lawyer’s attention but kept alive until the underlying matter has been properly completed. Further, the reminder should give sufficient time so the legal work can be completed on time. One rule is that each reminder date or limitation date should be noted 3–4 times before the ultimate date. To ensure no file “slips through the cracks”, another rule should be established in the office that no file is put away in the filing cabinet without a reminder in the system, even if it is only to ask if the file can now be closed. Each file should be brought forward at least once every month.

The coordinated efforts of the lawyer and administrative legal assistant are normally required to make a system work. While lawyers make most decisions about which dates to note in the calendar, the legal administrative assistant’s attention to detail and willingness to double-check entries are integral to most systems.

Accordingly, a “double” reminder system involving both lawyer and assistant is strongly recommended. (If no assistant is available, the lawyer should ensure that each limitation date is recorded in two different places.) Because the costs of missing even one limitation date can be devastating, it is best to implement a “double” reminder system for limitation dates.

Review and follow-up of reminders should be developed as an essential daily routine in a lawyer’s practice.

Initially the reminder system can be activated from information recorded on the file-opening sheet (note that it is difficult to maintain a reliable diary/reminder system successfully in isolation—it should be integrated with other procedures for handling client files). Follow-up and limitation date reminders are usually, but not always, instigated by the initial client instructions. The system should be flexible enough to respond to later changes.

The reminder system should be kept in a central location and secured at night, reviewed each morning, and followed up at the end of each day.

The system should be periodically tested and purged to ensure that erroneous reminders or misfiled reminders are corrected.

The basic types of limitation date/BF systems are as follows: 1–31 day accordion file, electronic and case management software systems, desk diary, central diary or index cards.

3. **Automated Systems**

There are a number of automated BF systems. These features often are incorporated into legal accounting packages and case management software so that there is no need for separate systems or software. However, you should review possible software to ensure that multiple dates for the same file and reasons for each reminder can be entered. You should be able to use the system for both general bring forwards as well as limitation date reminders.

Diary and reminder systems can be maintained electronically. Such an arrangement can facilitate communication between lawyer and legal administrative assistant in that they share the information on the system. However, communication and efficiency is only enhanced where the information is maintained: ensure that you backup all your electronic files.

Designate someone for entering the relevant information into the system. The person responsible for noting the reminder dates should enter the appropriate information: the client name, file number, reminder dates, dates leading up to the reminder date and the reason. Reports should be run daily, weekly and monthly.
4. Accordion File Folder System

A BF copy is made of whatever you need to be reminded of, usually a letter to which you need a response, but it could be a note, copy of a pleading, and so on. The note or copy of the letter should clearly identify four items: the client, the file, whatever you need to be reminded of, and the bring forward date. Each BF copy is filed, in an accordion file folder which is numbered 1-31, according to the bring forward date.

It then becomes your legal administrative assistant’s job to pull the BF copies daily and bring them to your attention. If the matter has been attended to, the BF copy can be discarded. Otherwise, you may want to follow up with a telephone call or another letter or set a new BF date.

The main advantages of this system are that it takes up very little of an assistant’s time (there is no preparation of a card or inputting data into a computer), and the copy tells you at once what you are waiting for (there is no need to pull the file and rummage through it to try and remember what it is you want). In addition, it works well for files requiring many reminder dates. Also, if your assistant is away, it is easy for you or another staff member to understand and use it.

5. Desk Diary System

When a limitation date is noted, the lawyer makes an entry under the appropriate date in the lawyer’s personal diary (paper or desktop/handheld device), recording the file number, client name and action required.

The lawyer then records at least three early warning reminders at dates of six months, two months and two weeks ahead of the limitation date in the personal diary. The lawyer then records the actual limitation date in red ink on the outside of the client folder.

Corresponding entries are then made in the legal administrative assistant’s diary.

Each time the secretary pulls the file for the early warning reminder, the entry in the administrative assistant’s diary is initialed off. Similarly, each time the lawyer receives the file in response to an early warning reminder, the lawyer’s diary is initialed off.

A reminder system should be used in conjunction with the lawyer’s personal diary but not as a substitute for the diary.

There are some disadvantages to solely relying on this system: limitation dates may get confused with appointments, other dates and less important deadlines; the lawyer’s diary may have limited space and not allow room for writing the reasons for the reminder; administrative legal assistants may forget to make the notes.

Note: a “to do” list noting reminders in either the diary/computer or in a notebook which is carried over from day to day supports the whole BF system.

6. Examples of Dates to Note in Bring Forward Systems

(a) Client Services

(i) Due dates for
- commencing an action
- trial court briefs and record filings
- expert reports
- probate proceedings
- filings with government agencies
- corporate or securities matters
- appellate briefs
- tax returns
- estate matters
- responses to correspondence

(ii) Renewal dates for
- licences
- copyrights, trademarks and patents
- notices of claim
- judgments
- leases
- insurance coverage
- charters

(iii) Appearance dates in
- chambers
- trial court
- discoveries
- bankruptcy proceedings.

(iv) Review dates for
- wills
- trusts
- buy/sell valuations of business interests

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3 This section is based on material prepared by Jacqueline Morris for the CLE publication, Law Office Management for Small Firms - 1991 (April 1991).
(v) Expiration dates for statutes of limitations, builders’ lien limitations and other statutory limitations

(vi) Closing dates for real estate transactions

(vii) Responses to correspondence and settlement offer, receipt of retainers or instructions, reminders to do particular work

(b) Office Management
Due dates for tax returns, GST and PST remittances

(i) Renewal dates for
- office lease
- insurance
- practice certificates
- notary certificates

(ii) Review dates for
- staff evaluations and raises
- accounts receivable

7. Review Procedures

Implement management review procedures to further enhance control over client matters and prevent errors and omissions from happening. For example, it is important to have some backup system to detect neglected files, especially those with no fixed deadlines and those (through some miscommunication) with no supervising lawyer. Management review procedures vary considerably between firms; the following list contains some examples.

Daily

Review the current day’s diary and to do list and the preceding and succeeding pages of the diary for matters to be done or followed up. Review and assess files and diary. Meet and coordinate work plans with your secretary and other staff.

Weekly

Systematically review open client files in filing cabinets to detect overlooked matters.

Weekly

Scan office desks, filing rooms and other locations for misplaced or abandoned files or documents.

Weekly (at least)

Hold staff discussions to discuss the status of particular files, client complaints, unresolved issues, backlogs, and other concerns.

Periodically

Observe the opening of the mail to ensure that cash, valuable documents, and complaint letters are being properly handled.

Periodically

Review client file index cards for open files to identify “sleeper” files, misfiles and general reliability of the index. Test the accuracy of the index in locating files. Consider affixing colour tabs on urgent or other critical files.

Periodically

Review the accuracy of the limitation reminder system to ensure that reminders by date are not being misfiled or misrecorded, that reminders relating to closed files are being purged, and that files needing action are being identified as planned.

Monthly

Review the monthly listing of trust balances. This should identify trust balances that have not changed for 30 days (indicating possible attention required to client file) and balances relating to files with limitation dates.

Review Work-in-Progress reports to identify those files which need to be billed and those files with little or no activity in the previous month.

§4.05 Recording Time and Billing

1. Reasons for Recording Time

Statistical data, accumulated by every bar association which has appointed a section or committee on law office economics and management, has proven that lawyers who keep time records earn more than those who do not.

However, in addition to deriving more net income from the practice of law, there seem to be additional reasons for recording time consistently:

(a) time records maintained or segregated by type or work—criminal law, real estate transactions, corporate work and so on—form a basis for eliminating unprofitable or undesired work;

(b) retrospective review of time records are the bases for selecting the areas of practice which occupy a significant proportion of the lawyer’s time, and suggest the areas that the lawyer should emphasize when developing systems for handling repetitive work;

(c) time records promote the habit of efficiency;
(d) time records constitute a basis for supporting any fee challenged by a client;

(e) solicitor-client rapport is enhanced when a client receives not only a statement but also a restatement of the work done on his or her behalf;

(f) time records are an excellent basis for monitoring the efforts of recently hired associates.

In *Coullee v. Sterling*, [1991] B.C.W.L.D. 1918 (S.C.), a client injured in a motor vehicle accident agreed to pay his lawyer $150 per hour under a contingency fee agreement if the client terminated the lawyer’s services. After Crown charges related to the accident were stayed, the client dismissed the lawyer from working further on the civil action. The lawyer billed for $7,500. The master allowed fees at only $3,000; he was unable to properly apply the hourly rate provided for in the agreement because the lawyer had kept no time records.

In summary, there are many reasons for a lawyer in private practice to keep time records.

2. Timekeeping Systems Generally

In simple terms, a timekeeping system is a mechanical procedure for recording billable and non-billable time. However, many systems have been developed which do more than that. A progressive system will automatically render a statement to the client at the end of the billing period, and cause the data to become part of monthly, quarterly and annual reports rendered to lawyers for prospective, retrospective and introspective analysis of the health of the firm.

A timekeeping system should be simple to operate, otherwise it will soon be abandoned. Also, inaccuracies will result unless the system avoids excessive transposition of numbers.

Timesheets must be routinely and promptly prepared or time recorded promptly electronically. The information must be summarized promptly and totals and comparisons made with comparable periods for management information purposes.

The time record must distinguish:

(a) time chargeable to each individual client;

(b) time expended by each lawyer but not chargeable to any client; and

(c) total time expended by each lawyer, day by day.

The timekeeping system must:

(a) record an explanation of each service performed in a format suitable for billing purposes. Codified billing phrases and abbreviations should be used whenever possible;

(b) accumulate the total time expended on each individual client by all lawyers of the firm; and

(c) provide comparative information on time charged and time billed for each client.

Criteria for Rating Timekeeping Systems

(a) Is the system inexpensive to acquire and maintain?

(b) Is it simple to use?

(c) Is it likely to promote the habit of recording time?

(d) Is adequate space allowed for recording all possible desired entries concerning the time spent?

(e) Is little time required to make all entries to complete each recorded unit of time?

(f) Will the client receive a detailed restatement of the work done?

(g) Does the system provide for integration from recording of the time through to resubmitting of an account receivable and periodic reports?

(h) Does it minimize incidences of “lost” time by forgetfulness?

(i) Does it provide immediate availability of the time status of a case throughout a pending case?

(j) Is there no duplication of effort by lawyer and legal administrative assistant between recording the time and billing the client?

(k) Does it provide an automatic reminder to submit delinquent accounts receivable without reviewing all statements?

(l) Does it assist in reminding of “dormant” cases?

(m) Is it a unitized system—does it obviate the need for separate calendars, diaries and other reminders?

(n) Does the system encourage accuracy rather than guessing in recording actual time spent; or preclude overstating time?
3. Automated Time Recording
The general procedures for automated time recording are as follows:

(a) lawyers record their time directly into the system using a variety of methods. The time is recorded with the appropriate narrative describing the lawyer’s activities or according to established codes for various services when signing on;

(b) the time is charged and calculated at the specified lawyer rates. Most automated systems permit more than one billing rate for each lawyer based on the type of work. In addition, fixed fees may be specified instead of a rate;

(c) the time is input and remains on the system in detailed form until it is billed. This detailed time information can be assessed by lawyer, by client and by matter.

Automated procedures for disbursement recording are as follows:

(a) to ensure full recovery of client disbursements, expenses such as long distance charges, courier fees, court reporter fees, service fees and photocopy fees are input to the system on a daily basis (telephone and photocopier charges can be transmitted directly from those devices to the system);

(b) when preparing a bill to a client, all unbilled time and disbursements are included on the draft bill. The lawyer is able to select the level and type of detail to be included in each billing.

With an automated system, each lawyer is provided with a regular work-in-progress (often called a pre-bill report) that indicates, by client, all:

- unbilled time;
- unbilled client disbursements;
- accounts receivable; and
- trust balances.

The documenting of unbilled time and disbursements acts as a reminder to lawyers to bill on a more regular basis. It can also show progress toward daily, monthly, and yearly billable goals. A report that includes trust balances reminds a lawyer, at a minimum, to bill the trust balance in order to transfer funds from trust into law firm accounts.

More frequent billing can improve cash flow and client relations. Clients will be aware on an ongoing basis of the fees and disbursements, which reduces the potential for disputes or identifies billing problems at an early stage.

An automated system can improve billing detail and accuracy. Different clients prefer different degrees of detail on their accounts; automated time recording allows the selection of various statement formats with different levels of detail.

There are many software packages available. As mentioned earlier, the integrated packages streamline these steps even more by more seamlessly recording the time when a lawyer is working on a particular client matter.

4. Non-automated Time Recording
One of the cheapest and simplest time manual recording systems is as follows:

(a) each lawyer records time as expended on each client on a daily sheet;

(b) the legal administrative assistant maintains a summary record for each client, filed alphabetically by client;

(c) at the end of each day, the legal administrative assistant transfers each individual time entry from the day’s sheet to the appropriate client summary record indicating the description of services;

(d) any time not chargeable to clients is transferred to separate records for each category: business development, education, and so on;

(e) the total charged to all clients for the day is recorded on a monthly summary with separate columns for each lawyer. The daily totals of non-chargeable time are transferred to a separate monthly summary sheet. This is for management information purposes;

(f) at billing time, the client summary record is pulled and the time is totaled and written on the summary record. The word “billed” is written beside the total and the summary record and draft bill passed to lawyer for approval. If the amount billed is less than the total expended, a notation should be made on the card indicating whether the difference is to be written off or carried forward to a future billing.

If the lawyer is precise in completing the time description column of the daily charge sheet, the bill can be prepared directly from the sheet with little further reference to the lawyer. Using the time charge abbreviations indicated on the bottom of the daily charge sheet will help.
Another simple system, for use only where the lawyer’s practice requires large amounts of time to be spent on relatively few charges, is as follows:

(a) the procedure is similar to the one described above, except that one sheet can be used for a number of days;

(b) there is no space on the sheet for description of services, so it must be supplemented by a separate diary or other similar record of description of services;

(c) procedures for summarizing total time and billing time are similar to that outlined above.

§4.06 Work-in-Progress

1. General

Work-in-progress (“W.I.P.”) represents the unbilled hours accumulated on client files, usually valued at the standard hourly rate charged by the lawyer. Sometimes this is referred to as unbilled value of time. It represents an inventory of lawyers’ time, which increases each time a charge is recorded on a file. Each time a client is billed, the time relating to that billing is reduced from the work-in-progress inventory.

Remember that the work-in-progress record is for information purposes only. The value of your work-in-progress has to be realized, that is, converted to billings and then collected from the client.

2. Controls

Certain controls should be implemented over unbilled time to ensure that it stays manageable:

(a) time records must be submitted regularly and promptly;

(b) time for each client must be summarized and billed regularly;

(c) accumulated unbilled time for each client should be reported to the lawyer from time to time.

Billing policies based on accumulated unbilled time should be established for the firm. An example of such a policy is to bill at the earlier of

(a) completion of the client matter;

(b) monthly;

(c) when the value of unbilled time exceeds $___.

If such a policy is established, the accounting department must be instructed to report to the lawyer as soon as:

(a) accumulated time exceeds $___ for a particular client; and in any event

(b) monthly (for all clients).

To assist in future planning, refinements can be made to the monthly W.I.P. reporting summary, such as projecting the amount to be billed and the month of billing.

§4.07 File Closing

The last acts you will need to perform for most files are to properly close, store and eventually destroy the file. Use a file closing sheet for this process.

A file closing sheet should contain information such as:

- the name of the file;
- the date the file was closed;
- who closed the file;
- file stripping checklist indicating what if anything was removed from the file and where it was sent or placed; and
- instructions about storage and eventual destruction of the file.

The responsible lawyer should review the file to be certain that no outstanding matters remain (such as undertakings). The responsible lawyer should then sign off that the file has been reviewed and is ready to close.

Next the lawyer should send a closing letter to the client and return whatever documents should be returned from the file, carefully documenting what has been sent. The client should acknowledge receipt of those file contents before the file is closed.

Bill the client for the final time, making certain that the bill and disbursements have been paid before the file is closed.

All proper storage and retention dates need to be entered in the file and in the office storage system.

On closing, strip the file. When doing so, follow the suggestions in Closed Files: Retention and Disposition, on the Law Society of BC’s website at Quicklinks > Publications and Resources > Practice Support > Client Files (http://www.lawsociety.bc.ca/page.cfm?cid=2001&t=Client-Files). This article provides excellent tips on things such as what materials should go to the client, what material should be destroyed, what material you should keep, etc. This topic is also discussed in “Closed Files: What shall we do with them?” (May 1996) Vol. 54 Part 3 The Advocate, 403–416, by Felicia Folk, Jacqueline Morris and Karen Munro.

Using a checklist, or incorporating a checklist as part of the file closing sheet, can help ensure that the essential steps and procedures are performed before the file is closed.

Ultimately, make sure the file is properly coded and filed within your system as a closed file.
WHOSE FILE IS IT ANYWAY?

Who Owns Client File Documents When the Retainer Ends

By Jacqueline Morris, Felicia S. Folk and John Vamplew

I. INTRODUCTION
Who owns the paper in client files?

In "Retention and Disposition of Client Files: Guidelines for Lawyers," Professor DeLloyd J. Guth attached as Appendix B a list outlining ownership of client file documents upon termination of the retainer when the account is paid and when a solicitor's lien is claimed because the account is not paid. Since that time, the Law Society of British Columbia has received weekly inquiries about who is entitled to originals or copies of client file documents. The callers have been referred to Appendix B.

The purpose of this article is to expand that Appendix for the benefit of lawyers and their clients. We provide an updated checklist followed by a discussion of authorities in support of the division we have made between documents owned by the lawyer and by the client and what can or cannot be retained by the lawyer when a solicitor's lien is asserted. For some documents, there is little or no authority or, since the authority pre-dates 1900, its relevance may be questionable. We have attempted to indicate the more controversial documents and place them where we believe they would fall under the categories set out in Cordery on Solicitors.

Whether documents are delivered to the client following termination of the retainer, or the file is delivered to another party subject to a solicitor's lien, it is important for the lawyer giving up possession to retain a copy, made at his or her expense, a copy of all relevant documents and correspondence. This practice could protect the lawyer in the event a complaint is made to the Law Society or legal action is brought against the lawyer in relation to the file.

II CHECK LISTS
A) File Document Ownership at Termination of Retainer — Accounts Paid

1) The client owns:
   a) originals of all documents coming into existence before the retainer was entered into (unless they belong to a third party);
   b) originals of letters sent by the lawyer to the client;
   c) originals of letters sent by third parties to the lawyer (including expert opinions and medical reports);
   d) copies of letters sent by the client to the lawyer;
   e) copies of letters sent by the lawyer to third parties;
   f) memoranda of law;

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5 The following article by Jacqueline Morris, Felicia Folk, and John Vamplew was first published in January 1994. 52:1 Advocate, 87-99. The authors concluded that the case of Kingswood Explorations v. Elkind, infra appeared to be an anomaly in that a claim of solicitors' lien on corporate records was successful. The authors note that a recent Tax Court of Canada decision seems to indicate that under limited circumstances a solicitor's lien on a corporate minute book will be valid: Kaiser v. Canada, 2002 TCJ, No. 196, April 2002.
g) notes and tapes of conversations with witnesses (if the trial has not been held);
h) receipts and vouchers for disbursements;
i) transcripts from examinations for discovery and from trial;
j) originals, copies and drafts of all deeds and other legal documents in contentious and non-contentious matters;
k) documents made in preparation for trial, such as chambers briefs, trial briefs, books of documents, and trial books;
l) copies of cases, briefs, and other documents prepared by the lawyer which the client has paid for.

2) The lawyer owns:
a) tape recordings and notes of conversations (other than with witnesses, if the trial has not been held);
b) notes and summaries of evidence and notes of submissions to court;
c) inter-office memos (other than memoranda of law);
d) diary entries;
e) time sheets;
f) computerized records;
g) books of account;
h) originals of letters sent by the client to the lawyer;
i) copies of all other correspondence made by the lawyer at the lawyer’s expense;
j) authorizations and instructions, written or oral, given by the client to the lawyer;
k) documents sent to the lawyer during the course of the retainer by the client with the intention that they become the lawyer’s property;
l) notes and documents prepared for the lawyer’s own benefit or protection and at the lawyer’s expense.

B) Solicitor’s Lien — Accounts Unpaid
A lawyer asserting a solicitor’s lien is entitled to withhold all documents in the client’s file except the following:
a) corporate records;
b) the original of a will;
c) a deed in favour of the lawyer but reserving a life interest and power of revocation in the client;
d) documents delivered by a third party to the lawyer acting on behalf of the client, where there is no authority, express or implied, to receive such documents;
e) mortgage documents where the lawyer, acting for both the lender and the borrower, tries to assert a lien against the borrower;
f) original court records;
g) documents delivered to the solicitor for a limited purpose;
h) documents received from a third party who has reserved his or her rights with respect to those documents;
i) documents that prejudice or delay proceedings involving third parties;
j) documents that the client would have no right to retain;
k) documents required by court order to be surrendered.

III FILE DOCUMENT OWNERSHIP AT TERMINATION OF RETAINER — ACCOUNTS PAID
Every document and every piece of paper in a client’s file belongs to someone. The question of “Who owns what?” will be answered by reference to legal principles of ownership and possession, not by consideration of legal ethics. The Court in Aggio v. Rosenberg quoted with approval the following from an article in the Law Society of Upper Canada Gazette. “The documents that should be handed over to a client is a matter of law and not of professional conduct.” A lawyer must, subject to any solicitor’s lien, produce the client’s documents when requested to do so. Documents should be delivered as quickly as possible and must be in a reasonable order and condition.

A) Documents Coming into Existence Before the Retainer
Often during the management of a file, lawyers take possession of documents which were created or received in the course of preparing the file. Following termination of the retainer, the original of these documents must be returned to the rightful owner.

B) Documents Coming into Existence During the Retainer
Cordery7 says the lawyer can establish ownership of documents created or received at the time of the retainer by meeting three criteria:
(a) He was under no duty to prepare them,
(b) They were not in fact prepared for the benefit of the client, and
(c) The client cannot be regarded as being liable to pay for them.

Cordery further says client ownership is proven by showing:
(a) The documents were a necessary part of the business transacted...and
(b) He has in fact paid (or is liable to pay) in one form or another for their preparation.

1) Cordery’s Four Categories
According to Cordery, and based on the criteria set out above, all documents coming into existence during the retainer fall into four broad categories (the special status of correspondence will be addressed separately below):

a) Documents prepared by the lawyer for the benefit of the client and paid for by the client

Documents in this category include all original deeds and documents, along with earlier drafts and copies, as well as cases and briefs prepared by the lawyer. They are the property of the client as they meet the twofold test of client ownership and must be provided to the client when requested. While inter-office memoranda generally are not the client’s property, we suggest this is not the case for memoranda of law. Where a lawyer prepares memoranda of law or has them prepared by an agent or employee, he or she does so with the purpose of offering the client the best possible advice and legal service. Such memoranda are clearly for the client’s benefit. Where the client ultimately pays for this legal work, either through the lawyer’s fee or as disbursements, such memoranda of law become the property of the client.

Documents made in preparation for trial, including chambers briefs, trial briefs, books of documents and trial books, are the property of the client. Where the client cannot receive the original, such as in the case of a chambers brief because the original is submitted to the court, the client is entitled to a copy. These documents clearly meet the two-fold test established in Cordery as noted above. The client is charged for preparation of these documents. Their preparation is often a necessary procedure when taking a matter before the courts.

The ownership of notes remains controversial. The traditional view is that all notes, including notes of interviews and preparations for trial, and tape recordings, are the property of the solicitor. However, a September 1993 publication of the Law Society of New Zealand, following Cordery’s categories, now places “memoranda of
telephone conversations with third parties in documents belonging to the client. 12 We agree that ownership of most notes and tape recordings of conversations are the property of the lawyer, as they are made to aid the lawyer’s memory. However, we suggest that notes and tape recordings of conversations with witnesses, whom the trial has not been held or the matter settled, belong to or the client. They provide extremely important information for new counsel in preparing the case.

b) Documents prepared by the lawyer for his or her own benefit or protection at the lawyer’s own expense

Documents in this category include notes and summaries of evidence, notes of admissions to court, inter-office memos (but not memoranda of law), diary entries, time sheets, computerized records and books of account. These original documents belong to the lawyer. As well, notes and tape recordings of conversations with the client or others with the exception noted above are for the lawyer’s own use or protection and are the property of the lawyer.

c) Documents sent by the client to the lawyer during the course of the retainer, property to which is intended to pass to the lawyer at the date of discharge These documents, including originals of letters, authorities and instructions written or given to the lawyer by the client, are the property of the lawyer. 13

d) Documents prepared by a third party during the course of the retainer and sent to the lawyer otherwise than at the lawyer’s expense

Documents of this nature are the property of the client. They include receipts and vouchers for disbursements. 14 The client is entitled to expert opinions, including medical reports, and transcripts from Examinations for Discovery and from trial, as the client is ultimately expected to pay for these documents either as a disbursement or indirectly, having paid an insurance premium. For a discussion of withholding a document, if the information in it may upset the client, please see (d) under Correspondence below.

2) Correspondence

Both the client and the lawyer are entitled to copies of all correspondence in the file provided each bears the cost of the respective copies. As part of the lawyer’s ongoing effort to keep the client informed of the progress of the file, the client should have been provided, on a regular basis, with copies of correspondence. If the retainer is terminated before the conclusion of the file and the client obtains new counsel, originals and copies of correspondence as set out below should still be provided so the new lawyer has a complete set of this information. Ownership of the original of a letter will depend on the circumstances. 15

a) Lawyer to client

The client is entitled to retain the original of all correspondence sent by the lawyer to the client. The file copy belongs to the lawyer, 16 but should be copied for the client at the client’s expense, especially if the file is going to new counsel so new counsel can more quickly be brought up to date with the case.

b) Client to lawyer

The original of a letter sent by the client to the lawyer is the property of the lawyer, 17 but should be copied for the client at the client’s expense, especially if the file is going to new counsel, for the reason set out in (a) above.

c) Lawyer to third party

A third party may retain the original of any letter sent by the lawyer acting on behalf of the client. The client has a right to the file copies of all such correspondence. 18 The lawyer may make a further copy at his or her expense.

d) Third party to lawyer

Correspondence sent by a third party to a lawyer acting on behalf of the client is the property of the client. The client is entitled to the originals of these letters, 19 while the lawyer may make copies, at his or her own expense.

What should a lawyer do if the third party specifically requests that the client not see the letter or the lawyer believes the information contained in the letter might in some way endanger, upset or offend the client? This issue was addressed in McKaskeili v. Benseman, 20 where a solicitor received a letter from opposing counsel containing remarks which he believed to be offensive and professionally embarrassing. The solicitor, acting in good faith and his view of the best interests of his client, returned the letter and requested the opposing solicitor to withdraw the offensive remarks and replace the letter. The original letter was never disclosed to the client. The High Court of New Zealand stated that there is a fiduciary duty owed to the client to reveal all material information coming into the solicitor’s possession concerning the client’s affairs. The solicitor was held to be in breach of this obligation in spite of acting in good faith and in what he believed to be the client’s best interests. The client was awarded $1,000 in damages against each of the two lawyers involved, although he had sought $160,000 in general and punitive damages.

IV. SOLICITOR’S LIEN — ACCOUNTS UNPAID

To secure payment of fees, a lawyer may assert a solicitor’s lien on documents, monies or other property of the client in the lawyer’s possession. This article will deal exclusively with the issue of a lien on client file documents. This type of solicitor’s lien, sometimes referred to as a retaining lien, creates neither an encumbrance nor an equitable charge. The lawyer has no proprietary interest in the documents withheld. This lien is strictly passive and possessory with no means of active enforcement.

At common law, a solicitor’s lien may be applied to all personal property of the client, including documents, papers and funds, with limited exceptions (see below), where the following conditions exist: 21

1. The personal property belongs to the client;
2. The personal property came into the lawyer’s possession while he or she was serving in a professional capacity on behalf of the client (i.e., there is no solicitor’s lien on property the lawyer receives when acting in the capacity of a lender or trustee);
3. If the lawyer received the property on behalf of the client from third parties, it was with the express or implied authority of the client;
4. The lien attaches only to taxable costs incurred by the lawyer in respect of work done on the instructions of the client.
5. A lien does not attach to funds held in trust for a particular purpose.

A lawyer asserting a lien should have his or her outstanding accounts reviewed. The lawyer will be under no obligation to permit the client to inspect or copy the documents in preparation for the review. 22 If the client insists on access to the file, he or she may apply in the Court, pursuant to section 77 of the Legal Profession Act, for an order requiring the lawyer to surrender the documents. Failing that, the client could possibly apply to the Registrar, pursuant to Rule 32(5) of the B.C. Rules of Court, for a direction that the lawyer produce the documents.

A) Change of Lawyer

The rights of a lawyer to assert a solicitor’s lien vary largely depend on whether he or she has been discharged by the client or has withdrawn from the relationship. 23
Occasionally, a lawyer will assert a valid lien on a client's documents but still must surrender the documents to the client or his or her new lawyer. The original lawyer can deliver them "subject to the lien." In so doing, the lawyer surrenders the documents while reserving his or her rights to the lien. However, this may be of little solace to the original lawyer because the lien will be of little use once the documents subject to it are no longer wanted by the client. A better approach for the lawyer is to seek to secure his or her position by obtaining an undertaking from the new lawyer to preserve the lien. Set out below are those occasions when a lawyer must give up possession of the documents without necessarily defeating his or her retaining lien.

1) Withdrawal by Lawyer

Upon a lawyer terminating the solicitor-client relationship, even for just cause, such as non-payment of account, the Courts have traditionally required the departing lawyer to deliver the client's file documents to the new solicitor "subject to the lien." This meant that the new lawyer undertook to return the documents to the original lawyer once the matter was completed, and the original lawyer could then hold the documents until his or her taxed account was paid. Obviously, the lien at that point has little value.

A 1963 case from the U.K., however, suggests that if a solicitor has refused to continue to act and the client requests a Court Order for delivery of the file, the traditional practice may not always be followed. The Court will consider the interests of the Court's own officers who should not be left without payment for work properly done. In certain circumstances the Court will uphold the lien.

Reference should also be made to Chapter 10 of the Professional Conduct Handbook, entitled "Withdrawal". Rule 8(a) states:

"Procedure for withdrawal

3. Upon severance or withdrawal, the lawyer shall forthwith:

(a) take all reasonable steps to assist in the transfer of the client's file."

Footnote 2 to that chapter provides further guidance:

"2. When, upon severance or withdrawal, the question of a right to a lien for unpaid fees and disbursements arises, the lawyer should have due regard to the effect of its enforcement upon the client's position. Generally speaking, the lawyer should not enforce such a lien if the result would be to prejudice materially the client's position in any uncompleted matter.

Before accepting employment, the successor lawyer should be satisfied that the lawyer formerly acting for the client has withdrawn or has been discharged. It is quite proper for the successor lawyer to urge the client to settle or take reasonable steps toward settling or securing any account owed to the lawyer formerly acting, especially if the latter withdrew for good cause or was capriciously discharged. However, if a trial or hearing is in progress or is imminent, or if the client would otherwise be prejudiced, the existence of an outstanding account should not be allowed to interfere with the successor lawyer acting for the client."

2) Discharge by Client

While it may be difficult to maintain a lien if the lawyer terminates the solicitor-client relationship, such is not the case if the client discharges the lawyer (with some notable exceptions). A solicitor's lien is available, subject to the account being reviewed, upon discharge without just cause. Following are exceptions to this general rule resulting in the lawyer having to surrender the documents, subject to the lien.

a) Prejudice to Third Parties

One exception to the rule that a solicitor has a right to exercise a lien upon documents in his possession where he has been discharged is that where third parties are involved the Court may "interfere with the exercise of the lien without actually nullifying it." In Re Gladstone, the Court would not allow the solicitor to prejudice the interests of the children in a divorce proceeding by retaining possession of the documents. It ordered that the former solicitor deliver the documents to the client's new solicitor, upon the new solicitor's undertaking to preserve the documents and return them to the former solicitor after the conclusion of the matter and apply funds from any judgment or settlement firstly to the former solicitor's taxed account.

b) Lawful Demand by a Third Party

A lawyer has no greater right to retain documents than the client would have if he or she still had possession. It has been long established that in circumstances where the client would be required to produce documents to a third party, the lawyer must also produce the documents. This principal has been applied in favour of court-appointed receivers and trustees in bankruptcy.

c) Court Order for Delivery of Documents

Upon a change of lawyers, or where the client subsequently chooses to act on his or her own behalf, an application may be made to the Supreme Court of British Columbia, pursuant to s. 77 of the Legal Profession Act, for an order that the former lawyer deliver the client's file documents to the client or his or her new lawyer. Re Neylon considered the predecessor to s. 77, that being s. 98 of the Barristers and Solicitors Act. While the difference in wording between section 77 and section 98 is of some significance, Re Neylon remains instructive for interpreting the present legislation.

Section 98 created a discretionary remedy. It provides as follows:

98. In case a change of solicitors takes place, the Supreme Court may, on application by summons on behalf of the client, order the solicitor having the custody of deeds, documents or papers of the client to deliver them to the new solicitor nominated by the client, on payment into court of the amount due to the former solicitor, or on proper security being given at the discretion and to the satisfaction of the court.

In Re Neylon, Hinds J. considered the effect of the words "proper security" and, upon weighing several factors, applied the common law in Re Gladstone to s. 98. He held that the former solicitor should deliver the file to the new solicitors upon an undertaking in writing requiring the new solicitors to:

a) preserve the documents in their present condition;

b) return all documents to the original solicitor at the final disposition of the action; and

c) apply the proceeds of any judgment or settlement firstly to the taxed account of the original solicitor.

In the absence of exceptional circumstances, the case law suggests these three conditions constitute the standard undertaking which new lawyers enter into when the original lawyer delivers a file subject to a lien. In practice, the original lawyer may wish to seek additions or modifications to this undertaking in order to secure payment of fees owing.

Section 77 of the Legal Profession Act states:

Change of solicitor

77. (1) Where a client changes solicitors or commences acting on his or her own behalf, without a solicitor, the client or the new solicitor may apply to the Supreme Court for an order directing that the former solicitor deliver the client's records to a new solicitor nominated by the client or to the client himself, as the case may be.

[s. 77 now s. 78]
(2) The court may, in an order under subsection (1), make the direction conditional on the client
(a) paying all amounts due to the former solicitor by the client, or
(b) giving security for the payment in an amount and manner satisfactory to the court,
and the court may order a review before the registrar.

This successor to section 98 has brought two significant changes. First, while the granting of the order remains at the Court's discretion, a second discretion may be exercised by the court in that it may or may not make the order to deliver conditional upon payment of all amounts due or on proper security being given. The previous legislation suggested that once the order to deliver was made, it must be made conditional. Re Neylan remains good authority for the interpretation of what constitutes "proper security" for payment.

The second significant difference between the present section 77 and the former section 98 is that the present legislation provides for circumstances where the client discharges a solicitor and chooses to act on his or her own behalf. Re Neylan does not apply where the client chooses to proceed without counsel. In Appleton v. Hawes, the Court refused to impose an undertaking in the terms found in Re Gladstone (and, thus, Re Neylan) on the client, stating, "the client is not an officer of the Court and to do so would be to defeat the very nature of the lien." Instead the Court allowed the client and any potential new solicitor to inspect the file at the former solicitor's office. In other cases it may be possible for the client to provide other security, preferably of a financial nature.

Where the client is moving from lawyer to lawyer with intent to avoid paying fees, it is unlikely a Court will require the lawyer asserting a solicitor's lien to deliver the documents to the client. However, where there is uncertainty as to the reasons for the discharge of the lawyer, the Court may require delivery or some means of access to the file.

When delivery of certain documents in a former client's file to the client might result in a breach of solicitor/client privilege with other parties to the action, the Court can impose an injunction on the client to restrain the client from revealing confidential information.

3) Dissolution of Law Firm

Where a lawyer is a member of a firm, the client's contract for representation is with the firm, not the individual lawyer. The dissolution of a law firm amounts to a termination of the client's relationship with the firm. The dissolved firm will have a residual accounting and financial interest in all files. A letter, similar in form to Appendix 4 of the Professional Conduct Handbook, should be prepared and arrangements made by the current or new lawyer to secure outstanding accounts owed to the dissolved firm.

4) Lawyer Departs from Firm

Where a lawyer leaves a law firm, the lawyer cannot do anything to detrimentally affect a lien asserted by the firm. In Vertlieb Anderson v. Nelford the B.C. Court of Appeal held that the departing member of a law firm could not remove client file documents, against which the firm claimed a lien, despite the fact that he was acting pursuant to the client's instructions. Southin J.A., for the Court, wrote:

[He] had an implied obligation to serve the firm, during his relationship with it, faithfully and diligently.

To so act as to deprive the firm of its lien was a breach of that obligation...

Reference should be made to the Professional Conduct Handbook, Chapter 11, Rulings 16-21, and Appendix 4.

When transferring files on either dissolution of the firm or upon a lawyer departing a firm, it is advisable to request of the lawyer taking the file that he or she provide written assurance that it will be produced if required for the purposes of an audit.

B) Loss of Lien

A solicitor's lien will not come to an end upon the death of a lawyer. Rather the lien passes to the lawyer's personal representative. A lien will, however, be lost under the following conditions:

1) Parting with Documents

A lien will be lost where the lawyer voluntarily parts with the documents without reservation of the lien. The lien will, however, remain intact where the documents are improperly taken from the lawyer or where the lawyer surrenders possession of the documents to his or her agent.

2) Waiver

There is a prima facie inference that a solicitor has waived a lien if security or other property is taken inconsistent with the lien. For example, a promissory note was sufficient to discharge the lien in Re Taylor, Sileman & Underwood, since the solicitor was under a duty to explain the effect of the security and specifically reserve a right to the lien. The security must be obtained by consensual arrangement with the client. In A. v. B., the arrest of a ship by the solicitor was held to be part of the process of enforcing a lien (which had become a default judgment), and did not constitute a waiver.

C) Documents Not Subject to Lien

The general principles set out above are subject to the following exceptions:

1) Corporate Records

By legislation, certain corporate records must remain in the records office of the company. In the case of B.C. companies, s. 187 of the B.C. Company Act lists the applicable documents, while s. 20 of the Canada Business Corporations Act governs for federal companies. Often, the records office is designated by the directors to be the office of the corporation's lawyer. When the lawyer's office ceases to be the records office of the company, the lawyer must deliver all applicable documents to the new records office. The lawyer cannot assert a lien on these documents.

However, in a case which appears to be an anomaly, a solicitor's lien on corporate records may be successfully maintained provided that the lawyer's office continues to be the records office of the company and the records are available to those entitled by legislation to view them. In Kingswood Explorations 1985 Ltd. v. Elkins, the Alberta Supreme Court noted that there had never been an express "designation" of the records office, but that the directors had approvedly deposited corporate records at the lawyer's office for 17 years suggested such a "designation" had been implicitly made. Adequate shareholder access had been provided for 17 years, and absent cogent evidence that the existence of a lien would preclude future access, the Court was not willing to disrupt the lien.

2) Original of a Will

A lawyer cannot assert a lien over an original will of a client.

3) Mortgages

A lawyer acting for the borrower as well as acting on behalf of the lender, or being the lender him or herself, cannot claim a lien on mortgage documents as against the client borrower. Upon the execution of the mortgage, the documents become the
sole property of the lender and any lien on the original mortgage documents as against the borrower is ineffective. Upon redemption of the mortgage, the documents must be returned to the borrower and the lien cannot be revived.48

4) **Documents for a Limited Purpuse**

A solicitor’s lien will not apply to documents delivered to the lawyer for the purposes of raising money or to money held in trust for a special purpose, unless the documents or money are delivered with the express or implied understanding that the lawyer is to retain them for general purposes subsequent to fulfillment or failure of the original purpose for which they were delivered.49

5) **Third Party Interest**

The legal right of a lawyer to hold documents under a solicitor’s lien cannot be greater than the interest of the client in the documents.

There can be no lien on a document where it is no longer held on behalf of the client against whom the lien is claimed.50 As well, a lawyer cannot assert a lien on documents delivered by a third party to the lawyer acting on behalf of the client, without express or implied authority from the client to receive such documents.51

Where a lawyer receives documents from a third party who has expressly reserved his or her rights, the lawyer cannot assert a lien against the client with regard to those documents. In *Re Galdon Properties Ltd.*,52 the solicitors acting on behalf of the vendor in a real estate transaction could not attach a lien to mortgage documents received from the third party lender. The solicitors held the documents solely as trustee for the lender and were required to redeliver them upon demand.53

6) **Original Court Documents**

A solicitor’s lien asserted against the client cannot attach to original court records.54 Thus, a discharged lawyer cannot refuse to produce a Court Order obtained while he or she was acting for the client.55

**V  WHO PAYS FOR COPIES?**

In *Ex parte Horsfall*, Lord Tenterden C.J wrote, “He who pays for the drafts ... by law has a right to the possession of them.”56 This statement still holds true today but technology and billing practices have altered the effect. Gone are the days of *Re Thompson*57 where letters were copied by hand into a solicitor’s letter-book and the client had to pay for them to be recopied. Gone also are the days of *Marshall v. McAllister*,58 where a single carbon copy was made at the time the original was typed. With the proliferation of computers and photocopiers, copies are made with relative ease.

Changes in technology have been accompanied by changes in billing practices. Photocopying charges are not now encompassed in the category of general office overhead which was included in the lawyer’s hourly rate. Rather, photocopying charges are billed as a disbursement. Provided the client pays these bills, the copies will already be paid for. For those copied documents generated since the last billing, provided the client wishes the copies, the lawyer is entitled to submit a bill for the outstanding copying charges.

A lawyer can claim ownership of some documents in a file and is thus entitled to the originals of those documents. All documents listed under “The client owns” in the Checklists at the beginning of this article, with one possible exception, should be provided to the client without any further copying charges. (That one exception is (d), copies of letters sent by the lawyer to the client.) The lawyer is entitled to make copies of these client documents to retain for his or her own benefit or protection. The expense of producing these copies is to be borne by the lawyer.

At the end of the retainer, where an original document “owned” by the client is still in the possession of the lawyer, it should be turned over to the client. Many original documents, however, will not be found in the file. For example, the original of a letter written by the lawyer and sent to a third party will be in the possession of the third party. The original of a chambers brief will be in the possession of the court. Documents such as these will be represented in the file by a copy of the original. At termination of the retainer, the client will be entitled to these copies, just as he or she would be entitled to originals, as the client will have been billed for the expense of producing the original and the copy.

Thus, the principle espoused by Lord Tenterden in 1827 survives. The client will be entitled to copies of documents only upon bearing the burden of the expense of copying. The lawyer should retain copies of all correspondence and important documents in the file for his or her own benefit or protection when the client or new lawyer is given the file, but the lawyer cannot charge the client for these photocopies.

ENDNOTES

6. Cordery, supra, note 2, at 89.
7. Supra, note 2, at 90.
8. Ibid., at 89.
11. Cordery, supra, note 2 at p. 90; “A Lawyer’s Authority over Documents on Termination of Retainer”, supra, note 3 at 94.
13. See the references at notes 10, 11 and 12.
15. The author of the letter is prima facie the first owner of the copyright in the letter. The recipient owns the material upon which the letter is written, subject only to the proprietary right retained by the author to restrain publication in breach of confidence and to restrain reproduction in infringement of copyright. Copinger and Skone James on Copyright, W.A. Copinger & F.E. Skone James, 1991 13th ed. (London, Sweet and Maxwell, 1991); Canadian Law of Copyright, Harold G. Fox, 2nd ed. (Toronto, Carswell, 1967).
17. Ibid.
20. [1989] 2 N.Z.L.R. 75 (C.L.C),
22. Cordery, supra, note 2 at 259.
32. Ibid. at 317.
33. (1990), 46 C.P.C. (2d) 107 at 112.
34. Ibid.
36. Cordery, supra, note 2 at 248.
38. Ibid, at 12.
41. Dicas v. Stockley, ibid., at 497.
42. Caldwell v. Sumpters, supra, note 40.
43. [1891] 1 Ch. 590 (C.A.), at 597.
44. Supra, note 25.
49. Ex parte Pemberton (1818), 18 Ves 282; Re Mid Kent Fruit Factory, [1896] 1 Ch. 567 at 570; Cordery, supra, note 2, at 238.
50. Supra, note 46.
51. Gibson & May (1853), 4 De G.M. & G. 512.
53. Bird v. Heath (1848) 6 Hare 236.
54. Clifford v. Turner (1848) 2 De G. & Sm. 1.
56. Supra, note 19.
57. Supra, note 18.
[§4.09] Time Management

Proper time management is essential to both the financial health of your practice and providing quality client service.

Generally, it is thought that 20% of the time expended (on the vital few situations or problems) produces 80% of the results.

The lawyer’s time is the most important asset of the law practice. Unless time is effectively used, the lawyer is unlikely to be able to operate successfully as a practitioner. It is important to make the most of both your time and your staff’s time.

There are a number of time management courses available. Lawyers should develop time management skills at an early stage in their practice careers.

Legal case management programs can help lawyers save time and effort. These software packages automate and integrate many of the manual law office systems and reduce the time required for administration. Most of the software allows lawyers to keep track of billable time, maintain limitation and bring forward dates, keep to-do lists, do conflicts checks, keep client lists, and track other work. See 25 Benefits of Case Management in 40 Minutes and Building an automated practice: it’s not so tough, both available on the Law Society of BC’s website at Quicklinks>Publications and Resources>Practice Support>Technology, for an analysis of case management programs.

Dedicating time to deal with important and essential tasks such as:

- planning the day, week, month;
- dealing with communications;
- evaluating and prioritizing work;
- recording time;
- marketing and developing your practice;
- meeting with clients;
- performing legal work;
- ensuring compliance with legislative and regulatory matters such as accounting records, taxes, etc.; and
- setting aside time for continuing professional development and networking.

Tasks must be organized and priorities identified. Tasks can usually be categorized according to priority, in the following manner:

(a) important and urgent;
(b) important but not urgent;
(c) busy work; and
(d) wasted time.

First list all the tasks (business and personal) which must be performed. Then assign a priority (1 to 5) to each one. Then perform each task in order of priority, completing all those classified as 1 before proceeding to those classified as 2 and so on. Use “to do” lists that are related to your diary/calendar.

[§4.10] Improving Productivity

[This section has been adopted from material in The Lawyers Handbook, published by the American Bar Association.]

Perhaps the sole practitioner’s single most difficult problem is becoming disciplined in his or her work. The sole practitioner must learn to marshal his or her efforts into productive client representations. The following suggestions will help the lawyer develop good work habits and use time profitably.

(a) Establish and maintain regular office hours.

(b) If commuting by public transit, use the travel time (and the time waiting for the bus) to keep up on your professional reading.

(c) Set aside time at the beginning of the day (“quiet hour”) to think and to plan your work. Avoid doing “things” during that period. Instead, use it to get organized and to determine priorities.

(d) Establish regular times for accepting client appointments. One way to do this is to limit client appointments and depositions to the afternoon, so that morning hours can be used as work time.

(e) Ensure your staff and associates know your schedule (if you have a regular daily schedule) in order to avoid needless interruptions and to maximize the efficiency of that schedule.

(f) Group similar tasks (e.g., phone calls and correspondence) and do them at particular (and convenient) times during the day, in order that these activities do not continually interrupt your work. Keep the time devoted to legal research free of distracting phone calls.

(g) Group matters that must be taken care of outside the office together in order to minimize the time spent.

(h) Delegate to the maximum extent possible and when doing so give specific and detailed instruction to minimize time spent supervising and reviewing.

(i) Keep accurate written records of every working hour in the day (not just billable time, but all time available for work). Most lawyers are astonished to learn how few hours
are actually spent in productive, billable legal work in the average day at the office. When this billable time is expressed as a percentage of the total time available for work and compared with time spent on personal business and civic matters, this percentage can be a very revealing measure.

(j) Throughout the day, ask yourself the question, “Is this the best way to use my time?” This will help keep you moving toward your goals.

1. Top 10 Tech Tips

*Benches’ Bulletin*

2010: No. 4 Winter

Practise Tips, by Dave Bilinsky, Practice Management Advisor

**Top 10 tech tips**

 صلى الله عليه وسلم

Save some time to dream
Save some time for yourself
Don’t let your time slip away
Or be stolen by somebody else... صلى الله عليه وسلم
Lyrics, music and recorded by Jon Mellencamp

I would like to share the top technology tips that I believe will improve your efficiency and effectiveness:

1. **Adobe Acrobat**

Adobe Acrobat has become one of those applications that have become essential to how I work. Not only does it allow me to send documents without hidden metadata, but it has become the “go to” application for government filings and exchanging documents with clients and other lawyers. What’s more, you can insert hyperlinks. That means you can create a brief, for example, that contains your argument and evidence, as well as the law on which you are relying, all linked and contained in one file.

For the paperless office, Adobe offers an ISO standard format that is unlikely to become obsolete. The “dual layer” nature of a searchable PDF (namely, a text layer combined with the graphic layer) allows you to easily search documents in a folder, a hard drive or even a network.

All versions of Adobe Acrobat, except the free Reader, have the ability to convert a scanned document into a searchable PDF, using optical character recognition (OCR).

The full version of Acrobat 8 (and higher) has many other features. One that I really like is the ability to create a single PDF portfolio that is composed of multiple files and formats. In particular, you can convert select emails or a whole folder, or nested groups of folders, right from the menu bar in Outlook. This is a great way to organize and archive emails, which is particularly useful when a file is closed.

2. **Dual monitors**

Once you have crossed the Rubicon and started to use dual monitors, you will find there is no going back. The ability to refer to a document on one monitor while working on another (for example, research on one and a draft contract on another) is a huge time-saver.

Virtually all laptops and most netbooks have a VGA connection that can be used to drive a second monitor. Desktops may need an additional video card installed, they’re not expensive. If you really decide to go whole hog, you can obtain a box that will allow you to connect and drive three monitors!

Once enabled through the operating system, you can drag and drop or copy and paste from one screen to another. The efficiencies gained from working in a dual-monitor setup quickly offset the expense of a monitor and video card.

3. **GoToMeeting (or Adobe Connect)**

GoToMeeting (www.gotomeeting.com) (or a competing product, Adobe Connect) is a great way to hold a meeting without having to go thru the expense and hassles of air travel. GoToMeeting allows you to hold one-on-one or group meetings of up to 15 people easily and cheaply. You can also present a webinar with their associated software, GoToWebinar.

GoToMeeting works with a Mac or PC. You can show a document or your whole screen. Attendees can get keyboard control — great for training or showing someone something. You can use a computer microphone or the telephone for the audio portion, and you can record the presentation. There is also an online chat component.

4. **“Paste Special”**

Lawyers are forever cutting and pasting text from one document to another. You probably have experienced the frustration that results from pasting a block of text only to find that the formatting of your document has been disrupted and “gone crazy.” The reason is that “Paste” brings the formatting of the original document into the target document, which may not be the desired result.

There is a way to copy and paste text that will not disrupt the style of your new document. Use “Paste Special” instead and select “Unformatted Text.” This will import the text without the associated formatting and make life much easier.

5. **EzDetach and SimplyFile**

EzDetach add-in application for MS Outlook is an intelligent filing assistant for email attachments. It “guesses” which folder an attachment belongs in, and with one mouse click you can save it into that folder. It learns where attachments belong, thereby improving its accuracy. Along with its companion product SimplyFile (which guesses which folder an email should be stored), it can make your life a whole lot easier. Find them at www.techhit.com.
6. ActiveWords
If you have ever used Quick Correct or a similar function in a word processing program, you can relate to ActiveWords (www.activewords.com). This application is like Quick Correct on steroids. You can type “Word” into the ActiveWord toolbar and it will launch MS Word. Type in “Photos” to open the pictures folder on your PC. If you use the same phrase or text all the time, you can set up an ActiveWords shortcut for use in ANY application you wish — not just your word processor. I use it in conjunction with Amicus Attorney to quickly substitute text that I use all the time. You can also use it to send emails. ActiveWords has become so central to how I work that I look for it on my Mac — but unfortunately, it is only for the PC. Rats!

7. Voice recognition
Voice recognition software translates speech to text on the computer. The productivity gains that can be realized are wonderful. If you have not tried it recently, the recognition rates have skyrocketed as the software has improved and the training periods minimized.

The products that are available:
Dragon’s Naturally Speaking (Nuance) (Windows)
(Preferred, Professional or Legal)
IBM ViaVoice (Nuance) (Mac or Windows or Linux)
Dragon Dictate for Mac
(www.macspeech.com/pages.php?pID=143)
Microsoft VR in Vista or Windows XP

Okay, I know that voice recognition isn’t for everyone. I have talked to lawyers who have achieved a 98 per cent recognition ratio and others who were unable to get through one sentence without an error. I think voice recognition falls under the Alexander Keith beer motto: “Those who like it, like it a lot.”

I personally think it is magic and I have achieved a fairly high recognition rate — high enough that I can dictate faster than I can type. I use Dragon’s Professional version 10, a Sennheiser switchbox and stereo headset, which allows me to use the same headset to answer telephone calls as well as dictate to the computer. The sound is clear and the switchbox has a volume control. My only negative comment is that the earpads get a bit warm after a while.

The Sennheiser USB microphone works well with my Lenovo and Dragon. I reduce the background noise by closing my door, as this seems to affect recognition rates. I have a grounded, three-prong power supply; I found the two-pronged one created static. Lastly, the most recent releases of Dragon analyze your existing documents and determine how you write. This seems to have a big impact on recognition rates.

8. Xobni
Xobni.com (“inbox” spelled backwards) is another Outlook plugin. It searches the web for information on your contacts and brings it all back into Outlook — so you can see the picture of the person who sent you an email, see your threaded conversations, find attachments from them, and much more. But the real power of Xobni is its ability to search your Outlook folders with lightning speed.

9. ioSafe
ioSafe is an external hard drive that is practically bombproof! It is USB 2.0 enabled, fireproof (it can withstand 1550° F for 30 minutes), waterproof (it can be submerged up to 10 feet deep in fresh or salt water for three days) and can be physically locked or bolted to the floor. It works with both PCs and Macs. It comes in large capacities (1, 1.5 and 2 terabytes) and has data recovery and insurance as well. It is also whisper quiet!

This is a wonderful hard drive for a law office for backup purposes.

10. YouSendIt
Need to send a big file but the email box for the recipient is too small … how do you get it to them? Go to www.yousendit.com. You can upload the file and create an email with a link to the file. The recipient clicks on the link and downloads the file. Quick, easy and free. Worried about confidentiality? Encrypt the file before uploading. (For information on encryption, see Practice Tips in the March 2008 Benchers’ Bulletin.)

I hope that at least one or more of these tips can help you save some time for yourself …

2. Six steps to improve your practice profitability

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Practice Tips

Six steps to improve your practice profitability
by David J. Bilinsky and Laura Calloway

There’s no getting around it if you’re a sole practitioner or a member of a small firm: You have to do the math. Larger firms often have full-time administrators, and megafirms have stables of financial pros to keep tabs on their business matters. As a small firm lawyer, you’re the one who has to start crunching the numbers and making changes if you hope to improve your bottom line. But what numbers should you be looking at? What things should you change? Here are six steps you can take to better understand — and improve — your practice’s profitability.
One: create a business plan

As Yogi Berra said, “You’ve got to be very careful if you don’t know where you’re going, because you might not get there.” Ergo, you need a business plan.

A business plan is your road map to the financial future. You can show it to banks, suppliers or others you will need to deal with to demonstrate that you’ve done the homework necessary to launch your practice or to move forward to the next level. A sound business plan is an organized explanation of where you plan to go and how you intend to get there. All successful businesses are planned on paper well before the doors actually open, but even if you’ve already been in business for many years, it’s not too late to sit down and draw up a business plan. And it’s a great way to refocus and revitalize a practice that has lost its way over the years and is wandering in the wilderness.

A business plan can be as simple or as detailed as you wish, but it always needs to contain four essential elements:

1. A general description of your business, including the services you intend to provide and the markets you intend to serve;
2. Your financial plan, including a budget detailing anticipated revenues and expenses;
3. Your management plan, with a description of how you will set up your office and support the delivery of your legal services;
4. Your marketing plan (think client development), showing how you intend to keep existing clients and reach new ones.

(A detailed description of how to draft a business plan, and what should be included, is available at www.lawsociety.bc.ca/practice_support/articles/BusinessPlan.html.)

Be as precise as possible when drafting the financial part of your plan, including your budget. The care and forethought you put into correctly anticipating future income and expenses can spell the difference between success and failure for your practice.

You should prepare a detailed, month-by-month budget for at least the initial 12-month period. Include all known or anticipated expenses, and when they will come due. Factor in an additional amount for unexpected expenses (anywhere from 10 to 20 percent is a safe bet), since it is Murphy’s Law that costs will always be greater than you expect, particularly as the volume of work increases. Build in marketing time and expenses as well, and don’t forget to include your draw. After all, if you don’t look after yourself, no one else will. (You’ll find a simple budget spreadsheet at www.lawsociety.bc.ca/practice_support/articles/docs/budget.xls.)

If you already have an earnings track record, look back for historical data to spot trends and seasonal fluctuations. If you’re just starting out, you can still make an educated estimate based on your marketing plan. Use a conservative estimate of how much business you will initially attract. Then, compare your estimated income and outgo on a month-by-month basis. If you show negative cash flow for several months in a row, will you still have the funds on hand to meet your needs? If not, where will the funds come from?

Once you’ve set out well-defined income and expense targets, you will be able to judge for yourself whether you’re meeting, exceeding or falling behind your goals. Review the goals you’ve set on an ongoing and regular basis. If you find yourself failing to hit your target, take corrective action by cutting unnecessary expenses and thinking strategically about potential new business — before it’s too late. If you ignore the initial signs of trouble, you may find that you are quickly out of business — and possibly facing even greater debts than when you started.

Two: implement a financial reporting system

After developing your business plan, you need to implement a system that can deliver financial information — in the form of sufficiently detailed and timely reports — necessary to determine whether you are meeting your business targets. At a minimum, these reports should include the following:

- a statement comparing actual income and expense numbers against your budget, for both the current month and the year to date;
- a statement showing worked but unbilled hours (WIP) for every lawyer, for both the current month and the year to date. It should also compare the actual WIP against the expected level of WIP;
- a statement showing actual billings by lawyer for the current month and the year to date. It should also show the expected level of billings and whether each lawyer is above or below expectations;
- a statement showing collections by lawyer for the current month and the year to date. It should also show write-offs and write-downs and compare actual collections against budgeted amounts;
- a statement showing aged accounts receivable by lawyer, by client and by area of practice;
- a statement showing unbilled disbursements by file and comparing them to the previous month to show whether they are increasing or decreasing;
- a statement showing funds in trust by client and whether those funds are retainers or funds held on behalf of clients;
- a statement of upcoming trials and motions that compares the expense and retainer funds in trust for each client against expected costs and fees for the courtroom work.

Three: scrutinize your cash flow

Although accountants encourage accrual-basis bookkeeping as a way to examine whether billable hours are finding their way to the bottom line, in the real world your firm will still live or die by its cash flow. Accordingly, your accounting system has to forecast cash flow needs and compare them with expected cash inflows. Any excess cash can be returned to the lawyers as bonuses or reinvested in the practice. Any cash
shortages must be covered either by the lawyers (by way of lowered draws or capital contributions) or by increasing the firm’s debt (usually by increasing the line of credit).

While occasional short-term cash shortages can usually be covered, long-term chronic cash deficits usually herald the undoing of a firm. Simply increasing firm WIP can drive you to ruin unless you are also converting that WIP to cash. A law firm’s objective is not just to perform legal work, but to change that intellectual effort into cash. A cash flow statement ensures that this is being done at a rate sufficient to keep the business afloat.

One cash flow item many lawyers fail to monitor and anticipate is taxes. Whether it’s monthly withholding taxes for your employees or quarterly self-employment withholdings for yourself, these items come around regularly. They need to be a part of your routine, budgeted expenses, with the money to pay them regularly set aside before other distributions are made.

Amounts to be remitted to the government — whether they are collected taxes or employee withholdings — are deemed to be trust funds, and failure to pay those charges in a timely manner will result in dire consequences.

**Four: track your time**

Many lawyers do not track their time. They give various reasons, the three most common being: “I only handle matters on a contingency basis, so the hours I put in don’t really matter,” or “Tracking billable hours just takes away from the time that I can be doing legal work for clients,” or “All that really counts around here is the amount of money that you bring in every month, not the number of hours you work.”

What these lawyers are really saying is, “Keeping up with my hours is a bother, and I can’t be bothered!” They are obviously missing the point if they want to improve their individual financial performance. For the individual lawyer, financial performance really comes down to two measures:

1. **effective hourly rate (EHR)**
2. **total billings.**

Here’s why.

You determine your effective hourly rate on a file by taking your fees billed and dividing them by the total hours put into a client’s file (not just the hours billed but all the time worked, whether billed or not). When you measure the EHR for all your files and rank the results from largest to smallest, you can see which clients and files generate high dollars for the effort involved and which are low contributors. This is a quality indicator — telling you which cases and clients result in high returns and what type of cases and clients you should be seeking to acquire.

After you’ve determined your EHR, calculate total collections per lawyer, per file, per month. This is a quantity indicator, and the usual metric used by lawyers. When you look at total collections, you have an indication of which files generate large bottom-line results.

Now — to work smarter and not harder — concentrate on clients and case types that are at the top of the list for both EHR and total collections.

**Five: reduce steps and increase work flow**

Look to automation to increase your efficiencies. There are many software products and technological gadgets available for legal professionals. As an example, one of the most fruitful products for enhancing work flow is practice management software (such as Amicus Attorney, Time Matters, PCLaw, ProLaw and PracticeMaster). However, just having the software doesn’t necessarily boost the bottom line. You need to integrate the products with your office procedures, and with each other, to reduce costs and increase efficiencies.

One obvious way to increase your work flow is to integrate your accounting system with your practice management application. Many small firms still don’t have automated time and billing systems or, if they do use software, they use one product for timekeeping, a second for contacts maintenance and a third, unrelated, product for calendaring and docketing. Often these products are on separate computers that aren’t linked through an office network and, consequently, can’t share information. A secretary or the lawyer must enter a new client’s data in the contact management software, then pass the intake sheet or paper file over to the bookkeeper, who has to re-enter the same information into the billing program on another computer.

Think of the savings in time and effort if that information can be entered — and updated — by one person, in one place, and everyone in the office can share it. Plus, integrating your accounting system with your practice management software will also allow you to post your time and billing data directly into your accounting system from your computer as you work — doing away with paper timesheets.

If you’re not sure whether the purchase of a particular program can help your bottom line, you can evaluate your expected benefits from the technology by doing a return on investment (ROI) analysis. To illustrate, here is how you can quantify some of the efficiency gains that you can realize from the implementation of case management software.

**ROI analysis in action.** Most firms employ at least a part-time bookkeeper to do time postings. For this example, let’s assume that time and billing entries take 40 percent of the bookkeeper’s time; that he or she is paid $35 per hour, including benefits; and that he or she comes in two days per week. You’re thinking about purchasing a case management system and integrating it with your accounting system, but at $5,000 the price seems steep and you don’t know whether it would be a cost-effective move.

Professionalism: Practice Management
Your savings by implementing this aspect of practice management would be:

\[
8 \text{ hours} \times 2 \text{ days} \times 40\% \times \$35 \times 52 \text{ (weeks)} = \$11,648
\]

Your ROI would be:

\[
\frac{\$11,648 \text{[savings]} - \$5,000 \text{[cost]}} {\$5,000 \text{[cost]}} = 133\%
\]

Looked at another way, you would recoup the program cost in approximately nine weeks, considering just the savings in bookkeeper costs. (Of course, this analysis assumes that you cut back on your bookkeeper’s hours as a result!)

In addition, case management applications allow you to link together all communications on a particular matter, whether they be word processing documents, telephone notes or emails sent or received, and to group them all in one place. Add a scanner to turn hardcopy pleadings and correspondence you receive into digital form, and you can set up a virtual file for each matter you’re working on. Then, when you receive a phone call from the client or opposing counsel, you don’t have to scramble around looking for the file. You just click on the client name, select the matter and view any document or other information you need.

Let’s assume that you spend an average of a half hour each day leaving your office to look for files or documents in order to return phone calls. Let’s also assume that this half hour is not “billable,” since you aren’t actually doing any productive work for your clients during these searches. What is your ROI if you could save this wasted time?

If your billable hourly rate is $100 per hour and you work an average of 231 billable days each year, your increased billable time is:

\[
.5 \text{ hour} \times \$100 \times 231 \text{ days} = \$11,500
\]

That’s your savings per year just by avoiding the search for files! Even if implementing the practice management product requires your firm to incur hardware, software and training costs of $5,000 per timekeeper (for computer upgrades, network upgrades, software purchases and the like), your payback period on the cost would be:

\[
\frac{\$5,000 \text{[cost]}} {\$11,500 \text{[savings]} \times 365 \text{ days}} = 159 \text{ days per timekeeper (less than six months)}
\]

As you can see, sole practitioners and small firms can realize a substantial return on investment by taking advantage of improvements in work flow.

**Six: reward the behavior you want to encourage**

Scientists have long known that the subjects of experiments, whether they be lab rats or lawyers, repeat behaviour that is rewarded and avoid that which is not. Accordingly, if you want your firm to move toward certain goals, you need to make sure that your compensation system is designed in a way that rewards the behaviours that will help you reach those goals, and discourages activities that are counterproductive.

Law firm compensation systems, whether intentionally or unintentionally, generally reward one or more of the following:

- production of work
- rainmaking
- referring clients within the firm
- superior client service
- effective delegation of work
- meeting or exceeding budgeted revenues
- meeting or falling below budgeted expenses
- mentoring, managing and supervising associates and staff
- firm leadership and business planning
- seniority
- capital investment, ownership and risk
- participating in community, bar association and pro bono activities.

Regardless of how you decide to divide the pie, look at your stated business goals, and then check whether your compensation system promotes those goals or actually encourages the firm’s lawyers to disregard, or actively work against, them. For example, what if you are trying to encourage your firm’s lawyers to refer more business within the firm, but each lawyer is paid based solely on the number of hours he or she bills? You won’t see many clients being referred. There’s absolutely no incentive to remove the nose from the grindstone to engage in cross-marketing activities.

**Share the numbers and increase the sum**

Improving the bottom line isn’t just a result of working harder. There are ways to increase the cash in your pocket that do not involve more billable hours. However, they do involve looking at your practice — including the numbers that underlie it and seeing what those numbers reveal.

Once you know and understand the financial underpinnings of your practice, you can start pulling levers that connect to profitability factors, resulting in an increase in net income. And once you can demonstrate the greater cash flow that will result from your proposed changes, other firm lawyers as well as staff can see what’s in it for them too.

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Chapter 5

Client Relations

[§5.01] Introduction

Consumer expectations around legal services have become more focused on satisfaction. Clients have learned to hold their lawyers accountable for the work they do and the fees they charge. The “mystique” of legal services is gone. When we purchase other services such as dental work or auto repairs, we are impressed if the service meets our expectations (e.g., in identifying the problem, confirming the work to be done, estimating the price, giving a commitment as to when the work will be done, meeting that commitment, communicating any problems that arise, and providing a readable and itemized bill). When our expectations are not met, we become dissatisfied customers. Our response varies according to our level of dissatisfaction and our individual propensity to complain. We refuse to patronize the same establishment in the future and we complain to friends, particularly the friend who gave us the referral. Some of us complain to management or to a consumer protection group, or even threaten litigation. Consumers of legal services react as consumers generally do when dissatisfied with goods or services they have purchased. We have to learn how to satisfy the customers we serve and how to effectively deal with customer dissatisfaction when it occurs.

[§5.02] Ten Commandments of Good Practice

In this article, I will outline what I believe to be the ten commandments of lawyers for avoiding professional liability claims by clients.

1. The First Commandment

Sell your firm and your services fairly. It can be dangerous to use superlatives when describing your firm in websites and publications. Clients may later refer to these pieces when a problem arises in the services performed. Be careful that you do not “oversell” your professional services.

2. The Second Commandment

Educate your clients on the nature and extent of your professional services. Clients tend to have a rather optimistic view of what you will or can provide, and often it is not until a problem arises that you and your client discuss your actual mandate. Claims sometimes arise against lawyers as a result of time or cost estimates being exceeded due to a client’s perception that these figures were “guaranteed.” A client who understands that many factors play a role in determining whether your services can be completed on time and within budget will be less likely to claim against you. Therefore, explain to your client all the details of your retainer, particularly any limitations.

3. The Third Commandment

Insist on a written retainer letter. You can rest assured in the event of a claim, there will be at least two versions of what services should, or should not, have been performed by the lawyer.

4. The Fourth Commandment

Avoid performing services outside your capacity as a lawyer. For example, business investment advice may fall outside the common description of professional services rendered by a lawyer. Giving business investment advice may jeopardize your professional liability insurance coverage.

5. The Fifth Commandment

Develop a specific plan for the performance of professional services. It is important that personnel assigned to new files be identified and advised as soon as possible. The team should be briefed with regard to the overall plan, and then be instructed to study the details of the retainer.

6. The Sixth Commandment

Keep your client informed. This is in large part self-explanatory because the client has hired you to be a professional advisor. The more informed the client, the less chance of surprises and claims that you have not properly carried out your engagement.

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1 Based on material prepared by J. Cameron Mowatt of PLI Claims Management Inc. for the Law Society/CLE seminar, Loss Prevention—1992 (June 1992); reviewed annually by PLTC.

2 Prepared for PLTC by Donald R. Cherry, March 1990. Reviewed annually by PLTC.
7. The Seventh Commandment

Deal promptly with problems. When a problem occurs, discuss it with your client and explain the ramifications. If you keep it hidden, it is an invitation to problems down the road. Therefore, keep your client informed and work with your client as closely as possible.

8. The Eighth Commandment

Keep written records of conversations with your client. Many professional liability claims are the result of a breakdown in communications. The retainer letter sets out your mandate, but it is equally important to keep notes of meetings with your client because the notes can be vital evidence over oral recollections.

9. The Ninth Commandment

Communicate your efforts on your client’s behalf so as not to create an impression of inattention and neglect. Let your client know what work you have done by providing the client with copies of letters and pleadings you have drafted.

10. The Tenth Commandment

Think carefully before suing for fees. Lawyers are entitled to fees for services rendered, but a suit for unpaid fees almost inevitably results in a counterclaim alleging professional negligence, usually for a much higher amount. There are a number of possible reasons for non-payment of your account, including the client’s inability to pay and dissatisfaction with your services. You must weigh the amount of the outstanding fee against what you perceive may be a problem with your services.

[§5.03] Screening the Client

There are many reasons to screen a client and a case. For example, you want to determine conflicts, avoid taking on difficult clients, avoid taking on clients who are fraudsters, and so that you stay within your experience and comfort.

Sometimes a claim or a complaint, whether valid or not, could have been prevented by the lawyer exercising better judgment when deciding whether to accept a case or a client. There are a number of unpleasant side effects of accepting the wrong case or client: distraction from the enjoyment of practising law, frustration or anxiety over uncollected fees, lack of time for other files, and disappointment by both you and the client over the results.

Here are some things to look for when screening clients:
- the client has had more than one other lawyer for this matter
- the client’s expectations are unrealistic
- the client has already contacted multiple government representatives to plead the case
- the client wants to proceed with the case because of principle and regardless of cost
- the client expresses distrust of you
- the client and you cannot easily agree on the fee and retainer
- the client demands you agree to a contingency fee arrangement to show your commitment to his or her cause.

And here are some warnings for not taking a case:
- the case has already been rejected by one or more other firms
- the case has an element of avoidable urgency
- the case requires more fees and costs than the amount you anticipate will be recovered
- the case is outside your expertise
- the case has a potential conflict of interest
- the case requires significant disbursements which the client cannot cover without winning, and the outcome is doubtful
- the case will over-extend your time or staffing capability
- the case does not give you adequate time to prepare.

You should weigh your obligations to do pro bono work and to provide representation against your time and ability to give proper representation. If a case has merit, there will be a lawyer who will accept it—it need not be you. Write a polite non-engagement letter and dedicate your time to your other clients.

When you decide, after careful consideration, to take on a difficult client or case, do so with your eyes open, and ensure that you maintain a good relationship with the client and that you protect yourself by keeping good records of all the steps you take on the file.
§5.04 Maintaining Communications

1. General

From the outset of your practice, establish and maintain an approach that ensures that full and proper communications are maintained between lawyer, staff and clients. It is not always easy to maintain optimal communication when you are extremely busy, but some simple policies and procedures can be adopted to facilitate communication.

At a minimum, you must establish a policy that you and your staff take and file dated notes of all conversations (initial and ongoing). The outcome of many legal actions turns on who said what to whom, often over the telephone. Furthermore, adequate records of what was said by whom to whom and when will prevent disputes from ever starting.

Clients naturally want to stay on top of their legal affairs and to know what is happening at each stage; they entrust to our care legal issues impacting on crucial features of their lives. Our difficulty as lawyers is that we perform most of our work out of the client’s view. With little effort, lawyers can keep clients informed as work progresses. The attention is worthwhile: a well-informed client will feel the lawyer genuinely cares about the case, and will come away happier. Satisfied clients, it bears note, tend to pay bills and refer work back.

Note the following passage from the Canadian Lawyers Insurance Association publication, Safe and Effective Practice (p.63):

Most people who sue their lawyers do so because they feel their lawyer has not tried very hard for them. Usually they have no idea of all the things the lawyer has done for them or of the obstacles met, because their lawyer has not told them . . . Most claims against lawyers are motivated (even if not founded) on lack of information.

Therefore follow these guidelines:

(a) Confirm all instructions in writing and adopt a comprehensive form of retainer agreement (as discussed in detail §5.06, supra).

(b) Use plain language when explaining what you will do, when, and how long it will take, and ask if there are questions, whenever you see your client.

(c) Copy your client automatically with important correspondence and documents received or sent. You don’t even need to use a cover letter to the client; many lawyers stamp the copies with a note to the effect “Copy for your information only—no response required.” If the client complains about the cost of copying and instructs you not to send material, confirm those instructions in a letter to the client.

(d) When a new development appears or approaches, take a minute to prepare a brief letter explaining its general significance. Many lawyers keep precedent letters of explanation for matters that arise frequently in their practice.

(e) Tell clients when things are not happening. When you call to report that you have done what you can and are waiting for others to do their part in the transaction or lawsuit, your client knows you are staying on top of the case. Very often your secretary can make these calls for you. The client appreciates being updated and saving on your time charges.

(f) Allow enough time to send your client drafts of any agreements, pleadings or other important documents. Most clients appreciate a chance to review drafts. Any client with questions or suggestions can then speak with you before things are finalized. From a loss prevention perspective, sharing drafts may shift some risk. It may be harder for the client later to complain or claim against you in connection with the document where he or she participated to a significant degree in preparing it.

(g) In a lengthy case, take the time and summarize progress and reconfirm instructions in writing at important junctures.

(h) In litigation matters, send at least one assessment letter when evidence has become clear to advise the client on the strengths and weaknesses of each major aspect of the case (i.e. liability and quantum in personal injury cases), your assessment of relevant case law and opinion on quantum. This letter should help clients to be realistic and facilitate settlement or mediation.
Keeping Written Notes of Conversations

When a complaint or an insurance claim is lodged against a lawyer, often the lawyer has insufficient documentary record of his or her handling of a client matter to defend against the client’s allegation. Many lawyers having competency problems do not take or keep any notes at all. Even the fact that a conversation or meeting was held can be important.

Notes of conversations form the basis of remembering what happened on a file and what the lawyer agreed to do in the future. Some lawyers think they can keep this all in their heads. This is, of course, impossible and one of the reasons why a complaint or claim has been made. Certainly, without notes, the lawyer has no evidence to back up an assertion or denial. The lawyer is frequently forced into the position of having to state that: “In this situation my usual practice would be to...” Also any lawyer who must take over the management of a file will not have the benefit of the original lawyer’s memory.

Most case management programs allow you to make a time entry to the file that can also note a conversation, meeting, telephone call, or other communication; however, you must enter sufficient detail. Using this method, you do not have to enter information twice and these notes can be easily recalled from the system. As the lawyer on the file, you also save time by recording your billing time simultaneously. All notes should be backed up.

Notes needn’t be taken on any special form, although certain firms produce notepaper for taking notes of particular conversations or meetings with clients or other parties. It is important to record the date and time of the call or meeting; who called or was called or present at the meeting; what information or instructions were received; and what advice was given.

A systematic written record of all advice given to a client should be kept. Where the client’s instructions are not specific, any subsequent clarification also should be recorded. All notes (or print copies from computer recordings) should be dated and placed in chronological order with the communication section of the file. Important instructions, information, or advice should be followed up by an e-mail, fax or letter to the person spoken to with copies to the relevant other people.

Revisiting the Client Relationship

Benchers’ Bulletin 2002: No. 4 September October
Practice Tips, by Dave Bilinsky, Practice Management Advisor

I won’t beg you to stay with me through the tears of the day, of the years, baby baby baby.

Just call me angel of the morning, Angel

Words and music by Chip Taylor, recorded by Merrilee Rush

Management moment

What factors cause lawyer burn-out, disillusion and dissatisfaction with the practice of law? In a tongue-in-cheek aside, lawyers will say: “The practice of law would be great were it not for the clients.” Implicit in this statement is the assumption that clients, or at least some of them, are demanding, droning time-wasters—that if only the clients would leave you alone, you would have a great practice. Let us take a moment and turn this statement and its assumptions inside out. Lawyers continually state that they have no time to market—yet seeking to meet the communication and information needs of your clients is marketing on a very personal, one-on-one level. Examine each of your files and ask yourself: do you care about this particular client and his or her problems? Or do you wish the client would just go away?

This is an important moment: if the client and the problems do not resonate with you, if the problems are not touching a chord within you for justice and if the matter falls outside your practice or would prove uneconomical for either of you, do not wait for the client to become disillusioned with the justice system in general and you in particular. The result of client disillusionment, dissatisfaction and unmet needs is clear—complaints, unpaid fees and possibly a negligence claim. That client will certainly not do you any favours in terms of positive referrals—exactly the opposite is likely. Those clients will consume an inordinate amount of your time and your resources and are likely to be dissatisfied in the end result.

How can you make the best of a difficult situation? If you have a client who causes such a heartfelt, negative gut reaction, ask the client to kindly find another lawyer, provided it is legal and ethical for you to do so. This is not being inconsiderate. That client deserves a lawyer who identifies with his or her problem and who can ethically, competently and economically solve it. You, in turn, deserve clients with whom you can build a relationship of mutual trust and good will.
Asking a client to find another lawyer can be done any number of ways—for example, you can arrange a meeting and in a factual manner state that, in your opinion, they would be better served by another lawyer. If they ask why, you can state that your current caseload does not allow you the opportunity to devote the kind of time and attention to their file that it deserves. In most situations, I believe the client is coming to or has already arrived at the same conclusion, hence the persistent telephone calls. Hearing it straight out from you allows both of you to acknowledge the situation and move.

There is a further corollary: seek to understand the profile and personality of these clients and try to prevent further situations by increasing your initial client screening. One way to do this is to permit yourself to think about whether or not to take on a new client. Start the habit of saying to potential clients: Let me think about your case for a day or two. I will send you a letter indicating whether I think I can help you on this (and ensure that you send a letter that clearly sets forth whether you accept or reject the file!). If the client is persistent, irritable or desires you to take action immediately, then this in itself should send up warning flags that are ignored at your peril.

Make file review an annual event—say in December, and acknowledge it as part of a “new year” renewal—to regenerate your interest in and satisfaction from your practice. By carefully pruning your client base, you gain a little control over your practice and your life and start to be your own guardian angel.

2. When to Discuss the Retainer

The matter of retainer, both in terms of money payment and the scope of the work you will do for the client, must be canvassed early—preferably at the first meeting. There is no reason to be reluctant to discuss either the method and amount of payment required or the work to be done, and there is every reason to bring it up early. The client wants to know what to expect, how much it will cost, when they have to pay, and what the lawyer is authorized to do. It may be that a fee cannot be set without further investigation, but the subject should at least be raised, even if only in general terms (you should make it clear that you are providing only an estimate). Otherwise, the client cannot make an informed decision on whether to proceed.

A client may be nervous about approaching a lawyer if he or she has not dealt with one before. Therefore, a lawyer must not only inform the client what the services will cost but also explain what assistance the client requires. Often a client comes into the office with only a vague idea that he or she has a problem that a lawyer can solve. It is the lawyer’s job to separate the issues and determine, for example, whether it is something that is suitable for litigation and, if so, the manner of proceeding, the cause of action, the likely amount of damages, the possible cost of each stage, and other similar information.

3. Cash Retainer

With some clients or types of files the lawyer will not require a cash retainer. This is especially true of regular clients or for wills, real estate or estate files. With most other first-time clients, however, the lawyer should request the payment of a retainer (like a down payment) before proceeding with the matter. Not only does this protect the lawyer’s fees, but it forces the client to face at the outset the actual cost of the work.

In any event, the client should clearly understand what work the retainer covers and whether a further retainer might be required. This should be confirmed in writing in the retainer letter.

[§5.05] Retainers and Retainer Letters

1. Meaning of “Retainer”

“Retainer” has several meanings. It may denote the mere act of hiring a lawyer or refer to a money payment or both. If referring to a money payment, it may be a specific payment for a specific future task, or, less frequently, the general retainer of a solicitor for whatever tasks may arise in future.

From the client’s point of view, to retain means to “keep” or “have”, even if temporarily. Once a lawyer is retained, the client will expect the lawyer to pay full attention to the file. One key to good client relations is not just working on the file but keeping the client advised of its progress.
4. Scope of the Retainer

It is important to establish, at the outset, the scope of the services the lawyer will be providing to the client and to confirm those services in writing. Not only will this prevent any misunderstanding from arising, but it may protect the lawyer if the client later sues for negligence. If the terms of the retainer are unclear and the client’s expectation was broader than the lawyer’s, the lawyer may well be forced to accept that broader retainer.

This matter was discussed in R & L Contracting Ltd. v. A & B (unreported), aff’d (1981), 28 B.C.L.R. 342. In that case, a former client brought action against his solicitors for allegedly negligent advice given in connection with the termination of a construction contract. McEachern C.J.S.C. said that “the terms of the retainer are crucial factors to be considered in determining whether there has been a breach of duty.”

Similarly, in Bergman v. Williams (1981), 22 B.C.L.R. 317, Esson J. dismissed the plaintiff’s action against the solicitor, as the matter claimed to be negligence was not within the scope of the retainer. The plaintiff had argued that it was the duty of the defendant solicitor to advise of all dangers inherent in the client’s action. The court accepted the defendant’s argument that the scope of his retainer was limited to less than that.

When discussing the scope of the retainer with the client, the lawyer must also cover the matter of disbursements. To incur disbursements on the client’s behalf, the lawyer must obtain the client’s authorization to do so. It may be that the client does not wish to incur certain expenses, in which case the lawyer may wish to place some limits on the retainer. An example of this type of limit is found in Moore and Moore v. Gilespie and Davidson & Co. (1980), 22 B.C.L.R. 329. In that case, the client sued his lawyer alleging negligence in the conduct of the action. A landslide had washed the plaintiff’s cabin away along with some property. The solicitor’s instructions had been that the client wished to retain the property and rebuild the cabin. Later it turned out to be prohibitively expensive to rebuild the cabin. The client sued the lawyer for failing to obtain an appraisal so as to recover the diminished value of the property. That action was dismissed because the client’s instructions always had been that he wished to retain the property. The clarity in instruction proved to be very helpful to the lawyer.

The Canadian Lawyers Insurance Association publication, Safe and Effective Practice, warns lawyers to avoid agreeing to cut corners or to do partial jobs:

Be careful of the client who comes in and says “only want a bill of sale, nothing fancy” or “just a very short agreement, nothing complicated.” In theory you can be retained to do just part of a job, but in practice that is fraught with danger.

Why? Remember, when cutting corners, you cannot contract out of liability for negligence (see Legal Profession Act, s. 65(3) and Law Society Rule 8-3(c)).

Also remember that others, who can never know about the agreement, may see the incomplete work and question your competence or abilities. Note that an agreement to do only a partial job must be very carefully worded and in writing, and that such an agreement must be based on informed consent; explaining all the dangers in doing only a partial job will often be more difficult than doing a full job.

Finally, remember that you should always identify exactly who it is you will be acting for. Anyone else who might be seen to have a “relationship of proximity” to you should be clearly advised in writing that you do not act for them and that they should seek the advice of another lawyer to protect their interest. See the discussion of unrepresented parties at §6.18 of the Practice Material: Professional Responsibility.

5. Retainer Letter or Agreement

Having the scope and amount of retainer and billing practices clearly set out in a letter or agreement clarifies the important issues for clients and provides useful documentary evidence for you, if problems arise with the client later. It is important to have a written retainer letter or agreement with every client. The main exceptions occur with simple real estate transactions (where purchasing clients should be provided with an interim reporting letter on title which also covers these points) and simple wills (where a final letter is used and it confirms these points).

If a retainer is not written, and if there is any disagreement, the onus will be on the lawyer to prove that the terms are as he or she maintains. If there is any doubt, that doubt is often resolved against the lawyer: Bergman v. Williams, supra, as well as Re Dickie (1916), 23 B.C.R. 538 and Barker v. Skrine, [1936] 1 W.W.R. 431. See also Roberts v. Kroll, [1971] 5 W.W.R. 133, which held that, without a written agreement, the onus is on the solicitor to prove the retainer and to prove the terms of any oral agreement contrary to the client’s statement.

Professionalism: Practice Management
Generally, the purposes of the retainer agreement are to:

(a) confirm critical instructions i.e. the legal services to be provided and any restrictions on those services (which reduces the likelihood of misunderstanding of work to be done or not to be done);

(b) identify the specific work that will be done to accomplish instructions;

(c) confirm and clarify billing practices; and

(d) obtain the client’s commitment to the terms of the retainer by having the client sign the letter or agreement.

There are several excellent examples of retainer letters and agreements. They should not be lengthy or intimidating, but should clearly set out for the client’s benefit, as well as your own, the following matters:

(a) an outline of the client’s instructions;

(b) the lawyer’s authority to act (it is good practice to identify the lawyers who will be performing the services) and to incur disbursements (including, where appropriate, authority to employ agents and/or experts);

(c) the services to be performed (and, where necessary to clarify the cash retainer, the services the lawyer will not be performing; for example, in real estate and commercial matters, those matters which remain the responsibility of the client or a third party such as a realtor, accountant, surveyor or engineer);

(d) the manner of remuneration, including the amount of the cash retainer, and an explanation of the purpose of the cash retainer, the basis for calculation of fees: set fee, straight time, or time plus some additional amount after considering the circumstances set out in s. 71(4) of the *Legal Profession Act*. In addition, an explanation of the disbursements, the billing arrangement (e.g., monthly, quarterly, on completion), and any agreement as to interest on overdue accounts; and

(e) the terms under which the whole retainer will be terminated.

Note that you are entitled to charge interest on unpaid accounts only if you have entered into an express agreement with the client as to the interest at the time the client entered into the contract for services.

There are many other topics you should include, such as the charging of PST and GST, and whether any trust funds held will earn interest.

In *Arctic Installations (Victoria) Inc. v. Campney & Murphy* (1994), B.C.L.R. (2d) 345, the Court of Appeal denied the firm the right to charge the client a bonus for a “notably successful result” where that wasn’t a term of the retainer. The Court held that “[b]ecause the solicitor, when he accepts a retainer, is contracting with his own client, he has a duty to advise the client fully and fairly concerning the terms of that contract.”

The wording and length of the retainer agreement will depend upon the task to be performed and the clients. For example, when a banker asks a lawyer to act on behalf of the bank in collecting a simple debt, a simple letter from you to the bank confirming your retainer should suffice.

If you act for clients who have trouble with written English, the letter should be written in simple terms that can be translated easily.

Two other important points often made in retainer letters involve telephone calls. Explain to the client how the nature of your practice often makes it difficult to return calls immediately (e.g. you are often in court or discoveries, or you are a solicitor frequently involved in lengthy client meetings). Tell the client you will always do your best to answer calls within 24 hours. Urge the client to speak to your secretary or, if the message is urgent, the client should say this, so you will call back as soon as you can that day.

Also, if you are billing on the basis of time spent, tell your client you charge for time devoted to telephone communications with the client and others connected with the case and that the billing will include time spent on any necessary review of file material before the call and making a note of the contents of the call.

At the end of this chapter there are two plain language retainer letters. As with other precedents, these standard form letters should not become substitutes for the exercise of your own judgment. There may be topics that you will add and others you will delete. The text under each topic must be modified to fit the circumstances of each situation and client.
6. Contingent Fee Agreements

A contingency agreement, or contingent fee agreement, is one that provides that a lawyer’s fee is contingent, in whole or in part, on the happening of an event (Legal Profession Act, Part 8, s. 64).

A contingent fee agreement must be written (Legal Profession Act, ss. 65, 66 and Law Society Rule 8-3). It is important that the terms of such an agreement are clear. The terms should identify work contracted for and exclude work not to be done by the lawyer, for example a review of accounts or an appeal. They should also provide for getting off the record and terminating the solicitor-client relationship. Failing to do so may result in an inability to withdraw unless the client consents: Edwards v. Barwell-Clarke (1980), 22 B.C.L.R. 6 (S.C.). The agreement should also clarify whose responsibility it is to pay for disbursements and whether a retainer for disbursements is required.

When entering into a contingent fee agreement, the client is entitled to independent advice as to its terms. As a matter of practice, the lawyer should require the client to consider the contingent fee agreement at his or her leisure and in the lawyer’s absence. However, ensure the agreement is signed and returned together with the monetary amount of the retainer (if any) before or very soon after you start work.

A lawyer has an overriding duty to ensure that a contingent fee agreement is fair and that the remuneration charged is reasonable in the circumstances (Law Society Rule 8-1). Thus, if a registrar reviews the agreement eventually under s. 68(5) of the Legal Profession Act, the registrar may, where he or she considers that the agreement was unfair or unreasonable, modify or cancel the agreement.

In Commonwealth Investors v. Laxton, 50 B.C.L.R. (2d) 186, leave to appeal refused (1991), 54 B.C.L.R. (2d) xxxiv (S.C.C.), the B.C. Court of Appeal held that s. 68(9) contemplates a two-step inquiry. The first step, on the issue of “fairness”, investigates the mode of obtaining the agreement and whether the client understood and appreciated its contents. Assuming the contract is found to be fair, the second inquiry entails investigation of its “reasonableness”, in which the court will consider all of the ordinary factors in the determination of the amount a lawyer may charge a client (these factors are reviewed in §5.07(3)).

The Law Society has enacted rules limiting what a lawyer can charge under a contingent fee agreement in personal injury cases. Rule 8-2 provides that, subject to the court’s approval of higher remuneration, the maximum remuneration to which a lawyer is entitled under a contingent fee agreement, when acting for a plaintiff in a claim for personal injury or wrongful death arising out of the use of a motor vehicle, is 33-1/3% of the amount recovered, and in any other claim for personal injury or wrongful death, is 40%. Note that the maximum limits apply only to trial work and not to appeals. All contingent fee agreements must include wording that informs the client that the limit is restricted to trial work (Rule 8-4, prescribes the wording).

Rule 8-2(2) provides that a lawyer and the client may enter into a contingent fee agreement in which the lawyer may elect to forego any remuneration based on a proportion of the amount recovered and receive instead an amount equal to any costs awarded by order of the court.

In Pierce, van Loon v. Davro Investments Ltd., (7 May 1996), Vancouver Registry, CA19833, the Court of Appeal considered a contingent fee agreement where the client alleged that the contract was unfair or unreasonable when made. The lawyer had agreed to work at an hourly rate plus a “bonus for success” at an agreed rate on the recovered judgment. The registrar agreed with the client that the contract was unreasonable and cancelled the contract, directing the lawyer to submit a new bill.

Contingent fee agreements relating to child custody and access are void, and those relating to services for other matrimonial matters are void unless approved by a judge of the Supreme Court (Legal Profession Act, s. 67(3), (4), (5)).

In Cook v. Mission Memorial Hospital, [1996] B.C.W.L.D. 1752 in which the lawyer’s fee was substantially reduced, Oliver J. said:

[H]aving regard to the way in which the law is developing and the way that Yule v. Saskatoon [(1955) 17 WWR 296 (Sask. C.A.)] has been applied in recent contingency fee review cases, it is my view that any lawyer who hereafter fails to keep time records when undertaking contingency fee litigation in circumstances where there is a possibility of his [sic] bill being taxed is foolhardy—for the lack of detailed time records deprives the Court of important information necessary to protect the legitimate interests of the provider of legal services.
In deciding whether an agreement is fair and reasonable, the registrar or court may look at the percentage charged and may modify it and lower it (Pohorecky v. Remedios (21 February 1995), Victoria Registry, No. 950101 (S.C. Registrar)).

Note that Part 4 of the model contingency agreement (see Precedent B at the end of this chapter) includes a notice to the client of his or her right to have the lawyer’s account reviewed under s. 68 of the Legal Profession Act. Such a notice is required under Rule 8-3 of the Law Society Rules.

A contingent fee agreement must not include a provision that allows the lawyer to contract out of liability for negligence, to exercise a veto on settling a matter, or to prohibit a change of solicitors (Rule 8-3(c)). The agreement must set out that the fee is not based on taxable costs and disbursements.

Subsection 68(9) of the Legal Profession Act provides that the Rules of Court apply to the assessment of costs review of bills and examination of agreements.

See Precedent B at the end of this chapter for a sample agreement.

7. Non-Engagement Letters

After initial consultation, you may decide not to take the work. In these circumstances, it is often wise to send a “non-engagement” letter to the person confirming your decision. Your letter should state clearly that your firm will not represent that person in the matter. Avoid commenting on the merits of the case, since any comments might be construed as legal advice. Clearly point out the limitation period if any and urge the individual to consult another lawyer as soon as possible.

There are model non-engagement letters at the end of this chapter.

Fees and Disbursements

Communicating Fees at the Beginning of the Retainer

Lawyers sometimes find it embarrassing to talk about fees. Clients do not find it embarrassing. They do find it more than annoying when they finally receive an account when they had no idea it would be that large.

One of the most frequent complaints by clients against lawyers is that the fees charged are excessive. All too often these complaints arise because the lawyer failed to specify in advance the basis upon which fees would be charged. Misunderstandings with clients often can be avoided if there is a full and frank discussion of fees at the commencement of the matter. Arrangements should be recorded on the file opening sheets and confirmed in writing: see §4.02.

The Practice Advisor, in (February–March 1994) 2 Benchers’ Bulletin had this advice concerning fees (at p. 6):

Are you discussing your fee with a prospective client immediately and up front? Or are you reluctant to discuss the fee? Are you afraid of rejection when the client hears how much the legal work will cost?

Clients want and have a right to know the basis on which you will arrive at the fee.

The Court of Appeal refused to allow a firm to charge the client a bonus for a “notably successful result”, when that was not a term of the retainer. In Arctic Installations (Victoria) Inc. v. Campney & Murphy (1994), 86 B.C.L.R. (2d) 345, the Court said, “[b]ecause the solicitor, when he accepts a retainer, is contracting with his own client, he has a duty to advise the client fully and fairly concerning the terms of that contract.”

Discuss your charges and your billing procedures. If you charge by the hour, tell the client whether you will be billing for phone calls and travel time. Do you bill for postage, long-distance charges, and photocopies? If you are offering a flat fee for some services, indicate what is covered in the package price.

If you are charging the client a contingent fee, you will strengthen your relationship with your client by an open and frank discussion of what costs are covered by your fee, and whether and when you expect disbursements to be paid by the client. You should also explain the risks for you and for the client, in particular the risk that the client may be ordered to pay costs to the other side if unsuccessful. Remember that a contingent fee agreement must be in writing.

If you ask for a retainer, explain how a retainer is used. Often clients do not understand the concept.

Professionalism: Practice Management
Fees are often a major worry for clients. When you have openly discussed the fees, the client will be better able to focus on the substantive matters—as will you. Clients who do not understand the fee structure tend to get angry when billed, delay paying, complain about your work or blame you for their losses.

A potential client needs to know whether it is worthwhile to proceed at all—and if your client can’t afford you, you should both know that before you do the work. You are practising your profession not only to provide a public service but also as a means of livelihood. Unless you generate the dollars necessary to fund the activity, you will not be in business.

Upfront discussion of fees gives you better options. You may decide to waive the fee, or work for less than you normally charge. You may decide to refer the client elsewhere, to ask someone else in your office who bills at a lower rate to handle the case, or simply to turn down the work and take your children to the park. You will not be happy if it is your client who suddenly initiates his or her pro bono status because you did not reach a clear understanding about fees. Talking about fees is important not only for the client but also for you.

2. Ongoing Communication about Fees

No matter what the basis of payment, a lawyer must keep in touch with the client, and keep the client advised of progress on the file. If the lawyer is billing hourly, he or she should send out monthly bills, setting out the work done on the client’s file during the time covered by the bill. This is a good method of keeping the accounting current, and letting the client know that the file is being dealt with. Firms that bill regularly (e.g., not six months after the service was performed) tend to look more professional to the client and get paid more quickly.

Do not be afraid to ask clients how they would like to be billed; for extended matters, most will request monthly billing, a few will prefer bimonthly. Another method of interim billing is to bill in stages. For example, the client might be billed after the initial opinion has been done, after the pleadings are closed, and after examinations for discovery. For extended matters, advantages of interim billing include knowing where things stand (for both you and the client), and exposing misunderstandings and unreasonable clients at an early stage.

Interim billing also is appropriate for “set fee” files, such as criminal files as these files may be billed in stages.

For contingent fee arrangements a form of interim account may be a useful reporting method. The fee may be left blank with a note saying that it is governed by the contingency agreement, or the fee may be estimated for the benefit of the client as if it were payable on an hourly basis, with a notation that no money is due or owing at present. If a lawyer tends to lose money on contingencies, these interim billings will have the added benefit of convincing your clients that they are getting a tremendous bargain for their money, which they are.

Billing should be done promptly at the completion of the service. It is good practice to schedule a time during the week to attend to billing. Consider meeting with or telephoning the client, in appropriate circumstances, to discuss the bill before its delivery.

The work must have been performed or the service actually rendered before billing, unless there are specific arrangements to the contrary. This applies both interim and final billing.

In order to comply with Rule 3-71 of the Law Society Rules, it is necessary to maintain a copy of all fee bills. One copy should be kept in the client file. Another copy should be kept in a separate file that is filed alphabetically by client or numerically. It is usually preferable to keep separate files for “paid” and “unpaid” bills.

3. Setting the Fee

Basic rules regarding “Fees and Review” are set out in Part 8 of the Legal Profession Act. Other important points of reference for setting fees are found in Section 3.6 of the BC Code and Canon 2.1-3 of the Canons of Legal Ethics.

There are no set schedules on how much lawyers may charge. The method of calculating fees varies with each lawyer and with different types of legal services. It is likely best to avoid quoting maximum fees; it is impossible to know when the unexpected will happen.

The following are the most common methods for arriving at a fee:

(a) A fixed fee

For example, a flat charge of $X for a particular service such as a conveyance, an incorporation, an impaired driving defence, or an uncontested divorce, used only when you can calculate approximately how much time will be required;
(b) An hourly rate
For example, $X per hour for every billable hour spent on preparing a complicated lease or handling a child custody dispute, used when you cannot predict how much time will be involved. For trials, many lawyers set a rate for each day or half day at trial;

(c) Percentage fee
For example, a charge of X% of the value of the subject matter when collecting debts;

(d) A contingent fee
For example, a charge of X% of what you recover on your client’s behalf in an I.C.B.C. claim or a medical negligence action, used when the client has a fairly strong case and has no funds to pay the lawyer at the beginning. The percentage normally will vary depending on the amount of the client’s claim, the degree of risk involved, and the stage in the proceedings the case is resolved; see §5.05(6) for rules governing contingent fees;

(e) Quantum meruit, or lump sum fee
For example, a fee based on a number of considerations, including the amount involved, the time spent, the result achieved, the complexity of the matter, the importance of the matter to the client, and the means of the client: Yule v. City of Saskatoon (1955), 17 W.W.R. 296 (Sask. C.A.). But see also the factors set out in s. 71(4) of the Legal Profession Act. These factors are referred to in the event that services do not fit conveniently into any other category and when, at the end of the file, the lawyer and the client are unable to agree on a fair fee.

Two Court of Appeal cases have examined quantum meruit billing. In Arctic Installations (Victoria) Ltd. v. Campney & Murphy, supra the Court of Appeal upheld the lower court’s ruling that the law firm was not permitted to claim a “bonus” or “premium”, in addition to its hourly fee. The court said a law firm must advise its clients up-front exactly how it intends to bill. When a lawyer accepts a retainer, he or she has entered into a contract with the client. The lawyer has a duty to advise the client fully and fairly concerning the terms of the contract. Moreover, if the firm agrees on an hourly rate with interim bills, it cannot add a bonus at the end just because the litigation was successfully concluded in the client’s favour.

In Nathanson, Schacter & Thompson v. Albion Securities Co. Ltd., 2004 BCSC 909, as in Arctic, no agreement had been made about the basis on which charges would be made. The firm followed a monthly billing practice (forty in total) and included a $250,000 bonus in the final account. The Registrar distinguished Arctic, finding “...the solicitors intended to bill a ‘fair fee’, although agreement to do so was never reached with the clients, and the clients proceeded on the incorrect understanding that they were going to be billed at straight hourly rates.” On appeal to the Supreme Court, and then the Court of Appeal, the clients argued that the firm was estopped from charging on a “fair fee” basis because of the established practice of hourly rate billing, and because the lawyers never explicitly informed the clients that they intended to charge a fair fee. The Court of Appeal upheld the Registrar and Supreme Court decision noting: “The test for a representation sufficient to found an estoppel is an objective standard. In any particular case, it is a factual inference whether a reasonable person in the position of the client would conclude that the solicitors’ represented by words or conduct that fees would be charged on an hourly rate basis only. Here the Registrar has concluded that the monthly accounts and other circumstances did not objectively demonstrate to the Client a pattern of billing based exclusively on hourly-based charges” (Nathanson, Schacter & Thompson v. Albion Securities Co. Ltd., 2004 BCCA 515 at para. 23).

Lawyers sometimes bill solely by one method, but more often than not, particularly in complex matters, factors such as those mentioned in Yule and Nathanson, s. 71(4) of the Legal Profession Act come into play.

Time spent on a file does not entitle you to bill automatically. In this respect, the law is clear: “what the lawyer has done”, “what the lawyer has accomplished”, “the magnitude of the interests concerned”, “the skill which the lawyer manifests on behalf of the client”, these are the things which count most in the assessment of the...
lawyer’s fee; not “the number of interviews the lawyer may have”, nor “the time spent” (see Yule).

Other considerations are as follows:

(i) Means of the client

The client’s ability to pay becomes a significant factor if the client’s means are modest; can the client pay in instalments? Note Canon 3(9) of the Canons of Legal Ethics, which states in part that “[t]he client’s ability to pay cannot justify a charge in excess of the value of the service, though it may require a reduction or waiver of the fee”;

(ii) Complexity

Was special difficulty, novelty, or responsibility involved beyond that which is normally expected in the general field of the law concerned? Note that in Connell Lightbody v. Yoo, [1996] D.C.L. 96–5383 (S.C., Master), Master Tokarek expressed difficulty in “appreciating what was actually done by [the solicitor] and why it took so long to do it” despite the fact that the solicitor repeatedly explained that the matters in issue were complex, while providing summaries of the work and services related to each interim account. The court concluded that the mere stating that matters were complex and difficult without actually explaining how that led to greater fees did not in and of itself lead to the conclusion that the fees were reasonable;

(iii) Result

Were the instructions successfully and promptly carried out to the satisfaction of the client?

(iv) Amount involved

For example, where a specific amount is involved, a lawyer might start an assessment of the fee at 15% of that amount, if warranted by the amount and nature of the work done, but consider that a 20% fee requires some special justification related to the particular case;

(v) Time

Bill the lesser of the number of hours actually spent on the task and the number of hours that would have been spent by the average practitioner.

Remember, however, that a lawyer’s retainer is a matter of contract, and that a departure from the retainer agreement may amount to a breach of contract. The retainer letter should clearly indicate the considerations that may apply in the lawyer’s calculation of the fee.

Note also Canon 2.1-3(j) of the Canons of Legal Ethics:

A lawyer should try to avoid controversies with clients regarding compensation so far as is compatible with self-respect and with the right to receive reasonable recompense for services. A lawyer should always bear in mind that the profession is a branch of the administration of justice and not a mere money-making business.

It goes without saying that the principles of billing are easier to state than to apply. Practical guides are hard to find. The only real guide on which a lawyer can rely in settling on a proper fee is his or her judgment and conscience, coupled with the judgment of his or her colleagues in the firm. The article by Gordon Turriff, Q.C. “Remuneration and Professionalism” in (November 1991) 49:6 Advocate 867 is recommended to all new lawyers. Gordon Turriff also wrote a paper entitled “Lawyers’ Remuneration” which outlines recent developments in this subject. You can find the article in CLE’s Annual Review of Law & Practice—1994 at pp. 439–448 and more recent articles in subsequent editions of the Annual Review of Law & Practice.

4. Client Protection Devices

The primary client protection devices with respect to lawyers’ fees are as follows:

(a) review of fees by the registrar (Legal Profession Act, s. 70); and

(b) statutory prohibitions (for example, Legal Profession Act, s. 67, with respect to contingent fees).

Clients should be advised of their rights under s. 70 and the time limits to exercise them.

5. Lawyer Protection Devices

To prevent client complaints and claims, and to recover full payment from the client, the lawyer has the following protection devices:

(a) early discussion of fees;

(b) keeping the client informed;

(c) keeping time sheets to record the time spent and work done on a file;

(d) interim billing;
6. Solicitor and Own Client Reviews

Clients should be encouraged to discuss the bill with their lawyer before applying to a registrar; there may be a genuine misunderstanding about what the lawyer had to do to resolve the client’s legal problem.

Under s. 70(1) of the Legal Profession Act, a client charged with a lawyer’s bill may apply to a Supreme Court Registrar, before or after payment of the bill, for an appointment to review the bill. The lawyer must receive five days’ notice of the appointment, and of any affidavit in support (Supreme Court Civil Rule 14-1(21)). Unless special circumstances exist, the client must have the bill reviewed within one year after receiving it, or within three months after paying it, and will be barred from a review if the lawyer has received a judgment for the amount of the bill (s. 70(11)).

Section 71 states that a registrar is responsible for conducting review hearings; however, a master has the same powers and jurisdiction as a registrar (Rule 23-6 and Supreme Court Act, s. 11(8)). In this chapter, the review officer is referred to as the registrar.

Unless special circumstances exist, the lawyer must pay the costs of the review if 1/6 or more of the total amount of the bill is subtracted from it; otherwise the client must pay the costs of the review.

7. Solicitor and Client Collections

By refusing to pay or otherwise challenging a lawyer’s bill, a client waives solicitor-client privilege to the limited extent necessary to resolve the dispute. Accordingly, lawyers have the right to bring an action in contract to recover fees (Wilson, King & Company v. Torabian (1991), 53 B.C.L.R. (2d) 251 (S.C.)).

A lawyer may bring an action in Small Claims Court (for actions under $25,000), or in the Supreme Court ($25,000 or over), or, under s. 70, a solicitor may apply to have an account reviewed against his or her own client (on the expiration of 30 days after the bill has been delivered or sent, and after having served the client with five days’ notice in writing of the appointment and any affidavit in support). On conclusion of the review, the registrar may issue a certificate, which operates in the same manner as a judgment. The fee review is a nullity if the lawyer applies before the 30 days expire (Bull, Housser & Tupper v. Mr. T. International Agencies Ltd. and Daljit Toor (6 July 1999), Vancouver Registry, CA022827).

Naturally, your first step in proceeding against an overdue account is to send out reminder letters. Next, you should send a demand letter if the client fails to respond or if it becomes clear that the client does not intend to pay.

Your method of proceeding will depend on a number of factors, such as whether your relationship with the client is still friendly, whether the client can afford to pay, whether the client has retained another law firm, where the client resides, and the likely outcome of the dispute. In some circumstances, it may be worth reducing part of a disputed amount in exchange for payment and the abandonment of any claims by the client; after all, a fee dispute can waste much of your time, and the client will complain to others about you if the dispute is not settled.

If the client refuses to pay because he or she believes the amount of an account is too high (and is not disputing the validity of the retainer), it will often be easier to pursue a review rather than a judgment. If the client does not respond to demand letters, commencing an action may be the better route, because the client may not defend, and the lawyer may be able to obtain a summary judgment with little cost and effort (particularly in Small Claims Court).

8. The Registrar’s Perspective of Solicitor and Own Client Reviews

A good part of the time of registrars is spent reviewing bills between solicitor and client. A review hearing is conducted like a trial. The onus is always upon the lawyer to prove the bill; accordingly, the lawyer’s case is presented first. Witnesses are called; parties may be subpoenaed. At the conclusion of the evidence, submissions are received from the lawyer, the client and, if necessary, the lawyer in reply. The lawyer arranges for attendance of a court reporter if a transcript of the proceedings is required. A party to a review may appeal the registrar’s decision to the Supreme Court under s. 75 of the Legal Profession Act.

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Section 69 of the Legal Profession Act and Supreme Court Civil Rule 14-1(31) prescribe the requirements of a proper bill:

**Section 69(4)**

A bill under subsection (1) is sufficient in form if it contains a reasonably descriptive statement of the services with a lump sum charge and a detailed statement of disbursements.

**Rule 14-1(31)**

A lump sum bill must contain a description of the nature of the services and of the matter involved as would, in the opinion of the registrar, afford any lawyer sufficient information to advise a client on the reasonableness of the charge made.

In an application by a lawyer, the registrars will decline to review “bills” which are not sufficiently descriptive of the work done. A “one-liner” bill—“To all professional services rendered in connection with matrimonial matter”—is undoubtedly not sufficiently descriptive (Re Campney and Murphy v. Fong, [1982] 1 W.W.R. 446 (B.C.S.C.)). But common sense and the knowledge possessed by the client must be taken into account. In any event, the registrar can always order particulars or details of the services for which the bill was rendered.

The registrar will decline to review disbursements claimed by a solicitor where they are not itemized (Re Hastings (7 August 1981), Vancouver No. A811608).

It is usually not enough for a solicitor to direct an articled student to appear to speak at the review of a bill, because the student will not have personal knowledge of the work done. A client is normally entitled to expect the lawyer who performed the services to be present. The registrar may decline to review the bill where someone else attends, even if the client has not appeared to raise an objection (Schleeter v. Ruhr (1957), 25 W.W.R. 178 (B.C.C.A.)). One potential solution is for the solicitor to file an affidavit containing information of the kind considered to be relevant under the Legal Profession Act, and to send the student only if the lawyer is sure that the client will not attend. However, Registrar Carolyn Bouck suggests that since the onus of proving the reasonableness of a bill rests with the lawyer, the lawyer who performed the work described in the bill must be available to give evidence and be available for cross-examination and “affidavit evidence will rarely, if ever, suffice” (See Registrar Bouck, “Assessments of Costs and Reviews of Lawyers’ Accounts” (September 2004) Vol. 62 Part 5, The Advocate 679-686, at 683).

Section 71 sets out the criteria that must be in the mind of the registrar when he or she is called upon to determine the propriety of a lawyer’s bill.

The lawyer should remember that time spent is only one criterion. The lawyer may need to prove what is an appropriate hourly or daily rate. Of three lawyers who use the same rate, one may be hopelessly unproductive, another just slow, and the third, greedy. See, for example, Treasury Solicitor v. Registrar, [1978] 1 W.L.R. 446 (Q.B.), which emphasizes that an arithmetic bill—hours multiplied by hourly rate—often does not accurately reflect the value of the solicitor’s work and often undervalues it. It suggests that “hours by hourly rate” is only a “cross-check” of value and that it is not itself indicative of value.

The principles for adducing evidence when a party and party bill is presented for assessment (see chapter 7 of the Practice Material: Civil) apply with equal force to the review of a bill between solicitor and client. Counsel for a client should file the client’s affidavit, be prepared to call the client as a witness and be ready to adduce any other evidence which is necessary. This evidence can include, under Rule 14-1(32), another solicitor’s expert opinion as to

> ...the nature and importance of the services rendered and of the matter involved and the reasonableness of the charges made...

The solicitor has the same right to call opinion evidence. The weight to be accorded the expert evidence is a matter for the registrar, who may be influenced by the fact that the expert gave an opinion with knowledge of the amount of the bill. The registrar has jurisdiction to decide whether a lawyer was retained.

Most reviews are the product of the failure of lawyers to take the time, when they get instructions, to explain to their clients the way in which the fee to be charged will be calculated—in a general way at least—and to keep their clients informed about mounting charges and the alternatives that might be available. Some reviews result because lawyers have simply stopped treating their clients in a polite way.

9. **Section 3.6 of the BC Code—“Fees”**

Rule 3.6-1 of the BC Code provides that:

A lawyer must not charge or accept a fee or disbursement, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion.
Commentary [2] to Rule 3.6-1 states:

The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. No fee, extra fees, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where the lawyer’s fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such agency or other person.

Rules 3.6-4, 3.6-5 and 3.6-6 state:

3.6-4 If a lawyer acts for two or more clients in the same matter, the lawyer must divide the fees and disbursements equitably between them, unless there is an agreement by the clients otherwise.

3.6-5 If there is consent from the client, fees for a matter may be divided between lawyers who are not in the same firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

3.6-6 If a lawyer refers a matter to another lawyer because of the expertise and ability of the other lawyer to handle the matter, and the referral was not made because of a conflict of interest, the referring lawyer may accept, and the other lawyer may pay, a referral fee, provided that:

(a) the fee is reasonable and does not increase the total amount of the fee charged to the client; and
(b) the client is informed and consents.

10. Disbursements

(a) General

Disbursements paid on behalf of a client may be billed to that client provided they are for bona fide specific amounts. Typically they include such transactions as corporate and land title searches, registration fees, medical reports and the like. Such amounts should be separately shown on the fee account under the description “disbursements” or “amounts paid on your behalf.”

It is a customary practice to charge as a “disbursement” certain costs that may potentially include an element of “overhead fees.” Such costs are:

(i) photocopies (number of copies actually used, multiplied by the rate per copy);

(ii) delivery charges, including courier and postage, provided that the delivery charges in excess of the postage rate were not incurred because of some tardiness or default on the part of the lawyer;

(iii) long-distance telephone calls; and

(iv) automobile traveling expenses at a reasonable rate per kilometer parking and actual air, taxi and similar transportation expenses directly incurred on a client’s behalf providing that the charges are reasonable in amount and incurred with the client’s knowledge and consent.

When disbursements, such as for travel expenses, are incurred for the benefit of two or more clients, the actual expenses must be pro-rated on a reasonable basis, and charged to the client accordingly.

(b) Other Overhead Fees and Charges

In certain cases an amount for overhead or administration costs can be specifically allocated to the handling of a client matter. Such amounts might typically include word processing charges and file opening fees.

Such amounts may be shown as a separate fee or as an amount included in the fee for services. In no circumstances may the foregoing items be described on the fee account as “disbursements” or “amounts paid on your behalf” or similar descriptions.

(c) Agency Fees

Fees paid to other lawyers under agency arrangements are often charged as a disbursement. This practice is permissible, provided that the agency arrangement is entered into with the client’s prior consent and is reasonable and necessary and provided that it is not entered into on a regular basis for the purposes of fee splitting.
When a person not connected with the law practice performs agency or research work this work may only be done with the client’s prior agreement and the amount charged as a disbursement cannot exceed the amount actually paid.

When a cost is incurred on behalf of a client in a transaction carried out by a management company or a person or firm with whom the lawyer is not dealing at arm’s length, only the direct cost may be charged as a disbursement. No amount may be included for labour, service, overhead or profit.

Subject to the foregoing, the overriding consideration in determining amounts to be characterized as disbursements on a fee account is that such amounts must be limited to amounts actually paid or incurred on behalf of the client.

11. The GST and PST and Client Billing

The GST is a form of value-added tax, with each business in a chain of supply required to collect a tax of 5% of the sales price from its customers. “Service” is very broadly defined and clearly includes legal services. Most legal services are a taxable supply. Every person who carries on a commercial activity, which includes the practice of law, is required to register with the Canada Revenue Agency, and to collect GST on all supplies of goods and services. Since legal services are a taxable supply, lawyers are required to collect 5% tax on the fees and some disbursements they charge their clients. The tax which the business must remit to the government is the net of total tax collected from clients in a given reporting period, less the total tax paid to suppliers (“input tax credits”) for the same period.

Partners in a firm do not have to register individually. The partnership is considered to be carrying on the commercial activity, for GST purposes, as a separate entity from individual partners. Associates, articling students and employees of a corporation or the Crown are not required to register. Generally, sole practitioners must register and obtain a GST number.

For information on registration, exemptions and credits, see the Canada Revenue Agency website: http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/menu-eng.html. See also Canada Revenue Agency Policy P-209R, Lawyers’ Disbursements, for further information.

The Social Service Tax Amendment Act (No. 2) 1993, imposes a 7% tax on legal services. Generally speaking, fees for services of lawyers (and notaries) that come within the definition of the practice of law under the Legal Profession Act, and specified disbursements (e.g., secretarial services and word processing charges), are subject to the tax. Generally, clients who live or carry on business in B.C. must pay the tax, unless the legal services have no connection to British Columbia, as defined. Thus, most law firms in British Columbia will have to register to collect the tax.

More information about the PST tax is available in the Act and in the Provincial Sales Tax Act Regulations, and is available in Consumer Taxation Branch and the Law Society.

12. Solicitors’ Liens

If you bill a client and a client doesn’t pay or a client retains another lawyer when you have outstanding fees and disbursements (billed or as yet unbilled), you may be entitled to a lien—either a retaining (or possessory lien) or a charging lien. These two types of solicitor’s liens and the procedures connected with them are discussed in the article by Jacqueline Morris and Felicia Folk “Getting Paid: Asserting and Defending a Solicitor’s Lien” in (January 1997) Vol. 55 Part 1 The Advocate, 71–78. (www.lawsociety.bc.ca/docs/practice/resources/solicitors-liens.pdf)

The article “Whose File is it Anyway?” is also of interest regarding solicitors’ rights and is found at Practice Management, §4.08.

13. Final Reporting Letters

The absence of a final reporting letter can lead to dissatisfaction by clients and complaints about fees. It is not appropriate to simply send a covering letter with your account at the end of the file.

A final report should briefly summarize what has been done for the client and what result has been achieved. Most lawyers send a final reporting letter to buyers and banks (on the standard form) on completion of a conveyance, where the client is advised that the transfer and mortgage have been accepted for registration. However, some lawyers forget to do this very simple letter when acting for sellers. Many lawyers do not provide any kind of final report to wills litigation, estate, family or criminal clients. Not only does this failure not properly complete a file, but you also miss an opportunity to invite future business from the client and from friends and acquaintances. Some firms go a step further by requesting feedback from the client to improve the firm’s services (See §5.07 for a Model Survey).
[§5.07] Model Client Survey*

This survey is short and limited in scope, but should be a useful reference for lawyers who are interested in building stronger client relations.

The changes you make as a result of a client survey should reflect your goals in practice. What are those goals? How do you think your clients see you? How do you want your clients to see you?

You may wish to send a survey with your account, demonstrating that you care about your client’s satisfaction with your work, as well as your payment for the work.

Before conducting a client survey, however, ask yourself whether you are really prepared to make changes once you receive the responses. If a client expresses unhappiness when asked to comment on your services, you should take some action. You will be marketing to your own clients — probably a better use of your marketing budget than advertising for new clients.

* * *

Did you feel welcome the first time you walked into the office?  
☐ Yes  ☐ No  
If not, why not?  
____________________________________________________  
____________________________________________________

Did the receptionist call you by name?  
☐ Yes  ☐ No

Did someone offer to:

☐ Take your coat?  ☐ Yes  ☐ No
☐ Get you some coffee  ☐ Yes  ☐ No
☐ Tell you how long you would have to wait?  ☐ Yes  ☐ No

Did the lawyer take time to listen to everything you wanted to say?  
☐ Yes  ☐ No

Did the lawyer:

☐ Ask what goals you wanted to achieve?  ☐ Yes  ☐ No
☐ Tell you how the lawyer was going to try to achieve your goals?  ☐ Yes  ☐ No

☐ Obtain your instructions and approval on the course of action?  ☐ Yes  ☐ No

☐ Tell you how long the process would take?  ☐ Yes  ☐ No
☐ Tell you how fees were charged?  ☐ Yes  ☐ No
☐ Estimate your total bill?  ☐ Yes  ☐ No
☐ Explain that you would be making decisions about your case?  ☐ Yes  ☐ No

☐ Keep you informed of developments?  ☐ Yes  ☐ No
☐ Promptly respond to your requests?  ☐ Yes  ☐ No
☐ Promptly return your phone calls?  ☐ Yes  ☐ No
☐ Promptly reply to your letters and/or email messages?  ☐ Yes  ☐ No

Professionalism: Practice Management
Did we meet your expectations?

☐ Yes, very well, in the following areas:

☐ Somewhat, in the following areas:

☐ No. Improvement could be made in the following areas:

Thank you for taking the time to answer these questions. We will review your answers and strive to make appropriate changes to serve you and our other clients better. We thank you for selecting us as your lawyers and helping us to improve our client service.

Name (optional): __________________________ 

Date: __________________________

* This Model Client Survey is from the Law Society of British Columbia Practice Advice Department and can be downloaded from the Law Society’s website: http://www.lawsociety.bc.ca/page.cfm?cid=341&t=Client-service-and-communication.

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Professionalism: Practice Management
Retainer agreement

General

Dear [name of client]:

Re: [description of matter]

1. Description of services

You have asked us, and we have agreed, to act for you in the matter described below. On [date], we [met/spoke] to discuss the scope of our firm’s intended representation. We covered this subject in some detail and considered the nature of our fee arrangement. The purpose of this letter is to summarize and confirm the terms of your engagement of us.

You retain us to represent you in connection with [description of matter]. We anticipate that our representation will involve taking the following steps on your behalf:

   a. [describe]
   b. [describe]
   c. [describe]

At this time we have not been retained to represent you generally or in connection with any other matter. We will not be performing the following services:

   d. [describe]
   e. [describe]
   f. [describe]

[Note: A lawyer who provides limited scope legal services should inform the client about the scope of services and the limits and risks associated with the limited services provided. Check BC Code for possible related provisions.]

[Optional] Your desired outcome and time frame for resolution of this matter is as follows: [describe]

[Optional] We will work with you towards your desired outcome. However, all legal actions are subject to many possible variables such as the demeanour and recollection of witnesses, the availability of substantiating documents and other evidence, and the evidence marshalled by the
other side—all of which affect the decision of a judge or jury. Accordingly, we cannot guarantee that your desired result will in fact be achieved. For us to work towards your desired outcome, it will be necessary for you to abide by the terms described in this letter.

2. **Lawyers**

We expect that most of the work will be performed or supervised by myself (a partner in this firm) who will be assisted by [name], an [associate/articling student] in this firm. However, we reserve the right to assign other lawyers in our firm to perform legal services if in our judgment that becomes necessary or desirable.

3. **Fees**

   a. Our fee will be based principally on the time spent by us on your behalf. Records of all time will be kept and accounts will then be prepared and sent to you periodically.

   Our hourly rates range from $[amount] for articled students to $[amount] for my associate to $[amount] for me.

   While we expect that our fee will be calculated on the basis of our regular hourly rates, we reserve the right to charge more in appropriate cases, such as pressing circumstances, the requirement for work outside normal business hours, exceptionally successful or efficient representation, or special demands on us.

   You will be charged the applicable taxes on fees and on some disbursements or other charges.

   b. [Optional] Based on our consideration of the materials and information you have provided to us, and assuming that there are no further developments or information which would cause us to vary our preliminary opinion and that nothing out of the ordinary is encountered in the course of completing this matter, we estimate that our fee, excluding disbursements and other charges, will be approximately $[amount]. We are not guaranteeing that we can accomplish the work for that sum, but are representing to you that in our judgment that amount appears reasonable under the circumstances.

4. **Disbursements**

You will also be responsible for reimbursing us for expenses (also called disbursements) we incur on your behalf and that must be paid to third parties. These include long distance calls, postage, deliveries, travel expenses, out of office photocopying and printing, government filing and search charges and the fees of agents who conduct investigations, searches and registrations and all other reasonable out of pocket expenses.

5. **Other charges (this paragraph must be adapted to particular business practices of the firm)**
You will also be responsible for office charges allocated to your file. These include charges for paralegal time, word processing charges, computer costs, in-house photocopying and faxes. (If your firm charges a file opening fee or charges for in-house title searches, deliveries, flat rate Quicklaw searches and the like, which cannot be charged as a third party disbursement, add these here.)

6. **Interest**

Payment is due on all of our accounts when rendered. If any account is not paid within 30 days, interest will be charged on the outstanding balance at a rate of [rate]% per annum from the date of the account, until paid.

7. **Client identification and verification**

Lawyers are required to follow client identification and verification procedures when retained by a client to provide legal services. Accordingly, before we begin work on your behalf, we will require information from you concerning your identity. In addition, for some transactional work, we will require information to verify your identity (to confirm who you are) before the transaction occurs.

8. **Retainer**

Before we begin work on your behalf, we require a retainer in the amount of $[amount] by [insert required date]. The retainer will be placed in our trust account and will serve as a source of payment for all or part of our account or accounts when rendered. You will be asked to replenish the retainer from time to time. Any unused portion will be returned to you upon the completion or termination of our services.

9. **No cash** *(this paragraph must be adapted to the particular practices of the firm. Check Law Society Rules for the limited circumstances in which cash may be accepted)*

Please note that we do not accept any funds in cash, including our retainer. As protecting your legal interest may require paying funds within certain time limits, we recommend that you discuss with us any necessary arrangements in advance to provide payment to us by way of certified cheque, money order, bank draft, or electronic transfer.

10. **Acting for more than one client** *(Refer to the Law Society precedent letters ‘Joint Retainers’)*
11. Termination of legal services

You have the right to terminate our services to you upon written notice to us.

Subject to our obligations to you to maintain proper standards of professional conduct, we reserve the right to terminate our services to you for good reasons which include, but are not limited to:

a. if you fail to cooperate with us in any reasonable request;
b. if there is a serious loss of confidence between us and you;
c. if our continuing to act would be unethical or impractical;
d. if our retainer has not been paid; or
e. if you fail to pay our accounts when rendered.

If you terminate our services or we withdraw, you would only have to pay our fees, disbursements, other charges, and the applicable taxes incurred up until the time we stopped acting for you.

12. Agreement

We recommend that you consider whether you want to have this agreement reviewed by another lawyer.

If you want us to proceed on the basis described above, please sign the enclosed copy of this letter in the space provided and return it to us, together with a retainer in the sum of $[amount], in the enclosed self-addressed envelope. If you decide that you do not want us to proceed on your behalf in this matter, please inform us promptly.

Yours truly,

__________________________________________
Client’s signature

__________________________________________
Date
Contract for Legal Services and Fees

Part 1: Our services

Legal services covered by this contract

We agree to act for you in your legal claim against [name of defendant], the Defendant, once we receive a signed and dated copy of this contract and obtain the information from you that is required by the client identification and verification procedures that lawyers must follow. We will then be your lawyers throughout the whole legal process including going to trial if necessary. (The attached document called Steps in a Lawsuit explains the basic steps most lawsuits go through as well as some legal terms.)

At the same time, we will try to settle your case to obtain a favourable settlement for you. A settlement is an agreement between the parties to a lawsuit which sets out how they will resolve the claim. If your claim is settled, it would not have to go to trial.

We will keep you informed about matters that arise, and discuss with you any significant decisions you must make. We will give you our best legal advice, but you will make the final decisions. We will only settle your lawsuit if we have your written consent.

Meeting your expectations

Money

You hope to get a fair and reasonable amount of money for your injuries to compensate you for:

1. your pain and suffering;
2. the wages you lost when you could not work;
3. your medical, drug, and other expenses.

You also hope the Defendant will pay for at least some of the legal fees we will charge you. Even if you win your lawsuit, the Defendant will only have to pay you some of these fees, not the whole amount. You still agree to pay us our fees, expenses and the applicable taxes which are discussed in Part 2 of this contract.

When we have the information we need, we will tell you how much money we think you could reasonably hope to get in a settlement or at trial. We will also tell you if our opinion changes as your case progresses.

Time

It can take up to two years or longer for a lawsuit to go to trial or settle. The amount of time your lawsuit will take will depend on such factors as how soon you recover from your injuries; when we receive the documents we need; how booked the courts are; and when the other lawyers are available.

Your role as client

You understand the importance of giving us all the facts and of being totally honest with us. We can only do our best job if we have your trust and are fully informed.

In particular, we ask you to give us all information you have, or have access to, which could help us in working on your lawsuit. We need copies of all letters and documents from ICBC; medical reports; physiotherapy records; income tax records; paycheque stubs; and medical, drug, and

Updated: June 2010
parking expenses. If necessary, we will ask you to give us written authorization to obtain this information.

**Legal services not covered by this contract**

If your case goes to trial and either you or the Defendant is unhappy with the court’s decision, you or the Defendant could appeal the decision of the court to get a higher court to change that decision. We would tell you what we think the likely outcome of an appeal would be. But this contract does not cover the work that would be involved in such an appeal. If you wanted us to be your lawyers on the appeal, we would ask you to sign another contract to cover those new legal services and fees.

This contract also does not cover any steps you may have to take to get the Defendant to actually pay you. If the court finds a defendant responsible for an accident, ICBC will usually pay the court judgment. But if ICBC does not have to pay the judgment or if the Defendant will not pay, then you have to start proceedings to enforce the court order or judgment to make the Defendant pay. If you ask us to help you enforce a court order or judgment, again, we would ask you to sign another contract. This contract does not cover such enforcement proceedings.

We have not agreed to give you legal advice or perform legal services for you relating to any other matter. [If you are not being retained to assist with another possible cause of action you are aware of, add this sentence: In particular, although you told us [describe cause of action, for example: “you were let go from work”], you have not asked us to take any legal action concerning this.]

[Note: A lawyer who provides limited scope legal services should inform the client about the scope of services and the limits and risks associated with the limited services provided.] Recommendation 13 of Report of Unbundling of Legal Services Task Force p. 22; approved by Benchers April 2008

**Part 2: Our fees, expenses, and billing arrangements**

**Our fee is a percentage**

There are two main ways a lawyer can bill you:

**Option 1** — by charging an **hourly** fee for work done;

**Option 2** — by charging a **percentage** of the amount of money awarded in a settlement or court judgment; or, alternatively, by accepting court ordered costs as the fee.

You have asked us to charge you fees based on a percentage of the amount of money awarded to you in a settlement or court judgment, or by accepting court ordered costs as the fee, whichever is greater (option 2). We agree.

The disadvantage to choosing a percentage arrangement (option 2) is that you may end up paying us more in legal fees than if we were to charge you an hourly fee for work done (option 1). This could happen if we are fortunate in favourably settling your lawsuit quickly.

There are also advantages to choosing a percentage fee. First, if we cannot settle your case or if you lose at trial, then you would only have to pay our expenses. You would not have to pay us any fees. Second, if we go to trial and win, the percentage fee may be less than an hourly fee if we have to spend a great amount of time.
Percentage based on work done

Our percentage fee will be less if your claim is settled than if it goes to trial. If it is settled, the fee will depend on the stage at which the lawsuit is settled. Our percentage fee will be:

1. ***[___, for example, 20%] of the settlement money***
   - if we settle your claim before the examination for discovery (Steps in a Lawsuit explains this step)
2. ***[___, for example, 25%] of the settlement money***
   - if we settle your claim during or after the examination for discovery and at least 90 days before trial
3. ***[___, for example, 30%] of the settlement money***
   - if we settle your claim less than 90 days before trial or during trial, but before the court judgment
4. ***[___, for example, 33-1/3%] of the trial judgment***
   - if your claim does not settle and is decided by a trial.

There is one case where our percentage fee will differ. You may want to go to trial even though we recommend that you settle. If the trial judgment turns out to be less than the settlement we recommend, our percentage fee will be based on the amount of the higher recommended settlement, not the trial judgment.

Costs

If we successfully settle your claim or win at trial, we will seek a sum of money called costs from the Defendant to help cover some of our legal fees and expenses. If our fee is calculated as a percentage of the settlement or court judgment, you will receive the full amount of these costs since these costs are not included in the calculation.

Please note, however, that if we win an award from the court for costs payable by the Defendant to you, we may choose to receive the costs as our fee instead of accepting a percentage fee from you. You understand that the amount of costs may be higher or lower than a percentage fee would be.

If we choose to receive costs paid by the Defendant instead of a percentage fee, you would then receive 100% of the court judgement awarded to you on your claim, less any expenses.

Legal expenses (also known as disbursements)

In addition to our percentage fee or court-ordered costs as our fee, you agree to pay all expenses, even if we cannot settle your claim or lose at trial.

Minor expenses

We will charge you for the minor ongoing expenses that we have to pay. Some of these expenses are long distance telephone calls; photocopying costs; costs to deliver documents to court or the other lawyers; faxes; court filing fees (which the court charges to keep an official record of court documents); and necessary land or company registry searches (for example, to find out the proper name of the defendant).
We will regularly bill you for these minor expenses once they total $[amount] and we will detail all expenses in our bills. Please pay our bills within 30 days. After 30 days we will begin charging interest at [XX]%.

If we successfully settle your claim or win at trial, the settlement or court judgment most likely will require the Defendant to reimburse you for some of these expenses.

**Major expenses**

We may have to hire other people such as court reporters, expert witnesses, accountants, and property appraisers to help us with your lawsuit. If we need to hire these people, we will first discuss the matter with you.

We usually ask you to pay these major expenses in advance, or we will have the bill sent directly to you to pay. Again, please pay these bills within 30 days. After 30 days we will begin charging interest at [XX]%.

Also, as with the minor expenses, if we successfully settle your claim or win at trial, the settlement or court judgment most likely will require the Defendant to pay you costs to reimburse you for some of these expenses.

**Taxes**

In addition to our legal fees and expenses, you agree to pay any applicable government taxes (PST and GST or HST) that we must charge you.

**Billing arrangements**

You agree that any money from a settlement or judgment, including costs, will be paid directly to us in trust. We will then deduct our fee, any applicable taxes (PST and GST or HST), and any unpaid expenses, and give you the balance.

**Part 3: Dealing with each other**

**Ending the relationship**

**By you**

You are free to end our services before your case is completed by writing us a letter or note. If you do, you agree to pay our expenses and an hourly fee based on the actual time spent up to the date of ending those services.

Our hourly fee will depend on which lawyer or assistant helps with the work. I will be the main lawyer responsible for your case, but some work may need to be done by a more senior lawyer, and other work can be done equally well by a more junior lawyer. There are also many services, such as gathering information and preparing routine documents, that our paralegal assistant is well qualified to perform. A paralegal works under the supervision of a lawyer, but may not give legal advice. Our paralegal can serve you at lower cost than one of our lawyers can.

If you end our relationship, our hourly fee will be based on these rates:

- **My rate**: $[amount] per hour
- **[senior lawyer’s] rate**: $[amount] per hour
- **[junior lawyer’s] rate**: $[amount] per hour
- **[paralegal’s] rate**: $[amount] per hour
PRECEDENT B

We would ask you to sign a court form which tells the court we no longer act for you.

By us
We are free to withdraw our services at any time if we have a good reason. For example, we
would withdraw our services if a client:
1. did not cooperate with us in any reasonable request;
2. asked us to do something unethical or illegal;
3. did not pay our bills on time without making other arrangements for payment.
Again, you agree to pay our expenses and an hourly fee for our legal services up until the time
we stopped acting for you.
We would also have to withdraw our services if we learned of a conflict of interest that would
make it unethical for us to continue to act for you. A conflict of interest occurs when what is best
for one of our clients somehow is not best for or hurts another of our clients. If we have to
withdraw our services for you because of a conflict of interest, you would have to pay our
expenses up until the time we stopped acting for you.

[Optional] Acting for you and another client

[Note to lawyer: Chapter 6 of the Professional Conduct Handbook provides that a lawyer may
jointly represent two or more clients if certain conditions are met. Appendix 6 of the
Professional Conduct Handbook sets out two precedent letters that you may use as the basis for
compliance with the conditions allowing joint representation. Refer to Appendix 6 and include
the provisions of those letters in this agreement, tailored as needed.]

If we have to stop acting for you because of a conflict of interest, you would have to pay your
share of our expenses to that date. [Name(s)] would have to pay [his/her/their] share of our
expenses. We would also charge you a fair and reasonable hourly fee for our work up to that date
if you went on to settle your claim or win at trial with the help of another lawyer.

Confidentiality
As your lawyers, we have to share relevant information about your case with the Defendant’s
lawyers and the court. But unless we need to share this information as part of our work, all
information you give us will be kept confidential between us.

No guarantees of success
We will try our best in acting for you and give you our best legal advice. However, you
understand that we cannot guarantee the successful outcome of your lawsuit. Remember that all
lawsuits involve risks and uncertainties in the law, the facts, and the evidence.

Part 4: Review of this contract
The law requires this contract to say:

[use in a motor vehicle action file]
The Rules of the Law Society of British Columbia provide that, subject to the Supreme
Court approving a higher fee, the maximum amount that a lawyer may charge in a claim
for personal injury or wrongful death arising out of the use or operation of a motor
vehicle is 33 1/3% of the total amount recovered. Fees charged by different lawyers vary.
The Rules of the Law Society of British Columbia provide that, subject to the Supreme Court approving a higher fee, the maximum amount that a lawyer may charge in a claim for personal injury or wrongful death is 40% of the total amount recovered. Fees charged by different lawyers vary.

Within 90 days after signing this contract or after our relationship has ended, you have the right to apply to a district registrar of the Supreme Court of British Columbia to have the contract examined to see if it is unfair or unreasonable. You have this right even if you have paid us any legal fees or expenses.

We also invite you to ask another lawyer to review this contract, if you wish, to make sure it is fair and reasonable.

**Part 5: Signing this contract**

This contract contains the whole agreement between us about our relationship with each other and our legal fees and expenses. It will not be changed unless you and we both agree and sign any changes. It will legally bind anyone such as heirs or legal representatives who replace either you or us, but it does not legally bind other lawyers who might act for you if you decide to end our relationship.

If you are satisfied with this contract, please sign and date both copies and return one of them to us.

Keep one copy for your records. If there is anything you do not agree with, or if there is anything you would like to discuss before signing, please write or call us.

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**Lawyer**

Date

I have read this contract carefully and I agree with it.

---

**Client**

Date
Practice Resource

Model non-engagement letters

Index
- Non-Engagement Letter (Confirming Conversation)
- Non-Engagement Letter (After Consideration)
- Non-Engagement Letter (Conflict of Interest)

Non-engagement letter (confirming conversation)

Dear [client name]:

Re: Legal Representation

This will confirm our conversation when I advised you I would not be able to represent you in connection with this matter.

If you do not have another lawyer in mind to represent you, I would suggest calling the Canadian Bar Association Legal Referral Service, as that service maintains a list of lawyers who may be available to handle your type of case.

You should be aware of the fact that time limits could be involved. I have not researched what these time limits are, so you should contact another lawyer immediately. If you fail to do so, you may be barred from pursuing the matter.

Thank you for your interest in this firm.

Yours truly,

Non-engagement letter (after consideration)

Dear [client name]:

Re: Legal Representation

After consideration, we have concluded that our law firm will not represent you regarding this matter.

This letter is not intended to be an opinion concerning the merits of your case. In declining to represent you, we are not expressing an opinion as to whether you should take further action in this matter.
You should be aware that there may be strict time limitations within which you must act in order to protect your rights in this matter. Failure to begin your lawsuit by filing an action within the required time may mean that you could be barred forever from pursuing your action. Therefore, you should immediately contact another lawyer to obtain legal representation.

We enclose all of the materials that you provided for our review.

Thank you for your interest in this firm.

Yours truly,

Non-engagement letter (conflict of interest)

Dear [client name]:

Re: Legal Representation

As we discussed during our meeting, before [firm name] could agree to represent you in this matter, we had to investigate whether this representation could adversely affect existing or former clients’ interests or there might be some other reason that we would be unable to adequately represent your interests.

After you left our offices yesterday, we performed a conflict of interest check and found that our firm does indeed have a conflict of interest in this case. Unfortunately, we can therefore not represent you and we must decline to do so in this matter.

Please be aware that whatever claim you have may be barred by the passage of time. Since time limitations may be critical to your case, we recommend that you immediately contact another lawyer for assistance regarding your matter.

Although we were not able to assist you in this matter, we hope that you will consider [firm name] in the event that you require legal services in the future.

Thank you again for your interest in this firm.

Yours truly,
Chapter 6

Trust Accounting

[§6.01] Trust Accounting Rules

Lawyers must understand the meaning and intent of the Law Society Rules regulating trust accounting. They must ensure that they implement and maintain a proper system for recording all financial transactions of the law practice and that the system works. Although the functions covered by the trust accounting rules may be delegated to another person, the lawyer “is personally responsible to ensure that those duties and responsibilities... are carried out” (Rule 3-54).

The trust accounting rules are intended to give assurance to clients and to the public that their financial transactions will be handled in a secure, responsible and orderly manner. The rules are also designed to protect lawyers by precluding practices that may precipitate a breach of fiduciary duty—a duty that is owed to all clients. Accordingly, the rules create a minimum acceptable standard in accounting procedures and record-keeping and regulate proper compliance with those minimum standards.

Failure to comply with the rules may result in disciplinary action. Section 37 of the Legal Profession Act provides that if there are reasonable grounds to believe that a lawyer or articled student may have committed or will commit any

(a) misconduct,
(b) conduct unbecoming a lawyer, or
(c) breach of this Act or rules

the Society may apply without notice or on such notice as the judge requires, to a judge of the Supreme Court for an order that the files or other records be seized from the person named in the order.

If the Chair of the Discipline Committee believes there has been misconduct, the Chair may authorize an investigation of the books, records and accounts of the lawyer under s. 36(b) and Law Society Rule 4-55. Under Law Society Rule 3-85, the Executive Director of the Law Society may order a compliance audit of the books and records to ensure that proper accounting procedures are followed.

The significant features of the trust accounting rules follow.

1. There are many important definitions in Rule 1 including an expansive definition of “trust funds”: “trust funds” includes funds received in trust by a lawyer acting

   (a) in the capacity as a lawyer, including funds

   (i) received from a client for services to be performed or for disbursements to be made on behalf of the client, or

   (ii) belonging partly to a client and partly to the lawyer if it is not practicable to split the funds, and

   (b) as a personal representative of a person or at the request of a person, or as a trustee under a trust established by a person, if the lawyer’s appointment derived from a solicitor-client relationship.

2. Rule 3-56 deals with the designation of savings institutions with which lawyers may deposit trust funds. The Law Society’s Executive Committee is given authority to make such designations under the Act.

3. Rule 3-58(1) provides that a lawyer must deposit all trust funds received into a pooled trust account.

   A lawyer who receives trust funds with instructions to place them otherwise than in a pooled trust account, pursuant to Rule 3-58(2), may place them in a separate account in accordance with s. 62(5) of the Act and Rule 3-61.

4. Rule 3-60(3) sets out the lawyer’s obligation to instruct the savings institution, in writing, to remit the net interest from a pooled trust account to the Law Foundation, at least quarterly, and to notify the institution that the trust account will contain funds of more than one client.

5. Rule 3-64 identifies how withdrawals from trust can be made and in what circumstances electronic transfers are permitted. Lawyers should arrange with the bank to have all bank charges for the trust account taken from their general account.

   Sometimes the bank does not follow the lawyer’s instructions and debits the trust account for these bank charges. To cover these rare cases, it is prudent to have an amount, up to $300 (as provided in Rule 3-60(5)) to cover errors in account debiting.

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6. Rule 3-61 addresses the separate trust account.
   - The client must authorize a transfer of trust funds from the pooled trust to a separate trust account and the lawyer must approve the transfer (Rule 3-68(c)).
   - The interest bearing trust account must be held in a savings institution in BC and the account must be designated as “trust” in the lawyer’s records.
   - Pursuant to Rule 3-66, if the features of the separate trust account don’t include the receipt of cancelled cheques and bank statements, then the funds must be transferred back to the pooled trust account.

7. According to Rules 3-60(4) and 3-61(3) lawyers must not deposit their own funds into a pooled trust or into a separate trust account (except under Rule 3-60(5)).

8. There are a number of provisions which specifically address the Benchers’ concern over security of trust funds. These are dealt with in Rules 3-60(3)(b), 3-57, and 3-77.

   Rule 3-65 includes provisions concerning the withdrawal of trust funds for the payment of fees and related taxes and in particular, a requirement to have the bill/account delivered as defined.

   Rule 3-65(5) prohibits a lawyer from transferring trust funds for fees where the lawyer “knows that the client disputes the right.”

9. Rule 3-62 provides for the endorsement over of cheques received by lawyers in the form in which they are received. The lawyer must keep a written record of the transaction and retain a copy of the cheque.

   Lawyers may make or authorize withdrawals from pooled or separate trust accounts by electronic transfer, provided that the conditions of Rule 3-64(2) are met. Please note that web or online banking payments and transfers from the trust account are not permitted.

10. There are a number of requirements in Rules 3-67 to 3-69 concerning books and records to be maintained. Note the requirements concerning the promptness of recording transactions and reconciling of accounting records in Rules 3-72 and 3-73.

11. Lawyers must report to the Law Society an inability to deliver up trust funds when due (Rule 3-74(2)(b)). The obvious situation is when the lawyer is short or overdrawn in his or her trust account, either by accident or other unusual circumstance. There have also been circumstances in which funds have been “held” by the financial institution, which prevented or jeopardized the lawyer’s drawing on those funds to meet obligations and undertakings. Rule 3-74 gives other examples of trust shortages (for example, caused by service charges, credit card discounts and bank errors). Rule 3-60(4) allows a lawyer to keep up to $300 in the pooled trust account in case bank charges inadvertently are debited from the pooled trust account. All trust shortages of greater than $2,500 must be reported to the Law Society.

12. Rule 3-78 preserves the lawyer’s right to claim funds standing to the credit of the client in a trust account, whether by way of lien, set-off, counterclaim, charge, or otherwise.

13. Division 7 deals with the Trust Report. Law firms are not tied to their fiscal years for purposes of trust audit reporting, but may choose any reporting period of not more than 12 months. Rule 3-79 requires the filing of a Trust Report each reporting period. Rule 3-82 sets out who has the credentials to complete the Trust Report. In some cases, law firms may be eligible to file a Self Report which is completed entirely by the practice. In other situations, the firm may be required to file an Accountant’s Report which requires the firm to engage a CA or CGA in public practice.

   Note that there is a penalty for filing a Trust Report late: $400 per month per Rule 3-80(3).

   Rule 3-81 deals with the consequences of a Trust Report not being received within 60 days of it being due: non-receipt results in suspension.

14. Provisions concerning unclaimed trust funds are dealt with under Division 8. The provisions set out a vehicle by which lawyers may remit to the Law Society trust funds which are unclaimed and for which the lawyer has been unable to locate the appropriate beneficiary for two years.

   In addition, this Division sets out the procedure for investigation and adjudication of subsequent claims against the unclaimed trust funds being held by the Law Society: the Part designates the Executive Director for these duties. The Law Society from time to time must conduct or authorize efforts to locate the owner of funds held under this Part. Note that s. 34 of the Legal Profession Act is also relevant to unclaimed trust funds. This section sets out the Law Society’s rights, duties and obligations with respect to their custody of unclaimed trust funds.
Opening a Trust Account

Any lawyer or firm receiving or paying money in trust is required to maintain a trust account at a designated savings institution.

For as long as the trust account is open, the lawyer must comply with all the rules governing trust accounts, including monthly reconciliation of trust balances and annual audit and reporting in the Trust Report.

Instructions for opening a trust account at a savings institution must be given in writing (Rule 3-60(3)). Contact the Trust Assurance Department of the Law Society for assistance with the procedure for opening a trust account.

The following letter should be used to instruct a savings institution.
CONFIDENTIAL

Dear ____________:

Re: Trust Account 

By this letter, I am [we are] advising your institution that the above account is a pooled trust account that will contain the funds of more than one client.

The Law Society of BC requires that a pooled trust account shall:

(i) be interest bearing,
(ii) provide monthly cancelled cheques and bank statements to the lawyer,
(iii) be readily available to be drawn upon by the lawyer,
(iv) be designated as a “trust” account on the records of the savings institution (and the lawyer), and
(v) be an account in respect of which the savings institution has agreed with the lawyer to pay interest to the Law Foundation.

Law Society Rule 3-60(3)(a) requires that every lawyer who opens or maintains a pooled trust account “instruct the savings institution in writing to remit the net interest earned on the account to the Law Foundation of British Columbia.”

This letter is my [our] instruction to you to calculate the interest on the above account at the rate and in the manner agreed upon between your institution and the Law Foundation of British Columbia, and to remit such interest directly to the Law Foundation according to the terms of that agreement (in the event that there is no agreement in place, please contact The Executive Director of the Law Foundation.) This letter authorizes and directs you to provide the Law Foundation with such information and explanation as it requires to verify the calculation of the interest remitted, including:

(i) account balance information during the reporting period,
(ii) the interest rate, and
(iii) interest earned.

A standard form remittance report which should accompany that remittance can be obtained from the Law Foundation.
Please forward the interest directly to:

   The Law Foundation of British Columbia
   1340 – 605 Robson Street
   Vancouver BC  V6B 5J3

and please advise me [us] of the amount of each transmittal.

I [We] also draw to your attention a requirement of the *Legal Profession Act*, S.B.C. 1998, c.9:

   **63(13)** Despite any agreement between a lawyer and a savings institution, if the lawyer’s pooled trust fund account is overdrawn by an amount exceeding $1,000, the savings institution must, as soon as practicable, inform the Society of the particulars.

   **(14)** Subsection (13) and the failure of a savings institution to comply with it has no effect on the civil liability of that savings institution to any person, and that liability, if any, must be determined as though that subsection were not in force.

Yours truly,

   [Name]

cc: Law Foundation of British Columbia
[§6.03]  **Selecting a Savings Institution**

The lawyer should select a particular savings institution carefully. It is usually costly and difficult to close and/or relocate a trust account.

Similarly, if you use accounting software, consider whether continuous stationery cheques are required before you instruct the bank.

[§6.04]  **Number of Bank Accounts**

Although at present there is no restriction on the number of trust bank accounts a lawyer may operate, it is strongly recommended that a lawyer maintain one or two only. Experience has shown that when many trust accounts are used, errors, shortages, and overdrafts frequently arise. In addition, the lawyer incurs greatly increased bookkeeping, accounting and reporting costs in trying to administer multiple trust accounts.

[§6.05]  **Ordering Cheques**

Many trust account errors arise because of a mix-up between the trust account cheques and deposit books and those of the general account.

Lawyers can reduce the chance of such errors by:

(a) using trust cheques which are a distinctly different colour to the general (non-trust) account cheques;

(b) ensuring that “TRUST” is imprinted in bold letters on each cheque; and

(c) ensuring that the account numbers allocated to the trust and general accounts are significantly different so that they will not be confused.

(d) maintaining the trust and general accounts at separate institutions, where possible.

[§6.06]  **Interest on Trust Accounts**

Normally, all interest earned on lawyers’ pooled trust funds is required to be paid directly by the savings institution to the Law Foundation or, if remitted to the lawyer, must be forwarded on to the Law Foundation.

A number of different arrangements for the calculation of interest have been entered into between the Law Foundation and various savings institutions. Usually interest is calculated at an agreed rate on the minimum monthly balance, and may, in some cases, be reduced by the amount of cheque processing service charges related to the trust account. It is the lawyer’s responsibility to ensure that any savings institution with which they are dealing has been instructed in writing to pay interest to the Law Foundation.

[§6.07]  **Separate Trust Accounts**

A lawyer must deposit all trust funds to a **pooled trust account**, except as permitted under section 62(5) of the *Legal Profession Act*:

62 (5) **On instruction** from his or her client, a lawyer may place money held on behalf of the client in a separate trust account, in which case

(a) this section and the rules made under it do not apply, and

(b) interest paid on money in the account is the property of the client.

The gross trust liability of the law firm must include amounts held in clients’ separate trust accounts. Accordingly, it is necessary to include such amounts in the monthly trust account reconciliation.

Some lawyers occasionally make the mistake of removing the trust liability from the accounting records at the time a particular client’s funds are transferred to the separate trust account. This error arises as follows:

DEBIT:  Trust Liability Account  
CREDIT:  Trust Bank Account  

The correct bookkeeping entry to record the transfer of client funds to a separate trust account, including the purchase of a term deposit, is as follows:

DEBIT:  Client’s Separate Trust Account  
CREDIT:  Trust Bank Account  

Under this method, the original trust liability amount remains unchanged and the amount of trust funds segregated to the separate trust account is separately identified.
[Please note that the numbers of the Law Society Rules in the Benchers’ Bulletin articles that follow on pages 90-94 have changed as of July 2015.]

### Trust accounts — pooled or separate?

Lawyers are reminded that, in accordance with section 62 of the *Legal Profession Act* and Part 3 of the *Law Society Rules*, funds received in trust are to be deposited into an interest-bearing trust account. In most cases, client trust funds are deposited to a pooled trust account, with interest payable to the Law Foundation. A lawyer, however, may obtain specific instructions from a client to set up and deposit the funds into a separate trust account, with interest accruing to the benefit of the client.

In each case, that lawyer should take into account the amount of the deposit, the time it will be held and the applicable interest rate to ensure that the return will outweigh the administrative costs and specific financial fees involved in a separate account.

Lawyers occasionally deposit funds in a pooled trust account in expectation of an early payout. If a process becomes protracted and the funds will remain in trust longer than anticipated, it is appropriate to reconsider whether to place the funds in a separate trust account.

Client instructions to deposit funds other than to a trust account must be in writing (Rule 3-51(3)) and the client should acknowledge in writing if the deposit is to an account that is not insured by CDIC or CUDIC (Rules 3-51(4) and 3-49).

### Proceeds of Crime Legislation (see also *Professionalism: Ethics*, §6.13)

To help the legal profession deal with the risks when accepting cash and exposure to money laundering schemes, the Benchers adopted a financial rule—Rule 3-59. This Rule prohibits lawyers from accepting $7,500 or more in cash, with some exceptions, such as if the lawyer receives the funds in payment of fees, disbursements, expenses or bail; pursuant to a court order; or the lawyer receives the funds from a law enforcement agency.

Under Rule 3-59(3), a lawyer “must not accept an aggregate amount in cash of $7,500 or more in respect of any one client matter or transaction.”

### Withdrawal of trust funds by electronic transfer

The Benchers have rescinded Law Society Rule 3-56(3.1)(a), allowing lawyers to make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer, *even if the dollar amount to be withdrawn is less than $25 million*. Prior to this change, a lawyer could not electronically transfer funds from trust unless the amount was greater than $25 million. The rest of Rule 3-56(3.1) is unchanged regarding the conditions that must be met for an electronic transfer from trust to occur.

Lawyers must complete and personally sign the *Electronic Transfer of Trust Funds Form* located on the Law Society website for all electronic transfers from trust (except for payments to the Law Foundation). Note that online payments from a trust account via the internet are not permitted. Also, online transfers to move funds from a lawyer’s trust account to his or her general account are not permitted.

Lawyers are cautioned that, although Rule 3-56(3.1) is permissive (use of the word “may”) so that a lawyer could theoretically write a trust cheque for an amount over $25 million rather than withdraw the amount by electronic transfer, financial institutions adhering to the Canadian Payments Association rules and standards governing the exchange of payment items between CPA member institutions for amounts over $25 million will not accept a trust cheque. The CPA was created by federal legislation to establish, maintain and operate a national system for the clearing and settlement of payments. To find out more about the CPA, visit cndpay.ca.

Lawyers who have questions about the electronic transfer of funds are encouraged to contact their banking representative and the Law Society’s Trust Assurance Department at 604-697-5810 or trustaccounting@lsbc.org.
The following Practice Watch articles give lawyers some helpful tips around how to handle cash and what scams lawyers need to be alert to.

**Newsletters**

**Benchers’ Bulletin**

2007: No. 4 October

*Practice Watch, by Barbara Buchanan, Practice Advisor, Conduct & Ethics*

**Know the rules for handling cash**

**No cash rule in retainer agreements**

Lawyers may only accept or receive cash in the limited circumstances permitted by Law Society Rule 3-59. All lawyers and individuals authorized to handle money should be aware of this rule, which prohibits lawyers from accepting $7,500 or more in cash except in limited circumstances. You may wish to make it your policy not to accept cash in order to reduce your chances of offending the rule.

In an effort to discourage clients from proffering cash, consider adding a paragraph similar to the following in your standard retainer agreement:

Please note that we do not accept any funds in cash, including our retainer. As protecting your legal interest may require paying funds within certain time limits, we recommend that you discuss with us any necessary arrangements in advance to provide payment to us by way of certified cheque, money order, bank draft, electronic transfer or credit card.

If you educate your clients and those who work in your office about Rule 3-59, you are unlikely to find yourself in circumstances that offend the rule. For example, your legal assistant will know not to accept cash in relation to a purchase and sale transaction and your client will know not to offer cash in the first place.

You can find retainer agreement precedents in the Practice Support section of the Law Society’s website.

**Cash receipt book requirement**

Lawyers in private practice who accept cash in the limited circumstances permitted by Rule 3-59 must maintain a cash receipt book of duplicate receipts and make a receipt in the receipt book for any amount of cash received (Rule 3-61.1). All lawyers and individuals authorized by a lawyer to sign the receipt book on the lawyer’s behalf should be aware of the receipt book requirements in Rule 3-61.1.

Both the lawyer who receives cash and the person from whom the cash is received must sign the duplicate receipt book. In addition to the two signatures, each receipt must identify:

- the date on which the cash was received;
- the person from whom the cash was received;
- the amount of cash received;
- the client who provided the cash; and
- the number of the file in respect of which cash was received.

**Withdrawing cash from trust**

A lawyer who is required by Rule 3-59(3.1) to withdraw funds in cash from a pooled or separate trust account must make a record of the transaction and that record must be signed by the person to whom the cash is paid. The transaction record must also identify:

- the date on which the cash was withdrawn;
- the amount of cash withdrawn;
- the name of the client in respect of whom the cash was withdrawn;
- the number of the file in respect of which the cash was withdrawn; and
- the name of the person to whom the cash was paid.

For further information regarding Practice Watch, contact Barbara Buchanan, Practice Advisor, at 604-697-5816 or bbuchanan@lsbc.org.
Cautions on cash and new scams

- Handling cash refunds
- List of valuables for monthly trust reconciliation
- Counterfeit bank drafts – yet another trust account scam
- Signing trust cheques
- United States subpoena scam
- Direction in a will to retain a particular solicitor
- PST news

Cash under the mattress, or in a safety deposit box? Think twice about whether you can deposit it in your trust account.

If you are acting for a personal representative of an estate who discovers cash amongst the deceased’s possessions and who wants you to deposit it into your trust account, be careful. You may deposit into trust cash that in the aggregate amounts to less than $7,500, but you may not deposit cash amounting to $7,500 or more (Rule 3-59). Be mindful of the words “in the aggregate” in subrule (3). Here’s how it works.

If your client finds $2,000 in the deceased’s safety deposit box, you may deposit that amount in your trust account, following accounting rules for deposit of cash. If your client finds $5,500 in the cookie jar a few days later and wants you to deposit the $5,500 into trust, don’t do it. In the aggregate, you would have received $7,500 in cash in a circumstance not permitted by the rule.

What can you advise the estate client who brings too much cash to your office? Here are two options:

- You can suggest that the client open up an estate account and deposit the cash into that account.
- You can suggest that the client use the cash to get a bank draft payable to your firm in trust.

Handling cash refunds

Lawyers may only receive or accept an amount of $7,500 or more in cash in the very limited circumstances permitted by Law Society Rule 3-59. Where a lawyer has received a cash retainer in accordance with subrule (3.1), and the client is later entitled to a refund, there are rules governing when the refund must be made in cash rather than by cheque.

What happens if a lawyer receives an $8,500 cash retainer (permitted) but when the lawyer issues the final invoice, $3,000 is left in trust? How does the lawyer refund the $3,000 to the client? Subrule (3.1) requires that any refund greater than $1,000 out of the $8,500 retainer must be made in cash. The lawyer must refund $3,000 to the client in cash, not by trust cheque.

What if a lawyer receives a $7,000 cash retainer but when the lawyer issues the final invoice, $2,000 is remaining in trust? How does the lawyer return the $2,000 to the client? Because the lawyer received less than $7,500 from the client, subrule (3.1) does not apply and the lawyer is permitted to return the $2,000 to the client by way of a trust cheque.

What if the client provided a cash retainer in a foreign currency? Subrule (4) requires the lawyer to convert the foreign currency into Canadian dollars based on the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada’s Daily Memorandum of Exchange Rates in effect at the relevant time. If no official conversion rate was published, the lawyer would use the conversion rate that the client would use in the normal course of business.

Lawyers are being cited for breaches of Rule 3-59. Make certain that you and your firm understand the rule. Breaches of the “no cash rule” are treated seriously. This is an important matter to the Law Society, for the legal profession and for the protection of the public.
List of valuables for monthly trust reconciliation

If you have received “valuables” (defined in Rule 3-53) such as paintings, sculptures, gold, Jewellery, securities, bonds (anything of value that can be negotiated or transferred) to hold for your client, be aware of the requirement to list the items received and delivered and any undelivered portion as part of your monthly trust reconciliation (Rule 3-73 (2)(e)). A sample Valuable Property Record is available on the Practice Support / Articles section of the Law Society’s website. You can simply attach your list of valuables to your monthly trust reconciliation.

This may also be a good time to do some spring cleaning. Have a look inside your safe. Are you holding valuables that should be listed?

Counterfeit bank drafts — yet another trust account scam

Recently the Law Society issued a fraud alert relating to counterfeit certified cheques that set out the details of a scam that had arisen in Ontario. Other schemes have surfaced in which counterfeit bank drafts, rather than counterfeit certified cheques, are used as a means of accessing lawyers’ trust funds.

One ruse involves a new client, located outside of Canada, requesting your assistance to recover a debt from a Canadian company. You send a demand letter and receive a bank draft for the full amount from the alleged debtor payable to your firm in trust. The bank draft is drawn on a Canadian bank and looks completely real. If you call the telephone number printed on the bank draft, the call is professionally answered and the bank draft is declared valid. In fact, it’s not.

If you deposit the bank draft in your trust account and then pay out a handsome sum to your new client, minus your fees and disbursements, then you may be a victim.

Regardless of the pretext the rogue uses to lure you into relying on a forged document to pay out trust funds, there seem to be some common elements.

The client presents as a businessperson or someone trustworthy (one individual claimed to be a pastor) and may be located outside of Canada. The services required are for a simple matter. The client wants to be paid quickly and may urge you to transfer the money electronically. The cheque or bank draft required to pay your client, whether for an outstanding debt, as part of a purchase and sale or for some other reason, is provided quickly and easily.

How do you protect yourself? Know your client. When you open the new client file, keep in mind the client ID and verification rules that will soon come into force across Canada. If you are dealing with clients that you do not know well, relying on a phone number to verify the document may not expose the scam. Ask your bank to contact the issuing bank to verify the authenticity of the draft or cheque and to confirm that the funds have cleared. If you draw on your trust account without the bank draft or certified cheque being verified or cleared, your firm may be exposed to loss.

Signing trust cheques

Law Society 3-64(5)(c) provides that a lawyer who withdraws funds from a trust account by cheque must ensure that the cheque is signed by a practising lawyer. Notwithstanding this rule, the Professional Conduct Department has recently investigated several cases where lawyers have permitted non-lawyers to be the sole signatories of trust cheques, or where non-lawyers have signed trust cheques without the knowledge of the lawyer.

Lawyers are reminded to ensure that trust cheques are being handled in a proper manner. As well, lawyers should discuss this rule with representatives of the financial institutions handling their trust accounts to try to ensure that these institutions properly monitor the signatories on trust cheques so that improperly signed cheques are not processed. Failure to comply with Rule 3-64(5)(c) exposes lawyers to the risk of fraud, as well as to possible disciplinary consequences.
2009: No. 4 Winter

Changes to cash transaction rule

On November 13, 2009 the Benchers amended Rule 3-59, the cash transaction rule, to accomplish two things. First, to clarify that the refund-in-cash provision applies even if a cash retainer has been received incrementally. Second, to provide a procedure to follow if cash has been received by a lawyer in a situation beyond the lawyer’s control that is not permitted by Rule 3-59.

If a lawyer has accepted an aggregate amount in cash of $7,500 or more in circumstances permitted under subrule (3.1), the lawyer must make any refund greater than $1,000 out of such money in cash. For more information on handling cash refunds and handling aggregate amounts on cash, see the May and July 2008 Practice Watch columns in the Bencher’s Bulletin.

Lawyers are accountable for accepting cash beyond the permitted limit; however, the Benchers recognized that there are cases where a lawyer may receive cash in a circumstance beyond their control. For example, a client or other person could deliver a “personal and confidential” envelope containing cash to a lawyer’s office without the lawyer’s knowledge, or someone could make a cash deposit directly to a lawyer’s bank account simply by having the account information. New subrule (3.3) sets out the procedure for a lawyer to follow in such circumstances.

In addition to the obligations under Rules, lawyers should continue to be mindful of Criminal Code provisions relating to proceeds of crime.

A lawyer who accepts money or property from a client knowing or being willfully blind to the fact that the funds constitute proceeds of crime, may be charged with the offences of possession or “laundering” (Criminal Code, ss. 354(1) and 462.31). “Proceeds” include funds received by a lawyer as a retainer or funds placed into a lawyer’s trust account in order to complete a legal transaction.

The offence, described in section 462.31 of the Criminal Code, is committed when a person deals with any property, or any proceeds of property, in any manner and by any means, with the intent to conceal or convert it, knowing or believing that the property or proceeds was obtained or derived as a result of a designated drug offence or an enterprise crime offence, designated in section 462.3 of the Code.

If a client asks you for services that seem not to be legal services but are more like banking services, or if you cannot define the legal services you are being retained to carry out, be wary. You must ensure that no person uses your trust account to deal with the proceeds of crime. A client with no bank account who wants to bring you cash can instead purchase a money order or bank draft and bring that to you. Call the Law Society for advice on how to deal with ambiguous requests for your services.

What course of action should a lawyer take upon learning that funds held in his or her account constitute the proceeds of crime?

The lawyer is liable to prosecution for the offence of laundering if he or she returns the property to the client, transfers it to another lawyer’s trust account on the direction of the client, or distributes it to other parties such as conveyancing vendors or estate beneficiaries.

On the other hand, the lawyer may put herself or himself at risk under the proceeds of crime legislation by continuing to hold the property in trust, unless the lawyer takes proper and adequate steps to safeguard his or her position.

Upon learning that funds placed in trust are the proceeds of crime, the lawyer should promptly do the following:

1. Retain counsel knowledgeable about the proceeds of crime legislation, disclose to that counsel his or her state of knowledge respecting the funds, and confirm that information in writing. This action is important for two reasons. First, it evidences the lawyer’s intention to retain the funds in the public interest (until entitlement to the funds is determined by a court), thus negating criminal intent. Second, the lawful options available to the lawyer may vary depending on the circumstances of the case and the lawyer needs legal advice from a colleague knowledgeable about the legislation.

2. Advise the client that the lawyer is holding funds in trust and that they will be released from trust only by court order.

3. If the client refuses to authorize disclosure of the reason the lawyer continues to hold the funds in trust to the other party for whose benefit the funds are being held, the lawyer must be careful to maintain confidentiality respecting the tainted nature of the funds, and simply advise the other party to seek an explanation directly from the client and, if necessary, to seek independent legal advice.

4. If steps (1) to (3) do not satisfactorily resolve the lawyer’s problem, contact the Law Society for advice as to the proper course of professional conduct to be followed.

Professionalism: Practice Management
Names of designated savings institutions at which lawyers may operate a pooled or separate trust account are no longer circulated to lawyers. Rule 3-49 summarizes the rules that affect Designated Savings Institutions as follows.

**Designated Savings Institutions**

3-56 (1) Subject to Rule 3-57, a savings institution is a designated savings institution within the meaning of section 33(3)(b) of the Act if it has an office in British Columbia accepting demand deposits and is insured by

(a) the Canada Deposit Insurance Corporation; or

(b) the Credit Union Deposit Insurance of British Columbia.

Generally these include any branch in British Columbia of a chartered bank or trust company provided it is insured under the *Canadian Deposit Insurance Act* (“CDIC”). In addition, B.C. credit unions qualify as designated savings institutions provided they are insured by the Credit Union Deposit Insurance Corporation (“CUDIC”); usually their assets must exceed $2 million to qualify.

Rule 3-58(3) states:

3-58 (3) Unless the client instructs otherwise in writing, a lawyer must deposit all trust funds in an account in a designated savings institution.

CDIC coverage does not apply to credit unions, but each qualifying credit union must be covered by CUDIC.

Rule 3-77 requires each lawyer to file an *Annual CDIC Report* with each savings institution where the lawyer maintains pooled trust funds, so that each client’s funds, rather than the account itself, are insured up to the CDIC limit. See next page for an example of this report.
TO: Each Financial Institution, except Credit Unions, where you have a pooled trust account.

Dear _________________:

This is to advise you that account number ____________ is a multi-beneficiary trust account which, as at April 30, 20__, contained the funds of various clients as follows:

<table>
<thead>
<tr>
<th>File Number or Client Initials</th>
<th>$Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>File Number or Client Initials</td>
<td>$Amount</td>
</tr>
<tr>
<td>File Number or Client Initials</td>
<td>$Amount</td>
</tr>
</tbody>
</table>

$TOTAL

We are providing you with this information so that you can comply with CDIC requirements.

Yours truly,

Notes:

- Deliver the report to the financial institution within 30 days of April 30th each year.
- Do not use client’s names.
- The total is to agree with the balance per the bank statement of the same date.
- Maintaining a pooled trust account with less than $100,000 does not exempt you from this requirement. It is not necessary to file this report with Credit Unions whose insurers do not require it.
- Whenever you open a new pooled trust account inform your bank, trust company, or credit union, in writing, that this is a pooled trust account which will contain the funds of more than one client. (This advice can be combined with the required letter instructing the bank to forward net interest to the Law Foundation).

Keep a copy of the CDIC report, with receipt acknowledged by the bank, to give to your auditor, who is specifically instructed by the Law Society to confirm that you have complied with Rule 3-77.
§6.10 Trust Administration Fee

BC lawyers who maintain one or more trust accounts are required to remit to the Law Society a **$15 trust administration fee** ("TAF") for each trust transaction (or series of trust transactions relating to one client matter). The fee is applied once each time a lawyer or firm opens a new trust account for a distinct client matter. The fee does *not* apply to trust funds that are to be used solely to pay legal fees and disbursements or held as a retainer.

Rules 2-109 through 2-113 provide details about how the Trust Administration Fee operates. The lawyer is responsible for paying the TAF to the Law Society. Remittances are to be made to the Law Society quarterly by April 30, July 31, October 31 and January 31. Each of these remittances will cover the three-month period ending March 31, June 30 and December 31 respectively.

The proceeds of TAF fund the trust assurance program.

The Law Society’s trust administration programs are important in monitoring the proper handling of trust funds within the profession. Since the programs relate to lawyers who hold trust funds and carry out trust transactions, it is appropriate for those lawyers to bear a larger portion of the overall expense.

For current information regarding the TAF and for FAQs look to the Law Society publications and forms: [http://www.lawsociety.bc.ca/page.cfm?cid=358&t=Trust-Accounting](http://www.lawsociety.bc.ca/page.cfm?cid=358&t=Trust-Accounting).

§6.11 Deposit Insurance on Trust Accounts

**Practice Management Tips**

**Deposit insurance on trust accounts**

The Canada Deposit Insurance Corporation ("CDIC") is a federal Crown corporation, which was created to protect funds deposited in certain financial institutions, not including credit unions. This protection extends to client trust funds on deposit in banks and trust companies to a maximum of $100,000 (principal and interest combined) for the same client.

When depositing client trust funds in savings institutions, members should be aware of the fact that not all deposits and investment instruments offered by CDIC-insured institutions are insurable. To be eligible for deposit insurance protections, the deposit must be payable in Canada, in Canadian currency. It must also be repayable no later than five years after the date of deposit, and some instruments are excluded.

Coverage does not extend to:
- foreign currency deposits;
- term deposits that are locked in longer than five years;
- debentures issued by a chartered bank;
- bonds and debentures issued by governments and corporations;
- Treasury bills; and
- investments in mortgages, stocks and mutual funds.

Coverage is based on all funds held in the institution itself, not its individual branches. As a result, clients with funds on deposit at more than one branch of the same institution may be limited to $100,000 coverage. To ensure the maximum $100,000 coverage for each client whose funds are on deposit in a pooled trust account, a lawyer must file a report listing client balances, as set out in the schedule to the CDIC Act: see Law Society Rule 3-77. Your financial institution should have details.

The Credit Union Deposit Insurance Corporation ("CUDIC") provides similar protection to the provincial credit unions. This is a provincial Crown corporation that administers and operates a deposit insurance fund for funds on deposit with credit unions. Although the principles behind CUDIC and CDIC coverage are similar, there are some significant differences. Both corporations have rules for determining when deposits are covered, as separate deposits, for protection purposes. In November 2008, the Provincial legislature passed amendments to the Financial Institutions Act to provide *unlimited* deposit insurance protection on all deposits in British Columbia’s credit unions for insured credit unions, deposits are neither restricted to Canadian currency nor to term deposits of five years or less.

Deposit insurance is one of a number of security factors lawyers should consider in selecting a savings institution for the deposit of client funds.

Under Law Society Rule 3-79, all lawyers must file a trust report. Practising insured lawyers who do not maintain a trust account must submit a trust report but are not required to complete the entire document. Rule 3-79(6) exempts non-practising and retired lawyers who do not handle trust funds from filing a trust report.

The annual Trust Report consists of filing either a Self Report or an Accountant’s Report. The Self Report is completed entirely by the firm, while the Accountant’s Report requires the engagement of a professional accountant. In both cases, the Law Society is looking to see whether the lawyer has complied with Division 7 of the Law Society Rules and has maintained an adequate system for recording all financial transactions of the law practice in compliance with Division 7.

The annual filing notice indicates which type of report a lawyer is required to file. The current policy is that the following must file an accountant’s report with a trust report:

- lawyers who have not filed accountant’s reports for two years immediately preceding the current reporting year;
- lawyers who formerly filed Section A trust reports and now operate a trust account;
- lawyers who terminate their practice during the year; and
- lawyers with a compliance rating that raises concerns about the lawyer’s trust accounting practices.

[§6.13]  The Compliance Audit Program

1. The Purpose of a Compliance Audit

In addition to the annual Trust Report filing requirement, each practice holding a trust account will receive a Compliance Audit, conducted by Law Society auditors, once every 5 to 6 years. These audits are conducted at no cost to the practice and are a complement to the annual Trust Reporting requirement. The Compliance Audit Program is conducted under the authority of section 33 of the Legal Profession Act and Law Society Rules 3-85 and 3-86.

The purpose of a Compliance Audit is to ensure a law firm’s books, records and accounts comply with the requirements of the Legal Profession Act, the Law Society Rules, and the BC Code.

Rule 3-53 defines a “compliance audit” as “an examination of a lawyer’s books, records and accounts and the answering of questions by lawyers.” A primary goal of the compliance audit is to provide on-site guidance to help law firms correct minor problems with recordkeeping before they lead to serious issues of non-compliance and possible professional conduct issues.

The compliance auditor will also perform an in-depth review of client files to ensure trust funds are being handled properly. Research has shown that certain areas of legal practice historically have been subject to Special Compensation Fund claims (now Part B insurance claims), and these areas of practice will be given extra scrutiny.

In addition, the Law Society’s trust assurance team will be available to answer any questions lawyers and their staff may have about trust accounting and to assist lawyers—particularly those who are setting up new practices or working in smaller firms—to develop proper accounting systems.

A new law firm may receive a new firm visit in its first year or upon request, to ensure appropriate record-keeping practices and trust fund handling procedures are established and maintained. The auditor will answer all questions about trust accounting and, in particular, will assist new lawyers regarding proper accounting systems.

2. The Process

For most, the compliance audit will be a straightforward review and will provide the firm with an opportunity to raise any questions they may have on trust systems and procedures.

In general, the auditors will be employees of the Law Society; however, there may be times when accounting firms are hired to perform the compliance audits.

The audits generally are selected at random. However, some indicators may trigger an audit, such as:

- failure to file a trust report;
- information on a trust report that indicates non-compliance with the trust accounting rules and procedures;
- referral from other departments of the Law Society;
- inadequacies that were identified during a previous compliance audit; and
- a compliance rating that raises concerns about the lawyer’s trust accounting practices.

The Law Society determines the compliance rating by reviewing a firm’s past trust report history relating to compliance or non-compliance with the Law Society’s trust accounting rules. Any
exceptions are assigned a weight based on the nature of the exception and the risk the exception could pose to the public. Some examples of more highly weighted exceptions are:

- prohibited large cash transactions (Rule 3-59);
- deposits to incorrect bank accounts (Rule 3-58);
- insufficient funds in trust (Rule 3-63);
- cheques improperly written on trust accounts (Rule 3-64);
- incorrect amount of funds transferred (Rule 3-64);
- incomplete accounting records (Rule 3-67);
- incomplete trust accounting records (Rule 3-68);
- not keeping records (Rule 3-70);
- non-timely preparation of trust account reconciliations (Rule 3-73);
- trust shortages (Rule 3-74);
- late or incomplete trust reports (Rule 3-79); and
- failure to remit taxes in a timely manner.

The auditors will consider other lawyer information, such as areas of practice and the volume and size of trust transactions, together with additional answers given about the trust reports.

Firms will be advised about a compliance audit, by letter, approximately four to six weeks before the audit. Included with this letter is a Compliance Audit Books & Records Checklist which lists the books and records the auditor will review, which will include but is not limited to the following:

- trust account bank statements and cheques;
- trust bank reconciliations;
- general/operating account bank statements and cheques;
- GST returns;
- PST returns;
- trust administration fee (“TAF”) returns;
- list of files by area of practice;
- general ledger for main operating account;
- accounts receivable subledger;
- trust listing detail.

An audit will take approximately three to four days. If the lawyer has a scheduling conflict with the date specified in the letter, the lawyer will need to inform the auditor immediately. The audit may be rescheduled, but it will not be cancelled.

To ensure minimal disruption to the lawyer’s practice, it is best for the lawyer to have all records ready and available on the date of the review and to have a work area set aside for the auditor.

Please note that a lawyer who does not produce and permit the copying of records and other evidence or provide the required explanations may receive an administrative suspension until the records are produced, copying permitted, and explanations provided (Rules 3-85(2)(b) and 3-86(1)). In addition, the lawyer or law firm will not have met an acceptable standard of financial responsibility relating to the integrity and financial viability of the lawyer’s professional practice (Rule 3-49), which may lead to a referral to the Professional Conduct Department.

The Law Society audit staff will review the audit findings with the lawyer and provide a written explanation of any breaches found during the review. If the deficiencies in the trust accounting records are serious, the Law Society will arrange a follow-up visit to ensure corrections to the records have been made and procedures have been put in place so these errors do not happen in the future.

After reviewing the report of the auditor, the Law Society staff will do one of the following:

- close the file, if no deficiencies were found or minor deficiencies have been corrected;
- arrange a follow-up visit to address more serious deficiencies or in a letter request further documentation to support deficiencies in the accounting records;
- refer the lawyer’s file to the Professional Conduct department, in the event of serious breaches of the trust accounting rules.

3. Confidentiality

Under the Legal Profession Act, information obtained during an investigation is generally confidential and cannot be used in other proceedings except with consent. However, the Law Society is subject to the Freedom of Information and Protection of Privacy Act. As a result, information gathered by the Law Society may be disclosed, on request, to other persons whose interests are affected by it.
Chapter 7

The Accounting Records

[§7.01] Accounting System

The form and methods of recording all financial transactions of the law practice is called the accounting system.

The accounting system includes:

- Accounting records (for recording transactions).
- Reconciliations for proving accuracy.
- Files of invoices, vouchers and documents for retaining the information that has been recorded.
- Internal supervisory procedures and approval carried out to help maintain the integrity and accuracy of the accounting system.

Some lawyers have difficulty with their accounting records because they are not familiar enough with their accounting system. Lawyers are urged to seek professional accounting or bookkeeping assistance if they are at all unsure of how to set-up a system. For a description of law office accounting requirements and systems, see the Law Society of British Columbia’s article, the “Lawyer Guide to Working Effectively with a Bookkeeper” available at Quicklinks > Publications and Resources > Practice Resources > Trust Assurance http://www.lawsociety.bc.ca/page.cfm?cid=1540&t=Lawyer-Guide-to-Working-Effectively-With-a-Bookkeeper. Lawyers should also refer to the Law Society’s Trust Accounting Handbook http://www.lawsociety.bc.ca/docs/trust/Trust-Accounting-Handbook.pdf.

Variou...
RECORDING OF ACCOUNTING TRANSACTIONS

Accounting Process Overview

Chart 1

1. RECORDING OF TRANSACTIONS

SOURCE DOCUMENTS
- Deposit receipts
- Fin. institution statements
- Bank vouchers

SOURCE DOCUMENTS
- Cancelled/voided cheques
- Petty cash vouchers
- Credit card slips

SOURCE DOCUMENTS
- Transaction records e.g. suppliers invoices, fee bills, etc.

BOOK OF ORIGINAL ENTRY or DATA SOURCE
- e.g. cash book, trust book, valuables

A/R & Disbursement Ledger

GENERAL LEDGER
(see Chart of Accounts)

Trust Ledger

2. PROVING ACCURACY OF THE RECORDING

General Account Reconciliation

TRIAL BALANCE

Trust Account Reconciliation

3. PRODUCTION OF FINANCIAL/MANAGEMENT INFORMATION

FINANCIAL/MANAGEMENT INFORMATION
- e.g. listing of overdue accounts receivable; cash collections; fees written off; income and expense statement

FINANCIAL STATEMENTS
- income and expense statements, balance sheet

GOVERNMENT FILINGS
- income tax, GST, PST reports and returns

Professionalism: Practice Management
LAW PRACTICE ACCOUNTING RECORDS

Chart 2

- Receipt (optional)
- General Cheque
- Bank Deposit General Account
- Bank Deposit Trust Account
- Details
- GENERAL LEDGER
- subsidiary ledger
  - Accounts-disburse. Rec. deposits & disbursements (separate account for each client)
- subsidiary ledger
  - Trust Accounts (separate record for each client)

RECONCILIATION
[§7.02] Books of Original Entry (Charts 4 and 5)

The majority of accounting transactions originate from one of the following:

- a cheque issued or credit card/cash payment made;
- a receipt of funds (cash or cheque);
- an invoice received for supplies or services (including client disbursements); or
- a bill issued for legal services.

The transactions are recorded in a Cash Book or Data Record (book/record of original entry). The Fees Journal is also a book of original entry. The purpose of a book of original entry is to accumulate and summarize the numerous transactions in their appropriate categories (“accounts”). The Cash Book/Record is totalled monthly and the totals ‘posted’ to the General Ledger.

CHART 4

PROCEDURES FOR RECORDING TRUST RECEIPTS, PAYMENTS AND RECONCILIATIONS

<table>
<thead>
<tr>
<th>TRUST RECEIPTS</th>
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</thead>
<tbody>
<tr>
<td><strong>ACCOUNTING PROCEDURE</strong></td>
</tr>
<tr>
<td>1. Receive trust funds from client and prepare a RECEIPT (where applicable)</td>
</tr>
<tr>
<td>2. Enter details of receipt in the TRUST CASH BOOK/RECORD (ensure “source” of funds is noted)</td>
</tr>
<tr>
<td>3. Enter details of receipt in the individual client TRUST CASH BOOK/RECORD.</td>
</tr>
<tr>
<td>4. Enter details of receipt on copy BANK DEPOSIT slip.</td>
</tr>
<tr>
<td>5. Deposit funds in bank</td>
</tr>
<tr>
<td>6. ADD and BALANCE the TRUST CASH BOOK/RECORD</td>
</tr>
<tr>
<td>7. Post the TOTALS of the TRUST CASH BOOK/RECORD to the GENERAL LEDGER</td>
</tr>
<tr>
<td>8. Obtain the BANK STATEMENT and cancelled cheques from the bank</td>
</tr>
<tr>
<td>9. see <strong>TRUST ACCOUNT RECONCILIATION</strong> - outline procedure</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FREQUENCY</th>
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<tbody>
<tr>
<td>Daily</td>
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<td>Daily</td>
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<tr>
<td>Weekly</td>
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<tr>
<td>Periodically</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>TRUST ACCOUNT PAYMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Accounting Procedure</strong></td>
</tr>
<tr>
<td>1. Receive request for payment from a properly-authorized official within law firm</td>
</tr>
<tr>
<td>2. Verify that the amount is properly payable out of trust account</td>
</tr>
<tr>
<td>3. Examine individual client TRUST LEDGER ACCOUNT and verify that sufficient funds have been recorded, deposited and ‘cleared’ for that specific client</td>
</tr>
<tr>
<td>4. Record payment details on the trust cheque</td>
</tr>
<tr>
<td>5. Record same details on cheque stub or duplicate copy of trust cheque</td>
</tr>
<tr>
<td>6. Enter details on TRUST CASH BOOK/RECORD</td>
</tr>
<tr>
<td>7. Enter details on individual client TRUST LEDGER ACCOUNT</td>
</tr>
<tr>
<td>8. Present the trust cheque and supporting information to a lawyer(s) for signature</td>
</tr>
<tr>
<td>9. Optional if applicable - attend bank to have cheque CERTIFIED</td>
</tr>
<tr>
<td>10. Ensure TRUST CHEQUE is delivered to recipient precisely as directed by lawyer (by mail, courier, pick-up, delivery to bank, upon exchange of documents, etc.)</td>
</tr>
<tr>
<td>11. Record method of transmittal of all TRUST CHEQUES (usually by covering letter)</td>
</tr>
<tr>
<td>12. Add and balance the TRUST BOOK/RECORD</td>
</tr>
<tr>
<td>13. Post the totals of the TRUST BOOK/RECORD to the GENERAL LEDGER</td>
</tr>
<tr>
<td>14. Obtain the bank statement and cancelled cheques, electronic form or otherwise from the bank (Rule 3-60)</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Frequency</th>
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<td>Daily</td>
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### PROCEDURES FOR RECORDING TRUST RECEIPTS, PAYMENTS AND RECONCILIATIONS

<table>
<thead>
<tr>
<th>TRUST ACCOUNT RECONCILIATIONS</th>
<th>Frequency</th>
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<tbody>
<tr>
<td><strong>Outline Procedure</strong></td>
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</tr>
<tr>
<td>The TRUST ACCOUNT RECONCILIATION proves the accuracy of the recording of trust account transactions and identifies errors to be corrected.</td>
<td></td>
</tr>
<tr>
<td>The reconciliation comprises three distinct steps:</td>
<td></td>
</tr>
</tbody>
</table>

#### STEP 1: TRUST BANK ACCOUNT RECONCILIATION
For each pooled trust and separate trust account-comparison of balance per bank statement with bank balance per the law firm books and records (i.e. GENERAL LEDGER)

*Step 1 identifies any differences – usually bank errors, timing differences or accounting recording errors.*

#### STEP 2: TRUST LISTING
Comparison of the reconciled TRUST BANK ACCOUNT balances with a LISTING of the total of individual clients’ TRUST LEDGER ACCOUNT balances.

*Step 2 identifies whether any trust account records are missing, incomplete or individual trust accounts have been overdrawn.*

#### STEP 3: COMPARISON of TOTAL TRUST LIABILITY
Comparison of the TOTAL TRUST LISTING with the TOTAL of all reconciled pooled and separate bank balances.

*Step 3 confirms that all bank accounts, including separate trust accounts and deposits ‘otherwise’ under Rule 3-58(2) have been included.*

#### ADDITIONAL CONSIDERATIONS
1. Diarize the date on which the bank statements are to be picked up from, delivered or transmitted electronically by the financial institution.
2. Reconcile each trust bank account separately, identifying errors, differences and reconciling items.
3. Immediately resolve, remedy/correct any errors and notify ‘responsible’ lawyer
4. Upon discovery of a shortage, immediately, the lawyer’s own funds must be paid in to eliminate it (Rule 3-74(1)).
5. If a trust shortage greater than $2,500 is discovered, the lawyer must report it to the Law Society (Rule 3-74(2)).

*As Required*
The Chart of Accounts (Chart 3)

To set-up the accounting records, it is necessary to create a **CHART OF ACCOUNTS**. This is a listing of the different types of asset, liability, expense and income accounts expected to occur in the law practice. It is an inventory listing of the transaction categories (“accounts”) that are most relevant to your practice i.e., the account names that best describe the typical receipts and payments, etc. that occur. The following Chart is a template for the future recording of all accounting transactions. For that reason, it is important that the account names are carefully chosen. However, they can be changed as required.

**CHART OF ACCOUNTS [§14.14]**

### ASSETS

#### CURRENT ASSETS

- **Cash & General**
  - Operating Account
  - Petty Cash

- **Trust Accounts**
  - Bank of XXXXXX, Pooled Trust
  - Bank of XXXXXX, Separate Interest Bearing Trust

- **Work-in-Progress**
  - Work-in-Progress, Fees
  - Work-in-Progress, Disbursements

- **Accounts Receivable**
  - Accounts Receivable, Fees
  - Accounts Receivable, Disbursements
  - Accounts Receivable, Miscellaneous
  - Allowance for Doubtful Accounts
  - GST Input Tax Credits

- **Prepaid Expenses**
  - Prepaid Expenses
  - Refundable Deposits (e.g., Central Registry, Vital Statistics)

- **Fixed and Other Assets**
  - Furnishings and Fixtures
  - Library
  - Leasehold Improvements
  - Equipment
  - Software
  - Miscellaneous
  - Reserve for Depreciation/Amortization

- **Other Assets**
  - Investments (etc.), as applicable

---

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Total Assets

LIABILITIES & PROPRIETOR’S EQUITY

CURRENT LIABILITIES
Liability for Client Funds Held in Trust
    Liability for Employee Withholdings (CPP, EI, etc.)

Accounts Payable
    Bank Operating Loan
    GST Liability
    SST Liability
    TAF Liability (if applicable)
    Accounts Payable—General

LONG-TERM LIABILITIES
    Capital Loan
    Equipment Loans
    Other

Total Liabilities

PROPRIETOR’S EQUITY

Capital Accounts
    Partner XXX
    Partner YYY

Drawing Accounts
    Partner XXX
    Partner YYY

Unallocated Income

Total Proprietor’s Equity

Up to this point in the chart of accounts, the listed accounts all affect the balance sheet. At year-end, net income from the income statement is journalized into the unallocated income account until distribution occurs to the partners’ capital accounts. At this point the assets and liabilities of the firm should be equal. The accounts affecting the income statement are listed following.

---

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## REVENUE AND EXPENSE

<table>
<thead>
<tr>
<th>Revenue</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees Billed</td>
<td></td>
</tr>
<tr>
<td>Other Revenue Disbursements Recovered</td>
<td></td>
</tr>
</tbody>
</table>

### Total Revenue

<table>
<thead>
<tr>
<th>Expenses</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Associate Salaries</td>
<td></td>
</tr>
<tr>
<td>Staff Salaries</td>
<td></td>
</tr>
<tr>
<td>Other Payroll Costs (CPP, EI etc.)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disbursement and Other Costs</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupancy</td>
<td></td>
</tr>
<tr>
<td>General Insurance</td>
<td></td>
</tr>
<tr>
<td>Telephone</td>
<td></td>
</tr>
<tr>
<td>Long Distance Charges</td>
<td></td>
</tr>
<tr>
<td>Long Distance Recovery</td>
<td></td>
</tr>
<tr>
<td>Photocopier Expense</td>
<td></td>
</tr>
<tr>
<td>Photocopier Recovery</td>
<td></td>
</tr>
<tr>
<td>Fax Expense</td>
<td></td>
</tr>
<tr>
<td>Fax Recovery</td>
<td></td>
</tr>
<tr>
<td>Postage</td>
<td></td>
</tr>
<tr>
<td>Postage Recovery</td>
<td></td>
</tr>
<tr>
<td>Travel</td>
<td></td>
</tr>
<tr>
<td>Travel Recovery</td>
<td></td>
</tr>
<tr>
<td>Delivery Expense</td>
<td></td>
</tr>
<tr>
<td>Delivery Recovery</td>
<td></td>
</tr>
<tr>
<td>Minister of Finance</td>
<td></td>
</tr>
<tr>
<td>Minister of Finance Recovery</td>
<td></td>
</tr>
<tr>
<td>GST Expense</td>
<td></td>
</tr>
<tr>
<td>GST Recovery</td>
<td></td>
</tr>
<tr>
<td>Office Expense</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Professional Costs</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Practice Insurance</td>
<td></td>
</tr>
<tr>
<td>Practice Fees</td>
<td></td>
</tr>
<tr>
<td>CLE</td>
<td></td>
</tr>
<tr>
<td>Practice development, promotion expense</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>General Expenses</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Write-offs (Fees)</td>
<td></td>
</tr>
<tr>
<td>Write-offs (Disbursements)</td>
<td></td>
</tr>
<tr>
<td>Miscellaneous</td>
<td></td>
</tr>
</tbody>
</table>

### Total Expense

### Net Income
[§7.04] The General Ledger

This is the key accounting record. It is compiled, usually monthly, from the Cash Book/Record (which, earlier, will have been added and balanced). After the monthly totals have been posted from the Books of Original Entry to the General Ledger, the latter must also be balanced. This is done by preparing a Trial Balance, which is a listing of all the balances (debit or credit) in each account.

[§7.05] Double Entry Bookkeeping

For accounting purposes, all financial transactions fall into one or more of the following main categories:

ASSETS  LIABILITIES

PROPRIETORS EQUITY comprising
– Contributed capital (less draws)
– Undistributed earnings (from previous years)

EXPENSE  INCOME (including fees and recovered disbursements)

An “increase” in the ASSETS or EXPENSES account is recorded as a debit (dr) whereas an “increase” in LIABILITIES, PROPRIETOR’S EQUITY or INCOME account is recorded as a credit (cr). A “decrease” in an ASSET or EXPENSE account is recorded as a credit (cr) whereas a “decrease” in LIABILITIES, PROPRIETOR’S EQUITY or INCOME account is recorded as a debit (dr).

Traditional double entry bookkeeping requires each accounting transaction to have two balancing aspects. In effect each amount must be entered twice in the accounting records. This recognizes that there are at least two considerations in each financial transaction. For example, if trust funds are received and deposited, this represents an increase in the ASSET (bank account). But at the same time there is an increase in the LIABILITY (amount owed to clients). The same principle applies for other financial transactions. For example, if general account funds are received, this would increase the ASSET (cash) and either decrease a different ASSET (e.g., accounts receivable), or increase a LIABILITY (bank loan) or increase INCOME (fees collected), or decrease EXPENSE (refund/rebate on purchases). For each transaction the two amounts must be equal or ‘in balance’. In simple transactions only two accounts are affected. In more complex ones, a combination of several might be affected.

One clear advantage of the double entry method of bookkeeping is that the books, when prepared accurately, will be in ‘balance’.

[§7.06] Reconciliation

Reconciliation is an accounting process that enables the proving of the accuracy of the recording of transactions. Typically, the matters requiring periodic reconciliation include

- all bank accounts,
- the General Ledger (Trial Balance),
- any subsidiary ledger of the General Ledger. (For example, it is usual to keep individual clients’ accounts receivable data in a subsidiary ledger. Reconciliation of this will ensure that this is kept in agreement with the General Ledger totals.)

If the lawyer keeps the accounting records, it is important to not overlook the preparation of these reconciliations and/or listings. If another person performs the bookkeeping role, the lawyer should ensure that the lawyer reviews and approves this information on a monthly basis.

[§7.07] Trust Accounts Records

- Trust cash book/record (or synoptic)—showing, for all trust funds received and disbursed for each client, the date of receipt, the source of funds, the cheque or voucher number, the date of each disbursement, the name of each recipient and the identity of the client on whose behalf the trust funds are received or disbursed.
- Trust ledger (sometimes referred to as client ledger)—keep a separate ledger account for each client on whose behalf trust funds have been received.
- Record of transfers between client’s trust ledgers—records an explanation of the purpose for which each transfer is made and contains the lawyer’s written approval of the transfer.
- Cash Receipt book of duplicate receipts (for both trust and general cash receipts).
- Monthly trust account reconciliations—prepared under rule 3-73.
- Copies of fee or other billings to clients showing the amounts and the dates charges are made and identifying each client charged. Fee bills must be filed in chronological, alphabetical or numerical order. See Rule 3-71. Also refer to s. 69 of the Legal Profession Act for information on requirements for the lawyer’s bill.
- Copies of bank deposit slips or ATM slips.
- Copies of all vouchers and documents substantiating the foregoing.

Refer to Checklist of Required Accounting Records on the next page.
<table>
<thead>
<tr>
<th>Law Society Rule</th>
<th>Record Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3-68(a)(i)(ii)(iii)</td>
<td>Trust Accounts Cash Records</td>
<td>A book of original entry or data source showing the date of receipt and source of all trust money received and identifying the client to whom the money belongs or on whose behalf the money is received.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>A book of original entry showing all withdrawals of trust money and showing the cheque number, the date of the withdrawal, the name of the payee and identification of the client with respect to whose affairs the withdrawal is made (combined with trust receipts journal, together referred to as the trust account records).</td>
</tr>
<tr>
<td>3-68(b)</td>
<td>Trust Ledger or System</td>
<td>A trust ledger consisting of trust ledger accounts, one for each client from whom the law firm has received trust money or on whose behalf or at whose direction or order the law firm has received trust money, with each trust ledger account showing:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1) the name of the client;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) all receipts and withdrawals, in chronological order with the dates of receipt and withdrawal and indicating the source of the money or the person to whom the payment was made, as the case may be; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3) the unexpended balance in the account.</td>
</tr>
<tr>
<td>3-68(c)</td>
<td>Trust Transfer Records</td>
<td>A lawyer must maintain at least the following records:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) Records</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(i) showing each transfer of funds between clients’ trust ledgers, including the name and number of both the source file and the destination file;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii) containing an explanation of the purpose for which each transfer is made; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(iii) containing the lawyer’s written approval of the transfer.</td>
</tr>
<tr>
<td>Law Society Rule</td>
<td>Record Name</td>
<td>Description</td>
</tr>
<tr>
<td>-----------------</td>
<td>-------------</td>
<td>-------------</td>
</tr>
<tr>
<td><strong>3-69(1)(a)(i)</strong></td>
<td>General Account Cash Record</td>
<td>A lawyer must maintain at least the following general account records: (a) A book of original entry or data sources showing: (i) the amount, the date of receipt and source of all general funds received.</td>
</tr>
<tr>
<td><strong>3-69(1)(a)(ii)</strong></td>
<td>General Account Disbursements Record</td>
<td>Book of original entry or data source showing the cheque number or voucher number, the amount and date of each disbursement and the name of each recipient (combined with General Receipts Record, together referred to as the general cash record.)</td>
</tr>
<tr>
<td><strong>3-69(1)(b)</strong></td>
<td>Client Accounts Receivable Ledger</td>
<td>Accounts receivable ledger or other suitable system to record, for each client, all showing all transactions including: (i) transfers from a trust account; (ii) other receipts from or on behalf of the client; and (iii) the balance owed to the client.</td>
</tr>
<tr>
<td><strong>3-70</strong></td>
<td>Cash Receipt Book of Duplicate Receipts</td>
<td>A lawyer who receives any amount of cash for a client that is not the lawyer’s employer must maintain a cash receipt book of duplicate receipts and make a receipt in the cash receipt book for any amount of cash received (this applies to both trust funds and general funds).</td>
</tr>
<tr>
<td><strong>3-71(1)</strong></td>
<td>Billings Records</td>
<td>A lawyer must keep file copies of all bills delivered to clients or persons charged: (a) showing the amounts and the dates charges are made; (b) identifying the client or persons charged; and (c) filed in chronological, alphabetical or numerical order.</td>
</tr>
<tr>
<td><strong>3-67(6)</strong></td>
<td>Supporting Documents</td>
<td>A lawyer must retain all supporting documents for both trust and general accounts, including but not limited to the following: (a) validated deposit receipts; (b) monthly bank statements; (c) passbooks; (d) cancelled and voided cheques; (e) bank vouchers and similar documents and invoices.</td>
</tr>
<tr>
<td>3-68(d) and 3-73</td>
<td>Trust Reconciliations</td>
<td></td>
</tr>
<tr>
<td>------------------</td>
<td>-----------------------</td>
<td></td>
</tr>
<tr>
<td>Lawyer must prepare a monthly trust reconciliation of the total of all unexpended balances of funds held in trust for clients as they appear in the trust ledgers, with the total balances held in trust bank accounts together with reasons for any differences between the totals supported by:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) a detailed monthly listing showing the unexpended balance of trust funds held for each client, and identifying each client for whom trust funds are held;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) a detailed monthly bank reconciliation for each pooled trust account;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) a listing of balances of each separate trust account or savings, deposit, investment or similar form of account, identifying the client for whom each is held; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) a listing of balances of all other trust funds received pursuant to Rule 3-58.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e) a listing of valuables received and delivered and the undelivered portion of valuables held for each client.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
An automated accounting system is a good way to track GST billed to clients and to maximize input tax credit claims. Automating the process keeps records more accurate and timely, enabling more efficient preparation of GST returns and reports. There are many software options including some that offer this component as part of an integrated law practice management package.

Training staff and lawyers should be an important part of GST automation. Staff who enter data into the system must know if the client is exempt, taxable or zero-rated. When inputting, it’s necessary to indicate whether disbursements are taxable or non-taxable. A good program will allow coding of disbursements so that the program will know which ones to add the GST to. Some programs have a small pop-up window for verifying the GST posted. The accounts payable program should accommodate the GST amount and the supplier’s registration number. Modify your chart of accounts by adding two new accounts: a receivable account called “GST Input Credits” and a payables account called “GST Billed.” The program must allow for accounts receivable write-offs using the GST formula.

To ease the pain of GST, your system should produce these five reports:

(a) an Input Credit Report to show the cheques and invoices for which you are claiming GST credits;
(b) a GST Billed/Collected Report that lists all the accounts where you have charged or written off GST;
(c) a GST Refund/Remittance Report, which will add up the GST billed and deduct the tax paid out. In addition, this report should show the amount you remit to the Canada Revenue Agency. A good system will also print out a form to send to CRA, along with the cheque or the amount of refund;
(d) an Input Credit Exception Report that lists all cheques and invoices where you did not claim GST. This report is essential so you don’t miss any credits; and
(e) a GST/Collected Exception Report, which lists all bills where you did not charge GST. Now you can verify which clients were exempt or zero-rated. If you are wrong about the exemption, your firm must pay the tax.

An automated accounting system is a good way to track PST billed to clients. Automating the process keeps records more accurate and timely, enabling more efficient preparation of PST returns and reports. There are many software options including some that offer this component as part of an integrated law practice management package.

An automated accounting system is a good way to track those client matters which attract the Trust Administration Fee (“TAF”). Automating the process keeps records more accurate and timely, enabling more efficient preparation of the quarterly TAF return.