



Law Society of Alberta  
**Start-Up Kit**

June 2017

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## 25 Keys to Success for Small Firm Lawyers

(Updated: November 2013)

### 5 Key Things To Have

- An affinity for small firm practice**  
Solo and small firm practice is not for everyone!
- A clear vision**  
You need a vision: if you don't know where you are going, how will you know when you get there?
- A sound business plan**  
A plan translates the vision into concrete steps that will make it a reality.
- A marketing plan**  
Without clients, you have no business, not matter how busy you are
- Business acumen**  
Your vision and plan are important, but you also need to be able to take the appropriate actions, on a day-to-day basis, to initiate and sustain progress in your business.

### 5 Key Things To Do

- Become financially literate**  
You should always know where your money comes from and where it goes.
- Take charge of your practice**  
As proprietor, it is your responsibility to lead.
- Invest in technology and people**  
Technology is essential in the modern law practice, but it is only as good as the people using it: invest in both.
- Organize everything**  
By organizing your practice, you imbue your work with consistency, reliability and quality.
- Know your competition: find a mentor**  
The first rule of marketing: create a differentiation your competitors will find it difficult or impossible to duplicate.

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## **5 Key Trends To Respond To**

- Client education**  
Clients are no longer willing to assume a passive role in the lawyer-client relationship.
- Technological change**  
A tidal wave of change is fundamentally altering the way our profession works.
- Shifts in the patterns of supply, demand and competition**  
Demand used to exceed supply. Now supply exceeds demand. There are more lawyers than ever, and you no longer have to be a lawyer to do lawyer's work.
- Specialization and limited scope retainers**  
Specialization is everywhere these days: athletic shoes, furniture and appliances, fast food, financial services, legal services. Resist this trend at your peril!
- Downward pressure on revenues, upward pressure on costs**  
For the past 2 decades, costs have consistently increased at a faster rate than fees.

## **5 Key Dangers**

- Failure to attract enough work**  
To find a niche, you must find an itch.
- Failure to turn down the wrong work**  
Foonberg's law: "It is better to not do the work and not get paid, than to do the work and not get paid."
- Poor financial management**  
Key indicators: too much debt, excessive unbilled WIP and disbursements, and out-of-control accounts receivable.
- Crisis management style**  
Adrenalin junkies burn out.
- Isolation**  
It is important to rub shoulders with lawyers to remind yourself that you are part of a profession. Have coffee at the court house! Get active in the CBA! Go to the section lunches!

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## **5 Key Benefits**

**Independence**

You are a professional, so you will never achieve complete freedom. But at least in a small firm you are your own boss.

**A sense of accomplishment**

You can look at your practice and say, "Hey, I created that!"

**The opportunity to help ordinary people in direct and concrete ways**

This is the reason many lawyers become small-firm lawyers!

**Security**

The last secure harbour in our chaotic economy may well be a professional practice with a stable client base.

**A reasonable income**

Not many solos get rich, but many make a decent living.

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## Considerations for Opening a Law Office

So you are thinking of opening your own office? Before you take this bold step, you need to ask yourself: Are you prepared? Do you understand the challenges that you face? Do you understand yourself? Being a sole practitioner entails more than just being good at the law and understanding how to file a complaint or argue before a judge. You also have to understand how to start and run a business. To succeed, you must be a savvy business person, negotiator, and bookkeeper all while being a good lawyer.

### Realistically Evaluate Your Situation

First, you need to understand yourself. Are you an entrepreneur? Are you willing to take a risk? Have you considered what it will take to run your own office by thinking about your budget, equipment, marketing, and keeping your doors open while you build your practice? Can you balance a checkbook and deal with demands on your available funds? Do you see yourself as a self-starter, comfortable with managing competing demands, multiple deadlines, and doing it all yourself? Or are you more of a social animal, feeding off the energy of others and most effective where you have a team approach to various tasks? Your personal attributes will help direct you into the right type of practice and setting. Think about the type of environment that will make you most effective. Will you function best as true solo with no support staff, or would you benefit from a less solitary office with someone to assist you from the first day?

You must be realistic and honest with yourself. Critically evaluate your strengths and weaknesses. It isn't enough to simply know the law and have the desire to share your knowledge. To run a successful law practice, you must have, or at least be willing to learn, strong business skills. You will need to possess the ability to take the appropriate actions, on a day-to-day basis, to initiate and sustain the progress of your business. You need to be prepared to forgo regular paychecks, work harder than you ever have before, and not only be a lawyer but also be a person. You need to recognize that solo or small firm practice is not for everyone.

### Develop a Plan and Get Some Advice

If you are still undeterred and are satisfied that you have the necessary business acumen, you will need a clear vision of what you want your practice to be and an idea of how you are going to get there. Is this a temporary solution to a current situation? Are you hoping to grow your firm to include multiple support staff persons and, perhaps, other attorneys over time? Or possibly start a series of satellite offices? Do you eventually hope to join another existing practice? Do you intend to run a general practice or specialize in only a specific area? Are you an innovator, dreaming of revolutionizing the practice of law?

Next, think about the types of clients you want to attract. Who are your ideal clients? What are the attributes they possess that make them likely prospects for your assistance? Think of identifying your ideal prospect as being able to spot a zebra in a herd of horses: When you know what you are looking for in prospective clients, they will stand out from others. If you believe that solo practice is the right choice, then you need to decide what this practice will look like and develop a plan to build it.

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The plan doesn't have to be 30 pages with subsections and appendices; it can be as simple as a single piece of paper at this point. If you take the time to write down your vision—where you want to be in six months, one year, and five years. It will help you focus your ideas. Knowing where you want end up helps make reaching your destination easier.

Now you need to develop a solid business plan that will drive many of the other decisions that you make in starting up. Having an idea of the area of law you intend to practice, the nature of work that will entail, and who are your target clients will help complete other sections of the plan as you write it. Identifying your ideal client will also help you develop a marketing strategy to attract that business and form the basis of your financial plan.

Things you will need to consider when drafting your business plan include:

### **1. What type of entity will you use for your practice?**

Today, you have a number of choices when it comes to how you structure your law firm. The two primary considerations when determining an operating structure are (1) what is the best structure to shield yourself from personal liability (not including malpractice) and (2) which structure best addresses the foreseeable tax consequences of your practice? Think through the liability and business implications of the various entity types that are suitable for your practice, whether a sole proprietorship, professional corporation, partnership or limited liability partnership (if you are going into practice with another lawyer).

Take the time to get some accounting advice to help you determine the operating structure to select. Talking to an accountant before you select the entity type can save you money as your practice becomes successful.

Be aware of any regulatory restrictions on the type of structure that you choose. For example, lawyers are not permitted to incorporate to escape liability – a professional corporation is really more of a tax planning tool and there are law society requirements that have to be met.

[\(Professional Corporations\)](#)

### **2. What do you need for an office?**

Most start-up businesses are faced with financial choices to make when getting off the ground. One of the major decisions is whether or not you can practice initially out of your home or if you will need dedicated office space. While having dedicated office space is nice if you meet regularly with clients, being able to forego this expense when you start can make a huge difference to your bottom line and the start-up capital you will require.

Working from your home is a good way to keep your overhead low in the start-up phase. This also allows you to focus your budget on critical items such as a marketing plan and acquiring the necessary technology to make you effective and efficient.

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Consider whether you want to work from home, at least initially, or develop more of a “virtual” office. Would you want to have clients attend at your home office or meet you at some other location. You may want to lease space from an executive office suite or business centres, establish a more traditional office in a commercial building, or share an office with another lawyer or firm. Ask yourself whether you need a dedicated office in the traditional sense or whether other options may work while you build your client base. Obviously, it is less expensive to work from home, but security or professional isolation may be a concern for you. Some lawyers arrange to meet clients at the courthouse, at the client’s home or business, or at a local coffee shop (confidentiality is obviously a concern with this approach). Others make arrangements with lawyers or other businesses to rent conference rooms from these established offices on an as-needed basis. The reality is that there are many creative solutions to this and no single right answer.

If you do decide that you need a physical office, how much space do you need? Where do you want to be located? Different areas of practice may also impact where you want to be. With a litigation practice, you may want to be close to the courthouse or near public transit to make access easier for you or your clients. If you are focusing on transactional legal work, perhaps you want to be located in the suburbs or other areas so as to be more accessible to where your clients work or live.

Determining how much space you need is not an exact science. If you are working from your home, your space needs are different than if you are renting space elsewhere, and where you will be meeting with clients will influence this decision as well. If practicing from your home, you need dedicated “work” space as differentiated from your “living” space—not only to preserve your mental health but also to meet the ethical requirements of safeguarding client information. The differentiation is also important for tax purposes. According to CRA, you can deduct expenses for the business use of a work space in your home, as long as you meet one of the following conditions:

- it is your principal place of business; or
- you use the space only to earn your business income, and you use it on a regular and ongoing basis to meet your clients. (For more, see: <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/slptrnr/rprtng/t2125/ln9945-eng.html>)

If you determine that your practice needs distinct office space outside your home, you need to determine if there will be a meeting room available, kitchen or break room, storage space, and room for an assistant if you need one. Think in terms of square feet when considering office space. If you will meet with clients in your office, it should be larger than if you will meet with clients in a conference room or other location. If you plan to have an assistant, how many square feet should be reserved for this person?

You also need to remember that your costs will generally be based on the amount of space you use, so the larger the space, the higher your rent will be.

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www.thebalance.com. has a number of useful articles to help you plan for your office space needs:

[A Beginners Guide to Office Space](#)

[How Much Office Space Do You Need?](#)

Another useful resource can be found on the How Stuff Works website:

[HowStuffWorks "How Finding Office Space Works"](#)

Check the Alberta Code of Conduct to understand your obligations with respect to protecting client confidentiality and space-sharing arrangements.

### **3. What will you need for technology?**

Think about what you really want to accomplish and what your comfort level is with technology. The possibilities in terms of equipment and applications are virtually endless. As with everything else, know your objectives and your limitations. Unless you are very tech savvy, you should get some advice from an expert. Think about how much you want to do yourself and how much you are capable of maintaining. At the very least, you need a telephone, Internet access, computer, something to back it up, and probably a printer. Key programs for word processing, time keeping, billing and accounting, e-mail, contact, and calendar management would also form a simple foundation. Beyond that, your decisions will again be influenced by your practice objectives and your budget. Consider whether you want to develop a paperless (or less paper) system—start-up is an excellent time to consider entrenching a digital backup system for all files and documents that come into your possession.

### **Creating Your Financial Plan and Your Budget**

Next you need to develop a cash flow plan and budget. You will use your cash flow plan and budget to help adjust your operations as you grow your practice. They will serve as your road map for getting to a successful practice and provide benchmarks to monitor your progress. It is critically important to understand your cash flow requirements, your regular monthly expenses, your potential sources of revenue, and what will you live on until you begin to generate a reliable income. Do you have an existing client base that will generate immediate income for you, or will you need to draw on funds from other sources?

Many lawyers hear the words “financial plan” or “business plan” and envision lengthy documents with pages and pages of details. This often results in paralysis as they feel overwhelmed trying to create the plan. A key thing to remember is that a business plan doesn’t need to be complex and cover everything in extreme detail.

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This is an instance where following the KISS principle (“keep it simple, stupid”) is a benefit. Generally, a business plan will consist of a number of parts such as:

- executive summary
- firm description
- scope of services
- market analysis
- marketing plan
- financial projections
- operating plan

One recommendation is to break the different segments of your business plan into a number of mini-plans (e.g., your marketing plan will be a mini-plan that can stand on its own). Fortunately, you do not have to recreate the wheel to draft a business plan: There are numerous resources online and in print that can make this process easier. The U.S. Small Business Administration (SBA) has a number of articles and resources, including a step-by-step tool on [How to Write a Business Plan](#) and you can find a sample law office business plan below:

[Business Plan Outline - practicePRO](#)

Finally, for an interactive program that will guide you through the entire process, see the 2012 CD-ROM edition of [The Lawyer’s Guide to Creating a Business Plan: A Step-by-Step Software Package](#) by Linda Pinson, published by the American Bar Association.

Whether your initial capital investment comes from your own personal savings, loans from family and friends, credit cards, or a line of credit, you will need to establish a budget for your initial start-up. Obviously, the size of your budget will dictate the complexity of your initial set-up. Capital expenditures such as furniture, equipment (computer, software, scanner, copier, printer, telephone, fax, filing cabinets, postage scale and meter) and potentially tenant improvements will depend on your practice setting. Consider to what extent your smartphone or tablet can substitute for a landline, laptop, copier, or scanner—at least for a while. Consider whether you will purchase, lease, or rent your office equipment (this is probably something to discuss with your accountant).

Other operating expenses associated with start-up will continue on a regular, recurring schedule such as office supplies, license, membership and insurance dues, expenses for office space (utilities, insurance, taxes, etc.); they need to be included in your budgeting process.

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**Table 1. Sample Expense Calculation**

Description	Monthly amount	Annual amount
Rent	\$300	\$3,600
Utilities	\$150	\$1,800
Telephone & Internet	\$100	\$1,200
Business insurance	\$50	\$600
Malpractice insurance	\$200	\$2,400
License and professional memberships	\$100	\$1,200
Staff	\$0	\$0
Advertising	\$100	\$1,200
<b>Totals</b>	<b>\$1,200</b>	<b>\$14,400</b>

The information in Table 1 (Sample Expense Calculation) is needed to help you determine what you are going to charge for an hourly rate, if that's how you will bill. When you've established your hourly rate, you need to divide your monthly fixed expenses by this hourly rate to determine the minimum number of hours you will need to bill simply to cover your fixed expenses. Using Table 1's monthly total of \$1,200 and dividing it by an hourly rate of \$150 per hour would result in the calculation shown in Table 2 (Number of Billable Hours to Cover Fixed Expenses).

**Table 2. Number of Billable Hours to Cover Fixed Expenses**

Monthly fixed expense	Hourly rate	Number of billable hours
\$1,200	\$150	8.00

Therefore, you would need to bill a minimum of eight hours each month just to cover your fixed expenses. If you're not sure what an expense will be, you can often discover approximate amounts easily by talking to fellow lawyers, getting price quotes from service providers, and making an educated guess in some circumstances. This number is not meant to be exact but to give you an idea of what you'll need to make just to cover your fixed expenses.

You will have expenses above these for such things as office supplies, mailing, and copy expenses, and no amount was included for equipment or other purchases. These will also have to be taken into consideration. Generally, for things such as office equipment and technology purchases, you will create a budget and spread it over two to five years.

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With a view to the image that you want to create, decide how you want to convey that image to your target audience. You also will want to spend some time developing a website—this doesn't have to be extensive at first, but it is a very important element in your marketing plan and requires time to design. There are a number of resources to assist you in creating a marketing plan for your firm. Your initial plan can be as simple as a single page with the marketing efforts you will make daily, weekly, monthly, and annually. If you are starting a new practice and do not have an existing base of clients, marketing your firm will be critical to early success. You may want to include hiring a legal marketing provider in your budget. Firms such as Attorney Sync provide manuals for creating a marketing plan.

Stephanie Francis Ward's helpful *ABA Journal* article ["50 Simple Ways You Can Market Your Practice"](#) provides some great tips for marketing your practice.

## Regulatory Requirements

Ensure that your membership status and insurance are appropriate for your current working situation. Realize that there may be a time delay in obtaining the necessary approvals prior to taking on your first client. It is also important to understand the qualifications you have to meet if you want to operate a trust account. If you are going to accept funds for advanced fees, costs, or funds that belong to someone else other than yourself, you will need approval to be a Responsible Lawyer and operate a trust account. If you will not need to hold client trust funds, you will need to obtain an exemption from those trust accounting requirements. Determine whether your municipality requires you to obtain a separate business license.

You will also need to consider whether there are any rules that restrict you in terms of business/ mailing address requirements or obligations with respect to how you name your firm and whether you need to register a trade name. Review Chapter 4 of the Alberta Code of Conduct in terms of advertising.

In addition to professional liability coverage, there are many other types of insurance that can protect you and your practice in various circumstances. Depending on your personal situation, consider the applicability of the following:

- public liability and/or tenants liability coverage
- property insurance (all perils)
- auto and home (business use)
- business interruption, valuable papers
- life and short- and long-term disability insurance
- fraud coverage

You will also need to consider whether you need to register and collect GST. For more: <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/rqstrng/menu-eng.html>

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## **Solo, but Not Alone**

Starting up a new business is an exciting and also somewhat daunting process—like everything else in life, being your own boss has its rewards and its headaches. It is important to develop a network of other professionals to whom you can turn for support. And probably most important of all, find a friend, a mentor, or a sounding board that you can rely on for objective feedback—or just a shoulder to cry on. There is also a great wealth of information available through the Legal Education Society of Alberta, The Canadian Bar Association Alberta Branch, and through the Practice Advisors Office at the Law Society.

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## Startup Checklist

<p><b>1. Sever Your Existing Relationship</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Advise firm of your decision</li> <li><input type="checkbox"/> Advise clients of their rights</li> <li><input type="checkbox"/> Wrap up/memo/transfer files</li> <li><input type="checkbox"/> Transfer trust funds</li> </ul> <p><b>2. Satisfy Law Society Requirements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Become/remain active</li> <li><input type="checkbox"/> Advise re address, form of practice</li> <li><input type="checkbox"/> Pay insurance or file exemption</li> <li><input type="checkbox"/> File Form U re accounting or exemption</li> </ul> <p><b>3. Make Deal With Partner(s), Space- Sharer(s)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Find people to associate with</li> <li><input type="checkbox"/> Negotiate the deal</li> <li><input type="checkbox"/> Write up an Agreement</li> </ul> <p><b>4. Acquire Space</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Find a location that supports your goals</li> <li><input type="checkbox"/> Design the layout</li> <li><input type="checkbox"/> Negotiate a lease</li> </ul> <p><b>5. Acquire Furniture</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Lawyer/assistant/client areas</li> <li><input type="checkbox"/> Reception, meeting room</li> <li><input type="checkbox"/> Filing cabinets, safe</li> </ul>	<p><b>6. Acquire Software</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Basic: word processing, client and file information, calendaring, time/billing/accounting, email, Internet, communication, voice recognition</li> <li><input type="checkbox"/> Specialized: (e.g. real estate, wills, litigation support)</li> </ul> <p><b>7. Acquire Equipment</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Computers, printer, server, backup, scanner, cost-recovery devices</li> <li><input type="checkbox"/> Telephone, FAX</li> <li><input type="checkbox"/> Photocopier (with collator, document feeder)</li> <li><input type="checkbox"/> Postage scale, meter</li> </ul> <p><b>8. Acquire Supplies</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Paper supplies</li> <li><input type="checkbox"/> Other supplies</li> </ul> <p><b>9. Acquire Insurance</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> E&amp;O (basic and excess) through ALIA</li> <li><input type="checkbox"/> Public liability/tenants' legal liability</li> <li><input type="checkbox"/> Property (all perils)</li> <li><input type="checkbox"/> Auto (business use)</li> <li><input type="checkbox"/> Business interruption, valuable papers</li> <li><input type="checkbox"/> Life, disability</li> </ul>
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<p><b>10. Acquire Legal Resources</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Research resources</li><li><input type="checkbox"/> Precedents</li><li><input type="checkbox"/> LESA Practice Manuals, Bar Ad Resource Materials and Course Materials</li><li><input type="checkbox"/> Texts, reports, digests, periodicals</li></ul> <p><b>11. Arrange for Services</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Courier</li><li><input type="checkbox"/> Process Server</li><li><input type="checkbox"/> Investigator</li><li><input type="checkbox"/> Land Titles and Corporate registry</li></ul> <p><b>12. Start Policies and Procedures Manual</b></p> <p><b>13. Develop Paper-Handling Systems</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> File opening procedure (incl. numbering)</li><li><input type="checkbox"/> Filing</li><li><input type="checkbox"/> Mail, FAX and deliveries</li><li><input type="checkbox"/> Phone messages</li><li><input type="checkbox"/> Registry of incoming cheques</li><li><input type="checkbox"/> Registry of incoming/outgoing client documents and property</li></ul> <p><b>14. Develop Client and File Info Systems</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> File index or database</li><li><input type="checkbox"/> Client index or database</li><li><input type="checkbox"/> Conflict of interest procedures</li></ul>	<p><b>15. Develop Time Management Systems</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Dual calendar for appointments, appearances, etc.</li><li><input type="checkbox"/> File bring-forward system</li><li><input type="checkbox"/> Limitations and deadlines systems</li><li><input type="checkbox"/> Timekeeping</li><li><input type="checkbox"/> Case planning</li></ul> <p><b>16. Develop Systems for Legal Procedures</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Use LESA Practice Manuals</li></ul> <p><b>17. Develop Personnel Policies</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Job Descriptions</li><li><input type="checkbox"/> Salaries and benefits policies</li><li><input type="checkbox"/> Workplace policies</li><li><input type="checkbox"/> Confidentiality policies</li><li><input type="checkbox"/> Hiring (recruiting, interviewing, selecting, negotiating terms)</li><li><input type="checkbox"/> Orienting, training, supervising, evaluating</li><li><input type="checkbox"/> Payroll (Revenue Canada employee number, deductions books, payroll book)</li></ul> <p><b>18. Make Banking, Credit Arrangements</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Open trust and general accounts</li><li><input type="checkbox"/> Interest on trust account letter to bank</li><li><input type="checkbox"/> LOC/bank or family loan/overdraft</li><li><input type="checkbox"/> Office credit cards</li></ul> <p><b>19. Make GST Arrangements</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Register</li><li><input type="checkbox"/> Accounting procedures</li></ul>
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**20. Develop Bookkeeping, Accounting Procedures**

- Trust accounting procedures
- General accounting procedures (timekeeping, disbursements, billing procedures and Cycles, accounts receivable, accounts payable, revenue and expenses posting, month-end procedures, payroll)
- If using a manual system, get Guide to Manual Law Office Bookkeeping

**21. Develop Financial Info Systems**

- Aged accounts receivable, aged work-in-progress, monthly cash and credit analysis, monthly budget analysis
- Accounts receivable follow-up
- Accounts payable follow-up

**22. Establish Pricing Policies**

- Fees
- Disbursements recovery policies

**23. Establish Client Relations Policies**

- Communicating fees and deadlines to clients
- Engagement, non-engagement and disengagement letters
- Copies to clients policy
- Reporting to clients policy
- Documents appearance policy
- Phone call return policy

**24. Register with Legal Aid, Lawyer Referral****25. Announce your New Practice**

- To existing clients
- To lawyers and judges
- To potential clients
- To the public

**26. Start Marketing**

- Open house
- Yellow pages
- Signage
- Advertising

**27. Seek Out Law Society Help**

- Practice Advisor
- Practice Management Advisor
- Mentors
- Auditors
- ASSIST

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# **Outline of a Law Office Manual**

## **I. Preliminaries**

### **A. Introduction to the firm**

- 1 History of the firm
- 2 Mission/vision/value statement
- 3 Organization of the firm: list of partners, associates, and support staff; organizational chart; committees

### **B. Law as a profession and a business**

- 1 Commitment to quality
- 2 Importance of clients to our success
- 3 Importance of support staff to our success
- 4 Membership and ongoing education requirements

### **C. Office Policies**

- 1 Office hours
- 2 Work hours; breaks
- 3 Overtime
- 4 Time and attendance records
- 5 Absences for illness; sick leave; medical notes
- 6 Absences for personal reasons
- 7 Leaves of absence
- 8 Parental leave
- 9 Statutory holidays

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- 10 Vacations: entitlement, scheduling
- 11 Lateness
- 12 Job descriptions
- 13 Orientation
- 14 Training
- 15 Evaluation
- 16 Probationary period
- 17 Promotions and demotions
- 18 Grievances and dispute resolution
- 19 Discipline
- 20 Layoff for economic reasons
- 21 Termination for cause
- 22 Parking
- 23 Keys to premises
- 24 Smoking
- 25 Employment of relatives
- 26 Solicitations and distribution of literature
- 27 Outside employment and other activities
- 28 Use of Technology

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## **II. Emergency procedures**

### **A. Security and Safety of Employees and Office**

### **B. Emergency contacts**

- 1 Police/Fire/Ambulance
- 2 Building Security
- 3 Identification of firm emergency contacts

### **C. Accidents, Medical Emergencies, Work Injuries**

- 1 First Aid training

### **D. Disaster Plan and Recovery**

### **E. Data Protection**

## **III. Employee Relations**

### **A. Importance of employees to our firm**

### **B. What we expect of employees**

- 1 Loyalty; conduct outside working hours (being a good ambassador for our firm)
- 2 Hard work; productivity; quality; timeliness
- 3 Support of co-workers
- 4 Professionalism: confidentiality; ethicality; good judgment; honesty; trustworthiness; tact; courtesy; respect for clients, co-workers and anyone else you deal with on our behalf; personal appearance, grooming and dress
- 5 Personal problems, phone calls, use of office facilities and resources
- 6 Performance evaluation

### **C. Delegation to and supervision of support staff; teamwork**

- 1 Who may delegate to whom
- 2 Who reports to whom

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- 
- 3 Asking for help
  - 4 Offering help
  - 5 Taking responsibility for team leadership
  - 6 Supporting leaders as a team member
  - 7 Prioritizing work; emergencies
  - 8 What to do if you feel you are being taken advantage of
  - 9 Suggestions welcomed

#### **D. Salaries, wages, benefits**

- 1 Definitions of full-time, part-time, temporary, casual
- 2 Overtime
- 3 Bonuses
- 4 Profit-sharing
- 5 Salary reviews
- 6 Job-related courses
- 7 Community college and university courses
- 8 Medical, dental, pension plans
- 9 Life, LTD insurance
- 10 Employee assistance plan
- 11 Discounts on legal services
- 12 Memberships in job-related organizations
- 13 Staff social functions: Christmas party; summer picnic

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**E. Payroll**

- 1 Pay days
- 2 Pay slips
- 3 Deductions: IT, EI, CPP, AHCIP; benefits; other
- 4 Advances

**IV. Client relations****A. Importance of clients to our firm****B. Support staff dealings with clients**

- 1 Level of formality or familiarity
- 2 Confidentiality
- 3 Helpfulness

**C. Receiving clients**

- 1 Comfort
- 2 Reading material
- 3 Coffee
- 4 Smoking
- 5 Greeting clients: level of formality or familiarity
- 6 Housekeeping
- 7 Announcing clients; escorting clients to lawyers' offices
- 8 Clients without appointments
- 9 Non-clients without appointments
- 10 Troubled members of the public

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- 11 Troublesome members of the public
- 12 Long waits
- 13 Client confidentiality: overheard phone messages; indiscreet conversations; exposed documents

#### **D. Client satisfaction feedback**

- 1 Why it is important
- 2 Procedures for obtaining
- 3 Procedures for reviewing

#### **E. Non-engagement letters; disengagement letters**

### **V. Confidentiality**

#### **A. Importance of confidentiality in a law firm**

#### **B. Confidentiality policies**

- 1 Client information
- 2 Firm information
- 3 Departure from the firm
- 4 Personnel records
- 5 Home phone numbers
- 6 Overnight confidentiality
- 7 Phone, fax, and e-mail security
- 8 Security procedures

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## **VI. The Telephone**

### **A. Importance of the telephone to our business**

### **B. Phone answering: Receptionist**

- 1 Switchboard hours
- 2 Answering machine
- 3 Voice mail –who has codes, function instructions
- 4 Greeting callers: tone of voice; level of formality or familiarity; grammar and diction; asking name; asking business
- 5 Urgent calls
- 6 Troubled callers
- 7 Home phone numbers
- 8 Complaints
- 9 Announcing callers
- 10 Keeping track of lawyers', staff's whereabouts
- 11 Keeping reception informed of whereabouts
- 12 Keeping reception informed that holding calls
- 13 Locating lawyers and staff
- 14 What to say when: lawyer with client; on the phone; holding calls; in a meeting; out of the office; in court; out of town
- 15 Alternate call-takers
- 16 Taking messages: time; date; name of caller; get it spelled; return phone number; taking notes
- 17 Do not lie

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**C. Phone answering: other than receptionist**

- 1 Greeting (give your name)
- 2 Transferring calls
- 3 After-hours greeting
- 4 After-hours messages

**D. Telephone manners**

- 1 How to announce yourself on behalf of the firm
- 2 How to leave a message without disclosing confidential information
- 3 Tone of voice

**E. Long-distance charges**

- 1 Tracking long distance charges
- 2 Firm credit card
- 3 Accepting reversed charges calls

**VII. Communication Systems.****A. Importance of these systems to our firm****B. Mail, Messenger Services, Couriers, Electronic Communications**

- 1 In-coming: receiving; distributing
- 2 Out-going: who we use; capturing disbursements
- 3 Court runner
- 4 Process server
- 5 Admission of service on court documents

**C. Incoming mail**

- 1 Who picks it up; who is the alternate
- 2 Opening; date-stamping; sending copies to clients

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- 3 Cheques
- 4 Noting dates in diaries and flagging for lawyers' attention
- 5 Distribution to lawyer
- 6 New matters received by mail

#### **D. Outgoing mail**

- 1 Envelopes to be appropriate size
- 2 Return address
- 3 Postage
- 4 Postal codes
- 5 Getting mail signed
- 6 Enclosing cheques
- 7 Enclosing documents
- 8 Enclosing documents that need a signature
- 9 Revisions
- 10 Copies to file
- 11 Registered mail

#### **E. E-mail**

- 1 If you invite it, check it
- 2 Use of E-Signatures
- 3 Use of task and time management tools in e-mail

#### **F. Serving documents**

- 1 Process servers we use
- 2 Instructions to process servers
- 3 Capturing disbursements

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## **VIII. Files**

### **A. Importance of filing to our firm**

### **B. Opening new files**

- 1 New file information form
- 2 Limitations
- 3 Conflict of interest check
- 4 File folder: colours; information on tabs; information inside files; brads
- 5 File index; file number
- 6 Client index; client number
- 7 Accounting information
- 8 Engagement letter
- 9 Contingency agreement filing
- 10 Assigning files to a lawyer; transferring files to a different lawyer

### **C. Files and filing**

- 1 Filing: routines and deadlines to ensure filing done; order in which items are to be filed; filed material to be nailed down
- 2 Retention of draft materials; disks
- 3 Copies of drafts on correspondence brad
- 4 Organizing complex files: subfiles; binders
- 5 "Out" cards
- 6 Removal of files from the office
- 7 Responsibility for condition and location of files
- 8 File closing; re-opening
- 9 Retention and long term compressed storage

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## **IX. Conflicts of interest**

- 1 Importance of conflict of interest system to our firm
- 2 Definition of conflict of interest
- 3 Description of conflict system
- 4 Entering client and other information into conflict system
- 4 Conflict checks

## **X. Deadlines**

### **A. Importance of managing deadlines to our firm**

### **B. Limitations diary**

- 1 Rules re new files
- 2 Rules re existing files

### **C. Appointments and appearances diarization**

- 1 Duplicate diary system (lawyer and assistant)
- 2 Picking up dates from incoming correspondence
- 3 Having a primary and backup diary system (lawyer and assistant)

### **D. File diarization**

- 1 Entering new files in the system
- 2 Assigning diarization dates
- 3 Pulling files; bring forward list
- 4 Rediarization
- 5 Periodic (monthly?) review of all files in system
- 6 Periodic (weekly?) cleaning of lawyer's and secretary's desk

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## **XI. Financial Management of Firm**

### **A. Timekeeping**

- 1 Trust Account/Trust Safety requirements
- 2 Lawyers' timesheets / Staff timesheets
- 3 Posting time
- 4 Receipts
- 5 Disbursements
- 6 Petty Cash or Advances
- 7 Reimbursement of expenses
- 8 Billing Procedures

### **B. Accounting**

- 1 Description of accounting system and where ledgers and records are kept
- 2 Trust accounting: receiving trust money; depositing; issuing trust cheques; certification of trust cheques; trust ledgers; trust statements for clients; trust reconciliations
- 3 Disbursements: capturing; posting; billing policy
- 4 Other charges: amounts; capturing; posting
- 5 Preparing accounts to clients
- 6 Collections procedures: aged A/R lists; reminders; cessation of work
- 7 General accounting: receiving cash; receiving cheques; issuing cheques; posting the general ledger; general account reconciliation
- 8 GST
- 9 Petty cash
- 10 Reimbursement of out-of-pocket and travel expenses
- 11 Bank address and account numbers; location of safety deposit box

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## **XII. Office Supplies**

### **A. Stationery, supplies, and forms**

- 1 Location
- 2 When to order and how to purchase
- 3 Personal appropriation

### **B. Paper sizes and types**

### **C. Envelope sizes and types**

## **XIII. Taking dictation**

- 1 Where and when to pick dictation up
- 2 Transcribing dictation
- 3 Where and when to deliver transcribed dictation to lawyer
- 4 Composing letters based on minimal instructions; form bank

## **XIV. Paper production**

### **A. Importance of the paper we produce**

- 1 Quality of appearance; content
- 2 Proofreading
- 3 Revisions
- 4 Prior drafts

### **B. Correspondence**

- 1 Letter format
- 2 Fonts
- 3 Copies to clients; file; other parties

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- 4 Return envelopes
- 5 Diction; spelling (spelling check); appearance
- 6 Tone; contractions
- 7 Opinion letter review

### **C. Documents**

- 1 Appearance
- 2 Format
- 3 Cover
- 4 Proof-reading; spelling (spelling check)
- 5 Using precedents

### **D. Memos**

- 1 Format of legal memos, interoffice memos, memos-to-file
- 2 Distribution
- 3 Preservation
- 4 Memos to file re phone calls; instructions received by telephone

## **XV. Conference & Signing Rooms**

- 1 Booking
- 2 Housekeeping
- 3 Confidentiality

## **XVI. Equipment**

### **A. Computers**

- 1 Logging on and logging off
- 2 Computers to be left on and computers to be turned off overnight

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- 3 System administration: who assigns and keeps passwords
- 4 Servicing
- 5 Training
- 6 Software allowed
- 7 Printer supplies and service
- 8 Organization of hard drives
- 9 Security of client and firm information
- 10 Precedent retention
- 11 Executed document retention
- 12 Personal use
- 13 No outside disks (risk of viruses)
- 14 Backup procedures: frequency; where to store; testing restoration

## **B. Photocopying & faxing**

- 1 Procedures
- 2 Charges to clients
- 3 Quality of photocopies
- 4 Key operator
- 5 Servicing photocopier and fax
- 6 Ink or toner supplies
- 7 Personal use

## **XVII. Client documents & property**

### **A. Storage**

### **B. Indexing**

### **C. Safeguards**

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**D. Returning Material to Clients****E. Diarization for Destruction of Archived Materials****XVIII. Our lease**

- 1 Access during normal office hours
- 2 After-hours access
- 3 Landlord's rules and regulations

**XIX. Library**

- 1 Publications
- 2 Circulars
- 3 Use by firm personnel and non-firm personnel
- 4 Charge policies for clients
- 5 Organization

**XX. Miscellaneous**

- 1 Temporary assistance
- 2 Outside or Third Party services (ie: copying companies, process servers)
- 4 Reporting error and omission claims
- 5 Security of property: client; firm; personal
- 6 Community and Charitable Activities
- 7 Kitchens

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## Safeguarding Your Practice

*(September, 2014)*

There's no time like the present to plan for the future – and no better reminder of the importance of planning than witnessing the effects of a local disaster on the businesses and lives of the people affected. It seems that over the past several years, the nature and frequency of disasters that are affecting our daily lives is changing. It used to be that we would hear how tornadoes or earth quakes would cause widespread destruction in parts of the United States. Then there were stories of the devastation to life and practice caused by Hurricanes Katrina and Rita. We saw how lawyers could lose both their homes and their offices in the blink of an eye. Still, these types of natural disasters rarely seemed to affect Alberta lawyers. Similarly, we hear reports on the news about high level breaches of internet security or of yet another incident of workplace violence being carried out south of the border. But as lawyers, even here in Alberta, we are not immune to the forces of nature or the whims of the demented.

Disasters can and do occur, everywhere. Whether natural or man-made, there can be little advance warning. From wild fires, floods, train derailments, to bomb threats closing down the court house, computer hackers compromising internet security, or the sudden heart attack of a lawyer, the potential disruptions to a law practice add up. While many of these catastrophes are beyond one's control, advanced planning can give a lawyer and their firm an edge in overcoming the long-term effects of these unexpected or unimaginable events.

### Identifying Potential Risks

The first part of developing a contingency plan is to understand and identify the types of hazards that could present a risk to your practice. Consider the potential threats, in light of your physical surroundings, the nature of your practice and the community that you are in. To what extent are you vulnerable to the following?

- Physical Hazards – are you in an area that can be subject to avalanches, earthquakes, flooding, landslides, lightning strikes, severe storms, tornadoes, or wild fire?
- Other Hazards – are you subject to power failure, water line, gas line or sewer break, building fire, train derailment, chemical releases, pandemic influenza, or hard-drive or server crashes?
- Anti-social Activities – are you vulnerable to theft, arson, a bomb threat, a violent intruder (former client, terminated employee, opposing party), computer hacker, or fraudster?
- Personal Problems (your own or your employees) – there is always the possibility of an unexpected accident, illness or disability, suspension or disbarment or death.

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## Evaluating Your Current Circumstances

Once you have identified the various potential risks, consider what you need to establish in the way of systems or procedures that will protect you in the event that any of these events occur.

- How effective is your building or office security?
- Should you consider limiting access to certain business area or during certain times?
- How can you secure your electrical and phone systems so that they are not exposed to sabotage?
- How can you protect your computer system from hackers?
- How will you duplicate all file documents and back-up all computer programs?
- Will you arrange for off-site back-ups of your data?
- Would any off-site back-up storage be subject to the same potential threats as your office?
- Will you periodically test your ability to restore a backed-up file?
- How will you create a complete record of all your open matters and associated contact information?
- Will you make arrangements for remote access to all your electronic records?
- Will you have communication protocols in place for contacting the clients, the court, regulatory authorities, opposing counsel, staff in the case of a disaster?
- How will you ensure that your staff is trained in basic response requirements in the event of a disaster?

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- Will you have a central place to store records of all critical business information including bank accounts, insurance policies, hardware and software programs and serial numbers, employee benefit policies etc?
- How will you access all this information in the event of a power, or internet failure?
- Who would step in and continue your practice or wind things down in the event of your sudden disability or death?
- Have you made financial arrangements to cover the cost of continuing your practice in your absence?
- What is your retirement plan?

Planning for the future, whether for an unexpected disaster or a future transition into retirement, is an important part of safeguarding your clients' interests as well as protecting your practice, even in the early stages.

The following checklist can serve as a starting point to develop a succession strategy for your law practice.

## Planning for the Unexpected

Develop your office systems with a view to the prior analysis that you have undertaken. Elements to consider include the following:

1. Maintain a complete list of all matters and client and file contact information that can be produced at any time.
2. Ensure that each client file contains sufficient detail that another lawyer taking over the file would know where the matter stood at any point in time including full written details of your retainer arrangements with the client.
3. Maintain an office procedure manual outlining all key aspects of your practice and a list of all law office contacts and business information. Include information all insurance policies, accounting information, a firm inventory of all office furniture, artwork, equipment (including all computer hardware and programs, serial numbers, usernames, and passwords) and ensure that a copy of this manual is stored outside the office or in a secured, fireproof location. Consider developing a formal emergency response plan and documenting your policies.

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4. Collect and store all employees' home and cell phone information along with at least one emergency contact number, in a secure off-site location.
5. Maintain an office limitation system and client file diary system, accurately reflecting all deadlines and all reminders so that next steps on files can be easily reviewed. Keep these systems up to date.
6. Establish a system for screening for conflicts and follow it. Include details of that system in your procedure manual.
7. Make sure your computer network programs are up-to-date with all security patches downloaded and installed.
8. Use strong anti-virus software and programs that can protect from spyware and adware collecting personal or client information from your computer, and monitor your internet activity.
9. Strengthen passwords, encrypt data, and control and monitor access to your systems.
10. Create office policies relating to technology use in your firm and regularly train staff on these data security measures.
11. Establish multiple systems for backing up data – full system back-up of your client and practice information and daily back-ups with some back-up versions stored in a secure, off-site storage location.
12. Keep your bookkeeping and accounting records up to date.
13. Keep your time and billing entries current.
14. Obtain life insurance along with a disability policy to cover both your personal requirements in the event of loss of your earning power, and also to cover the costs associated with hiring another lawyer to administer your practice and cover cash flow requirements as the practice is closed or sold.

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15. Make arrangements with a colleague or another lawyer for them to step-in if you are not able to practice, for whatever reason. Consider whether a formal agreement is appropriate – possible examples of such agreements are available on the LSBC and LSUC websites but it is important to check with the Law Society’s Trust Safety department to understand how these agreements will be viewed. Some lawyers prepare a letter to their staff or spouse directing how matters should be dealt with in their absence. (see Chapter 57 of *Flying Solo: A Survival Guide for the Solo and Small Firm Lawyer* Fourth Edition, for a sample letter) Consideration should be given to:
  - a. The scope of responsibility for the assisting lawyer – (wind up , preservation or sale of the practice)
  - b. The circumstances that will trigger the transfer of responsibility for the practice.
  - c. The compensation for the assisting lawyer’s work.
  - d. Details of the plans that you have made – including the location of any legal documents, all client record systems and your office procedures manual

Consider including provisions in your retainer agreement as to the provisions in place in the event of your death, incapacity or impairment.

16. Ensure that you have a valid will, including any terms required to deal with practice related issues. Also consider whether an Enduring Power of Attorney is required to deal with banking and trust accounting issues or your practice generally. Law Society of Alberta R. 119.21(1) requires approval by the Executive Director for a lawyer who is not a lawyer of the firm to sign on a trust account.
17. Make sure that your staff, partners/associates, and family are aware of the arrangements that you have made.

There’s no time like the present to plan for the future – and no better time to build in systems that will protect your practice and your clients in the event of an unexpected disaster than when you are developing those systems.

Disasters can and do occur, everywhere. Whether natural or man-made, there can be little advance warning. From wild fires, floods, train derailments, to bomb threats closing down the court house, computer hackers compromising internet security, or the sudden heart attack of a sole practitioner, the potential disruptions to a law practice add up. While many of these catastrophes are beyond our control, advanced planning can give you and your firm an edge in overcoming the long-term effects of these unexpected or unimaginable events.

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As a lawyer in a small firm setting or sole practice, it is particularly important to have contingency arrangements in place for another lawyer to step in and ensure that clients are not prejudiced and that your staff and family are not placed in an overwhelming position.

Essential information relating to client matters and the ongoing obligations of the practice must be able to be interpreted by an assisting lawyer regardless of whether that is a partner, associate, friend or formal custodian. It is much easier to build this into your practice structure at the outset.

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## File Retention and Document Management

File storage and retention is of concern to practicing lawyers, particularly due to the cost of storing original file materials and the attractive alternatives offered by technology. The cost of storing paper files often seems to outweigh the utility of doing so.

The Practice Advisors receive many inquiries from lawyers about document management and retention. The most common questions include:

1. Who owns the file?
2. What must I keep, and for how long?
3. What should I keep, and for how long?
4. What are best practices in file management, storage and destruction?

### Who owns the file?

Before closing a file, a firm must consider which parts of the file will be returned to the client. Lawyers typically provide original documents and other materials of importance to the client. The balance of the documents remaining on the stored file may belong to both the client and the lawyer.

File ownership is an important issue when considering file transfers to new counsel. File transfers may be subject to solicitors' liens, which is a separate topic. If the client has paid all outstanding accounts, certain parts of the file belong to the client, subject to the following comments.

### **The Client's Documents**

Documents created before the retainer generally belong to the client. Such documents are often sent by the client or third parties to the lawyer during the retainer. Documents which are created during the retainer belong to the client if:

- the documents were a necessary part of the business transacted, and
- the client has paid, or is liable to pay, for their preparation.

The client therefore owns documents:

- prepared by the lawyer for the benefit of the client and for which the client has paid, or is liable to pay; or
- prepared by third parties and sent to the lawyer, other than at the lawyer's expense.

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All of the following are owned by the client and should be provided to the client without further copying charges (with the possible exception of letters sent by the client to the lawyer):

- client documents brought to the firm by the client;
- originals of all documents prepared for the client;
- copies of all documents prepared by the lawyer for which the client has paid, including draft copies of documents;
- copies of letters received by the lawyer, some of which may be paid for by the client;
- copies of letters of instruction from the client to the lawyer;
- copies of letters from the lawyer to third parties kept in the client file;
- originals of letters from the lawyer to the client, though these would be sent to the client in the normal course;
- copies of case law;
- notes of telephone calls, meetings or interviews;
- briefs and memoranda of law where preparation was paid by the client;
- documents created in preparation for a hearing or trial, such as briefs, trial books and books of documents;
- letters received by the lawyer from third parties;
- copies of vouchers and receipts for disbursements made by the lawyer on behalf of the client;
- expert reports;
- discovery and trial transcripts

More recently, some lawyers have questioned whether the former firm is obliged to provide electronic copies of emails and drafts of documents to the client or new counsel, along with the client's paper file. In the Practice Advisors' collective opinion, the digital file materials form part of the work product for which the client has already paid and should be provided. New counsel should not be expected, for example, to retype an entire agreement when the former firm has refused to provide an electronic version for editing.

### **The Lawyer's Documents**

Documents created during the retainer belong to the lawyer if:

- the lawyer was under no duty to prepare them;
- the documents were not prepared for the benefit of the client;
- the client cannot be regarded as liable to pay for them.

Documents properly belonging to the lawyer include:

- documents sent to the lawyer in circumstances where ownership was intended to pass to the lawyer;
- original letters sent by client;
- copies of all original correspondence;
- copies of original documents or correspondence belonging to the client, and copied at the lawyer's expense;
- working notes or summaries, lawyer's notes regarding submissions to court;

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- inter-office memos;
- time entries;
- accounting records;
- original receipts and disbursement vouchers;
- notes and other documents prepared for the lawyer's benefit or protection and at the lawyer's expense.

## What must you keep?

### The Rules of the Law Society

Lawyers' obligations to maintain records are addressed in the Rules of the Law Society of Alberta, as follows:

**119.37 (1)** Except as otherwise authorized by the Executive Director, a law firm shall:

- (a) maintain its financial records in a safe and secure location;
- (b) maintain its most recent 2 years of financial records at its principal place of practice in Alberta;
- (c) upon completion and closing of a client file, place a copy of the client trust ledger card on the client file;
- (d) retain its trust ledger accounts referred to in rule 119.36(4)(b) and (c) for at least the 10-year period following the fiscal year of the law firm in which the trust ledger account was closed;
- (e) retain all other financial records referred to in rule 119.36, for at least the 10-year period following the fiscal year of the law firm in which the records came into existence;
- (f) **retain such parts of the files of the law firm, relating to the affairs of clients or former clients of the law firm, as are necessary to support the prescribed financial records for at least the 10-year period following the fiscal year of the law firm in which the file was closed.** [*emphasis added*]

**(2)** A law firm must not give up possession of any financial records and client files of the law firm relating to the affairs of clients or former clients of the law firm to a person other than a lawyer, unless the law firm retains or makes a copy of such parts of the file as are necessary to support the prescribed financial records, which copy must be deemed to be an original for the purposes of the Act and the Rules.

The rule requires retention of financial records for 'ten plus' years. This rule does not, however, create an obligation to maintain the entirety of the client's file. The rule is focused on maintenance of trust accounting records. It is, however, strongly recommended that lawyers do not destroy files until a minimum of ten years after a matter is complete.

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Also note that the client identification rules require information related to the identification and verification of clients to be stored for six years following the completion of the work for which the lawyer was retained (see Rule 118.7(1) of the Rules of the Law Society of Alberta, available at [\(Rules of the Law Society of Alberta\)](#)).

The *Income Tax Act* requires financial records to be maintained for six years from the last taxation year for which the record may be required for a determination under the *Act*. These requirements should not be confused with lawyers' file retention obligations under the Rules of the Law Society.

## The Code of Conduct

The current Code of Conduct, in force February 3, 2017, provides for:

- Preservation of confidentiality – Rule 3.3-1
- Preservation of client property, including funds, wills, minute books, and all other papers and files. You are to care for client property as a careful prudent owner would, and must observe all relevant rules and law – Rule 3.5-1
- You must account for client property in your custody and, where appropriate, return it to the client – Rules 3.5-4 and 3.5-5
- When withdrawing from a representation, you must provide client files to successor counsel, subject to a lawyer's right of lien – Rule 3.7-7
- You should explain fees or disbursements a client might not anticipate – Rule 3.6-1. This would apply to file storage or retrieval costs.

## What should you keep?

### The Practical Realities of File Storage

The rules **do not require** you to keep a complete copy of the entire client file – it is, however, a **strongly recommended practice**, in the event you are required to defend yourself in a professional negligence claim or respond to a complaint. While there are, of course, no time limitations applicable to complaints to the Law Society, civil litigation claims are subject to limitations legislation. It is standard practice for most firms to store client files for ten years following the end of the fiscal year in which the file was closed, in consideration of sections 3 and 11 of the *Limitations Act*.

The *Limitations Act* provides:

- 3(1) Subject to section 11, if a claimant does not seek a remedial order within
- (a) 2 years after the date on which the claimant first knew, or in the circumstances ought to have known,

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- (i) that the injury for which the claimant seeks a remedial order had occurred,
  - (ii) that the injury was attributable to conduct of the defendant, and
  - (iii) that the injury, assuming liability on the part of the defendant, warrants bringing a proceeding, or
- (b) 10 years after the claim arose,

whichever period expires first, the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.

Section 11 provides:

11 If, within 10 years after the claim arose, a claimant does not seek a remedial order in respect of a claim based on a judgment or order for the payment of money, the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.

There are further qualifications on the limitation periods set forth in the Act. For example, section 4(1) states that the operation of the ten-year limitation period is suspended while a defendant fraudulently conceals an injury. The operation of a limitation applicable to an individual under disability is also suspended during the time the claimant is disabled. There are other special provisions governing claims by minors.

In reality, however, most claims and complaints are brought in the early stages. Any file that may give rise to a potential claim that is not statute-barred should be retained indefinitely, until the lawyer is able to make an assessment of his or her potential liability. If you are unsure when to destroy a file, set a date on which to review and reassess it in the future. Sound business judgment should be applied when deciding to destroy files, whether at or after the ten year period. You may wish to be particularly cautious when minors or mentally incompetent clients are involved.

The nature of the work performed, or the “working life” of the document, must also be considered when deciding how long to store client files. Wills are an obvious example, as they may not be subject to probate for a number of years after their execution. Other examples of documents with an extended “working life” include mortgages, long term leases, and matrimonial agreements. In many of these examples, the client may return to the lawyer for assistance with the interpretation, enforcement or variation of an agreement. In the case of a will, the interpretation of the will and the testator’s intentions may be the issue of future litigation.

When closing client files, consider retaining the following documents:

- All correspondence, including non-engagement letters;
- Documentation evidencing client instructions or changes to instructions;
- Lawyers’ opinions;
- Copies of drafts or other documents which substantiate a change in client instructions;
- Documents confirming a client’s refusal to follow a lawyer’s advice;

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- Copies of all offers to settle and the client's acceptance or rejection of any offers;
- Copies of expert reports or other documents that provide the basis of a lawyer's opinion or recommendation;
- Clients' written authorizations and directions;
- Written retainers;
- Memos of telephone conferences or meetings;
- Time sheet entries;
- Lawyers' personal notes and file memos;
- Copies of bills; and
- Copies of documents which may not be easily obtained from other sources after the file is closed.

### **Wills and Other Original Documents**

Do not destroy original wills, and keep the will preparation file for at least ten years past the date on which you know probate has been completed. Disappointed beneficiaries are able to pursue litigation against lawyers who negligently draft wills for testators, and the limitation period for such claims may only arise when the testator has passed away and the beneficiaries become aware of the terms of the will.

We recommend that lawyers return original wills and related documents to clients, to avoid indefinite storage obligations for wills. If you have decided to store wills, you must use a safe and secure means of storage, such as a vault or fireproof cabinet.

The same considerations apply to the retention of clients' originally executed documents or agreements falling into other categories. You should make a note on the file when you have stored the clients' original documents.

### **Best Practices in File Management, Storage and Destruction**

#### **Dealing with Client Files**

In the normal life of a file, you will handle it from start to finish, and will retain and store the majority of the file materials. Throughout the file, you likely will have provided the client with copies of significant documents and correspondence. When the file is concluded, you should ensure the client has originals or copies of all other documents of importance or interest. Keep a record of the documents the client has received, perhaps by keeping a copy of the final letter to the client in which the documents were listed. The client should also be advised when the file is scheduled for destruction and of any file retrieval fees which may be applicable, should the client wish to obtain a copy of any file materials in the future. Even if this has already been contemplated in the original retainer, it is a good idea to remind clients of the potential cost associated with retrieval of closed files so that they can request additional copies of any file materials before they are stored off-site.

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Some firms also contact clients 60 or 90 days prior to file destruction, to advise that the file will be destroyed unless the client wishes to retain it in his or her possession. In that case, the entire file may be sent to the client. Any copying of file contents is at the cost of the firm. If the client cannot be located, the destruction will proceed.

If you are required to transfer the file to new counsel before the matter is concluded, and if you wish to make copies before transferring the file, this must be done at the lawyer's cost. You are entitled to a copy, even if the client objects to you making one.

You cannot expect the successor lawyer to accept a trust condition to provide you with the file at a later date if you are sued or the subject of a complaint in the future. The file belongs to the client and it is inappropriate to put restrictions on its future use and transfer.

A lawyer must not give property held under trust conditions to the client or a new lawyer, unless new terms are negotiated with those parties to whom the lawyer owes obligations.

If you have kept the client informed of your progress on the file by providing copies of all incoming and outgoing correspondence and documents, the client may already have a significant portion of the materials to which he or she is entitled. You do not have to recopy what they already have. The client may, however, be entitled to other parts of the file (original documents, memos of calls and meetings, etc.). In practice, it may be difficult, time-consuming and impractical to try to distinguish what belongs to the client and what the client has already received; lawyers may ultimately find it more efficient to simply duplicate the entire file when the contents are demanded by the client or new counsel.

Note that the Rules of the Law Society require you to copy the client file materials if the client is taking the file, rather than new counsel. These rules, however, are focussed on the file materials which support the trust accounting records.

## **File Storage and Retention**

It is important for lawyers at all stages of practice to be thinking about file storage issues. What happens when a firm dissolves, or a lawyer dies or quits practice? Lawyers retiring from larger firms may have fewer concerns, as the remaining firm members continue to arrange for file storage. File retention and destruction issues are very important planning issues for solos and small firm practitioners. Who will wish to take responsibility for your files when you retire? Who will pay for storage? From the day you start practice, you should try to reduce the file materials you retain and set file destruction dates for closed files.

When Alberta lawyers leave practice, they are required to submit Form 2-20 to our membership department: [Form 2-20](#). The form requires lawyers to identify where closed files will be stored. If the retiring or inactive lawyer's files are to be held by or transferred to another lawyer, the receiving lawyer must also sign the form to indicate confirm the agreement and receipt of the files.

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Consider preserving appropriate firm records as archives. This involves identifying records which are of long-term legal or historical value, and then transferring these records for preservation, under appropriate conditions.

When considering whether to transfer file contents to an archive, make sure you carefully address issues of privilege and confidentiality. Client confidentiality must be preserved indefinitely, and does not die with the client. You should get a release from the client or the client's estate or successors before releasing any information of a confidential or privileged nature. The Legal Archives Society of Alberta may be contacted for more information: telephone (403) 244-5510 or by email at [lasa@legalarchives.ca](mailto:lasa@legalarchives.ca).

### Procedures for Closing and Destroying Files

- Develop and adhere to a policy that governs what you will retain in a paper file or how you will maintain electronic records, during the life of the file and upon its conclusion. Remember to organize emails too. Good file management will make it easier to cull the file when it is time to close it.
- Determine whether file materials should be stored, destroyed, returned to client, delivered to a third party, or transferred to another lawyer who will be assuming the obligation to store them. Remember to consider the electronic records as well;
- Valuable and/or original documents on the file should be returned to the client – it is preferable to do this when closing the file, but certainly prior to destruction;
- When returning documents to the client, list them in the covering letter;
- Advise your client of the file destruction date;
- Remove all duplicates.
- Keep case law separate so you can easily discard it when closing the file. You may wish, however, to keep a list of your research sources for your file.
- Consider whether to keep research memos or pleadings as precedents, for future use within the firm. If doing so, remember to delete any information which might identify the client, to ensure that client confidentiality is preserved;
- Keep anything on a file which allows you to answer a potential claim – advice given, instructions received, decisions, etc. You may want to keep drafts of documents to evidence your instructions to amend them.
- Consider the cost of file storage and retrieval and, if it is your policy to charge a retrieval fee, you should advise your client at the time of opening and closing the file;
- A lawyer should make the final decisions about what file materials to remove or destroy;
- You may consider destroying documents which can be obtained from public records, such as documents filed at the land titles office, or pleadings filed with the court. Keep in mind, however, that it is expensive to obtain copies from court files. In addition, in recent years the courts' files were contaminated by mold and not accessible. Will court files always be accessible?
- If you are closing a file because your client has lost interest in your matter, advise that you are closing the file and that you no longer act. If the client has disappeared, document your efforts to find him or her. Get off the file. Tell the client about critical dates and deadlines and make it clear it's the client's responsibility to ensure they are met;
- Before closing a file, check for funds in trust as well as for outstanding undertakings and trust conditions;

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- When deciding on a destruction date, consider other requirements, like tax legislation and limitations law. Also consider the likelihood of potential negligence claims or complaints. Even criminal lawyers may have to consider the likelihood of wrongful conviction proceedings in the future;
- Assess your client's needs – will your client need access to these file materials in the future? If, for example, they relate to a long term lease on property which your client is likely to own or lease for a substantial period of time, you may wish to keep the file for decades;
- Even family law files may have to be kept for longer periods, depending on when enforcement or interpretation issues may arise. For example, when does the pension become payable?
- If you are unsure when to destroy a file, set a date on which to review it and reassess in the future;
- If you are leaving a firm and your closed files are remaining behind, confirm the firm's intentions, particularly if you have a file on which a claim or complaint may arise;
- Files should be shredded by a trusted professional shredding service or by the firm. Cross-hatch shredding is the most secure. If hiring an outside company, exercise due diligence to ensure confidentiality;
- Retain records identifying the files you have closed and destroyed. These records should also help you identify the location of all stored files, should you ever need to retrieve any. By keeping a record of all files destroyed in accordance with a file destruction policy, you will be able to refute any allegation that you may have destroyed a file indiscriminately.
- Assign new sequential numbers to closed files, and store files closed in the same year together.
- Develop a policy regarding who will have access to closed files. Consider not only firm staff, but also employees of the storage facility who may be accessing your documents;
- If storing off-site, ensure there is proper security during both the storage and destruction phases. Confidentiality is a concern, but also damage from fire, flooding, temperature and humidity. Storage conditions may be different for paper, as opposed to other electronic media. You may want to insure the files, as standard professional negligence insurance will not cover the loss and possible cost of restoration of valuable documents.

## Digital File Storage

We receive regular inquiries about whether lawyers are allowed to maintain digital file records, on local servers or other electronic media, or in the cloud. If you are considering maintaining only electronic copies of your file materials, keep these issues in mind:

- There are no LSA rules endorsing or prohibiting the retention of client file materials exclusively in a digital format. It is cheaper to store documents digitally in the long term;
- Lawyers have a fundamental obligation to ensure that they maintain confidentiality over their clients' records, whether those records are stored in hard copy or in digital form. Lawyers must exercise due diligence when choosing any service provider that might be engaged in the storing of confidential client information. In the case of digital storage, the onus is on lawyers to understand the technology they are using and to exercise appropriate levels of care when converting or storing client information in digital formats.

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- Clients should be fully informed, and their consent confirmed, before their data is stored in the cloud.
- The Law Society of Alberta currently has no express policy regarding cloud storage. The legislation in other jurisdictions, like the U.S.A., could authorize a breach of privilege or confidentiality. The Law Society of British Columbia has studied the issue and generated some useful reports and checklists. For more information, see the report from the Cloud Computing Working Group and the Cloud Computing Checklist on the website of the Law Society of British Columbia:  
[http://www.lawsociety.bc.ca/docs/publications/reports/CloudComputing\\_2012.pdf](http://www.lawsociety.bc.ca/docs/publications/reports/CloudComputing_2012.pdf) and <http://www.lawsociety.bc.ca/docs/practice/resources/checklist-cloud.pdf>.
- If storing electronic media, consider the storage environment and ensure humidity and temperatures are appropriate;
- Consider the potential for corruption and future readability of document images. You may have to maintain certain programs in the future to ensure you can access stored records;
- If using an outside service provider, consider whether it is likely to continue in business and what happens to your documents if it disappears. Read the service agreement closely;
- Implement a document scanning or 'paperless' policy on a 'go forward' basis – the cost of scanning existing paper files may be more prohibitive than storing them;
- Ensure digital data is appropriately removed from all discarded firm computers and devices.

Consider evidentiary issues regarding the admission of electronic records into evidence. You must be able to prove the authenticity of your file. The relevant provisions of the *Alberta Evidence Act* with regard to the admissibility of electronic records are as follows:

### **Authentication**

**41.3** A person seeking to introduce an electronic record as evidence has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.

### **Application of the best evidence rule**

**41.4(1)** Subject to subsection (3), where the best evidence rule is applicable in respect of an electronic record, it is satisfied on proof of the integrity of the electronic records system.

**(2)** The integrity of an electronic record may be proved by evidence of the integrity of the electronic records system by or in which the information was recorded or stored, or by evidence that reliable encryption techniques were used to support the integrity of the electronic record.

**(3)** An electronic record in the form of a printout that has been manifestly or consistently acted on, relied on or used as the record of the information recorded or stored on the printout is the record for the purposes of the best evidence rule.

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## Presumption of integrity

**41.5** For the purposes of section 41.4(1), in the absence of evidence to the contrary, the integrity of the electronic records system in which an electronic record is recorded or stored is proved

(a) by evidence that supports a finding that at all material times the computer system or other similar device was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of the electronic record, and there are no other reasonable grounds to doubt the integrity of the electronic records system,

(b) if it is established that the electronic record was recorded or stored by a party to the proceedings who is adverse in interest to the party seeking to introduce it, or

(c) if it is established that the electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not record or store it under the control of the party seeking to introduce it.

## Standards

**41.6** For the purpose of determining under any rule of law whether an electronic record is admissible, evidence may be presented in respect of any standard, procedure, usage or practice on how electronic records are to be recorded or stored, having regard to the type of business or endeavour that used, recorded or stored the electronic record and the nature and purpose of the electronic record.

## Sample Closed File Checklist

As with any checklist or guideline, the following is merely a starting point. It is not a substitute for implementing your own firm policy which addresses the specific needs of your clients and the nature of your practice.

<b>DATE:</b>	<b>SUPERVISING LAWYER:</b>
<b>FILE NAME:</b>	<b>ADMINISTRATIVE ASSISTANT:</b>
<b>OPEN FILE #:</b>	<b>CLOSED FILE #:</b>
<b>REASON FOR CLOSING:</b>	<b>DESTRUCTION/REVIEW DATE:</b>
<b>CLIENT NAME(S):</b>	<b>LAST KNOWN ADDRESS AND PHONE NUMBERS:</b>

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ITEMS	YES	NO	DONE
1. Final reporting letters done?			
2. All trust conditions met, all undertakings completed?			
3. File reviewed for any loose ends? Noted for action or follow up? Is further diary entry required?			
4. Unnecessary limitation dates removed from limitation diary?			
5. No balances in accounts: (a) Trust (b) Unbilled time (c) Unbilled disbursements (d) Unpaid accounts			
6. All amounts payable to third parties paid?			
7. Does client owe overdue bills on other files?			
8. Anything on file which should be sent to clients or others? (e.g. originals, executed documents, borrowed documents)? Is there a list of these documents, in correspondence or a memo?			
9. Anything on file useful for other files?			
10. Any notes or copies of briefs, opinions, memos of law, etc., to be preserved?			
11. Anything else to take off file? (e.g. drafts of documents; bulky, repetitive, useless items, including those stored elsewhere, not including correspondence or notes or messages)?			
12. (a) Client notified re closure and eventual destruction? (b) Client acknowledgment or instructions received?			
13. Destruction date marked on file cover? (not less than ten years from file closure)			
14. Current accounting and file records moved to closed accounting and file records?			
15. Closed file renumbered and entered in closed file index?			
16. Closed file physically removed to closed file location? (including all sub-files, ancillary loose leafs, notebooks, rolls of plans, etc.)			

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## Computer/Network Security Checklist

Security in the law office context is more than just a locked door and secure file cabinet. Computers and the internet are now an essential component of most, if not all law practices today. Advances with respect to technology have dramatically transformed the way that lawyers handle their clients' confidential information and conduct the practice of law. These developments have created tremendous opportunities to deliver legal services in new and innovative ways, as well as created additional challenges and risks for lawyers as they strive to fulfill their ethical and legal duties to protect their clients' information.

While most lawyers should not attempt to be their own IT department, they do need to educate themselves to the point that they can properly instruct and screen their IT support. This involves understanding your equipment, how it can be secured physically, how it connects to the outside world, and what steps you need to be taking to manage that interaction.

To properly protect yourself and your information, you first need to understand the various threats that you face, and then design a system of defense.

### ✓ IDENTIFY THE THREATS:

- **Theft or physical loss of equipment** - What would you do if your laptop was stolen? Is there confidential client information stored on that machine, or is it only used to access data located back at your office? Is your information password protected? How strong is your password? What if all the computers in your office were stolen? Would you be able to recover that information? And would anyone else be able to access it?

Whether targeted or random, portable electronic devices make ideal targets for thieves. There are examples in Alberta every year where lawyers computers, both desktop and laptop, are stolen. These thefts are from law offices, lawyers' vehicles, or from homes. This same threat can apply to external hard drives, flash drives, photocopier hard drives, and mobile devices such as smart phones, iPad and tablets. The more portable something is, the more important it is to ensure that the data is secured.

- **External hackers** – How can you prevent unauthorized access to your office systems over the internet? Do you understand the risks of using public computers or public Wi-Fi connections? Do you know how to harden your own wireless and Bluetooth connections?

When developing a strategy to protecting yourself from external threats, think of the types of data that you have and where and how you access it to identify potential vulnerabilities (client files, email, voicemail, network configurations, cloud services) and then consider the technical solution to address your vulnerability. This will likely require a combination of software programs to secure your systems as well as specific equipment.

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It is not enough to simply set up the system - ongoing maintenance and monitoring is essential.

- Do you know if there have been any unauthorized attempts?
- Or what your employees are doing with your systems?
- Do you have anyone using software to remotely monitor your system's health - from servers, to desktops, tablets and mobile devices?  
Are you able to lock, wipe, and GPS monitor your tablets, phones, and other devices?

- **Internal breaches** – the actions of the humans in your office, whether inadvertent or deliberate, also presents a threat to law office security. It is critical to educate yourself and your staff about the various potential threats. Understand the dangers of email – one of the most common ways that external hackers deliver malicious programs. Emails may come with links to harmful sites, contain infected attachments, or be part of a Phishing scheme seeking to gain access to your account information and passwords.

The best system in the world will not work if it isn't used properly. The human component of any security strategy must not be overlooked:

- Always install software updates (Microsoft, virus scanners, etc.);
- Conduct regular system back-ups and store these back-ups in a location other than a computer that is hooked up to the internet or a network and periodically test your back-ups to ensure that you are able to recover data if necessary;
- Use a firewall/security suite to stop people from remotely accessing a computer or network;
- Implement policies on internet, email, dropbox, and social media use and develop internal controls and TRAINING to ensure that everyone is following the correct procedures.

## ✓ **DESIGN YOUR DEFENSE**

Consider the following when developing your own cybersecurity strategy.

- **Surge Protection**
  - Uninterrupted power supply
- **Firewall:** the “firewall” is the gatekeeper on your internet connection – screening the incoming and outgoing communications from your computer. Information goes in and out of your computer through access points or ports. These ports are open and accessible to any other computers on the internet. The firewall watches these openings and prevents and warns you about unauthorized access. There are two different kinds of firewalls – hardware and software.

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- Hardware (usually for protecting your entire network)
  - D-link
  - Linksys
  - Netgear
  - Cisco (for larger networks)
- Software
  - (built in on newer Windows and Mac OS – enable them)
  - TrendMicro Titanium Maximum Security ([www.trendmicro.ca](http://www.trendmicro.ca))
  - ZoneAlarm ([www.zoneAlarm.com](http://www.zoneAlarm.com))
- Test for security vulnerabilities – ShieldsUP! ([www.arc.com](http://www.arc.com))
- **Antispam:** use filters to help catch unwanted and unsolicited commercial emails and prevent these from reaching your email inbox.
  - Postini/Google
  - Norton Antivirus ([www.norton.com](http://www.norton.com))
  - SpamNet ([www.cloudmark.com](http://www.cloudmark.com))
  - [www.fightspam.gc.ca](http://www.fightspam.gc.ca) for more information about Canada’s anti-spam legislation
- **Anti-virus/anti-malware/anti-spyware:** Malware – short for malicious software - refers to any programs designed to gain access to computers, compromise or interrupt regular computer operations, or gather sensitive information such as passwords or valuable account information. Viruses and Spyware are just specific examples of Malware. (See “Common types of malware” attached)
  - Microsoft Security Essentials
  - Windows Defender
  - Norton AntiVirus (Norton.com)
  - McAfee VirusScan Enterprise (mcafee.com)
  - Bitdefender QuickScan
  - Trend Micro
  - Mac – yes even Mac is vulnerable
- **Encryption** - the process of encoding information so that the content, if accessed by unauthorized users, is not in a form that is not understandable. There are both hardware and software-based encryption methods and it is important to think about encrypting any devices that you use to store data – not just desktop computers, but laptops, external hard drives, flash drives, and mobile devices. Enabling encryption can be as simple as enabling the password feature on any device – or enabling password protection on an individual document. (For information on considerations for dealing with encryption in the context of cloud technologies refer to the 2013 LSBC Practice Resource Cloud computing due diligence guidelines)

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- BitLocker (Microsoft's built-in full disk encryption feature included in many versions of Windows)
  - SecuriKey Pro (laptop protection for PC and Mac)
  - Symantec Drive Encryption
  - Flash drives – use only encrypted eg. Defender Basic or IronKey
  - Turn on passwords or enable content protection on mobile devices
- **Password assistance**
    - Password managers: LastPass, 1Password, Password Box – programs to help you remember all those passwords
    - Password checker: [www.howsecureismypassword.net](http://www.howsecureismypassword.net)
    - Password generator: [www.speedypassword.com](http://www.speedypassword.com)
  - **Back-up, back-up, back-up!** Redundancy and security in this regard is key.
    - Full system back-ups using rotating external hard drives or multiple servers
    - Offsite backup to Canadian Cloud data centres
      - There is no specific prohibition on using off-site options. Lawyers store paper files off-site all the time and that is fine, as long as reasonable precautions are taken. The location and level of protection that has been employed only becomes an issue if there is a breach in security and data is compromised. If you are sending data out of your office electronically, it must be encrypted.
      - When considering different storage providers, ask:
        - How does the provider secure my data (do they back up their servers and where are those servers located)?
        - How long has this particular company been around, and are they likely to still be in existence if I need to access my data?
        - If the company fails, how can I recover my data?
        - What is the method of encryption used, and does anyone other than me have the access key?

Consider a company that is reliable, and is using only Canadian servers to store data. The decision and the responsibility is up to individual lawyers and their level of comfort with risk. When data is stored using servers located outside of Canada, legislation in other countries may give foreign governments the right to examine or intercept confidential and privileged client data.

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The Law Society of British Columbia has produced good information on the risks of Cloud computing with due diligence guidelines:

(<http://www.lawsociety.bc.ca/docs/practice/resources/guidelines-cloud.pdf> ), and a Cloud computing checklist: (<https://www.lawsociety.bc.ca/docs/practice/resources/checklist-cloud.pdf>)

- Offsite backup using secure hard drive rotation
- **Office security protocols for online activities:** develop policies and training for safely using the internet
  - Internet use policy – develop a policy that sets out guidelines for dealing with online transactions, restrictions on website visits, file sharing sites, download or installation of software, apps or browser add-ons etc.
  - Email use policy – dealing with recommended procedures for dealing with various activities such as forwarding sensitive emails, identification of suspicious communications, the use of “reply all”, or how email communications should be stored.
  - Social media policy – set out guidelines for use of such social media sites as Facebook, Twitter, Instagram, and LinkedIn, how these sites can be accessed, and what information is appropriate to share.

*This material was originally developed by Jocelyn Frazer for the LESA Law and Practice Update, November 2014.*

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## Leaving Issues:

### Ethical Considerations when Lawyers Leave Law Firms

(Updated: February 2017)

Our profession has changed dramatically over time. Lawyers are no longer committed to the same firm for their whole careers, and regularly move to new firms or leave to start their own practices. A lawyer's departure often tests the professionalism of the lawyers involved and raises many ethical, legal, business and personal issues. Lawyers' ethical obligations are best fulfilled when the departing lawyer and firm agree to engage in cooperative discussions, designed to protect the interests of the clients they serve.

#### The Client's Choice of Counsel

Lawyers and law firms do not have proprietary rights to clients. Clients have an absolute right to choose their own counsel, in light of the personal nature of the services provided. (See *Loreto v. Little*, [2010] O.J. No. 679 and *A Law Firm v. A Solicitor*, [1992] A.J. No. 1242.)

In addition, a client has the freedom to terminate the lawyer-client relationship at will. (See commentary to Rule 3.7-1 of the Alberta *Code of Conduct*.)

#### Ethical Considerations – Code of Conduct

The firm and the departing lawyer have ethical obligations under the *Code of Conduct* to clients, colleagues, the courts and the profession when a lawyer leaves a firm. When a lawyer is departing a firm, all the lawyers involved have an ethical obligation to protect clients' interests and honour clients' rights to choose their own counsel. Lawyers within a firm also have obligations to one another, both contractual and fiduciary in nature.

It is of utmost importance to ensure that the clients are not affected by any disputes that arise between the lawyer and the firm. The ethical obligations of the departing lawyer and the firm are addressed in the following excerpt from Commentary to Rule 3.7-1 of the *Code of Conduct*.

#### Withdrawal from Representation

**3.7-1 A lawyer must not withdraw from representation of a client except for good cause and on reasonable notice to the client.**

#### Commentary

[4] When a law firm is dissolved or a lawyer leaves a firm to practise elsewhere, it usually results in the termination of the lawyer-client relationship as between a particular client and one or more of the lawyers involved. In such cases, most clients prefer to retain the services of the lawyer whom they regarded as being in charge of their business before the change. However, the final decision rests with the client, and the lawyers who are no longer retained by that client should act in accordance with the principles set out in this rule, and, in particular, should try to minimize expense and avoid prejudice to the client.

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The client's interests are paramount and, accordingly, the decision whether the lawyer will continue to represent a given client must be made by the client in the absence of undue influence or harassment by either the lawyer or the firm. Each party should be willing to agree that certain clients be contacted by the other party. As to clients whom both parties wish to contact, a neutrally worded letter should be jointly formulated that clearly leaves the decision about future representation to the client. Accordingly, either or both the departing lawyer and the law firm may notify clients in writing that the lawyer is leaving and advise the client of the options available: to have the departing lawyer continue to act, have the law firm continue to act, or retain a new lawyer. Should advice be actively sought by the client, the response of the lawyer contacted must be professional and consistent with the client's best interests.

[5] With respect to other dealings between the departing lawyer and the firm, reasonable notice should be given by the departing lawyer to the firm in advance of notice to clients. The lawyer and firm must come to a mutually acceptable arrangement respecting work in progress and disbursements outstanding on files that are to be transferred with the lawyer. The transfer of a file and, consequently, the progress of a client matter, should not be unduly delayed. When a client chooses to remain with the firm, it is generally improper to charge the client for time expended by another firm member in becoming familiar with the file.

When the client decides that the file is to follow the departing lawyer, the lawyers must endeavor to minimize the impact of the change on the client. Rules 3.7-6 and 3.7-7 of the *Code of Conduct* provide as follows:

### **Manner of Withdrawal**

- 3.7-6 When a lawyer withdraws, the lawyer must try to minimize expense and avoid prejudice to the client and must do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor lawyer.**
- 3.7-7 On discharge or withdrawal, a lawyer must:**
- (a) notify the client in writing, stating:**
    - (i) the fact that the lawyer has withdrawn;**
    - (ii) the reasons, if any, for the withdrawal; and**
    - (iii) in the case of litigation, that the client should expect that the hearing or trial will proceed on the date scheduled and that the client should retain new counsel promptly;**
  - (b) subject to the lawyer's right to a lien, deliver to or to the order of the client all papers and property to which the client is entitled;**
  - (c) subject to any applicable trust conditions, give the client all relevant information in connection with the case or matter;**
  - (d) account for all funds of the client then held or previously dealt with, including the refunding of any remuneration not earned during the representation;**
  - (e) promptly render an account for outstanding fees and disbursements;**

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- (f) **co-operate with the successor lawyer in the transfer of the file so as to minimize expense and avoid prejudice to the client; and**
- (g) **comply with the applicable Rules of Court.**

## Commentary

[1] If the lawyer who is discharged or withdraws is a member of a firm, the client should be notified that the lawyer and the firm are no longer acting for the client.

[2] If the question of a right of lien for unpaid fees and disbursements arises on the discharge or withdrawal of the lawyer, the lawyer should have due regard to the effect of its enforcement on the client's position. Generally speaking, a lawyer should not enforce a lien if to do so would prejudice materially a client's position in any uncompleted matter. Material prejudice is more than mere inconvenience to the client. A lawyer should not enforce a solicitor's lien for non-payment if the client is prepared to enter into an arrangement that reasonably assures the lawyer of payment in due course. When a matter is being transferred to other counsel, the transferring lawyer may request that the receiving lawyer undertake to pay an outstanding account from the money ultimately recovered by that lawyer. Where the matter in question is subject to a contingency agreement, the lawyers may agree to divide the contingent fee on the basis of an apportionment of total effort required to effect recovery.

[3] The obligation to deliver papers and property is subject to a lawyer's right of lien. In the event of conflicting claims to such papers or property, the lawyer should make every effort to have the claimants settle the dispute.

[4] Co-operation with the successor lawyer will normally include providing any memoranda of fact and law that have been prepared by the lawyer in connection with the matter, but confidential information not clearly related to the matter should not be divulged without the written consent of the client.

[5] Subject to Rule 3.4 (Conflicts of Interest) and Rule 3.3 (Confidentiality), a lawyer acting for several clients in a case or matter who ceases to act for one or more of them should co-operate with the successor lawyer or lawyers to the extent required by the rules and should seek to avoid any unseemly rivalry, whether real or apparent.

## Solicitors' Liens

A solicitor's lien is a legal right to retain possession of a client's property until the lawyer's account has been paid, whether or not the property came into possession of the lawyer in connection with the matter on which the account is owed. The lawyer may retain property other than money that has a value in excess of the amount owed, but may not retain money in excess of the amount due. The lawyer may not dispose of or deal with the lien property without a court order.

A lawyer's assertion of a solicitor's lien is subject to Rule 3.7-6 and 3.7-7 of the *Code of Conduct*, set forth above. When determining whether to claim a lien, the lawyer should consider:

- Whether the client will suffer serious consequences without the file;
- The client's ability to pay;

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- The fairness of the fee agreement or the client's understanding of it; and
- Whether any prejudice to the client can be mitigated by means other than the return of the file.

The *Code of Conduct* encourages, but does not require, parting lawyers and their new firms to ensure payment of the former firm's accounts. It is appropriate, however, to agree to reasonable trust conditions governing the transfer of a file to a new firm, which assist the former firm to collect its outstanding account. (See commentary to Rules 3.7-1 and 3.7-7 above.)

## Navigating the Departure

### Duties to Clients:

While departing lawyers owe fiduciary obligations to the firms in which they have worked, all of the lawyers involved owe a primary duty to the clients. Lawyers are obliged to tell clients about a lawyer's intention to leave a firm, as it amounts to a material change in the representation. If the firm will not notify the clients, the departing lawyer is at liberty to do so.

Clients are clients of the firm and not of individual lawyers, even if the client came to the firm because of a particular lawyer and regardless of whether the lawyer working on the file is a partner or associate.<sup>1</sup> Clients are not, however, property of the firm and have the right to choose their own lawyers.

When a lawyer who was substantially involved in a client's matter leaves the firm and is interested in having clients come to the new firm, the client should be given the option to choose to stay with the current firm or go with departing counsel. The client's third option is of course to take the file to new counsel.

In some cases, the firm may be agreeable to the client files going with the departing lawyer, and may not wish to give the client the option of staying with the firm. In other situations, the departing lawyer may not be proposing that a client come to the new firm. In either case, the client should still be informed of the departure of the lawyer. At all times, the client must be placed in a position to provide informed instructions regarding the future handling of the matter.

Client protection requires additional consideration of the following issues:

- Competence – any change in representation must not adversely affect the client's interests and, if the firm remains as counsel, the file must continue to be managed with competence and diligence;
- Avoiding prejudice resulting from a departure or a file transfer –the firm must take all reasonable steps to protect the clients' interests and must not unreasonably deny them access to their files, in the event the firm is no longer acting;
- Maintaining confidentiality –confidential information shared with the firm's lawyers must be protected;

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<sup>1</sup> This analysis is not applicable, however, to associations of independent practitioners, where each member of the association owns their own files, work in progress and accounts receivable.

- Avoiding conflicts of interest – the duty of loyalty and confidentiality owed to current and former clients must not be compromised when lawyers move between firms;
- Solicitation of clients – clients must be given adequate and accurate information to assist them in making an informed decision about the choice of counsel, in the absence of undue influence, intimidation and overreaching;
- Duty of candour – avoid dishonesty, fraud, deceit or misrepresentation when dealing with both clients and other firm members in connection with a planned withdrawal from the firm.

Contractual restrictions, which prevent departing lawyers from accepting retainers from firm clients, are of concern. There are areas in Alberta where there are not enough lawyers to provide legal services, and restrictions on lawyers who seek to change firms may inhibit the access to justice. Regardless of the firm's location, the right of the client to choose his or her own counsel should not be prejudiced by a contractual term in a law firm's partnership agreement, or in an employment agreement with an associate lawyer.

### **Communication with the clients:**

Departing lawyers should only contact clients after the firm has received notice of the lawyer's planned departure. When both the firm and departing lawyer desire to, or are willing to, continue with the client's file, the client is to be given the option to choose where the file is to go. Ideally, client communications should come jointly from the firm and the lawyer, but either can send a notice directly to the client if they cannot agree. Firm client lists may be used by a departing lawyer for the purpose of identifying and communicating with the affected clients.

Even if the departing lawyer does not wish to take firm clients, or the firm is agreeable to the files going with the departing lawyer, the client should be informed of the lawyer's departure as it may have an impact on the ongoing representation of the client and the ability to accomplish the client's objectives. Files should not simply be transferred with the departing lawyer, or left behind at the firm, without first communicating with the client.

### **Joint Notices:**

A joint notice should be neutral in tone and contain the following details:

- An explanation of the lawyer's departure and the timing, and the identity of the new contact person within the firm;
- A confirmation of the client's right to choice of counsel, along with a list of options for the client. The client may remain with the firm, go with the departing lawyer or be represented by a new firm or lawyer;
- Information about the client's liability for fees and costs incurred if the client terminates the retainer with the firm. For example, explain that funds held in trust as a retainer will be applied to fee accounts before the file is transferred;

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- Information about refunds of unused fees;
- An explanation of how the client file will be transferred and any associated costs;
- Information regarding the client's matter, such as critical deadlines or limitations, or information about pending steps;
- A list of all client property held by the firm, and a request for a direction from the client regarding where it is to be held, or to whom it should be forwarded;
- The notice should include a form authorizing the matter to stay with the firm, or authorizing the transfer of the client's file and trust funds or other property, if the client chooses to leave the firm. Include a return envelope if the notice is mailed. Authorizations to transfer trust funds should be signed by the client. If the client chooses to go elsewhere, the firm should send a letter confirming that the retainer is at an end;
- If the client does not have the option of remaining with the firm or going with the departing lawyer, due to conflicts or the inability of either the lawyer or the firm to provide representation, this should be explained to the client. The firm should also offer an alternative, such as suggesting other firms or lawyers who may be willing to take the client's matter;
- Indicate when the client needs to respond and the consequences if the client does not respond. For example, the client will continue to be a client of the firm unless the client gives notice to the contrary.

Client trust money that is subject to a prior trust condition or undertaking must be handled in a manner consistent with the lawyers' ethical obligations. If both the new firm and the entrustor of the trust condition or beneficiary of the undertaking agree, the trust condition or undertaking can be transferred to the new firm.

### **Communication between the Departing Lawyer and Firm Clients:**

After giving notice to the firm, departing lawyers should speak with clients, to inform those with whom they have professional relationships of their impending withdrawal from the firm. This includes clients with active matters, when the departing lawyer is directly responsible for the representation. The lawyer may also communicate with firm clients in circumstances where the departing lawyer plays a principal role in the firm's delivery of legal services. The departing lawyer may not, however, directly ask clients to send files to the new firm or otherwise solicit work while still at the old firm. The communication must be very neutral.

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The lawyer and the firm are expected to attempt to reach an agreement on the clients to whom letters will be sent, as well as the content of the letter. Unilateral communications to clients by the departing lawyer are permitted if the lawyer and firm cannot agree on the form of joint notice to be issued to clients. Notices are not required or justified if the departing lawyer had only a subordinate role on a file, or little direct client contact. When determining whether to send the client a notice, it is helpful to consider the situation through the clients' eyes. Would the client be concerned about the lawyer's departure and its effect on the ongoing representation?

All communication should be informative only, and neutral in tone. The following are helpful guidelines to consider when issuing notices:

- the notice should be sent only to those clients for whose active matters the lawyer has direct responsibility or involvement at the time of the notice;
- the departing lawyer may inform the client that the lawyer is leaving, the timing of the departure, where the lawyer is going, the lawyer's ability or willingness to continue to represent the client, the client's options (to stay, go with the departing lawyer, or find a new firm), and who will maintain and handle the client's file until the client expresses a choice;
- the departing lawyer must not urge the client to terminate its relationship with the firm and must not disparage the firm;
- the notice should make clear that the client has the ultimate right to decide who will handle the files;
- if the client requests more information, the departing lawyer may provide information about the new firm's billing rates, staffing and resources, as this information assists the client in making an informed decision about the choice of counsel;
- the notice should be in writing, to minimize the risk that the firm or client will accuse the departing lawyer of improper solicitation.

### **Duties Owed to the Firm**

A law firm should have a written agreement addressing what will happen to client matters in the event of a departure of a lawyer. It's also advisable to have a technology policy to address the management of a departing lawyer's email account and access to the firm's computer systems and data. Finally, any agreement should consider the ability of a departing lawyer to retain copies of work or precedents they have personally completed, as well as to clarify whether or not the lawyer may take copies of other firm precedents, documents, CLE materials or other resources which the firm has created or paid to obtain.

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In reality, however, these issues are rarely contemplated in an agreement, and in many cases lawyers work together without any written agreement in place.

All lawyers owe a fiduciary duty to the firm, whether they are partners or associates. This means that no lawyer should exploit his or her position in the firm for personal benefit or interfere with the firm's ability to conduct business.

It is inappropriate for a departing lawyer to compete with the firm prior to giving notice of the lawyer's departure. Departing lawyers may, however, take some preliminary steps to establish a new office before advising the firm, as this is consistent with the interests of the clients in facilitating an orderly transition of client files. For example, the departing lawyer may obtain office space, establish trust accounts, order office equipment, and obtain financing.

In contrast, the departing lawyer should not:

- Entice clients and employees to leave the existing firm before notifying the firm of the impending departure;
- Surreptitiously remove client files without consent or knowledge of the firm or the clients;
- Convert or misappropriate fees owed to the firm;
- Mislead the firm about plans to leave, or conceal the departure;
- Abandon the firm on short notice;
- Use firm resources to copy files or client lists without permission, subject to the comments later in this paper regarding the use of client information to develop a list of clients the departing lawyer may wish to contact, or to screen for conflicts arising from the lawyer's transfer to a new firm;
- Take any action which may be detrimental to the interests of the firm or the clients, aside from the impact of the lawyer's departure on the firm.

When the lawyer has commenced work at the new office, and is no longer employed by the old firm, the lawyer may be more direct in approaching former clients and engaging in marketing and client development in efforts to obtain new work. Lawyers should not, however, interfere with existing retainers between prospective clients and other lawyers.

Before informing the firm of a plan to resign, a departing lawyer should consider the following:

- Have a plan that will allow you to commence practice right away, in the event you are asked to leave immediately upon giving notice. Many firms will not allow lawyers to remain in the office after learning that they are about to leave. Do you have a computer, work space, copies of upcoming events on your calendar or task manager, a telephone for clients to reach you, etc.? Most importantly, before you are able to practice, you must either have approval to operate a trust account or, alternatively, must have successfully applied for an exemption from the trust accounting rules;

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- Compile a list of clients and current contact information for future conflict checks. List the firm clients and matters on which you might have an ongoing conflict. You may also need to use this list to notify clients of your departure in the event the firm does not agree to notify clients, or you otherwise need to notify clients on your own;
- Review the governing agreement, whether you are a partner or associate, to determine if there are any contractual provisions affecting departing lawyers.

Once a lawyer has provided notice to the firm:

- The parties should negotiate the terms of the withdrawal, if not already provided for in an agreement;
- The firm should bill and collect on those files which are being transferred;
- If the departing lawyer is compensated based on a percentage of fees collected, negotiate the compensation for work-in-progress that has not been billed and accounts receivable not yet collected at the time the lawyer departs;
- Agree on how staff will handle calls from clients or potential clients after the departing lawyer has left the firm. Clients must not be misled and the firm must not withhold information;
- Agree on how the firm will manage emails or other communications directed to the departing lawyer;
- Notify the Law Society of your change of contact particulars;
- Change your address and email address with all listservs and publications to which you subscribe;
- Arrange for your name to be removed from firm bank accounts, if applicable.

When dealing with trust conditions governing the transfer of files to the departing lawyer and/or the new firm, it is improper to demand that the new firm retain the client file intact and return it on demand. The new firm cannot comply with such an undertaking without infringing on the client's rights to the file. If the former firm wishes to protect itself, it should copy the file before turning it over and is entitled to retain the file for a reasonable period of time to do so. Such copying is done at the firm's own expense and not that of the client or new law firm.

### **Conflict Screening and Maintaining Confidentiality**

When a lawyer is transferring to another firm, the departing lawyer and the prospective new firm must perform a conflict check to determine if the departing or transferring lawyer has represented a party with interests adverse to those of the new firm's clients. The transferring lawyer must accordingly share some information about current and former clients. It is appropriate to limit this information to what is necessary to detect and resolve a conflict arising from the lawyer's change of employment – such disclosure would include client names, names of opposing parties, a brief summary or description of the matter, and whether the file is ongoing or has been concluded. It should not include information about the fees generated from a particular client's files, for example, as that information goes beyond what is necessary to conduct a conflicts analysis.

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If, however, the disclosure would compromise privilege or otherwise prejudice the client, the disclosure may be prohibited. There may be potential prejudice to a client when, for example, the client has consulted the firm about the possibility of a divorce before the client has made his or her intention known to the other spouse. A similar concern may arise if the client has consulted a lawyer about a criminal charge before public charges have been laid. In the context of corporate practice, the fact that a client may have sought advice on a takeover, that has not yet been publicly announced, would be information that should not be disclosed when screening for conflicts.

If information may not be disclosed due to concerns over privilege or potential prejudice to a client, the departing lawyer and the new firm have three options:

- Abandon the move;
- Defer the move until the conflicts check can be completed without prejudice to the client;  
or
- Complete the move on the understanding that if a conflict emerges, the new firm will deal with the situation as required when the conflict becomes known.

### **Conduct After Departure:**

After the lawyer's departure, the lawyer may make direct contact with clients of the former firm and may be more direct about obtaining work from the client. The lawyers involved must not disparage one another.

A law firm should never withhold information from clients who inquire about the location or contact information of the departed lawyer. Mail and other communications should be promptly forwarded to the lawyer's new address.

### **Important Business Issues**

Some departing lawyers make the mistake of taking as many files as they can. This error usually occurs because of fear that the new practice will not generate enough cash flow in its early days. The lawyer believes that any work is better than no work.

Work that is at odds with the business plan of the new practice can, however, be worse than no work at all. It can take the new practice in unintended directions and divert attention from the numerous organizational tasks that you must attend to as your new practice develops. One of the greatest threats to a new practice is too much legal work, or legal work of the wrong kind, because production overwhelms management and the infrastructure of the new practice never gets properly established.

It is also unwise to take clients who are difficult or who are slow to pay. The new practice will be particularly vulnerable to the damage such clients can cause.

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## Don't Let It Get Personal

Tempers can flare when the stress of dealing with a departure is added to the normal stresses of practicing law.

It is in everyone's interest to maintain the highest levels of professionalism during this difficult transition. Don't let it get personal. If you find you are losing objectivity, retain counsel to act as a buffer.

**The Practice Advisors Office encourages lawyers and firms to quickly negotiate reasonable trust conditions and financial arrangements to facilitate file transfers with the least possible impact on the clients. We are available to help in these negotiations. The Practice Advisors Office provides free, confidential mediation of disputes that arise when a lawyer leaves a firm.**

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## Parting Checklist

1. Ask the firm to delegate authority to deal with your departure to one person
2. List all files for which you are responsible
  - completely clean your office, including in and behind your credenza and filing cabinets to make sure no files slip between the cracks
3. List the files where you want to give the client the option of going with you or staying with the firm, noting any
  - trust funds
  - outstanding accounts receivable
  - unbilled disbursements
  - outstanding work in progress
  - outstanding trust conditions or undertakings
  - loans to clients
4. Discuss the list with the firm and negotiate the wording of the letter to go to the clients (see the precedent letters below)
5. Send the letters giving the client the option of going with you or staying with the firm, including an authority to transfer the file and trust funds
  - if clients contact the firm or the departing lawyer to ask what their rights are, it is unethical for either to use undue influence or harassment to keep the file
6. Complete, bill out and collect on as many files as possible. On matters that cannot be completed, interim bill and collect on as many as possible
7. Negotiate trust conditions for the transfer of contingency fee files, which
  - recognize the firm's right to share in the fee and provide a mechanism for determining the appropriate share, with an arbitration clause for disputes
  - deal with disbursements, either requiring them to be paid at the time of file transfer or when the matter is settled
  - deal with loans to clients
  -
8. Negotiate trust conditions for the transfer of non-contingency files with outstanding accounts receivable or work in progress dealing with
  - trust funds
  - accounts receivable

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- disbursements, billed and unbilled
  - work in progress
  - loans to clients
9. Print out, forward, or save electronic copies of all emails, documents, correspondence and other computer files that relate to files that are going with you
  10. Inform the firm in writing on a timely basis of all the deadlines (particularly limitation and court dates) on all files that you are not taking with you so appropriate arrangements can be made to protect the clients' interests
  11. Make a list of the firm's clients and matters on which you will have an ongoing conflict of interest
  12. If you are a partner, negotiate the terms of your withdrawal from the partnership
  13. If your compensation is based on a percentage of fees collected, negotiate the basis for your compensation for work in progress unbilled and accounts receivable not collected by the time you leave
  14. File, where applicable,
    - notices of change of solicitors
    - notices of change of agent on caveats and other Land Titles documents that contain a notice of address for service
    - notices of change of address on security registrations
    - notices of change of address in respect of contracts (including leases and options) where your new office will be the address for service
    - change of registered office for corporations where your new office will be the registered office
  15. Notify the Law Society of Alberta of your new address and status
  16. Give notice of your new address to
    - lawyers you deal with regularly
    - lawyers you have files with
    - LESA
    - CBA
    - other legal organizations you belong to (e.g., ACTLA)
    - publishers of magazines or other subscription services to which you subscribe
    - listservs and other Internet subscriptions
  17. If you have signing authority on the firm's bank accounts, arrange for new signing documents to be executed

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## Leaving Letters

### For Firm Alone or Firm and Departing Lawyers Jointly

On [date], [Departing Lawyer] is leaving/left this firm to join the firm of [name of new firm]/commence practice at [address and phone no.].

[Departing Lawyer] has been the responsible lawyer on the above matter. You may choose to have

- (a) [Departing Lawyer] continue to represent you;
- (b) This firm continue to represent you, in which case the file will be handled by [New Lawyer] or,
- (c) Some other firm represent you.

If you wish to have [Departing Lawyer] continue to represent you or have your file go to some other firm, please so advise us in writing by signing the enclosed letter of authority and returning it to us. Arrangements respecting your account(s) with us may have to be made.

Please advise us in writing of your decision by [date], so that continuity in your representation may be assured. If no response is received, the file will remain with this office.

Yours truly

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### For Departing Lawyer Alone

On [date], I am leaving/left [name of old firm] firm to join the firm of [name of new firm]/commence practice at [address and phone no.].

I have been the responsible lawyer on the above matter. You may choose:

- (a) To have me continue to represent you;
- (b) To have [name of old firm] continue to represent you or;
- (c) To have some other firm represent you.

If you wish me to continue to represent you, please so advise me in writing by signing the enclosed letter of authority and returning it to me for forwarding to [name of old firm]. Arrangements respecting your account(s) with [name of old firm] may have to be made.

If you wish to have your file remain with [name of old firm], or go elsewhere, please advise [name of old firm] in writing, with a copy to me.

Please advise me in writing of your decision in writing as soon as possible [or by X date] so that continuity in your representation may be assured. If we hear nothing from you, your file will remain with [name of old firm].

Yours truly

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## **Letter of Authority**

[Date]

To: [name of old firm]

This is your authority to deliver to [Departing Lawyer] the file(s) regarding the following matter(s):

[list matters]

This is also your authority to pay to [Departing Lawyer] all monies held by you in trust to my credit relating to such matter(s)\*.

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Client

\*If there are no trust funds to be transferred, delete this paragraph.

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# How Alberta Lawyers Organize Their Professional Businesses

(Updated: October 2012)

## Entities that Practice Law

Viewed as **legal entities**, law practices are:

**Sole proprietorships:** a sole proprietorship is an individual practicing law in the individual's personal capacity

- as a solo practitioner
- as a solo practitioner with one or more employee lawyers
- in space-sharing association with other sole proprietorships, professional corporations and/or partnerships

**Partnerships:** a partnership consists of two or more individual lawyers and/or professional corporations jointly carrying on business as the proprietors of a single law practice; the legal relationships between the partners are found in the partnership agreement, if any, the *Partnership Act*, RSA 2000, c. P-3 and the common law.

**Limited Liability Partnerships:** limited liability partnerships are partnerships that comply with the LLP provisions of the *Partnership Act* and have registered as an LLP with the Law Society and the Alberta government (see Rules 159.1-159.7 on the Law Society website)

**Professional Corporations:** professional corporations practice law pursuant to a permit issued by the Law Society under the *Legal Profession Act* and the Law Society Rules, and may practice alone or in partnership with individual lawyers and/or other professional corporation (see Rules 153.1-159 on the Law Society website)

Note 1: When you register with the Law Society as a LLP, you have to pay a registration fee and an annual fee. You also have to register with the Alberta government and file an annual return.

Note 2: If you incorporate your practice, you will have additional expenses:

- initial incorporation expenses, including normal incorporation expenses and a fee to the Law Society for your professional corporation permit
- annual expenses associated with maintaining the corporation, a fee to the Law Society for your professional corporation permit renewal, financial statements for the corporation and corporate tax returns (federal and provincial)
- your accounting will be marginally more complex

Note 3: Some lawyers incorporate a management company that employs the spouses and/or children of the proprietor or the partners. Because of the restrictions in the *Legal Profession Act*, a management company cannot practice law, so its activities must be restricted to providing non-legal services such as secretarial, accounting, administrative, space and other like services to the firm.

Get advice from an accountant before doing this.

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Viewed as **business organizations** (i.e., as firms), law practices are:

- sole practitioners:** a solo practitioner is a sole proprietor or a professional corporation operating alone (i.e., without employed lawyers or partners, though often with employed support staff)
- sole proprietors with employed professionals:** firms consisting of a sole proprietor or professional corporation with employed lawyers are not uncommon, although we don't have a specific name for them
- partnerships:** a partnership (including an LLP) consists of two or more individual lawyers and/or professional corporations operating a single, joint business, with or without employed lawyers. The word "partnership" refers to both the legal entity and the business firm.
- space-sharing associations:** a space-sharing association, also commonly referred to as a cost-sharing association or an association of independent practitioners, is a hybrid organization consisting of a group of sole proprietors, partnerships and/or professional corporations who practice together but not in partnership; an association does not usually employ lawyers, but members of an association may. A variation on this theme is a law suite consisting of space developed into law offices by a lawyer and rented out to other lawyers who practice independently of each other.

## Liability Issues

### Sole proprietorships

A sole proprietor carrying on a practice as a solo practitioner, a sole proprietor with employed lawyers, or a sole proprietor as a member of an association of independent practitioners with or without employed lawyers, has unlimited personal liability for claims arising out of the practice, including claims caused by the actions of employed lawyers and other employees.

### Partnerships

Each partner in a partnership has unlimited personal liability for claims arising out of the practice of the partnership, including unlimited personal liability for claims arising out of actions of other partners, employed lawyers and other employees while carrying on partnership business.

### Limited Liability Partnerships

All partnership assets are subject to claims of creditors.

Partners have unlimited personal liability for their own negligence, wrongful acts or omissions or misconduct:

- for the negligence, wrongful acts or omissions or misconduct of another partner when they knew of the misdeed but failed to take remedial action
- for the negligence, wrongful acts or omissions or misconduct of an employee, agent or representative of the partnership whom they negligently supervised

So-called "innocent partners" are not personally liable for the negligence, wrongful acts or omissions, malpractice or misconduct of other partners or employees acting in the ordinary course of carrying on the practice.

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However, they are at risk for their share in the partnership assets, and all insurance coverage held by the LLP is available to satisfy claims against an offending partner or partners.

All partners are liable for ordinary debts of the partnership.

### Professional corporations

You do not get the benefit of limited liability if you carry on your practice through a professional corporation in Alberta. *The Legal Profession Act* provides:

133(1) Notwithstanding anything to the contrary in the Business Corporations Act, every person who is a voting shareholder of a corporation during the time that it is the holder of a permit or of a corporation during the time that it acts in contravention of section 106(1) is liable to the same extent and in the same manner as if the voting shareholders of the corporation were during that time carrying on the business of the corporation as a partnership or, if there is only one voting shareholder, as an individual practicing as a barrister and solicitor.

### Space-sharing arrangements

Solo practitioners often join in space-sharing associations to give the impression that they are part of a larger organization with more resources. However, they usually also set a high value on their independence and do not want to be liable for the actions of other members of the association. These goals are incompatible. If a space-sharing association looks like a partnership and acts like a partnership, the courts are likely to treat it as a partnership for the purpose of determining liability to third parties, irrespective of the internal arrangements. Members of a space-sharing association who wish to avoid partnership-like liability must make it abundantly clear to clients and others that they are not partners, and that each entity within the association operates independently. This defeats the goal of projecting a firm-like image. A notation like "An Association of Independent Practitioners" on the letterhead of a space-sharing association, with no other separation of the practices, is of limited value in preventing partnership-like liability.

A member of a space-sharing association is exposed to several potential partner-like liabilities based on the activities of other members of the association:

- ❑ **negligence in the provision of legal services**—normally covered under the Law Society's compulsory E&O insurance program through ALIA, including negligence of support staff. ALIA does not pursue innocent partners or associates. However, if the policy has been breached in such a way that coverage is denied, other members of the association may be exposed.
- ❑ **fraud on a client** or a third party by a lawyer or support person—fraud is not covered by the Law Society insurance
- ❑ **trust fund defalcations**—the Law Society's Assurance Fund may make up part or all of the loss if trust funds are held in the capacity of a barrister and solicitor, but will not be available if the funds were not held in that capacity. The Law Society does not pursue innocent partners or associates.

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- **public liability, tenant's legal liability**—should be insured (make sure all members of the association and their employees and agents are named as insureds)
  - **trade debts**—if incurred in the name of the association (e.g. office supplies, process service, transcripts, medical reports, space leases, equipment leases, courier services, etc.)

Many lawyers apparently consider the risk of partnership-like liability to be more than offset by the benefits of associating with other lawyers, because space-sharing associations are increasingly popular.

A space-sharing association should have a written agreement setting out the arrangements among its members, including mutual indemnities in case partnership-like liability is imposed. But remember: an indemnity is only as good as the credit-worthiness of the indemnifier. Make sure you review the agreement before agreeing to join an association.

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## Taxation of Lawyers

A sole proprietorship is the simplest entity for tax purposes; the time and expense needed to prepare the tax information for a sole proprietorship is generally less than for a partnership or professional corporation.

The income of a sole proprietorship is the revenue less allowable expenses and is reported on the sole proprietor's individual tax return.

CRA Form T2032 (available on the CRA website) can be used to calculate professional income instead of having an accountant prepare financial statements, although CRA may require you to file a balance sheet (even if you use the form, it is a good idea to have an accountant for your practice).

No deductions are withheld from the draws paid to a sole proprietor (see below re quarterly instalments).

All sole proprietors must have a calendar year end.

### Space-sharers

Space-sharing associations are not taxable entities. Each member of a space-sharing association is treated as an individual business and can deduct its share of the common expenses in calculating its income.

### Associates

The taxation of associates depends on whether they are employees, independent contractors or space-sharers.

If an associate is an employee, the employer must deduct IT, EI and CPP. The employer matches the employee's CPP contribution and pays 1.4 times the employee's EI deduction. Failure to withhold properly can be very costly, so it is important that an associate's status be determined correctly. The employer must issue a T4 to the employee on a calendar year basis.

For tax purposes, associates who are independent contractors are treated the same as sole proprietors.

### Partnerships

A partnership is not a taxable entity. Partnership financial statements are prepared on a calendar year basis to determine the net partnership income, which is allocated among the partners pursuant to the partnership agreement.

The partnership claims Capital Cost Allowance (depreciation) on partnership assets.

A partner's share of the partnership net income is not necessarily equal to the partner's draws. Partners are taxed on the net income allocated to them by the partnership.

Partners can personally deduct expenses incurred for business purposes but not shown on partnership financial statements.

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For example, car expenses are often deducted by the individual partners because partners have different views on how much to spend on a vehicle.

No deductions for IT, EI or CPP are taken from draws paid to partners (see below re quarterly instalments).

From a tax perspective, there is no difference between a regular partnership and an LLP.

### Professional Corporations (PCs)

All shareholders must be members of the Law Society of Alberta.

Revenue and expenses are accounted for at the corporate level.

The PC normally remunerates its shareholder(s) by way of salaries and bonuses, which are expensed by the PC. The PC may also pay dividends to shareholders.

The PC deducts IT and CPP from salary and bonuses paid to the lawyer, but not EI. An owner of a PC is not eligible for EI. The PC issues a T4 for salary and bonuses and a T5 for dividends.

A PC must have financial statements prepared each year and must file federal and provincial corporate tax returns and pay corporate income tax; some corporations are required to make monthly tax installment payments.

A PC that is a member of a partnership must have a calendar fiscal year, but a stand-alone PC can pick any fiscal year.

**Small Business Deduction** A Canadian Controlled Private Corporation ("CCPC") carrying on an active business in Canada is entitled to claim the Small Business Deduction (the "SBD"), which will give it an effective tax rate of under 17%. The Income Tax Act integrates the income of CCPC's and their Canadian resident shareholders, so the SBD provides a tax deferral and a small permanent tax savings for Alberta residents. You do not get any benefit from the lower tax rate unless you leave money in the corporation. It is usually not a good idea for someone who is just starting out to incorporate. However, every situation is different, so professional advice should be sought on this question.

### Income splitting

You may be able to achieve some tax savings through income-splitting by employing family members in your sole proprietorship, partnership or professional corporation or by incorporating a management company to provide non-professional services to the law firm. Proceed with caution and get tax advice.

### Deductions

Certain deductions get special tax treatment. The deduction of auto expenses is very complex; talk to your accountant. No deduction is allowed for club membership fees or dues where the main purpose of the club is providing recreation, dining or sporting facilities to its members. Only 50% of meals, drinks and entertainment may be deducted. You are only allowed to deduct two conventions in connection with your profession per year.

Golf club dues and green fees are not deductible, but meals at such facilities are subject to the normal 50% limitation.

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## Reporting Taxable Income

A sole proprietor's net income, a partner's share of the partnership net income (less additional deductions), and a PC shareholder's salary, bonuses and dividends are reported on a calendar year basis and taxed with other personal income using the standard individual deductions, credits and graduated rates. A self-employed individual (sole proprietor, independent contractor associate or a partner) can extend the annual tax filing deadline from April 30 to June 15. The tax is still due April 30 and interest is charged from that date.

## Quarterly Instalments

Sole proprietors, associates who are independent contractors, and partners must pay quarterly IT and CPP instalments, must pay both the employer and the employee CPP contributions, and are not eligible for Employment Insurance ("EI"). Penalties and interest for late or deficient instalments can be costly.

## Buying/Selling a Practice

In the negotiation of the sale of a practice, it is in the purchaser's interests to allocate as little as possible to goodwill and as much as possible to "hard" assets, and in the interests of the seller to do the opposite.

Some of the assets of a sole proprietorship, an interest in a partnership, and shares of a professional corporation are capital properties, the disposition of which may trigger a capital gain or loss. Proceed with caution and get tax advice.

Special income tax elections are available to allow proprietorships to incorporate or to allow roll in or roll out of partnerships. These rules are complex, so get tax advice.

## GST

Whatever type of operating entity you chose, the entity should register for GST and collect and remit as required.

GST may be payable on part or all of the purchase price of a practice.

GST is payable on amounts paid to associates who are independent contractors.

Additional Information in this document provided by:

Leo R. Kelly, F.C.A., I.F.A.  
Kelly & Creaghan Chartered Accountants

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## Office Space Evaluation Checklist

1. Overarching question: How will the location and layout of this space contribute to the success of my business?
2. Will my clients be able to get to my office conveniently?
  - Is it close to where they live or work? (which is more important for my client base?)
  - Is it close to major traffic arteries?
  - Is there enough parking? is it safe? well lit? free or reasonably priced?
  - Is there disabled parking? disabled access?
  - Is there public transportation? (is this important for my client base?)
  - Is the location easy to find?
  - Is it easy to describe how to get to it (close to landmarks, major intersections, etc.)
3. Will I be able to get out to my clients easily?
4. Does the location have sufficient visibility to support my marketing plan?
5. Is the location well-serviced by couriers? banks? copy services? office supplies store? shopping? restaurants? other services and amenities I will need?
6. Is the ambience of the building professional and businesslike? Does the age of the building convey the right message? Is it the kind of building and area where my clients expect me to be? where they will feel comfortable coming to see me?
7. Does the appearance of each of the following convey a professional impression that is consistent with my business plan:
  - the area: new? old? going up? going down? clean? not so clean? safe? not so safe?
  - grounds and parking areas?
  - the exterior of the building?
  - the lobby?
  - the elevators?
  - the halls?
  - the entrance to my office?
  - the reception area?
  - the interior halls and work spaces visible to the public?
  - my office?
  - board rooms and signing rooms?
8. Is there enough staff parking?
9. If above the second floor, are there elevators? Are they fast? clean? modern?
10. What other amenities does the area offer? the building?
11. Is the building clean? well maintained? well lit?

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12. Is the signage appropriate? What will it cost?
13. Is the building management professional and accessible?
14. Is the lighting adequate? the power supply? the wiring for computers and the phone system? the sound-proofing? the heating, ventilation and air conditioning ("HVAC") systems?
15. Who controls the HVAC for my space?
16. When is the building HVAC system on? is it available after hours? at what cost?
17. Is there after-hours access?
18. Is there office-hours security? after-hours security?
19. Is there a cleaning service?
20. Do I need new space? or will improved or sublet space suffice?
21. Do the other lawyers and businesses in the space and the building have good reputations? Do I feel comfortable associating my name with them? Are there synergies with my practice? Will I feel comfortable referring work to them?
22. Is the space functional?
  - Is the reception area large enough? comfortable?
  - Is the board room large enough? comfortable? functional?
  - Is my secretarial area large enough? Does it lend itself to an efficient arrangement of my furniture, equipment and working areas? Is it close to my office?
  - Is my office large enough? Does it lend itself to an efficient arrangement of furniture, equipment and working areas? Does it have a window? Is it accessible to the reception area?
  - Is there adequate storage space for active files? closed files? financial records? other material?
  - Is there a kitchen/coffee room?
  - Is there a room for the copier, fax and supplies?
23. Will I be isolated from contact with other lawyers? If so, what will I do to overcome my isolation?
24. Will I have adequate space for active file storage? closed file storage?
25. Is my deal in writing? Is there a dispute resolution mechanism?
26. Is there room for expansion?

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## Lease Business Terms Checklist

1. **Space** - be sure to understand the difference between usable and rentable square feet.
  - Usable square feet** is the space contained within your demised premises that you can use.
  - Rentable square feet** includes a proportionate share of the common areas of the building and on which rent will usually be charged.
2. **Term** - for the small practitioner even five years is a long time. In a fairly static market, go to a two or three year term with a couple of one year renewals if there are no costs being amortized.
3. **Improvement allowance** - you can have anything you want but remember you are going to pay for it over time. It will be embedded in your rent, along with an interest factor. Don't get carried away.
4. **Assignment** – can you assign your rights? Is the landlord's consent required? Can it be unreasonably withheld?
5. **Personal Guarantees** - the landlord will ask for them but resist giving them (a declining guarantee may be justified where the landlord has to put up some money for a tenant improvement allowance).
6. **Moving Allowance and Free Rent** - you may be able to get some cash or free time now which may be helpful but remember you are going to pay it back over the term of the lease.
7. **Operating Costs** - most operating costs are beyond the control of the landlord such as property taxes and utility costs. Check the operating costs history and negotiate a cap on any increase from year-to-year if you can. Check out the reasonableness of the operating costs with a knowledgeable commercial realtor.
8. **Insurance** – make sure you understand your insurance obligations under the lease and how much it will cost to meet them.
9. **Option to Renew** - this is a good right to have in a rising market but in a static or declining market it doesn't mean a thing.
10. **Option to Expand** - this is a very important term to negotiate. Always make sure, if you can, that you have some additional space adjacent to your demised premises with the option to expand into it, or at least a right of first refusal on the space.
11. **Face Rate** - remember the face rate includes not only the base rate the landlord wants to achieve but an annual amortized amount for the costs of all the benefits being supplied.
12. **Space Planner** - sometimes a landlord will pay for the services of a space planner to provide a preliminary space plan. This is very important for firms that are locating in new premises.

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13. **Arbitration Clause** - if you have a right to renew with the rent to be settled by arbitration, be very careful with the arbitration clause, particularly to ensure that it does not include a "check stop" provision which says the rent can go up but it can't go down.
  14. **Get help** – don't be afraid to enlist the help of a knowledgeable commercial realtor to help with locating and screening space. And if you don't have experience with commercial leases, have a lawyer with commercial lease experience review the landlord's form.
  15. **Ask questions** – don't accept something you don't understand because you are embarrassed to ask for clarification.

Additional information in this material provided by:

Maury G. Van Vliet  
Vanterra Management Ltd.  
Edmonton, Alberta

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# Space-Sharing Arrangements

(Updated: June 2017)

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2. Ethical Issues in Space-Sharing Arrangements
3. Business Issues in Space-Sharing Arrangements with Lawyers
4. Business Issues in Space-Sharing Arrangements with Non-lawyers and in Executive Suites
5. Resource Material from the *Code of Conduct*

## 1. Types of Space-Sharing Arrangements

The common space-sharing arrangements are:

- space-sharing with lawyers (by far the most popular)
- space-sharing with non-lawyers
- executive suites

### Space-Sharing with Lawyers

One advantage of sharing space with lawyers is that you will have colleagues close by to bounce ideas off. Another is that space-sharing offices are usually already set up to run as law offices, so the staff already knows about the ethics of confidentiality, handling trust funds and how to deal with lawyers who are under pressure.

There are two basic types of space-sharing arrangements:

- each lawyer is on the lease as a co-tenant and is responsible for a share of the rent and other expenses
- a lawyer or law firm rents office space to another lawyer, a group of lawyers or another firm (usually as a licensee, not a subtenant as the arrangement does not involve exclusive possession)

In the co-tenancy arrangement, you have more security but less flexibility because you are committed to a lease. You will have more opportunity to have input into how the office is run. However, you run the risk that one or more of your co-tenants may leave you "holding the bag."

In the licensor-licensee arrangement, as licensee you do not have security of tenure but the termination notice periods are usually very short and flexible. Your risk is that your licensor may decide to terminate on short notice. As well, you may be dealing with someone who views you as little more than a way to get relief from overhead.

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## **Sharing Space with Non-lawyers**

The past few years have seen a proliferation of arrangements where lawyers share space with non-lawyers such as accountants, psychologists, realtors, insurance agents and, in smaller centres, all manner of small businesses with extra office space.

From a practical point of view, you will be operating a solo practice in rental space. The main difference from normal rental space is that your space is usually not exclusively demised for your use.

## **Executive Suites**

An executive suite is a space in an office building that is subdivided into smaller offices, which are then rented out for various terms to a variety of businesses, consultants, salespeople, marketers, engineers, lawyers. The rent usually depends on the location and prestige of the building, the size of your office, whether you have a window, and the ancillary services included in the rent.

Executive suites are usually rented on a month to month basis, so they give you maximum flexibility.

Executive suites arrangements usually include a variety of ancillary services, such as reception (usually included in the rent), secretarial (usually charged on an hourly basis), FAX and copier (charged on a per-use basis) and meeting rooms (sometimes included in rent, sometimes surcharged). Sometimes they also include basic furniture.

## **2. Ethical Issues in Space-Sharing Arrangements**

### **Sharing Space with Lawyers**

The Code of Conduct contains several provisions relevant to space-sharing arrangements (see part 5 of this article):

- If you share space with other lawyers, you are treated as a firm for ethical purposes unless you clearly and unequivocally indicate to your clients that you are independent practitioners. Even if you take steps to separate your practices, you are deemed to be a firm for the purpose of conflicts of interest and confidentiality. Code of Conduct (Definitions of "law firm").
- The rules on multiple representations (Rule 3.4-4, 3.4-5, Code of Conduct) apply when members of a space-sharing association represent clients in potential or actual conflicts of interest.
- Because you are a firm for ethical purposes, you can share fees (Rule 3.6-5 Code of Conduct).

The conflict of interest rules and the case law may combine to produce some surprising results when a new lawyer comes into a space-sharing arrangement because previous involvement by a new association member on the other side of a case being handled by an existing association member may prevent the existing association member from continuing to act. A system for screening for these conflicts will need to be established.

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## **Sharing Space with Non-Lawyers**

From an ethical perspective, there are two main concerns when you share space with non-lawyers.

The first is protection of client confidentiality from advertent or inadvertent disclosure. You must be extra cautious to ensure that confidential information does not get disclosed.

The second is ensuring that you don't breach the law and rules regarding unauthorized practice ([Code of Conduct](#) - Fees and Disbursements):

- You cannot pay referral fees except where referral of client to another (Rule 3.6-6 Code of Conduct).
- You cannot divide your fees with non-lawyers (Rule 3.6-7 Code of Conduct).
- You cannot accept finders fees except with disclosure to your client (Rule 3.6-7, Code of Conduct).

## **3. Business Issues in Space-Sharing Arrangements with Lawyers**

### **1. Ethical standards**

- Are you likely to have conflicts of interest with the other lawyers in the space?
- Are you willing to share your client list with the other lawyers in the space?
- Does the space-sharing agreement contain strong language on ethical standards?
- Does the space-sharing agreement require members of the group to advise the other lawyers when they received a complaint letter from the Law Society?

### **2. Is your practice compatible with the practices of the other lawyers in the space?**

You don't want your practice to be so different that your clients will feel uncomfortable. For example, if you are pursuing a wills and estates practice, your clients may not feel comfortable sharing the reception area with the clients of a criminal lawyer.

### **3. Are you personally compatible with the other lawyers in the space.**

You will be bumping into each other on a daily basis, so if you are not compatible, minor irritations can grow into major frustrations. Resist the temptation to gloss over personal and practice incompatibilities in your desire to get the space issue settled. Be brutally honest. You are better to spend more time at the beginning finding the right arrangement than to end up spending a lot of time and energy trying to get out of a bad one.

- Do the other lawyers in the space have good reputations? Do you share their values?
- Do they treat their clients the way you think they should?
- Do you trust them?
- Will you feel comfortable associating your name and reputation with them?
- Will you be able to work with them? Are there synergies with your practice?
- Will you feel comfortable referring work to them?
- Will you be able to resolve disputes with them?

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#### 4. Referrals and working together

- What are the policies on internal referrals and referral fees?
- What are the policies on working on files together?
- If you work on someone else's litigation file, when will you be compensated for your work?

#### 5. New admissions

- Will you have a say in the decision to admit new members to the group?
- Will new admissions be expected to adhere to the same agreement?

#### 6. Your legal status

- Will you be the tenant, a co-tenant or a subtenant with the right to exclusive possession of your space? or will you be a licensee? or will you have some other status?

#### 7. Your space

- What space will you have for your office, your support staff, your filing and storage of closed files?
- Will you have exclusive possession of your space?
- What access to and use of common areas (e.g., reception area, board rooms, signing rooms) will you have?

#### 8. What are the security arrangements for the building? the shared premises? your space within the shared premises?

#### 9. Name

- What name will be used by the group?
- Who owns the name?
- If the name or a variant of it is used as an Internet domain name,
  - Who owns the domain name?
  - Will your business email address be based on the domain name?
  - Will you have to terminate use of that Internet address if you leave the arrangement?
  - Will emails be forwarded to a new email address for a reasonable length of time after termination of the arrangement?
- Are all members of the group required to use a common letterhead and business cards?

#### 10. Holding out

- How do members of the group refer to each other (e.g., partner, associate, space-sharer, other)?
- How is the group held out to the public?
- How is the group represented in the Yellow Pages and other advertising media?
- Are you willing to be deemed a partner of the other lawyers in the space for liability purposes?

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## 11. Signage

- What rights will you have with respect to signage? What will signage cost you?

## 12. Telephone answering and reception

- Is the phone answered professionally? What words are used?
- Is there an automated attendant system?
- Will you have and be expected to use a direct line? voice mail?
- Is the reception area appropriately decorated and furnished for your client base?
- Are visitors treated professionally?

## 13. Management

- Who manages the office?
- How are decisions made?
- What input will you have?
- Is there a policies and procedures manual for the office you will be expected to adhere to covering staff policies and standard legal procedures (for example, standard will precedent, standard trust conditions for real estate)

## 14. Who has primary legal responsibility for:

- rent and common expenses payable to the landlord
- other lease terms (e.g., insurance)
- casualty and liability insurance
- the phone system
- the computer system, including hardware, software, the Internet connection and domain name
- equipment leases
- maintenance contracts
- software licenses and support contracts
- equipment and software upgrades
- land titles, registry office, court reporter, medical report and other accounts and invoices

## 15. What additional services, furniture and equipment will be included in the arrangement, and how will you pay your share:

- receptionist services
- secretarial services
- accounting software
- accounting services
- paralegal services
- shared articling student and/or junior lawyer
- lawyer's office furniture
- support staff furniture and equipment
- photocopier
- fax
- scanner
- phone system
- software

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- computer network
- Internet access
- other equipment
- file storage space
- furniture
- access to board, conference, meeting and signing rooms
- access to staff coffee room
- library and on-line research

**16.** Are the additional services, furniture and equipment of high quality?

**17.** Is the equipment used to provide ancillary services of high quality?

**18.** Are repair, maintenance and replacement of equipment and software included in the cost of ancillary services or billed separately?

**19.** Who will own items purchased out of pooled funds?

**20.** What other charges will you be expected to assume or share:

- postage
- photocopies
- faxes
- accounting services
- long distance tolls
- legal research library
- office supplies
- signage
- maintenance of equipment
- cost of on-line legal research
- letterhead and business cards
- utilities
- business tax
- shared marketing, promotion

**21.** On what basis will you be charged for additional services, furniture and equipment and other charges:

- included in a global monthly amount or share of billings
- cost recovery
- equal shares
- fee for service with profit margin for supplier?
- Be ready to pay your fair share, but watch out for "nickel-and-diming" agreements; they don't bode well for the future and can be very costly.

**22.** What costs will not be included in the agreement:

- support staff salaries and benefits
- Law Society dues and insurance
- auto expenses
- personal promotion expenses

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**23. Are promises of referral work and other inducements credible?**

- Be skeptical about promises of referrals because they frequently fail to materialize.

**24. "Work-for-space" arrangements.**

Be wary. These agreements may look attractive because they appear to solve your space problem with very little outlay of cash. However, they can cause problems if the parties don't share the same expectations about how much work will be referred, when it will be done and how it will be valued. They can also play havoc if your plans for developing your practice change.

**25. Are the consequences of non-payment spelled out in the agreement?****26. Is GST payable? By whom?****27. Trust and general accounts**

The most common arrangement for space-sharing lawyers is that each member of the group maintains separate trust and general bank accounts and separate books and records, and they report separately to the Law Society.

If the members of a space-sharing association consider themselves to be a law firm they can share trust and general accounts and accounting records and filings. If one lawyer in the space sharing arrangement doesn't feel they will have the type of practice to warrant operating their own trust account, arrangement can be made with one of the other responsible lawyers to use their trust account.

- Will you be sharing a trust account?
- Who will have signing authority?
- If your clients' funds go into the trust account, you must have unhindered access to their funds
- Who will sign be the Responsible Lawyer
- Will you be sharing a general account?
- Will you be sharing an office expenses account?
- Who will do the accounting for the group expenses?

**28. Are there standard fees for routine services that everyone in the office adheres to?****29. Is the staff treated with respect and fairness?****30. Is there a group benefits plan for you and your support staff?****31. The space-sharing agreement**

- Is it clear and in writing?

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You may think that "overflow secretarial" means a lot more than the busy lawyer who is paying the secretary's salary.

- Does it contain strong expectations with respect to ethical and competent performance by all members of the group?
- Does it contain a dispute resolution mechanism?
- Does it contain reasonable termination provisions with adequate procedural safeguards?
  - There is often bitterness and anger when these arrangements terminate, so a short notice period—no more than thirty days—is better than a long one.
- Does it deal with death? withdrawal? expulsion? the consequences of a lawyer being suspended or disbarred?
- Does it contain mutual indemnities regarding liabilities caused by one member of the group but imposed on others?

#### **4. Business Issues in Space-sharing Arrangements with Non-lawyers and Executive Suites**

1. Your space must be lockable or your files placed in lockable filing cabinets that are in fact locked when neither you nor your assistant are present (including at night, on weekends or for periods of time during the day).
2. Files must not be left in open areas where they may be perused. Similar security concerns apply to file storage.
3. If you share a photocopier or fax, you must be very careful not to leave documents on the copier (given the cost of fax machines now, there is no excuse for not getting one of your own and keeping it in a secure location). Or, consider a service that directs all faxes to e-mail.
4. If you are on a network, make sure your area of the network is secure with pass-words that are not available to persons other than you and your staff.
5. You must impress the importance of confidentiality on shared receptionists, bookkeepers and other office services staff. When they are answering your phone, greeting your clients or doing your bookkeeping, they are subject to the same standards as if they were working in a law office.

You have an ethical obligation to educate them about confidentiality and to supervise their work. Of particular concern: they must not disclose any information about your clients' affairs with anyone else in the office, including the person who pays their salary.

6. The supreme importance of confidentiality and the duties of shared staff should be discussed in detail with the proprietor of the space and negotiated into your written agreement.

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7. Instruct the receptionist on the importance of not disclosing the names of callers to your law office (by, for example, announcing the names of callers in the presence of others working in the office) and make arrangements that ensure that your phone messages are not open to disclosure.
8. Make sure your mail is delivered **unopened** to you or your support staff.
9. Be careful not to unwittingly back into an unauthorized practice arrangement. You may carry on your separate practice of law in the same premises as another business, but you cannot create a single business entity that has non-lawyers as partners. Make it clear to clients who are referred internally that your law firm is independent of the referring business. You do not want to end up being sued for someone else's malfeasance because your businesses were so closely allied that the client thought you were partners.
10. Since you may be the only lawyer in the suite, there will be a risk that you will become isolated. Make sure you get out and meet with other lawyers by having coffee at the court house, attending CBA section lunches and LESA seminars, etc.
11. Before you go into an executive suite, consider whether your practice is compatible with those of the other businesses in the suite. Depending on your business plan, you may find marketing opportunities in an office suite, or you may find yourself in conflict with the other tenants.
12. Storage is also often a problem in these arrangements. Law practices generate paper, at times inordinate amounts of paper, and they need secure, convenient storage.

## Resource Material from Code of Conduct

### 1.1-1 Definitions

**Lawyer:** It has long been understood that the term "lawyer" is defined in the Code to include the lawyer's firm and each firm member except where expressly stated otherwise or excluded by the context. However, a lawyer will not be responsible to the Law Society for the ethical misconduct of another member of the firm unless the lawyer had actual knowledge of the misconduct or the circumstances clearly indicate willful blindness.

"**lawyer**" means an active member of the Society, an inactive member of the Society, a suspended member of the Society, a student-at law and a lawyer entitled to practise law in another jurisdiction who is entitled to practise law in Alberta. A reference to "lawyer" includes the lawyer's firm and each firm member except where expressly stated otherwise or excluded by the context

"**law firm**" includes one or more lawyers practising:

- (a) in a sole proprietorship;
- (b) in a partnership;
- (c) as a clinic operated by Legal Aid Alberta;
- (d) in a government, a Crown corporation or any other public body; or
- (e) in a corporation or other organization;

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- (f) from the same premises, while expressly or impliedly holding themselves out to be practising law together and indicating a commonality of practice through physical layout of office space, firm name, letterhead, signage and business cards, reception and telephone-answering services, or the sharing of office systems and support staff;
- (g) from the same premises and indicating that their practices are independent.

**“associate”** includes:

- (a) a lawyer who practises law in a law firm through an employment or other contractual relationship; and
- (b) a non-lawyer employee of a multi-discipline practice providing services that support or supplement the practice of law;

**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.

## Commentary

[1] This rule prohibits lawyers from entering into arrangements to compensate or reward non-lawyers for the referral of clients. It does not prevent a lawyer from engaging in promotional activities involving reasonable expenditures on promotional items or activities that might result in the referral of clients generally by a non-lawyer. Accordingly, this rule does not prohibit a lawyer from:

- (a) making an arrangement respecting the purchase and sale of a law practice when the consideration payable includes a percentage of revenues generated from the practice sold;
- (b) entering into a lease under which a landlord directly or indirectly shares in the fees or revenues generated by the law practice;
- (c) paying an employee for services, other than for referring clients, based on the revenue of the lawyer’s firm or practice; or
- (d) occasionally entertaining potential referral sources by purchasing meals, providing tickets to, or attending at, sporting or other activities or sponsoring client functions.

[2] Lawyers may pay non-lawyers for direct and reasonable advertising costs (including a lawyer referral service), and are also allowed to compensate employees and other persons for general marketing and public relations services, whether by salary, profit sharing, bonus or otherwise, provided the compensation is not directly related to a specific client matter.

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## Conflicts of Interest

### Statement of Principle

In each matter, a lawyer's judgment and fidelity to the client's interests must be free from compromising influences.

#### Duty to Avoid Conflicts of Interest

- 3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

### Commentary

"Conflict" means the situation existing when the parties in question are prima facie differing in interest but there is no dispute among the parties in fact. Examples include vendor and purchaser, mortgagor and mortgagee, insured and insurer, estranged spouses, and lessor and lessee.

"Potential conflict" means the situation existing when the parties in question are prima facie aligned in interest and there is no dispute among the parties in fact, but the relationship or circumstances are such that there is a possibility of differences developing. Examples are co-plaintiffs; co-defendants; co insured; shareholders entering into a unanimous shareholder agreement; spouses granting a mortgage to secure a loan; common guarantors; beneficiaries under a will; and a trustee in bankruptcy or court appointed receiver/manager and the secured creditor who had the trustee or receiver/manager appointed.

Most lawyers prefer not to act for more than one party in a transaction. From the client's perspective, however, this preference may interfere with the right to freely choose counsel and may appear to generate unwarranted costs, hostility and complexity. In addition, another lawyer having the requisite expertise or experience may not be readily available, especially in smaller communities. Situations will therefore arise in which it is clearly in the best interests of the parties that a lawyer represent more than one of them in the same matter.

Yet professional loyalty remains an important aspect of the lawyer-client relationship, and many clients will be unhappy when their lawyer's attentions are divided. Acting in a conflict or potential conflict situation increases a lawyer's vulnerability to charges of professional misconduct. The apparent consent of those involved may be challenged on the grounds of misrepresentation or overreaching. Moreover, the client in a multiple representation context will expect to pay less than the normal fee for one client, creating another possible point of contention.

Consequently, although this rule permits multiple representation in certain circumstances, this type of retainer must be approached by a lawyer with caution, particularly if a conflict rather than potential conflict is involved. It will generally be more difficult for a lawyer to justify acting in a situation involving actual conflicting interests. In each case, the lawyer must assess the likelihood of being able to demonstrate after the fact that each client received representation equal to that which would have been rendered by independent counsel.

In determining whether it is in the best interests of the parties that a lawyer act for more than one party where there is no dispute but there is a conflict or potential conflict, the lawyer must consider all relevant factors, including the following:

- (a) complexity of the transaction;
- (b) whether there are terms yet to be negotiated and the complexity and contentiousness of those terms;

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- (c) whether considerable extra cost, delay or inconvenience would result from using more than one lawyer;
- (d) availability of another lawyer of comparable skill;
- (e) whether the lawyer is peculiarly familiar with the parties' affairs;
- (f) probability that the conflict or potential conflict will ripen into a dispute due to the respective positions or personalities of the parties, the history of their relationship or other factors;
- (g) likely effect of a dispute on the parties;
- (h) whether it may be inferred from the relative positions or circumstances of the parties (such as a long standing previous relationship of one party with the lawyer) that the lawyer would be motivated to favour the interests of one party over another; and
- (i) ability of the parties to make informed, independent decisions.

Furthermore, the requirement that the multiple representation be in the clients' best interests will not be fulfilled unless the lawyer has made an independent evaluation and has concluded that this is the case. It is insufficient to rely on the clients' assessment in this regard.

Although the parties to a particular matter may expressly request multiple representation, there are circumstances in which a lawyer may not agree. Examples include representing opposing arm's-length parties in complex commercial transactions involving unique, heavily negotiated terms. In these situations, the advantages of retaining a single lawyer are outweighed by the risks.

**Disclosure and consent** – If a lawyer determines that multiple representation is permissible, the consent of the parties must then be obtained (See the definitions of "consent" and "disclosure" in the "Definitions"). Consent in this context will be valid only if full and fair disclosure has been made by the lawyer (to all parties together unless completely impractical) of the advantages and disadvantages of, first, retaining one lawyer and, second, retaining independent counsel for each party. Such disclosure must include the fact that no material information received in connection with the matter from one party can be treated as confidential so far as any of the other parties is concerned (see commentary below regarding multiple representations).

In addition, the lawyer must stipulate that if a dispute develops, the lawyer will be compelled to cease acting altogether unless, at the time the dispute develops, all parties consent to the lawyer's continuing to represent one of them. Consent given before the fact is ineffective since the party granting the consent will not at that time be in possession of all relevant information.

While it is not mandatory that either disclosure or consent in connection with multiple representation be in writing, the lawyer will have the onus of establishing that disclosure was sufficient and that informed consent was granted. Therefore, it is advisable to document the process in some manner (such as memorandum to file or follow up letter) and to obtain written confirmation from the client wherever possible.

If a lawyer is proposing to act for both a corporation and one or more of its shareholders, directors, managers, officers or employees, the lawyer must be satisfied that the dual representation is a true reflection of the will and desire of the corporation as a separate entity. Having met all preliminary requirements, a lawyer acting in a conflict or potential conflict situation must represent each party's interests to the fullest extent. The fact of multiple representation will not provide a justification for cutting corners or failing in other respects to fulfil the duties and responsibilities owed by lawyer to client.

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### **Multiple representation without sharing of information**

In certain circumstances, knowledgeable clients in a conflict or potential conflict situation may desire representation by the same firm without the mutual sharing of material information. It may be acceptable for a firm to agree to act in such a situation provided that an effective screening device can be erected and the clients are fully apprised of, and understand, the risks associated with the arrangement. Such advice must be given by counsel that is independent of the firm involved.

This kind of arrangement remains an exception to the general rule, however, and should be undertaken only when the justification is clear. In particular, multiple representation with or without the sharing of information is unacceptable in a dispute or when the risk of divergence of interests is high. Responsibility remains with the lawyers to consider the factors outlined in the earlier commentary to this rule and to independently judge the advisability of the representation. Furthermore, the lawyers and clients involved must consider beforehand the risk that the screening device may be breached, intentionally or otherwise, or that a lawyer acting for one of the clients will obtain information confidential to the other client through a legitimate outside source. In such a circumstance, it would be necessary for the firm to cease acting for all clients in the matter.

### **Single client in dual capacity**

Special considerations apply when a lawyer is representing one client acting in two possibly conflicting roles. The consent of the client recedes in importance and the lawyer's independent assessment of the best interests of the client becomes more important. For example, a lawyer acting for an estate when the executor is also a beneficiary must be sensitive to divergence of the interests of the client in those two capacities. Such divergence could occur if the client is a surviving spouse who is the beneficiary of only part of the estate. It is obviously in the spouse's interests to apply to the court to receive a greater share of the estate; however, this course of action is detrimental to the other beneficiaries and therefore inconsistent with the neutral role of executor. The lawyer would likely be obliged by this rule to refer the client elsewhere with respect to the application for relief since, despite the client's consent, the lack of independent representation would not operate in the client's best interests.

### **Disputes**

3.4-2 A lawyer must not represent opposing parties in a dispute.

### **Commentary**

[1] The existence of a dispute precludes joint representation, not only because it is impossible to properly advocate more than one side of a matter, but because the administration of justice would be brought into disrepute.

[2] It is sometimes difficult to determine whether a dispute exists. While a litigation matter qualifies as a dispute from the outset, parties who appear to have differing interests or who disagree are not necessarily engaged in a dispute. The parties may wish to resolve the disagreement by consent, in which case a lawyer may be requested to act as a facilitator in providing information for their consideration. At some point, however, a conflict or potential conflict may develop into a dispute. At that time, the lawyer would be compelled by Rule 3.4-1 to cease acting for more than one party and perhaps to withdraw altogether.

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[3] In determining whether a dispute exists, a lawyer should have regard for the following factors:

- the degree of hostility, aggression and "posturing";
- the importance of the matters not yet resolved;
- the intransigence of one or more of the parties; and
- whether one or more of the parties wishes the lawyer to assume the role of advocate for that party's position.

[4] If clients have consented to a joint retainer, a lawyer is not necessarily precluded from advising clients on non-contentious matters, even if a dispute has arisen between them. When in doubt, a lawyer should cease acting.

#### Mediation or Arbitration

[5] This rule does not prevent a lawyer from mediating or arbitrating a dispute between clients or former clients where:

- (a) the parties consent;
- (b) it is in the parties' best interests that the lawyer act as mediator or arbitrator; and
- (c) the parties acknowledge that the lawyer will not be representing either party and that no confidentiality will apply to material information in the lawyer's possession.

#### Current Clients

3.4-3 A lawyer must not represent one client whose legal interests are directly adverse to the immediate legal interests of another client, even if the matters are unrelated, unless both clients consent.

#### Commentary

[1] This rule mirrors the bright line rule articulated by the Supreme Court of Canada.

[2] The lawyer-client relationship may be irreparably damaged where the lawyer's representation of one client is directly adverse to another client's immediate interests. For example, one client may legitimately fear that the lawyer will not pursue the representation out of deference to the other client, and an existing client may legitimately feel betrayed by the lawyer's representation of a client with adverse legal interests.

[3] A client is a current client if the lawyer is currently acting for the client, and may be a current client despite there being no matters on which the lawyer is currently acting. In determining whether a client is a current client, notwithstanding that the lawyer has no current files, the lawyer must take into consideration all the circumstances of the lawyer-client relationship, including, where relevant:

- the duration of the relationship;
- the terms of the past retainer or retainers;
- the length of time since the last representation was completed or the last representation assigned; and
- whether the client uses other lawyers for the same type of work.

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[4] When determining if one client's legal interests are directly adverse to the immediate legal interests of another current client, a lawyer must consider the following factors:

- the immediacy of the legal interests;
- whether the legal interests are directly adverse;
- whether the issue is substantive or procedural;
- the temporal relationship between the matters;
- the significance of the issue to the immediate and long-term interests of the clients involved; and
- the clients' reasonable expectations in retaining the lawyer for the particular matter or representation.

[5] The bright line rule cannot be used to support tactical abuses. For example, it is inappropriate for a lawyer to raise a conflict of interest in order to disqualify an opposing lawyer for an improper purpose, or to inconvenience an opposing client.

[6] This rule will not apply in circumstances where it is unreasonable for a client to expect that its law firm will not act against it in unrelated matters. In exceptional cases, a client's consent that a lawyer may act against it may be implied. (See commentary to Rule 3.4-1)

[7] A lawyer's duty of candour requires that a lawyer inform a client about any factors relevant to the lawyer's ability to provide effective representation. If the lawyer is accepting a retainer that requires the lawyer to act against an existing client, the lawyer should disclose this information to the client even if the lawyer believes there is no conflict of interest.

[8] A lawyer's duty of commitment to the client's cause prevents the lawyer from summarily and unexpectedly dropping that client to circumvent conflict of interest rules. The client may legitimately feel betrayed if the lawyer ceases to act for the client in order to avoid a conflict of interest with another more lucrative or attractive client.

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## Tips for the Home Office Lawyer

### 1. Preliminaries

- Consider whether your practice really is suitable for a home office
- Check municipal zoning to make sure a home law office is a permitted use
- If you are in a condo or apartment, check the rules on home law offices

### 2. Get separate phone and fax lines for your law business

- Put a separate voice mail service on your business phone line so you can send the message that there are times when you are not available for business even though you are home
- Don't list your home number and don't give it to clients
- Use a beeper for emergencies rather than giving out your home number
- Train the other people who live in the house how to take a message in case a client calls your home number by mistake

### 3. Put your office in a separate room

- Keep your files and administrative records in this room and lock your office when you are not working in it
- If you have to store any of your files or records outside this room, make sure they are kept in locked cabinets
- Train the other people who live with you to understand that this is private business space and not part of the common use area of the home

### 4. Furnish and equip your office

- Get a good, ergonomically designed chair—you're going to spend a lot of time in it
- Locate your computer thoughtfully—you're going to spend a lot of time in front of it
- Locate your phone, fax machine, printer, scanner, copier, etc. conveniently

### 5. Arrange to rent a meeting room in a law office, executive suite or other business location on a regular or ad hoc basis so you don't have to see clients at home

### 6. If you are going to see clients in your home office,

- Locate your office as far away as possible from sources of domestic noise and odour
- If possible, your office should have access to the outdoors so clients do not have to go through your living space (may require renovations)
- If possible, this room should have access to separate bathroom facilities and a waiting area (may require renovations)
- Determine your obligations with respect to access by disabled persons (may require renovations)

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- Do not let domestic objects and messiness invade your office (any sign that leads a client to think that this is not a place of business will degrade the perceived value of your services)
- Dress with appropriate formality when you are seeing clients—look like a lawyer

**7. Security issues: if you will be seeing clients in your home office,**

- Screen your clients carefully
  - Arrange to meet new clients outside your home office (e.g. at their business premises, in a restaurant or coffee shop, at the courthouse or in a law office, executive suite or other business location where you have made arrangements to use a meeting room) until you are satisfied they don't pose a risk
  - Verify the client's name, address and telephone information; if the client is a business, check it out to make sure it is legitimate and above board
  - If you have any reservations about the stability of a new or existing client, decline the case or terminate the representation rather than risking your family's safety
  - Make it clear to clients in the first meeting and in your engagement letter that they are not to come to your home unannounced under any circumstances
- Get a permanent post office box or use a commercial mailbox service
  - Use the box number as your business address on cards, letterhead, etc. so you have some control over information about where you live
  - You can arrange for a commercial mailbox service to accept deliveries on your behalf and even phone or email you when deliveries arrive
- Put an intercom between your office and the kitchen in case you need to call for help
  - Train your children what to do in an emergency (call 911 or a trusted adult)
- Consider a home security system with a 'panic button' that will set off an alarm and/or call the police automatically

**8. Get a separate computer for your law business**

- Put password protection on this computer so only you can access it
- Train the other people who live with you to understand that this is your private business computer and not one they share

**9. Clearly set boundaries between your work life and your personal life**

- When you are engaged in personal activities, direct business calls to voice mail
- Do not let business calls ring in the personal area of your home
- When you do legal work for family members or friends, meet them in your office, not in your kitchen or living room

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- When they see you in your professional space acting as their lawyer, they will be better able to refer you to their friends and relatives
- When you see them in your professional lawyer space, you will be better able to maintain your professional objectivity

**10.** Explain your "rules" about business hours and procedures in the initial interview and put them in writing in your engagement letter

**11.** Technology: don't scrimp just because this is a home office

- A high quality, fast, reliable computer with plenty of RAM and HD space and a large, bright, flicker-free monitor
- Current software for
  - Word processing
  - Accounting, including trust, time and billing, general ledger and financial management
  - Case management (client and file information, calendar information, etc.)
  - Other software needed for your practice
- High-speed Internet connection separate from your phone lines
- A high quality, high volume, office-quality laser printer, particularly if you will be doing a paper-based practice
- A high quality, high volume, office-quality FAX machine
- Photocopier
  - If you are in a paper-intensive practice, you should invest in a high quality, high volume, office-quality photocopier with a document feeder and sorter
- Scanner
  - Again, if you are in a paper-intensive practice, you should invest in a high quality, high volume, office-quality scanner with a document feeder
- Note: You may have to upgrade your electrical service to handle the power needs of your technology

**12.** Check out your insurance coverage

- Note: The normal homeowners policy is usually not adequate: consider public liability, fire and other damage, theft, valuable papers, loss of computer information, business interruption, disability and office expenses coverage

**13.** Check out the Income Tax Act and talk to your accountant about the special rules that apply to deductions for home office expenses

**14.** Services

- Arrange for a courier and court runner services that understand your needs
- Open your bank accounts in a bank that understands your needs
- Establish a good relationship with a technology consultant
- Have one or more experienced, competent legal secretaries on call for emergency document production or other paralegal services

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## 15. Set and keep regular work hours

- You need a regular start time so you don't get side-tracked with domestic chores when you should be doing legal work
  - Be flexible—one of the advantages of working from a home office is that you can take time out to go to the school and help out; just don't let non-work activities become excuses for procrastination
- You also need a regular quitting time so you don't work endlessly and so your clients realize that there are times when you are at home but not working
- Regular hours will also let your family know when you are working and when you are not

## 16. Set aside regular time for administrative work

- After all, you are running a professional services business

## 17. Don't let yourself get isolated

- Make sure you get out of the house and mingle with your professional peers regularly
  - Join CBA sections and go to the lunches
  - Go to LESA seminars
  - Join or start a support group of home office lawyers and meet regularly
- Set up an informal mentor network consisting of lawyers in firms and other home office lawyers
- Set up a "virtual law firm" of trusted lawyers to whom you can refer work you don't want to do yourself

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## Bookkeeping & Accounting in a Law Office

(Updated January 2013)

### Number-crunching in a law office

In a law office, "number-crunching" takes place at three levels:

- **bookkeeping**, which involves posting transactions to journals and ledgers, and is the foundation for the other levels
- **accounting**, which involves sorting the posted entries into several common reports that are generally accepted by accountants as summarizing the basic financial performance of the business, including in particular the Profit and Loss Statement and the Balance Sheet
- **management information reporting**, which involves sorting the posted information into a variety of reports that can be used in the management of the business, including such reports as
  - aged work in progress
  - aged accounts receivable
  - summary of fees and disbursements billed and collected, by month, by lawyer or by area of practice
  - accounts receivable trends
  - budget variances

### Do I have to have a Trust Account?

The Rules of the Law Society of Alberta, Rule 119.1 permits the Executive Director to exempt a lawyer from the requirement of appointing a responsible lawyer and the requirements of a trust account. Typically, most law firms that practice law receive and disburse client funds entrusted to them. However, there are situations where no retainers/trust money will be received, such as a criminal lawyer dealing exclusively with Legal Aid or a Wills and Estates lawyer who will only issue accounts after completion of the work. In these cases, a lawyer/law firm must file an Application for Exemption from operating a trust bank account. Once approved, the law firm must then submit annually a Law Firm Self Report. Please note that a lawyer/law firm approved for exemption is only required to complete specified sections of the Law Firm Self Report.

The mandatory Designated Filing Date ("year-end") for all law firms is December 31 and the report is due three months after the Designated Filing Date. The completed Law Firm Self-Report must be submitted by March 31 ("Due Date") the following year.

### Should I use a Manual or a Computer-based System?

Your decision on whether to use a manual or a computer-based system will depend on a number of factors. Some of the pros and cons are set out in the table on the next page.

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Type	Pros	Cons
Manual	Inexpensive to purchase "Low-tech"--easy to learn Sufficient for practice with low volume of entries "Hands-on"	Minimal management information Requires considerable time-consuming, repetitious, tedious, meticulous work No automation of account generation Very difficult to implement timekeeping efficiently Error-prone No built-in error corrections or audit controls Inadequate for practices with high volume of entries Tracking budget information is difficult Needs accountant for year end
Computer	Instantaneous access to information Built-in math functions reduce errors Rapid entry codes permit quick, accurate posting Can handle high volume of entries Trust integrated with Manual Systems	More expensive to purchase Users must be trained Some programs are overly complex for solo or small practices May result in technophobic lawyer losing touch with financial information

Although computerized accounting and management information systems are used widely in today's law offices, there is still a place for manual bookkeeping systems, particularly for

- lawyers with a minimal amount of bookkeeping
- lawyers who do not want to computerize

**Note:** some firms may have electronic filing as a condition of their trust account approval which will require the use of approved accounting software.

A manual system is a good way to get a "gut-level" understanding of law office bookkeeping. It is also very inexpensive to get a manual bookkeeping system started. However, a manual system is inefficient and does not produce much useful information.

If you decide to use a manual system, call the Practice Advisors Office for a free copy of the Guide to Manual Law Office Bookkeeping.

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## Computerized Systems

There are a number of good computer accounting programs available for small law practices. Under the new Trust Safety rules, lawyers are being encouraged to use legal specific accounting programs to stream-line their accounting procedures. If lawyers are using accounting software that contains features that enable users to transmit accounting information to the Law Society and if the data is transmitted, no Accountant's Report is required. Currently, there are three Law Society approved legal software vendors, Clio, PCLaw and Esilaw. The Law Society continues to work with other vendors so this list will continue to be expanded. See the article [What Kind of Accounting Software Should I Buy?](#) and call the Practice Advisors for current information.

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## What Kind of Accounting Software Should I Buy?

### Vanilla-brand accounting packages

I am opposed to "vanilla brand" accounting packages--AccPac, Simply Accounting, Quicken, Quick Books etc. because they are a bad investment for lawyers. I don't deny that you can do your accounting on such a program, BUT:

- You won't be able to record your time (even for a transactional or contingency practice, time records are necessary for costs analysis and taxations).
- If you buy a separate time-and-billing program (at additional cost), it won't likely integrate seamlessly with the rest of your system, which will invite mistakes.
- Disbursements are not likely to be handled well.
- You will have to create trust statements, trust listings and statement of account formats as well as the reports needed for practice management. The value of the time you invest doing this will almost certainly exceed the cost of buying and setting up a law-dedicated program, and you will probably end up with an inferior result.

### Levels of information

I divide law office accounting information into three levels:

- Bookkeeping Information** Journals, ledgers and billing information. Requires only low-level sorting. All trust "accounting" falls under this heading.
- Accounting Information** Information organized into accounting reports, such as the trial balance, profit & loss statement, balance sheet.
- Management Information Systems (MIS)** Information organized into management reports, such as aged WIP; aged A/R; summaries of billings, time and disbursements by lawyer, time period and area of practice; budget variances.

With a manual system, you get the first level; when your accountant does your year-end, you get the second level. It is possible to get some third level information manually, but it is so cumbersome and expensive that most don't bother.

Computerized accounting packages make all levels available with a couple of key-strokes. Management information becomes, for the first time ever, a practical reality for the small law firm. However, it is hardly worth computerizing your accounting if you don't use the third level information, so be prepared to do some learning and organizing to get the most out of your investment in accounting software.

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## Shopping for an accounting package

Here's what I recommend you keep in mind when shopping for a law office accounting package:

### Bookkeeping

- Trust done the way the Law Society requires, which means a chronological journal, individual client trust ledgers, a trust transfer journal and the ability to produce a trust listing
- Electronic trust and general account reconciliation.
- Disbursements done as painlessly as possible, with the option to treat them as recoverable expenses or as assets.
- Timekeeping that is easy and that allows work to be posted on either an hourly rate or a block fee basis.
- Multiple, flexible account formats that draw together the trust, timekeeping and disbursements information for easy review, editing and posting.
- Easy, intuitive posting of both simple and complex trust and general entries.
- Automatic GST calculation and reports.
- Clear and understandable trust statements, account receivable ledgers and statements of account that can be printed in a form that can sent to clients without being retyped.

### Accounting

- Full range of general ledger accounts (assets, liabilities, proprietor/partnership capital, revenue and expenses), with complete flexibility to customize account numbers and names.
- Year end posting.
- Ability to generate trial balance, balance sheet and P&L.

### MIS

- Quick, easy-to-access client/matter summary showing time, disbursements and trust information.
- Budget function.
- Reports as mentioned above.
- Control over which reports will be printed and when.

### Additional features

- Easy to learn and use.
- Rapid entry codes to facilitate posting.
- Understandable documentation.
- Good support (especially when you are converting to the new program).
- Networkable.
- Limitations and deadlines.
- Automatic conflicts checking.

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- Integration with spreadsheet to produce graphs and charts.
- Client information that integrates with other programs (e.g., to produce a merge data file of client addresses in WordPerfect, or with a case management program like Amicus Attorney).

Multi-level password control.

- A large base of satisfied users (when shopping, ask for a list of users in your area and call them to see what they have experienced using the program).

Value commensurate with price.

### **The transition**

It takes a while to get a computerized accounting system working well. You will probably make some mistakes in the initial set-up because it will all be so new, so don't go cold turkey. I recommend that you run your old manual system in parallel with the new computerized system for at least 2 months to allow you to make a step-by-step transition. When you have a good handle on the new system, dump it and start over, this time with some experience.

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## Accounting Tips

(Updated November 2017)

### Getting Started

- **Read the Law Society Rules** Lawyers' accounting obligations are set out in the Law Society Rules, which apply to all aspects of trust accounting and to many aspects of General Ledger ("G/L") accounting. The relevant rules are found in Rules 1 and 2 (definitions), Part 5, Rule 118 (client identification and verification requirements), Rule 119 and the related forms. You can download the rules and forms from the Law Society website ([www.lawsociety.ab.ca](http://www.lawsociety.ab.ca)). See Tab 6-7 Law Office Accounting in Alberta for the specific requirements for starting your law firm.
- **Open bank accounts** Unless you have obtained an exemption from requiring a trust bank account you will need at least one pooled trust account in an approved depository—a branch in Alberta of a bank, loan or trust corporation, credit union or a treasury branch—and at least one general account. Both of these type of bank accounts must be maintained in Alberta.
- **Interest on pooled trust accounts** All the financial institutions have signed agreements to pay interest on pooled trust accounts to the Alberta Law Foundation. You are required to instruct the bank that holds your pooled trust account to send this interest to the Law Foundation.
- **Service Charges on trust accounts** You must also instruct your bank not to take service charges or amounts owed by you personally from your trust account; this may require changes to the bank's standard account operation agreement. You can put up to \$500.00 of your own money in your trust account to cover any inadvertent posting of service charges by the bank.
- **Order cheques** Get different coloured cheques for trust and general to avoid writing cheques on the wrong bank account. If you have more than one trust or general account, get different coloured cheques for each. If you are using a computerized accounting program order computer cheques and forms that can be completed in your printer. You may have to order them directly from a supplier approved by your financial institution – you will need to ask your financial institution who they suggest that you order from.
- **Get organized** Keep all your accounting records in one area. Open a separate reconciliation s file folder for each bank account and file the reconciliations in reverse chronological order with the bank statement. If you have few transactions, keep the cheques with the statement and reconciliations; if you have many cheques, get boxes to store them in.
- **CDIC Coverage on the Trust Accounts** CDIC (Canada Deposit Insurance Corporation) insures bank depositors against a bank collapse for up to \$100,000 per depositor. However, a law firm can get trust account coverage of \$100,000 per client by providing the financial institution with a list showing the clients (identified by client number, not name) and outstanding amounts. The list must be as of April 30 and be sent to the financial institution by May 30 each year.

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- It should also include separate interest-bearing trust accounts. When you open a new trust account, you must submit a list after you complete the first reconciliation to get your clients coverage until the next annual list is due. Submitting these lists gets CDIC coverage for all funds that flow through the trust account, not just the funds identified on the lists. Coverage is not available for foreign currency accounts and terms deposits with a maturity of greater than five years. See [www.cdic.ca](http://www.cdic.ca).

## Operational Tips

- **Depositing trust money** Rule 119.19(1) requires you to deposit trust money "on or before the next banking day".
- **Handling credit card slips** Credit card slips are considered money in the Rules. Trust receipts must be deposited directly into your trust account. You must, concurrently with the deposit, transfer the amount of the bank discount, if any, from your general account so the total in trust equals the face amount of the slip. You must deposit the credit card slip within 2 banking days, so you cannot hold a blank, signed credit card slip as security for your fees and disbursements (Rule 119.44(a)). You should understand your bank's clearing rules for credit card slips to ensure that you do not disburse funds that have not cleared.
- **Restriction** Rule 119.17 prohibits the use of a trust account where no legal services are being provided.
- **Posting** All postings should be made as the transactions occur so you will always know how money is in each client ledger account prior to issuing a payment against those funds. If you have a manual accounting system all postings must be done in ink. Avoid obscure abbreviations.
- **Deposit Slips** To preserve confidentiality, use file numbers, not client names or transaction references, on deposit slip.
- **Trust funds from one client on several matters** When you receive trust money from one client for more than one matter at the same time, you must open separate client trust ledger accounts for each matter.
- **Certifying funds received in trust** If you intend to disburse trust money to a third party immediately after receiving it from your client, you should require certified funds unless the source of the funds is another lawyer or a financial institution. It is less important to get certified funds where the money will remain in your trust account for some time before being disbursed, but it may be prudent if you do not know the client well. It is ethical to certify another lawyer's trust cheque. It is also ethical to require a lawyer to provide certified funds if the contract under which the funds are provided requires certified funds – where the contract states that funds can be paid by lawyers' trust cheque or bank draft, it is not appropriate to require the issuing lawyer to certify their own trust cheque.

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- **Authority to withdraw funds from trust** The best authority for drawing a trust cheque is the written direction of the beneficial owner of the trust money. In any situation where you don't have written authority, you should identify the source and nature of your authority as clearly as possible. If the source of your authority is not obvious, document your authority in a memo to the file.
- **Withdrawals from trust** Withdrawals from trust must be by cheque, except a transfer to or from a separate interest-bearing account in the same branch, which may be made by a document other than a cheque (see Rule 119.22) or by electronic transfer (see rules 119.23 and 119.42. The Rules prohibit cheques made payable to "Cash" or "Bearer" and post-dated cheques. The cheque must clearly indicate that it is a cheque drawn on a trust account, be dated and completed as to the payee and amount and be signed by the member from whose trust account the withdrawal is made or another member authorized by that member.
- **Paying fees from trust** Do not transfer a retainer from trust to your general account to pay your fees or to reimburse you for disbursements until you have rendered a written account to your client. You do not have to render an account when you use trust money to pay disbursements directly to a third party, provided you have your client's authority to do so. See subrules 119.21 (3) and (4). To pay an account out of trust money, write a trust cheque to yourself and deposit it into your general account or by complying with the requirements of Rule 119.42 and completing the non-cheque withdrawal form. The account must be prepared and sent to the client before or contemporaneously with the removal of funds from trust. Promptly withdraw money which belongs to you from your trust account.
- **Separate interest-bearing trust accounts** Open a separate ledger card for each separate interest-bearing account. The interest on a separate interest-bearing trust account must be posted when credited to the account. Where you have a daily interest savings account that is posted monthly, you must obtain a statement updated at the end of each month for the purpose of reconciling the account. The interest is posted to a GIC or a term deposit when the term of the instrument expires; accrued interest must be posted when a GIC or term deposit is rolled over. Keep all separate interest-bearing account passbooks/statements and GICs together in one place (not in the file!!). Placing a client's money in a separate interest-bearing trust account may generate a considerable amount of bookkeeping, so make sure that the interest to be generated justifies the hassle (unless the investment is required by trust condition or legislation).
- **Inadvertent Trust Deficiency** If you discover an inadvertent discrepancy in your trust account (e.g., the bank deducted cheque printing charges), you must immediately (within 7 days) make up the deficiency. Where you are not in a position to do so, or where the deficiency is over \$2500 you must immediately report the matter to the Law Society. You do not have to report inadvertent deficiencies, under \$2500 that you immediately make up, but you should document the problem and the steps taken to correct it as your accountant will need an explanation of the discrepancy during the annual review of your accounts. You will also need the information if the Law Society auditors conduct a spot audit on your practice. Note: you can keep up to \$500.00 of your own money in a trust account to deal with minor inadvertent overdrafts.

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- **Trust ledger overdrafts** One of the most common audit deficiencies is the cheque that creates a ledger overdraft, i.e., a cheque for more than the balance shown on the client's trust ledger. A ledger overdraft does not necessarily create a bank overdraft because other trust money in the pooled trust account may cover the deficiency. To prevent ledger overdrafts, personally examine the client trust ledger before signing a cheque and ensure all postings are current to the time of issuing the cheque.
- **Bank reconciliations** Monthly reconciliations for both your trust and general accounts are part of your records, and must be prepared monthly. Prepare and use a checklist. Monthly reconciliations must be done for all trust accounts, including separate interest-bearing accounts, even if the account had no transactions, and for your general account. **You must prepare a trust reconciliation every month even if you have no transactions during the month and no funds in trust.**
- **CDIC Coverage on the Trust Account** See above. The annual list must be effective April 30 and be sent to the financial institution by May 30.
- **Voided cheques** Sometimes you have to void a cheque. Keep voided cheques (tear out the signature area and staple the cheque to the cheque stub or store with cancelled cheques for the auditor to examine).
- **Annual Filings**

The Annual Report includes the following:

- **Law Firm Self-Report** – prepared by the law firm in accordance with subrule 119.30(3)
- **Accountant's Report** – prepared by the law firm's accountant in accordance with subrule 119.30(4)
- **Electronic Data Upload** – prepared by the law firm in accordance with subrule 119.30(5) or (6)

Law firms must submit the Law Firm Self-Report and either the Accountant's Report or the Electronic Data Upload.

The mandatory Designated Filing Date (year-end) for all law firms is December 31 and the Annual Report is due three months after the Designated Filing Date. The completed Annual Report must be submitted by March 31 (Due Date) the following year. Law firms are now able to e-file a completed Law Firm Self-Report online via the Lawyer Portal. It is mandatory for the Self-Report to be filed online.

Law firms that do not comply and file by the March 31 Due Date will be subject to the following late fees, and administrative suspension of the Responsible Lawyer applies if the Annual Report is more than three months late:

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Date	Event	Fees	Cumulative Fees
Dec 31	Designated Filing Date (Year-End)	\$0	\$0
March 31	Annual Report Due Date	\$0	\$0
April 1	1 month late	\$250	\$250
May 1	2 months late	\$500	\$750
June 1	3 months late	\$750	\$1,500
<b>July 1 Responsible Lawyer is administratively suspended*</b>			
Post-July 1	Firm files Annual Report which terminates Responsible Lawyer's administrative suspension	\$225**	\$1,725
<b>Total Late Filing Penalties - \$250 (Minimum) - \$1,725 (Maximum)</b>			
* The Responsible Lawyer is automatically suspended if the firm is more than three months late filing its Annual Reports and remains suspended until the Annual Reports and all related fees are submitted.			
** In addition to late filing fees, a reinstatement transaction fee is required when the Responsible Lawyer returns from suspension.			

For information on transitional reporting deadlines that may apply to you / your firm in 2017-2018, please see: [Trust Safety Changes](#)

- Undisbursable trust money** Undisbursable trust money may be turned over to the Law Society under Rule 119.27. By statute, the Law Society cannot accept any undisbursable funds unless the law firm has held the funds for at least 2 years.
- Petty cash** Instead of using a petty cash fund, when you pay cash for items that are chargeable as expenses or disbursements, retain the cash register slip or other voucher and, from time to time, write yourself a general cheque covering the amounts owed to you. Do the same for employees who use their own cash for minor amounts.
- Payroll** If you have any employees, you will have to get an employer number from the Canada Revenue Agency (CRA). You will be provided with books that set out the amounts of the Income Tax, Unemployment Insurance and Canada Pension Plan deductions. Payments may be made directly to CRA or paid at your bank using the official remittance forms that CRA supplies.

You are required to provide your employees with a pay stub showing period worked, gross pay, deductions and net pay. You should obtain a payroll book from a stationery store to accumulate your payroll information through the year, as you will have to issue T4 income tax slips.

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- **GST/HST** If your revenues from taxable supplies (fees and charges) exceed \$30,000 in a single quarter or over four consecutive calendar quarters, you must register for GST/HST and comply with CRA reporting and remittance requirements. Payments may be made directly to CRA or paid at your bank using the official remittance forms that CRA supplies or online. If you are dealing with clients or matters that are outside of Alberta, be aware that HST collection and reporting requirements may also apply.
- **Location of records** You must keep your records at your place of practice unless exempted by the Executive Director.
- **Record Retention** After each fiscal year, store all the closed books and records for that year together, keeping the most recent 2 years at your principal place of practice in Alberta. All accounting records and supporting information must be retained for at least the 10-year period see (R. 119.37).
- **Audits** The Law Society conducts spot audits; it also conducts investigations where there is reason for concern about how a lawyer or firm is carrying out its accounting. The member must co-operate by providing the auditor with immediate access to the member's books and records, including client files, as requested. The Society recognizes that audits are stressful and disruptive to the member being audited, and wishes to keep this activity within the bounds of reason and to conclude an audit quickly and with as little disturbance to the law practice as possible.

## Getting Help

- **A good accountant** Look for an accountant who has experience with law office accounting and is willing to help you with such mundane matters as setting up your chart of accounts, establishing your accounting procedures and organizing your records so your year end will go smoothly.
- **The Law Society's auditors** The Law Society's Trust Safety Department is available to answer questions on the Law Society Rules relating to accounting and the accounting procedures.
- **The Law Society's Practice Advisors** The mandate of the Practice Advisors includes responding to accounting questions by phone and reviewing the accounting systems of small firms to help them over-come accounting problems.

The Practice Advisors are also available to discuss legal, ethical and practice concerns, and personal matter and provide assistance and resources in relation to strategic planning, practice management, marketing, and technology and systems, with focus on the needs of sole practitioners and lawyers practising in smaller settings.

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Practice Advisors will travel anywhere in Alberta for personal meetings with lawyers where appropriate. All contacts are strictly confidential. Services are provided without charge. Members are invited to call at any time.

- **Software Vendors** Some software vendors provide general accounting setup and support services, either themselves or through consultants to whom they make referrals. Of course, you have to use their software to obtain their support.

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This trust transfer journal must record all cheque and non-cheque transfers and must record the date, amount transferred and the clients involved.

### **How often do the trust and general account records need to be updated?**

Trust and general transactions should be posted as soon as they occur. This is particularly important for trust transactions as when a lawyer is approving a trust payment, he or she is certifying that the trust accounting records are current to the date of the signature.

Although there is no similar requirement for general records, it only makes sense that the law firm knows their financial status prior to making a general payment.

### **What should be done when a bank statement is not received on an inactive trust account?**

Contact the financial institution and ask for a zero-balance bank statement for that month or a letter confirming that the bank account had no transactions for the month in question. If the financial institution will not issue a statement or letter, a copy of the previous month's statements should be kept on file for the month in question to show that the balance did not change for that period.

### **If the law firm makes a disbursement by way of a certified cheque and the negotiated cheque image is not returned with the monthly bank statement, what should be done?**

A law firm is required to maintain all [negotiated cheques \(or cheque images\)](#) for all trust and general bank accounts. If the bank will not return the original certified cheque, the law firm must request from the financial institution a copy of the front and back of all certified cheques which passed through its trust and general bank accounts.

### **If the law firm is using a computerized accounting system, does it need to print hard copies of any records?**

Yes. On a monthly basis, the law firm is to print all trust records with the exception of the trust ledger accounts which must be printed upon demand. For the general records, they too must be printed monthly with the exception of the accounts receivable ledger cards.

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**How long must the accounting records be maintained and kept at the law firm?**

Financial and accounting records must be maintained at a law firm's principal place of practice in Alberta for its most recent 2 years. Additionally, the law firm must maintain at least 11 years (current year plus preceding 10 years). The financial information contained in client files is subject to the same retention period, and is considered part of the law firm's trust account records.

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## Precedent Letter to Bank re: Interest on Trust Account

(Updated: June 2014)

[Note: This letter should be provided to each approved depository in which a member maintains an operating trust account – that is, a trust account in which money received from more than one client is deposited.]

### (LETTERHEAD)

(Date)

(Name and Address of Approved Depository)

**Attention: The Manager**

**RE: Solicitor's Operating Trust Account # \_\_\_\_\_**

Please be advised that Section 126(1) of the *Legal Profession Act* requires me/us to instruct you to remit the interest earned on the above-named account to the Alberta Law Foundation in accordance with your agreement with the Foundation. In the event that there is no agreement in place, please contact the Executive Director of the Law Foundation.

Please be further advised that because the above-named account is a solicitor's trust account, no service or other charges are to be charged to the account.

Thank you for your co-operation.

Please acknowledge receipt of this letter.

Yours truly,

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## Income Tax Interpretation Bulletin

## Lawyers' trust accounts and disbursements

NO: IT-129R

DATE: November 7, 1986

SUBJECT: INCOME TAX ACT

**Lawyers' trust accounts and disbursements**

REFERENCE: Subsection 9(1) (also paragraph 12(1)(b))

This Bulletin replaces and cancels Interpretation Bulletin IT-129 dated October 31, 1973. Current revisions of significance are designated by vertical lines.

1. The purpose of this Bulletin is to provide information for lawyers in practice on the proper method of reporting their incomes and expenses for income tax purposes with respect to trust funds and disbursements and with respect to funds held for clients involved in litigation. The following rules are considered applicable to all lawyers in practice who maintain trust accounts.
2. With the exception of advances which the lawyer is entitled to treat as his or her funds by specific agreement with the client and retainers which the lawyer is entitled to keep whether or not services are rendered or disbursements are made, advances received from a client for services to be rendered or disbursements to be made are considered to be trust funds and are not income at the time of receipt. The first day when such advances can be legally withdrawn from the trust account for the use and benefit of the lawyer is regarded as the earliest day upon which an account could have been rendered for the purposes of subparagraph 12(1)(b)(ii) and paragraph 12(1)(a). However, the professional may elect to exclude work in progress from income under paragraph 34(a). (Refer to IT-457). Before 1985 a similar result was obtained under paragraphs 34(1)(b) and (c) subject to an election to exclude work in progress from income under paragraph 34(1)(d).
3. Any amount transferred out of the trust account for the use and benefit of the lawyer must be included in income at the time of such transfer unless a corresponding amount in respect of the same services or disbursements was reported as income at some previous time.
4. Disbursements on behalf of a client which are chargeable directly to funds advanced by a client, or would be so chargeable if such funds had been advanced, are essentially expenditures of the client and are not deductible by the lawyer. Examples of such disbursements that may be made on behalf of clients include amounts advanced to complete a real estate transaction or an investment transaction, amounts advanced to meet bail, amounts advanced to pay incorporation fees, etc.

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5. Similarly, disbursements which are properly chargeable to the client under the terms of an agreement (see 2 above) (such as travelling expenses), are normally charged directly to the trust account. If so charged, the lawyer's account is not affected. If a

disbursement made on behalf of a client from whom an advance is received is not so charged in circumstances where it is reasonable to consider that eventually the lawyer can legally withdraw from the trust fund an amount equal to the amount of the disbursement, no amount is deductible by the lawyer for tax purposes in respect of the disbursement.

6. Disbursements that a lawyer customarily makes in the ordinary course of practice which are not chargeable directly to funds advanced by clients are considered to be the lawyer's own expenses which may or may not be recoverable from the clients through regular billings. Consequently, such expenses of a business nature incurred in a taxation year are deductible in computing income for that year for income tax purposes unless the lawyer chooses to defer such expenses that relate to work in progress.

#### Interest on Trust Accounts

7. Interest on trust accounts which, by provincial law, is required to be paid to a law society or bar association or some foundation or fund related thereto is not taxable.

8. Where no such law is applicable and no arrangement to the contrary exists between the lawyer and client, interest credited on a trust account to which the client's advances have been deposited belongs beneficially to the client; therefore the interest is income of the client and not of the lawyer.

9. If there is a specific agreement between the lawyer and client that the interest credited to a particular trust account accrues to the lawyer's own use and benefit, then the interest is income of the lawyer at the time when it is credited to the account.

#### Interest on Funds of Litigants

10. Where funds deposited with a lawyer by a litigant or litigants for safekeeping and investment, pending a court order or settlement establishing their proper disposition, earn income the Department considers such income to be income of a trust and recognizes that the beneficial owner is the eventual recipient of the funds. Therefore, conditional upon waivers being filed by each of the litigants and the lawyer-trustee for the relevant taxation years, the Department will defer assessment of the income until the recipient is finally determined. (Refer to Information Circular 75-7R3, paragraph 5).

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Date Modified: 2002-09-04

  
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[Important Notices](#)

## Law Office Accounting in Alberta

(Updated November 2017)

- Lawyers' accounting obligations derive from the Legal Profession Act, the Rules of the Law Society and the Code of Conduct.
- The Law Society Rules apply to all aspects of trust accounting; they also apply to many aspects of General Ledger (GL) accounting.
- The accounting rules are found in Part 5 of the Law Society of Alberta Rules. The full rules can be accessed on the Law Society web-site at <https://www.lawsociety.ab.ca/regulation/act-code-and-rules/>
- The Law Society conducts spot audits; it also conducts investigations where there is reason for concern about how a lawyer or firm is carrying out its accounting. The most common audit exceptions are listed in Schedule 11.
- A law firm shall, before commencing the carrying on of its law practice in Alberta, obtain and at all times thereafter maintain, the following approvals (subrule 119.1):
  - Designation of a responsible lawyer; and
  - Authorization to maintain a trust account.
  - The rules governing the designation of a responsible lawyer are contained within subrules 119.3 through 119.7.
  - The rules governing authorization to maintain a trust account are contained with subrules 119.8 through 119.10
- The first step is to complete the [Application to Designate a Responsible Lawyer and/or Operate a Trust Account](#), which is completed by the lawyer who will be designated as the firm's Responsible Lawyer. Once the application has been approved, with or without conditions, the law firm can then establish a trust bank account.

**Note:** A law firm only needs a trust bank account if it is receiving or disbursing client trust funds. A lawyer who provides legal advice to clients but does not request a retainer from the client and instead bills the client at the conclusion of the matter may not need a trust bank account. In these cases, the lawyer must file an [Application for Exemption](#) from operating a trust bank account. Once approved, the law firm must then submit annually a [Law Firm Self-Report](#) within three months of the Designated Filing Date.

- When you open a new practice you must, within four months of being approved to operate a trust account, retain an accountant to complete a Start Up Report and provide a copy to the Executive Director. The form must include a designated filing date for the law firm. [Subrule 119.30(1) & (2)].

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- A law firm must, annually and within three months after the Designated Filing Date, provide to the Executive Director a completed Law Firm Self-Report and provide a copy of it to the law firm's accountant.
  - A law firm must, annually and within four months after the designated filing date of the law firm, have the law firm's prescribed financial records reviewed by an accountant, and cause an Accountant's Report to be completed by an accountant and filed with the Executive Director by the accountant responsible for the review. [119.30(4)]
  - A law firm is not required to comply with subrule 119.30(4) if the law firm uses approved accounting software, and the law firm submits automated data to the Executive Director within 1 month after the designated filing date of the law firm. Refer to the Law Society website for a list of approved accounting software. [Subrule 119.30(5)]
  - The forms mentioned above are available on the Law Society website ([Accountant's Report](#))
  - A law firm is required to maintain all of its prescribed financial records at its offices in Alberta unless exempted by the Executive Director (Subrule 119.35). This means that none of the prescribed financial records (journals, client ledgers, bank source documents, etc. may be removed from the law office location).
  - Independent practitioners who practice from the same premises and share a letterhead can share a trust and/or a general account as if they were a law firm for purposes of the accounting rules (Rule 119(1)(f.1)).
  - All accounting records and supporting information must be [(119.37(1))]:
    - Maintained in a safe and secure location
    - Maintained at its principle place of practice in Alberta for its most recent 2-years of financial records
    - Upon completion and closing of a client file, a copy of the client ledger placed on the client file
    - Retained for at least the 10 year period following the fiscal year in which the records came into existence.
  - Undisbursable funds (whereby you cannot locate the client) can be turned over to the Law Society, but only after all reasonable efforts have been made to locate the client. To remit undisbursable funds to the Law Society, an application must be made in:
    - A short form application as designated by the Executive Director, if the subject amount is under \$50, or
    - A long form application as designated by the Executive Director, if the subject amount is \$50 or more.
    - These forms are available on the Law Society web-site.

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**Help is available.** The Law Society's Trust Safety Department is available to answer questions

on the Law Society Rules relating to accounting and the accounting procedures. The Practice Advisors and practice management consultants can provide confidential assistance on any matter relating to your practice.

Trust Safety Customer Service contact numbers:

Phone:

403-930-7206  
403-930-7212

Fax:

403-228-1728  
Attn: Trust Safety

Toll Free:

1-800-661-9003

Email:

[Trust.Safety@lawsociety.ab.ca](mailto:Trust.Safety@lawsociety.ab.ca)

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## ESI-LAW

Since Esi-Law is your double entry accounting system, all trust and general transactions must be recorded in the program. This includes all receipts, withdrawals and billings. To be compliant with R119.36, the following Esi-Law reports should be printed monthly and maintained with your monthly banking records.

**TRUST** – for each open trust bank, pooled and SIBA, regardless of balance and/or activity:

1. **Trust reconciliation**, which consists of:
  - a. Bank reconciliation – ‘Month-Year-end/Bank Reconciliation/Bank Reconciliation’.
  - b. Adjustment page (if applicable) – prints automatically when bank reconciliation is printed.
  - c. Outstanding cheque list – ‘Month-Year-end/Bank Reconciliation/Outstanding Cheque list’. Print immediately after bank reconciliation is printed and include transactions from January 01/80 to end of month being reconciled.
  - d. Cleared cheque register – Month-Year-end/Bank Reconciliation/Cleared cheque register’. Ensure that you include cleared cheques from start of first day and end of last day of month being reconciled.
  - e. Trust Listing by bank – ‘Reports/Trust/Listing by bank’. Ensure that transactions from January 1/80 to the end of your month-end are included. It is your choice to sort by alpha or numeric.
  
2. **Trust Journal** – extra reports must be printed due to current field size limitations in order for the firm to see and therefore verify that all required data has been entered. These are:
  - a. Bank Journal (the only report required by the rules but has field size limitations) – ‘Month-Year-end/Bank Reconciliation/Bank Journal’. Include only transactions for the month being reconciled.
  - b. Cheque Register – ‘Month-Year-end/Bank Reconciliation/Cheque Register’. Include only transactions for the month being reconciled and select ‘Print cheque detail’.
  - c. Receipts Journal – Month-Year-end/Bank Reconciliation/Receipts Journal’. Include only transactions for the month being reconciled and select ‘Include details’.
  
3. **Trust transfer journal** – ‘Reports/Trust/Client Trust Transfers’. Include only transactions for the month being reconciled

**Note:** You do NOT have to print each client trust ledger card at month end. However, per R119.36(5)(c) the client trust ledger must be printed at the conclusion of the matter with one copy onto the client file and one copy into the central file maintained for closed ledgers. ‘Reports/Trust/Ledger by Client’.

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**GENERAL**– for each open general bank held in the name of the law firm, regardless of balance and/or activity:

1. **General bank reconciliation**, which consists of:
  - a. Bank reconciliation – ‘Month-Year-end/Bank Reconciliation/Bank Reconciliation’.
  - b. Adjustment page (if applicable) – prints automatically when bank reconciliation is printed.
  - a. Outstanding cheque list – ‘Month-Year-end/Bank Reconciliation/Outstanding Cheque list’. Print immediately after bank reconciliation is printed and include transactions from January 01/80 to end of month being reconciled.
  - c. Cleared cheque register – ‘Month-Year-end/Bank Reconciliation/Cleared cheque register’. Ensure that you include cleared cheques from start of first day and end of last day of month being reconciled.
  
2. **General Journal** – extra reports must be printed due to current field size limitations in order for the firm to see and therefore verify that all required data has been entered. These are:
  - a. Bank Journal (the only report required by the rules but has field size limitations) – ‘Month-Year-end/Bank Reconciliation/Bank Journal’. Include only transactions for the month being reconciled.
  - b. Cheque Register – ‘Month-Year-end/Bank Reconciliation/Cheque Register’. Include only transactions for the month being reconciled and select ‘Print cheque detail’.
  - c. Receipts Journal – ‘Month-Year-end/Bank Reconciliation/Receipts Journal’. Include only transactions for the month being reconciled and select ‘Include details’.

In addition, the following reports must be printed monthly. Best practice is to print after both the trust and general banks have been reconciled, in case any posting errors are discovered during the reconciliation process:

3. **Billing Journal** – ‘Reports/Receivables/Invoice Journal’. Include transactions for month being reconciled. Include ‘closed clients’. Currently sort by ‘Bill #’ and when the program is adjusted, then select to sort by date.
4. **Aged Accounts Receivable** – ‘Reports/ Receivables/AR Aging’. Include transactions to last day of the reconciled month; report by ‘Firm’.

**Note:** You do NOT have to print each client accounts receivable ledger card at month end. However, per R119.36(5)(c) this card must be printed at the conclusion of the matter and stored in the central file maintained for closed ledgers. ‘Inquiry – A/R tab only’

‘Inquiry – all tabs printed’ will provide all the trust and accounts receivable data required by the rules as well as all expense, disbursement and time which may be beneficial for the firm’s reference.

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## PC LAW

Since PC Law is your double entry accounting system, all trust and general transactions must be recorded in the program. This includes all receipts, withdrawals and billings. To be compliant with R119.36, the following Esi-Law reports should be printed monthly and maintained with your monthly banking records.

**TRUST** – for each open trust bank, pooled and SIBA, regardless of balance and/or activity:

1. **Trust reconciliation**, which consists of:
  - a. Bank reconciliation – ‘Tools/Bank Reconciliation’. We suggest that when the report dialogue box appears, you uncheck ‘Print separate outstanding items list’ as you will save paper. These additional printouts are not necessary as this detail is included in the body of the reconciliation.
  - b. Client Trust Listing by bank – ‘Reports/Client/Trust Listing’. Ensure that end date is your month-end and select the applicable trust account #.
2. **Trust Journal** – ‘Reports/Journal/Trust Bank’. Ensure that ‘start date’ is the first day of reconciled month and that ‘end date’ is the last date of the month being reconciled.
3. **Trust transfer journal** – ‘Reports/Journal/Trust bank matter to matter transfer’. Again, ensure that start and end dates are correctly selected.

**Note:** You do NOT have to print each client trust ledger card at month end. However, per R119.36(5)(c) the client trust ledger must be printed at the conclusion of the matter with one copy onto the client file and one copy into the central file maintained for closed ledgers.  
‘Reports/Client/Trust Ledger’

**GENERAL**– for each open general bank held in the name of the law firm, regardless of balance and/or activity:

1. **General bank reconciliation** – ‘Tools/Bank Reconciliation’. We suggest that when the report dialogue box appears, that you uncheck ‘Print separate outstanding items list’ as you will save paper. These additional printouts are not necessary as this detail is included in the body of the reconciliation.
2. **General Journal** – ‘Reports/Journal/General Bank’. Ensure that ‘start date’ is the first day of reconciled month and that ‘end date’ is the last date of the month being reconciled.

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In addition, the following reports must be printed monthly. Best practice is to print after both the trust and general banks have been reconciled, in case any posting errors are discovered during the reconciliation process:

3. **Billing Journal** – ‘Reports/Journal/Billing(fees). Select start and end date of month being reconciled. Also ensure that only ‘Include paid invoices’ and ‘Show balances as of end date’ are checked; also sort by date.
4. **Aged Accounts Receivable** – ‘Reports/Accounts Receivable/Receivables by client’. Ensure that only ‘Show balances as of end date’ is selected.
5. **Work-in-progress Retainers** – ‘Reports/Client/Work in progress’. Ensure start date is January 1/82 and end date is end of month being reconciled. Do not select any option relating to totals or balances on the first page. Go to the ‘Other tab’ and in the ‘Include’ box, only select ‘Retainers’. Note that these are deemed to be credit accounts receivable balances.

**Note:** You do NOT have to print each client accounts receivable ledger card at month end. However, per R119.36(5)(c) this card must be printed at the conclusion of the matter and stored in the central file maintained for closed ledgers. ‘Reports/Client/Accounting Ledger’.

‘Reports/Client/Ledger’ will provide all the trust and accounts receivable data required by the rules as well as all expense, disbursement and time which may be beneficial for the firm’s reference.

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## Guide for Effectively Managing Trust Safety Risk

With an estimated \$125 billion flowing through lawyers' trust accounts in Alberta in a twelve-month period, the legal profession must be ever vigilant to ensure that these trust funds remain safe. The legal profession is unique in that lawyers guarantee the safety of their client's trust property.

The Law Society of Alberta, as a regulator, is committed to providing continuing education and risk management tools to support lawyers in ensuring the safety of trust property.

New risks to the safety of trust property are constantly emerging. In order to maintain adequate accounting systems and procedures, lawyers must be wary of these risks and committed to continually assessing the safety and effectiveness of their accounting procedures.

This risk assessment guide will enable lawyers to develop and maintain internal accounting systems to better protect against those risks.

The main purposes of this guide are to:

1. Help lawyers to identify the key controls required to have adequate accounting systems and adequate accounting procedures that will meet the requirements of the Trust Safety Rules and offer assurance regarding the safety of trust property.
2. Give guidance on how the Responsible Lawyer can give sufficient oversight to the accounting systems and procedures to ensure their effectiveness – including some best practices that will provide assistance in this role.
3. Flag areas of other potential risk related to trust property.

Specific examples will also be provided of how law firms have experienced loss in the past due to becoming victims of client fraud or employee theft.

This guide will provide suggestions on practices that can protect a law firm from client fraud and a client's trust property from employee theft.

### KEY CONTROLS REQUIRED TO HAVE ADEQUATE ACCOUNTING SYSTEMS

Use Approved Accounting Software and have the following Control Documents:

1. a pre-numbered receipt book for trust monies received and a duplicate pre-numbered receipt book for cash receipts;
2. deposit books for the law firm bank accounts or receipts printed from the law firm accounting software;
3. pre-numbered cheques for law firm bank accounts;
4. cheque requisition forms;
5. trust transfer authorizations.

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## Approved Accounting Software

A properly designed, and correctly used accounting system provides **most** of the controls that are required to ensure the safety of the trust funds that a lawyer receives.

Trust fund accounting is different than ordinary accounting and requires some special features that are contained only in accounting software designed for law firms.

*Example:*

Accounting software which has been designed for law firms has the capability of creating separate trust ledger accounts for each client matter and makes monthly reconciliation of the client trust listing (list of all the separate trust ledger accounts) to the trust bank accounts easier.

Several specialized law office accounting packages, designed specifically to incorporate trust accounting requirements, are available at often surprisingly reasonable cost. The Law Society has been working with the developers of several of these programs to incorporate the ability to electronically transmit trust accounting data to the Law Society [Subrule 119.30(5)] as an alternative to filing an annual Accountant's Report. This is called the Trust Safety Accounting Upload.

Due to a Rule change in September 2014, the Manager of Trust Safety can now require this Upload of all law firms for the annual financial filing. It will become mandatory for all law firms within the next few years.

Some of the main advantages of using approved accounting software to do trust accounting are:

1. The software is designed to properly deal with fund accounting (required to properly deal with trust funds) – which is a unique accounting process;
2. The software is designed to generate all the journals required by the Rules of the Law Society of Alberta;
3. A single input process can record information quickly and accurately in several of the required journals;
4. Timeliness and accuracy of accounting information is improved;
5. The software is designed with built in approvals and limits that are required by the Rules of the Law Society of Alberta; For example, the software is designed to issue a warning if payments from trust are being issued where there are not sufficient trust funds available related to that client's matter to cover the disbursement.
6. Trust accounting records can be better protected due to the ability to restrict access through user settings and passwords;
7. The software is designed with built in safety measures – like not allowing overpayments from trust ledgers; and
8. Ease of access to information – for instance, summary of all matters related to one client, etc.

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There are a number of different approved accounting software programs that allow a law firm to complete the Upload. The software products currently available are:

- Clio
- PCLaw
- Esilaw

If the law firm uses the accounting software for as many processes as possible relating to trust monies (i.e. trust money receipts, payments from trust, and transferring trust monies in between trust ledger accounts) the trust accounting will be completed more accurately and on a more timely basis.

*Example:*

Processing cheques to pay monies out of the trust bank account using the approved accounting software records the disbursement from the trust bank account and posts it to the correct client trust ledger card in a one input process at the same time that the cheque is produced.

In a manual or “unapproved” accounting system, this process can often involve several different steps, some of which may be delayed for a period of time.

**WARNING – Ensure software is used properly:** A word of caution is in order with respect to using computerized accounting software. Unless the accounting software is used correctly, by trained staff, with the features designed to provide good controls activated and adhered to, it is not a safeguard of any kind.

*Examples of risks:*

- Many of the approved accounting software systems will produce a warning if the cheque is being issued from a client trust ledger that does not have sufficient funds to cover the payment.

This warning can protect the law firm from generating a trust shortage.

If this warning message is deactivated or it is customarily ignored or overridden by the accounting staff, the accounting system does not provide the protection against trust shortages.

- Many of the approved accounting software systems allow the cash receipts limits to be set in accordance with the Rules of The Law Society of Alberta. This will produce a warning message if cash has been received over the cash limit for any one client matter.

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This warning can ensure that the law firm is in compliance with the cash Rules.

If this limit is set at an incorrectly high limit or the warning is customarily ignored or overridden by the accounting staff, the accounting system does not provide this protection.

Lawyers should exercise caution in considering inexpensive off-the-shelf accounting programs. These programs cannot be easily used for trust accounting because they do not integrate trust and general account processes. A separate trust accounting system will be required. Law Society auditors recommend against using spreadsheet programs for any law office accounting. Spreadsheet programs can be changed, on purpose or by accident, after items are posted. They do not allow the law firm to maintain the required permanent record of law firm financial transactions.

If a manual accounting system or accounting software that has not been approved by The Law Society of Alberta is chosen, there are many additional measures that must be taken to ensure Rule compliance and adequate procedures.

Other accounting systems (i.e. manual) are only appropriate if the law firm has minimal trust activity. These systems are only permitted if they fully comply with the Rules of the Law Society of Alberta.

If Approved Accounting Software is not used, the following additional measures should be adopted:

- the trust accounting system should be designed and monitored by a professional accountant who is familiar with the Rules of the Law Society of Alberta;
- additional oversight procedures to be performed by the Responsible Lawyer, will have to be developed and overseen, to ensure that the controls that are automatically put in place with a properly used Approved Accounting Software system, are in place and being adhered to.

### **Control Documents**

Control documents, like those noted in the examples to follow, provide a means to control the use of the documents in the trust accounting system to prohibit misuse and ensure the completeness of the accounting records.

Control documents also provide the capability for the responsible lawyer, or their representative, to oversee some of the key accounting tasks through some simple review procedures. Some of these controls, such as the pre-numbering of accounting documents, are already incorporated into approved accounting software. The software automatically provides the sequential numbering.

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*Examples:*

## 1. If:

- the receptionist prepares a receipt, from a **pre-numbered receipt book**, for each trust cheque received from a client; and
- a duplicate deposit slip is filled out for each deposit to the trust bank account in the **deposit book**;

then the bookkeeper can ensure that all trust cheques have been deposited and are properly recorded by comparing the receipt book to the deposits in the deposit book and trust bank statement.

Any missing or lost receipts can be promptly followed up.

Every receipt can be marked as “entered” when the bookkeeper records it in the accounting system.

2. If **pre-numbered cheques** are used in sequence to pay monies out of the trust bank account, the bookkeeper can ensure that all cheques have been recorded in the accounting system and review them to prevent misuse of trust cheques or misdirection of trust funds.

If there are cheques missing from the sequence, the bookkeeper can identify the missing cheque from the cheques returned from the bank and ensure that the cheque has not been misused.

3. If **cheque requisition forms**, authorized by a lawyer at the law firm, are required before trust monies are disbursed from the trust account, unauthorized disbursements from trust can be prohibited and quickly identified.

Accounting staff responsible for preparing and printing trust cheques should not proceed with a disbursement from trust without a cheque requisition form signed by a lawyer.

A lawyer should not sign a trust cheque without reviewing the accompanying signed cheque requisition form.

4. If **trust transfer authorizations**, authorized by a lawyer at the law firm, are required before trust monies are transferred to trust ledger card for a different client matter, unauthorized transfers within the trust account can be prohibited and quickly identified.

Accounting staff responsible for posting trust transfers should not proceed without a trust transfer authorization form signed by a lawyer.

Please see: **Every Lawyer – Duties and Obligations** for requirements regarding authorization of withdrawals and transfers from trust.

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## KEY CONTROLS REQUIRED TO HAVE ADEQUATE ACCOUNTING PROCEDURES

1. Segregation of duties amongst the administrative staff.
2. Timely recording of information and processing of trust accounting transactions.
3. Proper training and delegation to administrative staff.

### Segregation of Duties

Adequate accounting procedures within the law firm require that for significant processes (i.e. dealing with trust receipts) the responsibilities and tasks are divided between different members of the law firm administrative staff.

If the law firm staff is not large enough to divide these duties among several individuals, additional monitoring controls will need to be put in place to secure the trust funds that the law firm receives. See: **Responsible Lawyer – Oversight Procedures**

*Examples:*

1. Trust Receipts: ensure that different individuals:
  - Open the mail – individual who opens the mail should immediately stamp each cheque received with a restrictive endorsement (i.e. *For deposit only*);
  - Take deposits to the bank;
  - Record the transaction in the law firm financial records;
  - Verify the numerical sequence of receipts and check to ensure that all funds receipted are also deposited in the bank and recorded in the accounting records; and
  - Perform the monthly bank reconciliations.
  
2. Trust Payments: ensure that different individuals:
  - Authorize the trust disbursement by signing the cheque requisition form (***must be a lawyer***);
  - Prepare and print the trust cheque;
  - Sign the trust cheque (***must be a lawyer***);
  - Record the transaction in the law firm financial records;

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- Verify the numerical sequence of cheques and check to ensure that all trust disbursements are legitimate and authorized, and recorded in the accounting records; and
- Perform the monthly bank reconciliations.

Additional segregation of duties is required when dealing with cash because cash is not a uniquely identifiable asset and is easily converted. In addition to the list above, a different individual should be responsible for the secure storage and regular reconciliation of any cash trust assets.

### Timely Recording

The timely recording of information and processing of trust accounting transactions is necessary in order to be in compliance with the Rules and to ensure accurate and useful accounting information.

*Examples:*

1. Deposit trust receipts by the next banking day.

Ensure that the individual from the law firm administrative staff that is responsible for preparing the trust receipts for deposit to the bank attends at the bank the day that a trust receipt is received at the law firm, or the next banking day thereafter.

This will ensure that the law firm is in compliance with the Rules of The Law Society of Alberta regarding receiving trust money. Alternatively, have the deposit slips and trust receipts *that are not cash* couriered to the bank the day they are received at the law firm.

Any cash trust receipts should be taken to the bank by a member of the law firm the day that the trust receipt is received at the law firm, or the next banking day thereafter.

***If receipts are not deposited the same banking day, ensure they are locked in a safe location until the next banking day.***

Trust receipts paid to the law firm in cash, in particular, require additional security measures since cash is not uniquely identifiable and is easily converted.

Ensure that access to the cash receipts that cannot be deposited the same day is restricted and that the secure location for storing the receipts is not public knowledge.

2. Prompt recording of trust transactions in the trust journal and client trust ledger accounts.

In order to make decisions that execute the lawyer's fiduciary responsibilities regarding the disbursement of trust monies it is imperative that the trust accounting records are up to date on a continual basis.

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If trust accounting records are not current, there is a risk of disbursing trust monies in excess of the amount that is held in trust for that client, and thereby creating a trust shortage.

Please see: **Every Lawyer – Duties and Obligations** for requirements regarding authorization of withdrawals and transfers from trust.

Every dollar in the law firm trust bank account is in “trust” and often has conditions attached. Consider if there are any trust conditions before every disbursement from trust.

**WARNING: DON'T FALL BEHIND.** The source of much of the regulatory review is falling behind in trust accounting. It is a major cause of sanctioning in the following areas:

- accounting rule violations;
- breach of trust conditions; and
- failing to serve the client.

### 3. Timely transfer of trust monies from trust bank account to general bank account for billings.

Once a Statement of Account has been rendered to a client for legal services, any trust monies that are to be used to pay for that account should be transferred from the law firm trust bank account to the law firm general bank account..

In order to be in compliance with the new Rule in this regard, this must occur within one month of the law firm becoming entitled to the monies.

## PROPER TRAINING AND DELEGATION

### Staff Trained in Accounting

Since a lawyer may not have an in-depth understanding of accounting principles and procedures, it is important that law firm accounting staff are well trained and competent in these areas.

***The Code of Conduct, Rule 6.1*** says that:

*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.*

See **Appendix A** for some questions to consider when choosing a bookkeeper or external accountant for the law firm.

### Use of Approved Accounting Software

A properly designed, configured and correctly used accounting system provides **most** of the controls that are required to ensure the safety of the trust funds that the law firm receives.

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A word of caution is in order with respect to using computerized accounting software. Unless the accounting software is used correctly, by trained staff, with the features designed to provide good controls activated and adhered to, it is not a safeguard of any kind.

Ensure accounting staff understand, and are trained to use, the approved accounting software and are aware of the features that can help to ensure the safety of the clients' trust monies.

The vendors of the accounting software that has been approved by the Law Society of Alberta provide classes and consulting, if required.

An important measure in ensuring the safety of client's trust funds is to control access to the law firm accounting software:

- Each staff member who is authorized to record trust accounting transactions should be issued their own user ID within the accounting software.
- Each user can be given authorization to access only the areas of the accounting software that they are responsible for or recording transactions in.
- Each user should have an individualized password/PIN that they use to sign on and access the accounting software.
- Each user should ensure that their password/PIN is securely maintained.
- Ensure that there are at least two people in the law firm who know how to operate the computer and accounting systems.
- Ensure that duties related to the various accounting functions of the computer system are segregated.
- Ensure computer systems and accounting software are password protected.
- Change passwords regularly.

It is also important to ensure the stability of the computer system and to take steps to protect the accounting data:

- Install adequate firewalls to prevent unauthorized access to the computer system through the internet.
- Ensure updates to the software are done.
- Scan for viruses regularly.
- Back-ups of computer accounting data should be made regularly and transported or transmitted to secure offsite storage, OR print hard copies of the law firm trust accounting records monthly and store them in a secure and fire-proof location.
- Have surge protectors for all computers and modems.
- Ensure that adequate service and support is available for the hardware and software.

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## Know the Rules of the Law Society of Alberta

Staff responsible for the accounting function of the law firm should be versant in the financial *Rules of the Law Society of Alberta (included in **Part 5 – Duties of Law Firms**)*.

Since every trust accounting transaction cannot be overseen, it is important for those that have the delegated responsibility for this function are aware of the Rules the Law Society has instituted to ensure the safety of clients' trust monies.

Please see: **Responsible Lawyer – Oversight Procedures** for guidance on how sufficient oversight can be given to the accounting systems and procedures to ensure their effectiveness.

## RESPONSIBLE LAWYER – Oversight Procedures

The designated responsible lawyer for a law firm is accountable for the operation of the law firm bank accounts and accounting, as well as the related controls.

See the *Rules of the Law Society of Alberta, Rule 119.3*

## Bank Reconciliation Review

### Trust Bank Account Reconciliation

Carefully reviewing the trust reconciliation monthly is a key oversight procedure for the responsible lawyer.

If the responsible lawyer does a comprehensive and thoughtful review of the trust bank account reconciliation to the trust listing, they will potentially detect any trust accounting problems, errors or irregularities.

*Examples:*

1. *Outstanding deposits* – ensure that any outstanding deposits from the previous months trust reconciliation have been deposited to the trust bank account within the first few days of the month.

This will allow any trust bank account shortages are being hidden by fake deposits to be detected.

2. *Overdrawn trust ledger accounts* – ensure that none of the trust ledgers for individual client matters are “overdrawn” (in a negative balance).

This will allow any overpayments out of trust or misallocations in trust accounting to be detected.

Review trust reconciliations (comparison of trust bank accounts and client trust listings) to ensure:

- they are completed within 30 days of months end;

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- all reconciling items are listed individually, clearly explained and traceable to the bank statements;
- deposit records confirm that any outstanding deposits listed on the reconciliations were deposited the next banking day;
- reconciling items from the prior month were cleared promptly and have not been carried forward;
- all outstanding cheques from the prior month that are still not cashed are followed up;
- for stale-dated cheques (6+ months old):
  - a stop payment is requested,
  - the cheque is reversed in the trust accounting record,
  - the client trust liability is reinstated in the client's trust ledger, and
  - a cheque is reissued to the payee, if appropriate.
- there are no trust shortages (overdrawn accounts) in the client trust ledger listings.
- for completed legal matters, billings have been rendered to clients and funds in trust have been either transferred to the law firm general account or returned to the client, as appropriate.
- all inactive client trust ledger accounts with balances (e.g. no activity for 12+ months) have been followed up;
- all funds held in trust are allocated to a client ledger account (i.e. there are no miscellaneous, suspense or firm accounts or accounts in law firm member's names in the trust ledger); and
- trust bank account balances are reasonable on an overall basis.

After the review is complete, DATE and SIGN the reconciliation.

### **General Bank Account Reconciliation**

Law firm general accounts are required to be reconciled monthly.

See the ***Rules of the Law Society of Alberta, Rule 119.40***

Reviewing the general bank account reconciliations is a basic business management tool and, additionally, may highlight trust accounting errors or potential employee fraud issues.

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### Examples:

1. *Trust receipts incorrectly deposited into the general account* – look for reconciling items or unusual amounts that may indicate that trust receipts were deposited into the general bank account in error.
2. *Payments out of general* – a review of disbursements of general funds may identify irregular payment patterns, like a large number of expense reimbursements to one employee who is inappropriately funneling firm monies to themselves. A quick and easy method to perform this review is to flip through all the returned cheques that accompany the bank statement.

### Accounting Journals Review

There are numerous accounting journals that, according to the *Rules*, are required to be maintained by the law firm.

See the ***Rules of the Law Society of Alberta, Rule 119.36***.

A review of these journals, on a monthly basis, for completeness and any unusual transactions is a good oversight procedure.

If an accountant that performs the monthly procedures, it may be appropriate to delegate this review to them and have them report to the Responsible Lawyer directly.

### Examples:

1. Trust Account Reconciliation – see **Trust Bank Account Reconciliation**.
  - A thorough and thoughtful review of the monthly trust bank account reconciliation will provide oversight for the trust accounting transactions that are recorded in the trust journal (including trust receipts and withdrawals) and the trust transfer journal.
2. Billing Journal and Accounts Receivable ledger –
  - Review the accounts receivable ledger monthly to identify any credit balances that may indicate invoices/Statements of Account to clients have not been issued, sent to the client and/or entered into the client ledger account; and
  - Follow up on longstanding accounts receivable balances to identify possible instances where a client deposit has not been recorded or has been allocated to an incorrect account.

### Review of Control Documents

See ***Control Documents***.

The purpose of using control documents is to provide a means to control the use of the documents in the trust accounting system to prohibit misuse and ensure the completeness of the accounting records.

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Some simple review procedures ensure that the control documents are providing the protection that they were intended to.

These procedures do not need to be performed by the Responsible Lawyer directly. However, if they are delegated, they should be performed by an individual that does not have direct responsibility for, control of or access to the control documents.

*Examples:*

1. *Pre-numbered control documents* – pre-numbered receipts and cheques should be reviewed to ensure that all documents are accounted for and have been properly entered into the accounting system.

The bank statements should also be reviewed to ensure that there are no cheques negotiated that are out-of-sequence, which may be an indication of a fraudulent cheque.

These procedures are easily incorporated into the monthly trust bank reconciliation process. They can be completed by the staff member who prepares the reconciliation or by the reviewing lawyer.

2. *Cheque requisition forms and trust transfer authorizations* – payments should not be issued without the appropriately used authorization form.

This procedure can be done by the individual preparing the cheques or by the lawyers responsible for signing the cheques.

### **Segregation of Duties – additional review procedures**

If the law firm is not of sufficient size to allow for key accounting duties to be segregated, additional monitoring controls must be put in place to ensure the safety of client's trust monies.

See ***Adequate Accounting Procedures - Segregation of Duties***.

Analysis must be performed regarding each accounting system (i.e. trust receipts, trust payments, trust transfers, etc.) to determine if one staff member has sufficient access to all stages of the accounting cycle in order to jeopardize the safety of client's trust monies.

*Example:*

1. Trust Receipts: if one individual is responsible for all of the following:
  - Opening the mail;
  - Taking deposits to the bank;
  - Recording the transaction in the law firm financial records; and
  - Performing the monthly bank reconciliations;

then the trust receipts are vulnerable to employee theft.

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Consideration should be given to instituting daily/weekly monitoring of the deposits and recording of trust receipts in the accounting system by an independent third-party.

### **Key Agreements Review**

Review key agreements related to the law firm trust accounting. Trust bank accounts, for example, can be set up to prevent misuse and fraud.

*Examples:*

1. *Banking agreements* – ensure that:

- cheques issued on the law firm trust bank accounts and bank statements are clearly marked as relating to a *trust* bank account;
- signatories on the law firm trust bank account are lawyers of the firm *only*;
- bank charges for the law firm trust accounts will be taken from the law firm general account;
- any bank cards issued on law firm trust bank accounts are *deposit only* – not allowing any withdrawals; and
- interest earned on the trust bank account is remitted directly to the *Alberta Law Foundation* at least semi-annually, in accordance with the *Rules*.

See the ***Rules of the Law Society of Alberta, Rule 119.16 and 119.22.***

### **File Monitoring**

The responsible lawyer is accountable to ensure that the controls put in place at the law firm are functioning properly.

Consider a periodic review of client files to ensure:

- client ID verification rules are being followed - see ***Client Identity Verification***;
- there has been a proper accounting to clients for their trust monies (i.e. *Statement of Receipts and Disbursements* given to clients upon the completion of their matter agrees with the client's trust ledger card in the law firm trust accounting records);

### **Trust Property Audit**

The responsible lawyer is also accountable for the security of client's trust property that is not money.

Periodically check the physical existence and security of trust property that is not cash.

See the ***Rules of the Law Society of Alberta, Rule 119.28.***

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## EVERY LAWYER – DUTIES AND BEST PRACTICES

### Duties under the Rules of the Law Society of Alberta

#### Client Identity Verification

***Know your client.*** Asking a few pertinent questions about the clients and verifying their identity can help protect the law firm from many of the common client frauds:

- fraudulent cheques from clients;
- payments from trust to fictitious or fraudulent payees;
- money laundering – conveying proceeds of crime through a law firm trust account;
- mortgage fraud;
- fraudulent investment scheme.

***Identification*** requirements apply whenever a lawyer is retained to provide legal services of any nature to a client. The lawyer must obtain basic identification information about individual or organizational clients in every retainer. The lawyer must obtain the following information:

- Client's full name;
- Client's business address and phone number;
- If client is individual:
  - home address and phone number;
  - occupation;
- If client is organization:
  - incorporation or business number, place of issue of its number;
  - general nature of the type of business or activities engaged in by the client;
  - name, position and contact information for the individuals authorized to give instructions with respect to the legal matter;
- if client is acting for third-party – obtain the above information about the third-party.

***Verification*** requirements arise when a lawyer, who has been retained by a client to provide legal services, engages in or gives instructions in respect of the receipt, payment or transfer of funds, subject to certain exceptions. By definition, "funds" include shares and negotiable instruments. Verification requires the lawyer to make reasonable efforts to obtain and retain copies of information which may be used to confirm that the client is who or what they say they are.

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See the ***Rules of the Law Society of Alberta, Rule 118.2 to 118.6. and the Law Society Client Identification and Verification Flowchart***

### **Withdrawals and Transfers of Trust Funds**

Each lawyer is responsible to ensure that funds are properly disbursed from the trust monies that their clients entrust to them.

Before signing any cheque issued from trust or trust transfer authorization, a lawyer must:

- Ensure that trust accounting records are up to date;
- Review client's trust ledger card to ensure that it contains sufficient funds to make the disbursement;
- Ensure that the disbursement is required for the legal matter for which the lawyer was retained;
- Ensure that the client's authorization has been given to make the disbursement;
- The money is not subject to any trust conditions that would prohibit the disbursement;
- Ensure that the trust bank account has sufficient funds to permit the withdrawal;
- Review disbursement to ensure it looks reasonable;
- Review the supporting documentation – (i.e. ensure that service was provided, disbursement is proper, etc.);
- Ensure the cheque is labeled with a client name or reference; and
- Ensure that any cheques payable to financial institutions include details of the transaction (i.e. mortgage number).

It is a best practice to ensure that a signed authorization from the client is on file for all withdrawals and transfers from trust.

See the ***Rules of the Law Society of Alberta, Rule 119.21: Certification of Funds Prior to Signing Trust Withdrawals and Transfers.***

### **Common Compliance Errors**

There are a few Rules that some may not be aware of:

#### 1. Duplicate Receipt Book for Cash

A book of duplicate receipts must be maintained which evidences the receipt of cash trust money.

See the ***Rules of the Law Society of Alberta, Rule 119.39(1).***

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**Tip:** This duplicate receipt book for cash can be used for both trust bank and general bank cash receipts, but must be dedicated only to cash receipts

This can be done using the law firm accounting software as well. Just ensure that three copies of the receipt are printed in conjunction with the actual receipt of the cash, and get the signatures from both parties, as required by the Rules, on all copies. Maintain one copy, as usual with the law firm accounting records and keep another file/binder with all the cash receipts.

## 2. Trust Shortage Reporting

If a shortage in the law firm trust account is discovered (i.e. the bank deducted cheque printing charges) or on a trust ledger card for an individual client matter (i.e. a client has been overpaid when returning any remaining trust funds at the close of a matter), the money must be replaced in the trust account immediately.

All shortages must be rectified immediately and disclosed to the Executive Director in compliance with Subrule 119.24(2) and 119.24(3):

- if the deficiency was not corrected within 7 days, or
- if the deficiency is greater than \$2,500, regardless of when it was corrected.

The *Trust Account and Client Ledger Shortages* form that must be remitted to the Trust Safety department can be found on the Law Society website.

## 3. Trust Account Signing Authority in case of the absence of the Responsible Lawyer

Rule 119.21 says that all withdrawals and transfers from a law firm trust account must be signed by a lawyer of the law firm.

If a sole proprietorship is being operated and/or there are occasions when all of the lawyers of the firm will be absent and payments must be made from the trust account during that absence, a written request must be made of the Manager of Trust Safety to authorize another lawyer to sign any cheques or transfers on the law firm trust account for that time.

Requests can be made by sending an email to the Trust Safety email mailbox:  
[Trust.Safety@lawsociety.ab.ca](mailto:Trust.Safety@lawsociety.ab.ca)

## 4. Representative Capacity Undertaking

Ensure lawyers disclose when they are acting as executor, estate trustee or exercising power of attorney on matters that are not reflected in the firm's books and records.

If a lawyer is acting in a representative capacity, the Manager of Trust Safety must be notified and an undertaking must be given that the accounting records will be made available for review if requested.

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The *Representative Capacity Annual Undertaking* form that must be remitted to the Trust Safety department can be found on the Law Society website.

See the ***Rules of the Law Society of Alberta, Rule 119.26***.

## 5. General Retainers

All retainers should be deposited into the trust account, unless the Client signs a general retainer acknowledgment that:

1. money is non-refundable and belongs to the law firm immediately upon receipt;
2. law firm is not obliged either to account for the money or render any services with respect to the money; and
3. services may never be rendered in respect of the money.

See the ***Rules of the Law Society of Alberta, Rule 119.41***.

## EXAMPLES

### Employee theft

#### 1. Forged trust and general cheques requisitions

Employee theft occurred in a large law firm (>50 lawyers). The legal assistant defrauded the law firm of over \$500,000 over a period of 8 years using the following methods:

- a. she requisitioned cheques payable to her company or the Canada Revenue Agency on files that had dormant trust funds;
- b. she requisitioned cheques payable to her company or the Canada Revenue Agency from director's fees payable to the firm that the firm held in trust; and
- c. she requisitioned or prepared general cheques payable to her company or the Canada Revenue Agency, supported by false invoices;

Most of the cheques were for small amounts. The legal assistant forged trust requisitions or procured lawyers' signatures on the false trust cheque requisitions through:

- a. misrepresentation to the lawyers; or
- b. failure on the part of the lawyers to properly determine that legitimacy of the payment.

The legal assistant removed the copies of the trust requisitions from the law firm files to hide her theft. The fraud was enabled by a lack of oversight by the lawyer on the file to verify the trust transactions. This theft could likely have been prevented.

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Refer to the following sections of this guide:

- ***Control Documents***
- ***Segregation of Duties***
- ***Withdrawals and Transfers of Trust Funds***
- ***Trust Bank Account Reconciliation***

## 2. Forged trust cheques requisitions

Employee theft occurred in a large law firm (>50 lawyers). The legal assistant defrauded the law firm of over \$800,000 over a period of 3 years. She procured forged trust requisitions payable to a financial institution or to her personal creditors, one being the Canada Revenue Agency.

The funds were stolen from clients' estates held in trust in the following ways:

- a. high net worth trusts held outside the firm. In this instance, the legal assistant forged the lawyers signature on the cheques and altered the bank statements to remove the fraudulent disbursements;
- b. trust funds held within the firm trust account. The legal assistant forged the trust cheque requisitions.

The legal assistant was the recipient of the bank statements for the trust funds held outside the firm. However, a lawyer would have been responsible for reviewing the trust reconciliation and signing off on it. The fraud was enabled by a lack of oversight by the lawyer on the file to verify the trust transactions. This theft could likely have been prevented.

Refer to the following sections of this guide:

- ***Control Documents***
- ***Segregation of Duties***
- ***Withdrawals and Transfers of Trust Funds***
- ***Trust Bank Account Reconciliation***

## 3. Legal assistant steals \$138,000 from law firm general account

Employee theft occurred in a small one-lawyer office. The legal assistant wrote cheques to her benefit out of the firm's general account. The theft of \$138,000 occurred over a period of 4 years.

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It is unclear if:

- the lawyer signed the cheques as prepared by the legal assistant – this is unlikely, however, since the information available indicated that the legal assistant hid or destroyed the cheques once returned from the bank with the monthly bank statement;
- the lawyer pre-signed the cheques;
- the legal assistant had signing authority on the general account; or
- the legal assistant forged the lawyer’s signature on the cheques.

*“A former legal assistant for a Calgary real estate lawyer has pleaded guilty to stealing \$138,736 from her employer over four years.*

*In an agreed statement of facts filed with the court, Annie Mae Cummer, 52, who worked for Bruce D. Blumell, admits she wrote 227 cheques on her boss’s general account to herself, her husband, her company and other family members.*

*She also paid her bills, including credit cards, by writing cheques from the law firm account, and covered up her crime by hiding or destroying the cheques when they were returned by the bank, according to the documents.*

*The theft occurred between January 2002, a year after she started working for Blumell, and July 2006, when she was fired.*

*Cummer’s theft was noticed by Blumell’s accountant, Cheryl Marshall, who brought a number of discrepancies to her boss’s attention when she filled in for Cummer when she was on vacation in July 2006.*

*A review of records initially indicated the women had been double paid for her June 2006 paycheque, and prompted a criminal investigation.”<sup>1</sup>*

This theft could likely have been prevented.

Refer to the following sections of this guide:

- **Segregation of Duties**
- **General Bank Account Reconciliation**

4. Employee conducts improper transactions through trust account that result in a \$1 million trust shortage

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<sup>1</sup> Calgary Herald, October 29, 2008, “Legal assistant admits \$138,000 theft”.

Employee theft occurred in a small law firm with four practicing lawyers. The legal assistant, a long-term and trusted employee misused the trust account in the following ways:

- a. She misappropriated trust funds for her own benefit;
- b. She misappropriated trust funds for the benefit of a third-party;
- c. She made loans of trust monies to a third-party; and
- d. She disbursed funds to clients from trust prior to the law firm receiving the trust monies into the trust account.

Trust shortages in excess of \$1 million occurred over a period of just over 2 years. All disbursements from the trust account were signed by lawyers from the law firm. The legal assistant frequently got a lawyer that was not directly responsible for the file to sign the trust cheques.

The legal assistant was responsible for initiating and entering transactions directly into the trust accounting system.

The legal assistant covered up the misappropriations using *lapping*. Lapping is where trust funds are moved from client ledger to client ledger to hide a trust shortage. The trust monies from other matters, that are not currently “due”, can be used to cover the trust shortage in the matter that is required to be paid out currently. Detection of the shortage can be avoided.

The legal assistant also:

- a. Falsified accounting posting sources like cheque stubs to prohibit detection of the fraud by the bookkeeper;
- b. Deposited trust monies received from clients into the trust bank account without opening a client trust ledger account for that matter;
- c. Forged supporting documentation, such as letters and courier slips, to make it appear that payments had been made; and
- d. Concealed correspondence and other communications from clients from the lawyers.

An overdraft of \$80,000 was detected by the lawyer early in the fraud, however, the legal assistant stated it was a mistake. The lawyer did not report the trust shortage to the Law Society.

A year later another trust shortage of nearly \$200,000 was detected by the lawyer, who repaid that shortfall from his own resources. The legal assistant indicated that the trust shortage was as the result of posting errors due to the late receipt of mortgage funds. The lawyer did not report the trust shortage to the Law Society.

The lawyer detected several other shortages and rectified them himself, repaying more than a \$1 million into trust, before instigating an investigation into the matter and ultimately, firing the employee.

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This theft could likely have been prevented.

Refer to the following sections of this guide:

- ***Control Documents***
- ***Segregation of Duties***
- ***Withdrawals and Transfers of Trust Funds***
- ***Trust Bank Account Reconciliation***
- ***Use of Approved Accounting Software – re: Access Controls***

## **Client Fraud**

### 1. Fraudulent cheque received

There are a variety of scams circulating constantly in which clients attempt to give the law firm a fraudulent cheque to deposit to trust. The matter does not proceed and they ask for a quick refund of the monies.

Common schemes:

- Debt collection;
- Divorce settlement collection;
- Real estate purchase transaction;
- Workers' injury settlement collection;
- Inheritance.

Some recent schemes have become more sophisticated, including fake websites and fake law firms. These are some of the common characteristics:

- Client resides overseas and therefore, cannot meet in person;
- Do not communicate by phone or fax – just email;
- Require quick action;
- Evade questions regarding their contact information or a legal representative in their jurisdiction.

It is good practice to certify cheques at the client's bank that are received from clients on matters that require a quick turn-around time. Alternatively, ensure that trust deposits have cleared the bank before disbursing any of the trust funds. Keep in mind that foreign cheques take much longer to clear the banking system.

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Refer to the following sections of this guide:

- ***Client Identity Verification***

## 2. Fraudulent investment scheme

The fraud involved a movie investment opportunity that provided both a tax write-off for the investor in the short term and then a good return on investment in the long term. The fraudster recruited investors through investment seminars and word-of-mouth.

The fraudster engaged the lawyer to prepare the investment documents, receive the executed agreements along with the investment monies from the investors, and then pay the monies out according to the directions of the fraudster. The fraudster had the investors make out the cheques to the law firm in trust.

The fraudster involved the lawyer in this scheme for two purposes:

- to protect the details of the scheme through solicitor-client privilege; and
- to give an air of legitimacy to the scheme and false sense of security to the investors by having the funds flow through the lawyer's trust account.

Law firm involvement in this fraud could have been prevented. Do not negotiate monies through the law firm trust account where legal services are not provided directly related to those funds (i.e. do not be a "banker" for a fraudster).

See the ***Rules of the Law Society of Alberta, Rule 119.17.***

Refer to the following sections of this guide:

- ***Client Identity Verification***

## External Fraud

### 1. Fraudulent law firm cheque clears the law firm bank account

In 2014, several law firms have been contacted by their banks to inform them that fraudulent law firm cheques have been negotiated through the law firm bank account each month. In each instance, the law firm cheque was a fake – often very closely resembling the actual law firm cheque and signatures of the signatories on the account.

These fraudulent cheques have historically been small in value, but in recent years have been for 10s of thousands or 100s of thousands of dollars. They are frequently deposited in banks in other towns or cities, or in the United States of America.

These fraudulent cheques are often detected because the cheque number is out of sequence with the other law firm cheques.

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Refer to the following sections of this guide:

- **Control Documents**

## Appendix A – Trained Accounting Staff

Since a lawyer may not have an in-depth understanding of accounting principles and procedures, it is important that law firm accounting staff are well trained and competent in these areas.

### Bookkeeper

Some questions to ask a potential bookkeeper:

1. Do they have any other law firms as clients?
2. Are they familiar with trust accounting?
3. Are they familiar with the Rules of the Law Society of Alberta?
4. Are they familiar with the law firm accounting software that the law firm is using?
5. Know how often they would be required to attend at the law firm offices to ensure compliance with the Rules. Can they accommodate the law firm needs?
  - a) are they going to be completing the day-to-day recording of transactions for the law firm or is a paralegal/administrative person employed at the law firm who can do some of the day to day work?
  - b) will they be preparing the fee billings (Statements of Account)?
  - c) do they need to follow up overdue receivables?
  - d) will they prepare the payroll?
  - e) what government remittances would they be required to prepare and file? payroll – due once a month? GST – due quarterly?
  - f) will they prepare financial statements? monthly? annually?
6. Do they understand how to prepare trust reconciliations? (*See the Appendix on preparing a trust bank reconciliation.*) Ask some specific questions like:
  - a) what does a client trust listing consist of?
  - b) what are the main things that should “balance” on a trust reconciliation?
  - c) what would they look for is a bank reconciliation did not balance?
7. Discuss confidentiality. Explain solicitor-client privilege and consider a confidentiality agreement.

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Consider what internal controls need to be in place to supervise the work of the bookkeeper and compliance with the duties of Responsible Lawyer.

Check with your colleagues. Get references – preferably from other law firms.

### **External Accountant**

Some questions to ask the potential external accountant:

1. Rule 119(1) (a): are they a Public accounting firm as defined in the *Regulated Accounting Profession Act*? (i.e. Chartered Professional Accountant, Chartered Accountant, Certified General Accountant, Certified Management Accountant)
2. Do they have any other law firms as clients?
3. Are they familiar with trust accounting?
4. Are they familiar with the Rules of the Law Society of Alberta?
5. Have they completed the Accountant's Report or Start Up Report before?

(These filings are different than typical assurance reports accountant's issue, like Review Engagements to review financial statements. These are prescribed forms available on the Law Society website and they involve testing compliance with a regulatory regime.)

6. Be aware of filing deadlines. Ask if they have sufficient capacity to ensure the filings gets submitted on time.

(Many law firms have December 31 year ends. That makes the filing deadline for Accountant's Reports April 30 – which coincides with the personal tax filing deadline.)

Talk to colleagues about their external accountants:

1. Has their accountant filed on a timely basis?
2. Do they seem to understand the needs and requirements of accounting in a law firm?
3. How much do they pay for the preparation of the Accountant's Report or Start Up Report?

*This paper was originally presented at the LESA Business of Law seminar in April 2015 by Jocelyn Frazer and Loreen Austin.*

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**Law Society of Alberta**  
**Trust Safety Approvals Guideline**

November 2010

Format updated April 2016

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## Trust Safety Approvals Guideline

### I. The Nature of this Guideline

1. The Law Society of Alberta is committed to protecting the public and supporting lawyers and law firms to develop the best possible practices to ensure the safety of trust money held by lawyers. This Guideline has been developed to:
  - a) explain the requirements to be met by an active lawyer with relation to the set up of a practice and operation of trust accounts;
  - b) explain the process followed by the Executive Director to decide whether to approve a lawyer as a responsible lawyer for a firm;
  - c) explain the process followed by the Manager of Trust Safety to permit a lawyer or firm to set up or maintain a trust account or to impose conditions on a firm which must be met to set up or maintain a trust account;
  - d) articulate the criteria upon which decisions are made to approve a responsible lawyer for a firm and to approve a firm to set up or maintain a trust account or to impose conditions on a firm which must be met to set up or maintain a trust account; and
  - e) outline the process to be followed by lawyers to review a decision of the Executive Director or Manager of Trust Safety which affects a lawyer or firm;
2. This Guide is intended to support decision makers, at whatever level, to make effective and consistent decisions. It is also intended to offer helpful information to lawyers and other interested parties to allow them to understand some of the criteria which may be applied to various applications and to clarify the procedures involved.
3. This Guideline should be read in conjunction with the relevant provisions of the Act and the Rules. To the extent any provision in this Guideline appears to be inconsistent with the Act or Rules, parties should rely on the Act and Rules.

### II. Statutory Role and Mandate

4. The Law Society has the mandate to protect the public and support lawyers to enable them to fulfill their duty to their clients. The Law Society has enacted rules to implement some stringent control procedures to help lawyers and law firms avoid some identified risks to trust money and better serve their clients. These controls, in conjunction with the high levels of competence and ethics demonstrated by Alberta lawyers, will enhance the profession's ability to safeguard trust money.
5. This Guideline explains the Rules which have been enacted respecting the duties of lawyers and law firms related to these stringent control procedures.
6. This Guideline relates to approvals required under the Rules to set up or maintain a trust account and does not relate to the audit and enforcement programs operated by the Law Society.

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### III. Setting up as a Sole Proprietor or a Firm

7. An active lawyer is required to provide the Law Society with the current business name, business address and business communications numbers and email addresses. This information is maintained as public information by the Law Society, provided to the public on the Law Society website and upon request. Membership services should be contacted to submit the required information.
8. If two or more lawyers wish to practice in association under a common business name the lawyers are required to notify the Law Society of their association. Membership services should be contacted to submit the required information.
9. A sole proprietor or law firm is required to maintain at least one approved operating trust account and one operating general account unless exempted from this requirement by the Manager of Trust Safety.
10. Prior to commencing practice as a sole proprietor or a law firm a lawyer is required to:
  - a) Apply to the Executive Director to have a Responsible Lawyer designated for the practice;
  - b) Apply to the Manager, Trust Safety for trust account approval or to obtain a trust account exemption; and
  - c) Follow any directions from the Executive Director and Manager, Trust Safety regarding set up requirements for the practice.

### IV. Designation of a Responsible Lawyer

11. Every active lawyer is required to be designated as a Responsible Lawyer or to practice in association with a law firm with a designated Responsible Lawyer. If a lawyer wishes to practice as a sole proprietor but is not approved as a Responsible Lawyer the lawyer may practice under conditions imposed by the Executive Director including any requirement to furnish undertakings to the Executive Director.
12. An application to be designated as a Responsible Lawyer must be made in writing to the Executive Director. The applicant will be required to provide any information requested by the Executive Director.
13. The Executive Director may require a lawyer to furnish undertakings as a condition of being designated as a Responsible Lawyer.

#### A. Requirements to be designated a Responsible Lawyer

14. A Responsible Lawyer has the regulatory accountability for the operation of the trust and general accounts of the lawyer or law firm. To be approved as a Responsible Lawyer, the applicant must demonstrate a history of compliance with the Rules of the Law Society. The applicant must also demonstrate an ability and commitment to comply with the Rules in the future and a willingness to actively assess risks to trust safety on an ongoing basis. Appendix I sets out the factors to be considered in determining whether an applicant should be designated as a Responsible Lawyer or conditions should be imposed.

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## **B. Appeal of decision**

15. If the applicant to be designated as a Responsible Lawyer disagrees with the decision of the Executive Director, the applicant may appeal the decision to the Trust Safety Committee. The appeal process is described in Section VI of this Guideline.

## **V. Obtaining Trust Account Approval or a Trust Account Exemption**

16. Most lawyers and law firms prefer to maintain a trust account to provide full legal services to clients. In some areas of practice lawyers prefer not to maintain trust accounts as they do not require retainers from their clients. Lawyers who apply for an exemption from maintaining a trust account are required to satisfy the Law Society that they have made adequate arrangements with another lawyer or law firm for the unexpected receipt of trust funds. Lawyers applying for an exemption will be required to undertake not to accept any funds except in payment of an account for legal services rendered in accordance with the rules.

### **A. Trust account exemption**

17. If a lawyer satisfies the Manager, Trust Safety that he or she has made suitable alternate arrangements to manage any trust funds received by the lawyer and has entered into the required undertaking to the Executive Director, the lawyer may be exempted from the requirement to maintain a trust account. The request for a trust account exemption must be submitted in writing and be accompanied by an undertaking in a form prescribed by the Executive Director.

### **B. Trust account approval**

18. Only a Responsible Lawyer or an applicant to be designated as a Responsible Lawyer may apply for approval to maintain a trust account. An application for trust account approval must be submitted in writing. To be approved to maintain a trust account the Responsible Lawyer must demonstrate the existing accounting controls comply with the Rules and satisfy any identified or foreseeable risks to trust safety or satisfy the Manager, Trust Safety that suitable controls and systems will be implemented to achieve this requirement. The Manager, Trust Safety may require conditions be met as part of the approval of a trust account.

### **C. Acceptance or referral to Trust Safety Committee**

19. Upon making a decision regarding an application for trust account exemption or approval the Manager, Trust Safety will provide a written determination to the applicant detailing the decision, any conditions and the reasons for the decision. The applicant may either accept the determination, by signing the required form, or may reject the determination and request the application be heard by the Trust Safety Committee. The hearing process is described in Section VI.

## **VI. Process Determination by the Trust Safety Committee**

20. **Panel.** In most cases the appeal or referral to the Trust Safety Committee will be decided by a panel of 3 members of the Committee, appointed by the Chair or Vice Chair.

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21. **Oral hearing.** The panel or Committee will only conduct an oral hearing if requested in the appeal notice or request for Committee determination.
22. **Process for paper hearing.** If no request for an oral hearing is received the decision will be based on written materials only. If the appellant/applicant provides information to the Trust Safety Committee that was not provided to the Executive Director or Manager, Trust Safety prior to the original determination of the application, counsel for the Law Society will be entitled to reply to any new information.
23. The following material shall be submitted to the Committee or panel prior to its determination of the outstanding matter:
  - a) Letter of appointment by the Chair or Vice Chair of the Committee appointing the members of the panel;
  - b) Copies of the materials that were before the Executive Director or Manager, Trust Safety;
  - c) The written decision and reasons of the Executive Director or Manager, Trust Safety; and
  - d) Any further submissions provided by the appellant/applicant and the Law Society permitted by the Rules or permitted by leave of the Committee or panel.
24. If an oral hearing is requested, the applicant and counsel for the Law Society will also receive notice of the time and date of the hearing.
25. Where no request for an oral hearing has been made, the panel or Committee must determine the process to be followed prior to making its decision as guided by the principles for natural justice and the circumstances of the case. Amongst other things, this will generally require:
  - a) That the applicant and counsel for the Law Society be permitted to submit relevant evidence and argument to the panel or Committee;
  - b) That the applicant and counsel for the Law Society be advised of all material that will be provided to the panel or Committee; and
  - c) That the applicant and counsel for the Law Society be provided with a meaningful opportunity to object to material being provided to the panel or Committee.
26. A court reporter shall be present for the duration of an oral hearing. The process shall be guided by the principles of natural justice, and in general will proceed as described below.
27. **Jurisdiction.** For the purposes of establishing the authority of the panel or Committee to decide an application or appeal, counsel for the Law Society shall submit the following exhibits:
  - a) Letter(s) of Appointment.
  - b) Materials provided to the parties as required by Rule 49. (See paragraph 20)

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- c) Affidavit(s) of Service of materials on any interested parties.
28. **Bias.** At the hearing, parties should be asked if there is any objection to the membership of the panel or Committee based on an apprehension of bias or for any other reason. If there is an objection, the panel or Committee member should not disqualify herself or himself unless reasonable grounds exist.
29. **Private hearing.** An oral hearing is presumptively private, however an application may be brought under Rule 115.15(5) to have some or all of the proceedings in public. If an application is brought, the panel or Committee should consider the following:
- a) A hearing under this Part of the Rules is an inquiry into the risk posed by the member as opposed to the determination of a complaint or application against the member.
- b) Evidence considered at this hearing may include discussions of accounting and risk management practices at current and past law firms of the applicant, and the privacy interests of those firms and their members should be considered.
- c) Protection of legal privilege and solicitor-client confidentiality are compelling privacy interests which must be protected unless they are expressly waived by the appropriate person(s).
- d) The decision and written reasons of the panel or Committee will be public.
30. **Exclusion of witnesses.** Generally, witnesses other than the applicants should be excluded until they have given their evidence.
31. **Opening statements.** The applicant or counsel for the applicant and counsel for the Law Society may each respectively provide a brief opening statement. Ordinarily in applications of this nature, counsel for the Law Society shall make the first opening statement, followed by the applicant.
32. **Oath.** A member of the panel or Committee may administer an oath or affirmation to a witness pursuant to sections 16 or 17 of the Alberta Evidence Act.
- OATH: "Do you swear that the evidence you will give touching the matters in question shall be the truth, the whole truth and nothing but the truth so help you God?" or
- AFFIRMATION: "Do you affirm that the evidence you will give touching the matters in question shall be the truth, the whole truth and nothing but the truth?"
33. **Applicant evidence.** The applicant and additional witnesses on behalf of the applicant may be called to provide relevant evidence. The applicant or witnesses called on behalf of the applicant will be subject to questions by the counsel for the Law Society and members of the panel or Committee.
34. **Other party evidence.** Other interested parties may, with the leave of the panel or Committee, give evidence as the panel or Committee considers proper. All other parties giving evidence at the hearing shall be subject to questions by the applicant or his or her respective counsel, counsel for the Law Society, and members of the panel or Committee.

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35. **Response evidence.** Counsel for the Law Society may call witnesses in response to the application or appeal. Any witnesses called by counsel for the Law Society will be subject to questions from the applicant, or his or her counsel, and members of the panel or Committee.
  36. The applicant is a compellable witness and may be called to give evidence at the hearing.
  37. **Submissions.** Ordinarily the applicant is asked to present argument first, followed by any other parties, and then counsel for the Law Society. There is a right of rebuttal at the discretion of the panel or Committee.
  38. **Decision based on evidence presented.** The panel or Committee shall make a decision based on the following:
    - a) Materials that were before the Executive Director;
    - b) Written reasons for the decision of the Executive Director;
    - c) Additional materials provided to the panel by the applicant, the appellant, any other interested person or by counsel for the Law Society; and
    - d) Evidence presented during the course of the hearing if an oral hearing is held.
  39. **Exhibits.** The exhibits form part of the hearing record and are private. Decision. The panel or Committee shall make its decision considering the factors described in Appendix I and considering the mandate of the Law Society as a regulator to support lawyers to meet their obligations to safeguard trust money. The panel or Committee may:
    - a) Dismiss the application or appeal;
    - b) Allow the application or appeal provided certain conditions are met; or
    - c) Allow the application or appeal.
  40. **Form of the decision.** The decision and reasons of the panel or Committee shall be in writing. A copy shall be provided to the applicant. The decision and reasons are public and will be available on the Law Society of Alberta website.

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## Appendix I: Factors to be Considered – Responsible Lawyer

1. General Test - To be approved as a Responsible Lawyer, the applicant must demonstrate a history of compliance with the Rules of the Law Society. The applicant must also demonstrate an ability and commitment to comply with the Rules in the future and a willingness to actively assess risks to trust safety on an ongoing basis.
2. Where there appears to be concern that the applicant does not meet the general test, the Executive Director may refuse the application or may approve the application on conditions.
3. In assessing the appropriateness of the applicant to be designated a Responsible Lawyer the following questions should be considered:
  - a) In the last 5 years has the applicant practiced in association with a law firm which has failed to file required accounting forms on time?
  - b) In the last 5 years has the applicant practiced in association with a law firm which has failed to comply with the Rules as demonstrated by exceptions to the Form S or Form T or exceptions to the Electronic Law Firm Filing?
  - c) Is the applicant under formal review under Part 3 of the *Legal Profession Act*?
  - d) Have there been any claims against the Assurance Fund resulting from the conduct of the applicant?
  - e) Have there been any insurance claims paid related to the handling of trust money? Are there current outstanding claims?
  - f) Has the applicant received any Mandatory Conduct Advisories related to the handling of trust money?
  - g) Has the applicant been found unsuitable to be a principal?
  - h) Has the applicant been found guilty of conduct deserving of sanction?
  - i) Has the applicant been the subject of a review by the Practice Review Committee?
  - j) Is the applicant under any restrictions, conditions or undertakings imposed by or provided to the Law Society?
  - k) Is there a reasonable prospect that the imposition of conditions will reduce the risk of continuation or recurrence of the conduct of concern?

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## Appendix II: Factors to be Considered – Trust Account

1. General Test - To be approved for a trust account, the applicant must demonstrate a history of compliance with the Rules of the Law Society. The applicant must also demonstrate an ability and commitment to comply with the Rules in the future and a willingness to actively assess risks to trust safety on an ongoing basis.
2. Where there appears to be concern that the applicant does not meet the general test, the manager, Trust Safety may deny the application or may approve the application on conditions.

The expectation for the application of conditions is that the law firm has not clearly demonstrated an attention to detail and/or competence regarding the handling of trust funds. Conditions will address if the applicant/associated law firm has the capability to handle the current and proposed level of trust account activity.

3. In assessing the appropriateness of the applicant to operate a trust account the following questions should be considered:
  - a) In the last 5 years has the applicant and/or associated law firm failed to file required accounting forms on time?
  - b) In the last 5 years has the applicant and/or associated law firm failed to comply with the Rules as demonstrated by exceptions to the required accounting form filings?
  - c) Has the applicant and/or members associated with the law firm been subject to any reviews by the Law Society of their accounting records and said reviews resulted in referrals to the Conduct Department due to issues of non-compliance.
  - d) Have any of the reviews noted in point c) resulted in a response contemplated under Section 53 of the *Legal Profession Act*.
  - e) Has the applicant received a Mandatory Conduct Advisory regarding the handling of trust funds?
  - f) Has the applicant been found guilty of conduct deserving of sanction regarding the handling of trust funds?
  - g) Have there been any successful claims against the Assurance Fund resulting from the conduct of the applicant?
  - h) Has the applicant been the subject of a review by the Practice Review Committee?
  - i) Is the applicant under any restrictions, conditions or undertakings imposed by or provided to the Law Society as they relate to the trust accounting rules?
  - j) Is there a reasonable prospect that the imposition of conditions will reduce the risk of continuation or recurrence of the conduct of concern?

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4. Factors which may be considered in assessing the potential effectiveness of conditions in reducing the risk of continuation or recurrence of the conduct of concern include:
- a) Area of law;
  - b) Number of trust bank accounts;
  - c) Volume of trust activity (deposits and payments)
  - d) Number of staff;
  - e) Background of staff (education, years of experience, accounting knowledge, etc)
  - f) Accounting software systems;
  - g) Availability of accounting/technical support;
  - h) Financial sustainability of the practice.

*Potential conditions to be recommended by Manager, Trust Safety*

If the Manager, Trust Safety is concerned about the custody of trust money by the applicant, examples of the type of conditions which may be recommended include the following:

- Conversion to approved accounting software
- Increased frequency of submissions of accounting data
- Co-signor on payments
- Retention of trained/experienced bookkeeper as approved by the Law Society
- Limit the number of trust bank accounts
- Limit the number of open client files in cases where the applicant has stated non-compliance resulted from too many files

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## Financing Your New Practice

A starting-up lawyer's initial financial resources will usually come from one or more of the following sources:

- Personal funds**, which are shown on the books as a capital contribution
- Funds borrowed from family and friends** (if a source of borrowing is also a potential source of legal work, you must pay close attention to Rule 3.4-13 of the Code of Conduct on conflict of interest when doing business with a client)
- Bank term loan**, usually used to finance capital expenditures, repayable in regular monthly payments of blended principal and interest or a fixed amount of principal plus interest, and which may have a fixed rate of interest or a floating rate tied to prime
- Line of credit** at the discretion of the bank; should be viewed as overdraft protection to help smooth out the ups-and-downs of cash flow, and not as a permanent source of bank financing because it will carry a high rate of interest
- Credit cards**, which, of course, have very high interest rates; many lawyers obtain a credit card for business expenses only, which they use for convenience and pay off every month
- Credit accounts** at Land Titles Office, stationers, court reporters, couriers, etc.
- Tenant improvement costs** buried in rent
- Equipment costs** buried in lease payments (see below)
- Cash flow** is a very unreliable source of cash flow in a new practice unless the starting-up lawyer has brought an established client base from another firm

You cannot finance your practice by giving a third party a share in your practice or a "piece of the action" on a file.

### Additional Notes:

#### Buy, lease or rent your equipment?

This is a question to discuss with your accountant. If you buy, you will likely be making a capital expenditure, so you will not be able to deduct the cost as a current expense. Buying usually results in a lower overall acquisition cost, but cuts more deeply into your credit. Lease and rental payments are, in most cases, deductible in full as expenses as they are incurred. Rentals are usually more expensive than leases, but they are easier to get out of. Leasing is really just another way of borrowing money, and usually an expensive way at that. Bear in mind that the resale value of modern electronic technology is minimal.

#### Bank financing

In recent years, the banks have become much more careful about lending money to lawyers just starting out in new practices. Before it lends you money, a bank will usually require a promissory note, an assignment of book debts and additional security such as charge on real property or a co-signer or personal guarantor such as a spouse with a good job or a parent with assets. Shop around because banks have different policies on loans to startup law firms. Be ready with a business plan and a budget that shows your proposed capital, startup and operating expenditures and your borrowing requirements to meet them.

Also be ready to provide a statement of your own assets and liabilities and details of any funds you are contributing personally or through other borrowing. Have all of this material prepared, with supporting quotations for major capital purchases, and any other material you think relevant to your presentation to the bank. The more businesslike you are in your presentation, and the more knowledgeable you appear concerning your financial obligations and your financial needs, the more likely you are to receive a favourable response to your requests.

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## SCHEDULE #1 - Sample Balance Sheet

### Alberta Law Office Balance Sheet As at December 31, 2010

#### ASSETS:

##### Current Assets:

General Bank	\$8,508.00
Trust Bank	\$73,053.00
Accounts Receivable	11,150.00
Inventory	750.00
Prepaid Expenses	1,500.00
<b>Total Current Assets</b>	<b><u>94,961.00</u></b>

##### Capital Assets:

Furniture & Fixtures	6,000.00
Accumulated Amortization - F & F	-500.00
<b>Total Capital Assets</b>	<b><u>5,500.00</u></b>

**TOTAL ASSETS** **\$100,461.00**

#### LIABILITIES & EQUITY

##### Current Liabilities:

Trust Liabilities	73,053.00
Accounts Payable	\$2,150.00
GST Payable	1,350.00
<b>Total Current Liabilities</b>	<b><u>76,553.00</u></b>

##### Long-term Liabilities:

Bank loan payable	3,500.00
Owner capital	4,490.00
<b>Total Long-Term Liabilities</b>	<b><u>7,990.00</u></b>

##### Equity:

Retained Earnings	8,418.00
Current Earnings	7,500.00
<b>Total Equity</b>	<b><u>15,918.00</u></b>

**TOTAL LIABILITIES & EQUITY** **100,461.00**

## SCHEDULE #2 - Sample Income Statement

### Alberta Law Office Income Statement For the month ended December 31, 2010

Legal Fee Income	\$18,500.00
Expenses:	
Wage Expense	7,200.00
Rent	750.00
Utilities	550.00
Advertising	1,070.00
Insurance	600.00
Telephone	300.00
Office	120.00
Bank Charges & Interest	10.00
Supplies	200.00
Licenses and dues	200.00
Total Expenses	<u>11,000.00</u>
Net Income (Loss) before Taxes	<u>7,500.00</u>
Tax Expense	<u>          </u>
<b>Net Income (Loss)</b>	<b><u>7,500.00</u></b>

SCHEDULE #3 - Sample Client Trust Ledger Card

Insert photocopy of an actual, physical TLC.

**Schedule #4.1**  
**TRUST BANK RECONCILIATION FORM (TRF)**

Page 1

**Month:**

**Bank Statements:**

Operating Trust Account statement balance

Less: uncleared cheques

Plus: unprocessed deposits

**Adjusted Operating Trust Account balance**

Plus: total of Separate Interest-bearing trust accounts


**Bank Statement Balance**

--

**Trust Receipts and Disbursements Journal:**

Balance at end of prior month

Less: cheques written during the current month

Plus: deposits made during the current month


**Trust Journal Balance**

--

**Trust Listing:**

Total of operating trust account client ledgers

Total of separate interest-bearing trust account client ledgers


**Trust Listing Balance**

--

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_





Schedule #5 - Sample Synoptic Journal

Alberta Law Office

	Date	Description	Method	Bank		Accounts Receivable		GST Payable		IT/PPP/EI Withheld (Paid)	Bank Loan		J. Lawyer - Capital		Expenses									
				Cheques	Deposits	Charges	Payments	Charged	ITC's		Increases	Principle pmts	Contrib.	Drawings	Fees	Wages	Rent	Interest/Bank Chrg	Advertising	Phone	Office	Disbursements		
1	2-Jan-09	Grand & Toy - Chq #145		\$52.31					\$2.50												\$49.81			
2	2-Jan-09	Lawoffice Mngt - chq #146		\$1,332.75					\$63.46								\$750.00				\$125.50	\$217.71	\$176.08	
3	10-Jan-09	J. Lawyer		\$1,200.00									\$1,200.00											
4	15-Jan-09	Alberta Land Surveyors - chq #149		\$341.25					\$16.25														\$325.00	
5	15-Jan-09	Tanice Smith - pay adv chq#150		\$850.00												\$850.00								
6	30-Jan-09	ATB - Bank charges/O/D interest		\$55.42																	\$55.42			
7	30-Jan-09	ATB - Paid Bank Loan		\$643.23							\$500.00										\$143.23			
8	30-Jan-09	Account #1003 - Bill Smith File#123				\$1,315.42		\$62.64							\$1,000.00							(\$75.00)	(\$25.43)	(\$152.35)
9	31-Jan-09	Tanice Smith - payroll chq #151		\$851.43						\$198.57							\$1,050.00							
10	31-Jan-09	Alberta Law Office Trust Account	cheque		\$1,315.42		\$1,315.42																	
11	31-Jan-09	John Jones - pmt on acct	cheque		\$1,245.34		\$1,245.34																	
12	31-Jan-09	J. Lawyer	cheque		\$5,000.00							\$5,000.00												
13	31-Jan-09	ATB - Bank loan proceeds	EFT		\$5,000.00						\$5,000.00													
14	31-Jan-09	TD Visa		\$287.32					\$17.84												\$14.53	\$129.45	\$125.50	
15																								
16																								
17																								
18																								
19																								
20																								
21																								
22																								
23																								
24																								
25																								
26																								
27																								
28																								
29																								
30		Monthly Totals		\$5,613.71	\$12,560.76	\$1,315.42	\$2,560.76	\$62.64	\$100.05	\$198.57	\$5,000.00	\$500.00	\$5,000.00	\$1,200.00	\$1,000.00	\$1,900.00	\$750.00	\$213.18	\$129.45	\$50.50	\$367.59	\$348.73		



**Schedule #7.1**  
**TRUST BANK RECONCILIATION FORM (TRF)**

Page 1

Month:

**Synoptic Balance**

General Bank Cheques		General Bank Deposits	
Fees revenue		Fixed Assets	
Other revenue		Draws	
Capital Contributions		A/R Charges	
IT/CPP/EI Withholding		GST ITC's	
A/R Payments		Visa Payments	
GST Payable		Bank Loan Principle	
Business Visa Charges		Expenses	
Bank Loan increases		Sundry Receipts	
Sundry Payments			
Total		Total	

**General Bank Balance**

Operating General Account statement balance		
Less: uncleared cheques		
Plus: unprocessed deposits		
<b>Adjusted General Account balance</b>		
<b>Cheque Stubs Month-end Running Balance</b>		
Synoptic Balance at end of last month		
Cheques written during month per Synoptic		
Deposits made during month per Synoptic		
<b>Synoptic General Bank Account Balance</b>		

**Accounts Receivable:**

<b>Aged Accounts Receivable Listing Total</b>		
A/R balance per synoptic, end of prior month		
New charges during month per synoptic		
Payments during month per Synoptic		
<b>A/R Balance per Synoptic</b>		



**Schedule #8**  
**MONTHLY CASH FLOW ANALYSIS FORM**

Month:

**General Bank Activity**

<b>Cash Balance at End of Prior Month</b>	
---	--

**Plus Cash Receipts:**

Fees, disbursements, GST		
Interest		
Other cash receipts		

<b>Total Receipts</b>	
-----------------------	--

**Less Cash Expenditures:**

Expenses paid by cheque		
Loan principle payments		
Business VISA payments		
GST remittances to CRA		
Fixed asset purchases		
Employee withholding payments to CRA		
Other cheques		

<b>Total Expenditures</b>	
---------------------------	--

<b><i>New Cash Balance</i></b>	
--------------------------------	--

**Accounts Receivable:**

<b>Outstanding at end of prior month</b> Fee		
billings during month Disbursements		
billings during month Other billings		
during month		
Fees & disbursements collected		
Other amounts collected		

<b>New Outstanding A/R Amount</b>	
-----------------------------------	--

**Schedule #8**

**MONTHLY CASH FLOW ANALYSIS FORM, Con't**

**Unbilled Client Disbursements:**

Outstanding at end of prior month

Incurred during month

Billed during month

**New Outstanding Amount**


**GST**

Balance owing at end of prior month

Collected from clients

Paid to Canada Revenue Agency

ITC's accumulated

**New GST Balance**




---

## Initial Expenses of a New Law Practice

The financial demands of starting a law practice fall into three categories:

### **Capital expenditures**

Capital expenditures are expenditures for items which are not consumed immediately, but over a period of years. They include such things as furniture, equipment and tenant improvements. You cannot claim a current income tax expense deduction for capital expenditures, but instead must write them off over the period of their use through the capital cost allowance expense (see below re leasing).

### **One-time start-up and other "up-front" expenses**

One-time start-up expenses are expenditures incurred to stock the office and get started. Some are one-time expenses, such as telephone installation; others will recur again in the future, such as insurance premiums.

### **Operating expenses during the start-up period**

Operating expenses are normal, on-going expenses that you will begin to incur at the start of your practice and continue to incur as long as you practice. These expenses must be carefully budgeted in the early months of your new practice because it may be some time before your practice begins to generate enough cash flow to cover them.

## Details

### **Law Society dues and insurance**

You must be an active member of the Law Society of Alberta. You will have to pay your annual dues, your contribution to the Assurance Fund and your insurance levy. Contact the Law Society office in Calgary for more information about these payments.

### **Tenant improvements**

The cost of building a law office in raw space can be a major start-up capital cost. This expense can be reduced in several ways:

- find space that has already been suitably improved for use as a law office (either by taking over an existing lease or subletting)

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- get the landlord to pay for the improvements (be assured, the landlord will pass this cost back to you in your rent; a tenant improvements allowance is just a way of borrowing money)
- rent space in an executive suite
- share space with other lawyers who have extra offices already built

## **Furniture**

Your furniture need not be elaborate or expensive; indeed, excessively lavish furniture can be a major turn-off to clients who may see it as phony. At the same time, you do not want to look like you do everything "on the cheap" unless that is an intentional marketing strategy to encourage a particular client base. Look for functionality, flexibility and good taste. If you have access to a board-room, you can go a little further "down-market" for your own office. Shop around, particularly at auctions, liquidators and used office furniture outlets. However, when buying used furniture, be careful that you don't buy furniture that was discarded because it would not accommodate a computer.

The furniture you will need will include some or all of the following:

- lawyer's desk, chair & chair mat, client chairs, credenza, waste basket
- secretarial desk, chair, chair mat, waste basket
- bookkeeping area desk, chair, chair mat, waste basket
- reception chairs, coffee table, lamp, art, magazine rack, coat rack, plants
- art, bookshelves, plants

You will also need some miscellaneous office equipment such as coffee making equipment, cups, and perhaps a small fridge.

## **Filing and storage cabinets**

Filing and storage cabinets are surprisingly expensive. Once again, shop around at auctions, liquidators and used office furniture outlets. You can avoid this expense by using open filing shelves, but only if you are sure that no unauthorized people will have access to your storage space. Open shelving storage is inappropriate in space-sharing arrangements or home offices.

At least one of your filing cabinets should be fire-proof. Don't buy a used fire-proof cabinet in which the fire-proofing material in the walls of the cabinet has deteriorated.

## **Photocopier**

Law is still a document-intensive business, and a durable, high-quality photocopier is an essential item. Your photocopies must look good.

A reconditioned copier that was built for high-volume use but has a low copy-count and good service support may be a better buy than a new, low-volume desk-top.

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It is well worth investing in the extra cost of a document feeder and a collator. The power to enlarge or shrink documents also comes in handy from time to time.

**Telephone**

The phone is your main link with the outside world. You will spend an enormous amount of time calling clients, other lawyers, government agencies, etc. Look for features that will help you to save time on the mechanics of making phone calls, such as push button dialing, memory dialing, a "flash" button (disconnects and reconnects immediately), a redial button, hands-free operation and a display of the number dialed. Listen for good sound. Here again it is worthwhile to look for reconditioned equipment, provided you have reputable back-up.

**Fax**

You will also need a reliable fax machine—and a separate line for it. Fax machines are dirt cheap now, so get a new one. Make sure you get one that has a speed-dial feature for frequently-used numbers.

**Computer**

A computer is essential. Look for proven hardware because you cannot afford to be on the "bleeding edge" during the early months of your practice. Make sure you have someone reliable to service your equipment. Saving a few hundred dollars on the initial cost of your computer may be penny wise, pound foolish if you are left high and dry when you have a break-down.

**Network**

If you have more than one computer, you should network them. You will also to spend some money on a computer consultant to make sure your network does what it is supposed to do.

**Internet connection**

High-speed access to the Internet is now a law office essential. You will need it for email and for access to the virtually infinite amount of legal and other information available on the worldwide web.

**Laser printer**

A laser printer is now state of the art for law offices. Look for durability rather than price because your law office will be a very heavy user of your printer and you can't afford break-downs. Speed of printing is very important. The laser printer can be used to print your letterhead, thereby saving you printing costs.

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**Software**

You will find it easier to hire trained staff if you buy software in common use in law offices.

**Dictating equipment**

You will likely need dictating equipment once you have an assistant. Used equipment is worth looking into.

**Supplies**

You will need:

**Image enhancers**

You will also want to look good, so you should consider folders with your name printed on them as an important device for sending a message of professionalism and concern to your clients.

**Marketing**

You will want to make sure people know about your new practice. To do this, you will have

- |                          |                          |                   |
|--------------------------|--------------------------|-------------------|
| ▪ letterhead             | ▪ document covers        | ▪ staples         |
| ▪ 2nd sheets             | ▪ calendar for lawyer    | ▪ staple removers |
| ▪ photocopy paper        | ▪ calendar for assistant | ▪ rubber bands    |
| ▪ letter envelopes       | ▪ phone directories      | ▪ scissors        |
| ▪ large envelopes        | ▪ business cards         | ▪ tape            |
| ▪ legal-size paper       | ▪ pencils                | ▪ hole punches    |
| ▪ note pads              | ▪ pens                   | ▪ 3-ring binders  |
| ▪ file folders           | ▪ paper clips            | ▪ letter openers  |
| ▪ telephone message pads | ▪ rulers                 | ▪ scratch pads    |
| ▪ document corners       | ▪ rubber bands           | ▪ erasers         |
|                          | ▪ file labels            | ▪ post-it notes   |
|                          | ▪ staplers               |                   |

to invest in items such as business cards, announcement cards, newspaper announcements and building signs. You will also have to develop a marketing plan that may include advertising, entertaining prospective clients and referral sources and other expenses.

**Legal research resources**

The arrival on the scene of on-line searches, particularly through CANLII ([www.canlii.org](http://www.canlii.org)), and interactive CD-ROMs has changed the face of legal research.

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Even with these electronic resources, however, you should consider a working library that will include material you will use on a regular basis. If you will be doing real estate, LESA's Land Titles Procedure Guide is essential. If you will be doing criminal law, an annotated Criminal Code like Martin's will be necessary. Consult experienced practitioners in other areas for their views on the essential texts.

**Keeping up on the law**

Reading law is a necessary exercise for the young lawyer. In this regard, I recommend as a minimum that you read The Lawyers Weekly. Also, you should read at least one set of law reports regularly, at least until you have been practicing for 5 years or more. You should also budget for at least 2 LESA seminars in your first year of your new practice.

**Insurance**

There are numerous forms of insurance to consider in addition to your compulsory Errors and Omission (E&O) insurance. You may have obligations to insure in your lease.

**Security deposits and down payments**

Some utilities require security deposits before they will install their services. Landlords and lease financing companies often require a security deposit of at least the first and last month's rent or lease payments; some leasing companies require a significant down payment. Finally, if you finance the purchase of some of your equipment through a bank, you may have to come up with part of the cost yourself.

**Auto**

A reliable motor vehicle is essential in most practice settings. The choice is a matter of personal preference; just make sure you don't imperil your business with either an unreliable or an overly expensive car. And make sure your insurance includes business use.

Whether to buy or lease is a difficult decision. The advantage to leasing is that your monthly payments will likely be lower than if you buy. However, at the end of the lease, you may be further ahead to have bought because the lease factor—in effect, the interest you are charged on the money used to finance the lease—may be significantly higher than if you had bought. As well, leases often contain restrictive mileage provisions that might inhibit your ability to travel widely to carry on your practice.

**Other one-time and up-front expenses**

Some other expenses you will face when starting up your practice are:

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- Telephone/cabling installation
- Moving expenses
- Postage scale
- Bank charges for cheque printing
- Computer consultant
- Marketing consultant
- Accountant for Form U and to help set up books
- Bookkeeping supplies
- miscellaneous

#### □ **Client disbursements float**

The client disbursements float is an item that sneaks up on many lawyers starting a new practice. Litigation files in general, and personal injury files in particular, can generate significant disbursements that often cannot be recouped from clients immediately. Even a real estate practice can require a significant "float" for client disbursements which, while quickly recovered, may have to be fronted for a month or so. Because the lawyer must pay for disbursements incurred (an ethical as well as a legal obligation), allowance must be made for such money during the start-up period.

#### □ **Overhead for a number of months**

Determining how long you will have to go before you begin to have a positive cash flow that allows you to begin to pay down your debt and take some money home is a very tricky matter. The cash flow from a fledgling law practice is very sporadic and unpredictable.

If your family depends on what you bring home it can be very frustrating for everyone when you are unable to say when you will have money for home expenses because you just don't know when your clients are going to pay you.

There is no set rule, although we have seen recommendations that you should have personal reserves to cover at least 6 or even 9 months of personal expenses before opening a practice. If you don't have sufficient personal reserves, you may be tempted to borrow through the business for personal expenses and thereby load the business with a burden of debt and interest that it cannot recover from.

- Rent
- Salaries (including EI and CPP)
- Phone – basic charges and long distance
- Bank charges
- Office expenses
- Courier
- Client disbursements
- Insurance
- Interest
- Library
- Business promotion
- Travel
- Dues and memberships
- Equipment leases and maintenance

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## Initial Expenses Work-Sheet

### Costs

<input type="checkbox"/> Tenant Improvements/Security Deposits/Down Payments	<input type="checkbox"/> Office Supplies & Image Enhancers
<input type="checkbox"/> Furniture & miscellaneous office equipment	<input type="checkbox"/> Law library/keeping up on changes in the law
<input type="checkbox"/> Filing & storage cabinets	<input type="checkbox"/> Business insurance
<input type="checkbox"/> Copier/Fax/Phone/Dictation/Other Equipment	<input type="checkbox"/> Marketing
<input type="checkbox"/> Law Society Fees/Insurance	<input type="checkbox"/> Client Disbursements
<input type="checkbox"/> Computer(s)/Printer(s)/Scanner/Network/Internet	<input type="checkbox"/> Overhead for first ____ months
<input type="checkbox"/> Software	<input type="checkbox"/> Other start-up expenses
<input type="checkbox"/> Computer consulting	<input type="checkbox"/> Total Funds Needed

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## Sources of Funds

<input type="checkbox"/> Personal Savings	<input type="checkbox"/> Family Borrowing
<input type="checkbox"/> Bank Borrowing	<input type="checkbox"/> Other

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# Cash Flow Management

## Introduction

Although most lawyers would like to "just practice law", law is a professional business and lawyers must make a living if they are to continue serving their clients. The economic environment in which most law firms now operate is characterized by increasing competition, price pressure, increasing costs and demands by ever more sophisticated client for ever greater levels of service. In this environment, lawyers are coming to understand the importance of **cash flow management**.

## 1. Overview

Cash Flow: The lifeblood of a law practice.

Cash flow management addresses the movement of money into, through and out of a law practice, the ultimate goal being to produce a sufficient profit to make the practice a viable business enterprise.

We start with the observation that you must spend money and other resources on capital, marketing and overhead **before** you are in a position to get paid for your work. When you are just starting up, you will not be able to finance your initial capital, marketing and overhead expenditures out of cash flow, so you will either have to put your own money into the business as a capital contribution or you will have to borrow. When you work on a file, you use the infrastructure you created in the past to create value that clients will pay for.

**Capital** in a law practice includes hard assets like furnishings and equipment, as well as soft items like checklists, systems, procedures and routines that do not show up on the balance sheet. You also have a capital investment in your people, including yourself. Continuing legal education programs for yourself and training programs for your staff are capital investments you make in the present so your business will run better and make more money in the future. Finally, the time you spend managing your practice is in the nature of a capital investment.

When you work on a file, you also harvest the fruit of **marketing** activity you paid for in the past. Some marketing, such as advertising, involves direct expenditures. Other marketing is paid for indirectly; for example, attending a board meeting for a group home diverts you from other work and therefore has a cost attached to it, even though it doesn't show up as such in your financial statements.

Working on a file also consumes **overhead**--rent, secretarial time, supplies, wear-and-tear on equipment, etc. The amount of overhead required depends on the nature of the work. The most expensive overhead item on most client matters is lawyer time, although it doesn't show up on the financial statements as an overhead item unless the lawyer is an employee.

You also incur disbursements—expenses you incur on behalf of a client, which, from a business point of view, are really overhead items that you bill separately from your fees.

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Having spent money for capital infrastructure to enable you to do the work, for the marketing necessary to attract the work, and for the overhead needed to actually do the work, you now have work in progress, or **WIP**. You turn your WIP into an account receivable, or **A/R**, by billing the client. When you collect your A/R, you finally have **cash**.

So the sequence of expenditure and collection on a file looks something like this:



Obviously, this is only a simplified, notional representation of the flow of cash through a law office; the reality is much more complex because a practice has many files, capital projects and marketing strategies going on at the same time. As Edward Poll puts it in *Attorney and Law Firm Guide to The Business of Law: Planning and Operating for Survival and Growth*, ABA, 1994, at p. 43:

*A business needs a cash flow statement because of the time differential between the expenditure of funds and the receipt of cash revenues. The cash-back-to-cash cycle takes time. Before the first cycle is concluded, the second cycle has started. Thus a business needs additional cash to keep the firm operating and must plan for cash flowing both in and out. This is true even in cases where advance, initial retainers are received. Such retainers ease your plight or shorten the cycle, but they do not eliminate this overlap of cycles.*

As Poll points out, you cannot just put your revenues straight into your pocket. Some must be reinvested in the business as capital, marketing and overhead expenditures for on-going and future work. Some must go to income tax, which is based on your profit, not your take-home. Some must go to pay off the debt you may have incurred to pay for capital, marketing and overhead before you could finance those expenditures out of cash flow. Only when you have taken care of the cash needs of your business can you take money out to meet your personal needs.

The key to maximizing profitability through cash flow management is to reduce the time gap between when you spend and when you collect as much as possible. Thus, you should:

- use your capital infrastructure as soon after it has been created and as often as possible (if you specialize in one or two practice areas, you can use your capital investment over and over, rather than having to maintain expertise, trained staff, precedents and systems for multiple practice areas)
- strive to convert your marketing activities into work as quickly as possible
- turn opportunities to do new legal work into WIP as soon as possible
- convert WIP into accounts receivable by billing clients as soon as possible
- collect on accounts receivable as soon as possible
- pay down your debt as quickly as possible

You also need to watch for **leakages**, such as:

- WIP that is not converted into an account receivable because you have lost track of it or are too embarrassed to bill it because of delay
- disbursements that you can't bill because you lost track of them
- accounts receivable you can't collect for any number of reasons

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## 2. Fees

You cannot communicate too much about fees.

How much should you charge for your legal services? What are they worth? How do you know if you have charged too much? too little? These questions are critical to cash flow management.

Setting fees is one of the most difficult things a lawyer has to do because there are so many intangible factors to take into account. Although there are many variations, fees typically fall into one of four types:

- Fixed fees (also called block fees)
- Contingent fees
- Hourly fees
- Fees based on quantum meruit

The Statement of Principle of Chapter 13, Fees, of the Alberta Code of Professional Conduct, reads as follows:

**A lawyer's fee must not exceed a fair and reasonable amount.**

Chapter 13 fleshes out this principle with specific rules and commentaries.

Some further pointers about discussing fees:

- Your clients are vitally interested in what their legal services will cost. However, they may be timid about introducing the topic, so it is up to you to take the initiative, preferably at the first interview. If you are not sure of what you want to charge at the first interview, and there are no imminent deadlines, there is nothing wrong with saying, "I want to give some thought to the fees I should charge you for this case. If you will come back in next Monday, I will go over the matter of fees in detail with you at that time. In the meantime, I won't do anything that will cost you any money."
- Try to develop a "routine" for introducing the topic; for example, you could say, "I guess you're wondering how much this is going to cost you. Well, ..." and then outline the basis for your charges.
- The discussion should be frank, candid and comprehensive. It should take as long as necessary to ensure that all the client's concerns are addressed in full.
- Try not to imply, "I'm sorry this is going to cost you so much, but..." If your fees are reasonable, there is no need to apologize.
- Remember that your clients are often under considerable stress when they are in your office. Your explanation of fees and disbursements may be a model of clarity, but it may go in one ear and out the other. Be prepared to give the explanation in writing as well as verbally.

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- Let your clients take the fee agreement or fee memo home and read it over before committing themselves to it. Allow them time to "buy in" to the arrangement. Clients who understand and accept the fee arrangement are much more willing to abide by it than those who don't.

Here are some additional pointers about fee agreements from *A Guide to Setting Up and Running Your Law Office*, a publication of the Oregon State Bar Professional Liability Fund:

- a. Identify the Scope of Services. The fee agreement should include the scope of engagement. Written fee agreements should specify the services to be rendered, provide the client with clarity, and provide the lawyer with written proof of what he or she has agreed to do.
- b. Specify Timing of Services. A fee agreement that clearly states that the lawyer will commence the representation after the client performs a future act, such as paying a retainer fee, providing money for filing fees, or providing crucial background information, can avoid a misunderstanding about when the lawyer will begin providing services.
- c. Explain the Type of Fee. A client is generally not familiar with legal terms such as contingent fee, costs, retainer fee, or flat fee. Be certain to explain these terms carefully to the client. For example, if a contingency fee is used, explain what the percentage fee will mean in terms of dollars. Be certain that the client understands he or she will be responsible for costs regardless of the outcome. If an hourly fee is used, estimate the number of hours the case may take and periodically update the client. Provide revised estimates if the case takes more time than originally planned. If the fee arrangement is for an uncontested case, be certain to define "uncontested". For example, if the fee applies only if the lawyer does not have to negotiate support or property division, let the client know this.
- d. Stick to the Payment Terms. The fee agreement should specifically state when the client is expected to pay for services, even if the arrangement is for a contingent fee. Many contingent fee cases involve the expenditure of large amounts of money for costs. Outlining the terms of payment in the fee agreement enables the lawyer to recover these costs on a monthly or other basis.

Once the fee agreement is signed, treat it as the contract it is. Follow through on the legal work to be performed, and require the client to pay as the client agreed to do. Do not change your method of compensation in the middle of the case [and don't let the client unilaterally amend the payment arrangement].

- e. Form of Agreement. The fee agreement can be a separate letter or memorandum, or it can be incorporated into an initial acknowledgment letter to the client. Whichever method is used, the agreement should (1) specify the scope and timing of representation; (2) delineate what the client is expected to pay for and when; (3) explain billing practices and when the client can expect to receive bills; (4) identify what will occur if payment is not made; and (5) be signed by the client.

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It is important for the lawyer to personally review the agreements with the client. The lawyer should also send a copy of the agreement to the client so the client can review the agreement in the client's own home or office. The agreement should be stated in terms the client can understand.

### 3. Retainers

Don't let your clients turn you into a charity.

The word "retainer" has many meanings. In this article, it refers to the money deposit a lawyer requires a client to make at the outset of and to maintain during the currency of the lawyer's representation of the client, to be held in trust as security for payment of the lawyer's fees and disbursements. A firm's retainer policy is a critical element in its **credit policy**. (Every time you do work for a client, you lay out your time and your overhead for the benefit of your client. Your credit policy is expressed in the rules you establish to ensure that you get paid. Too many law firm credit policies are based on **hope**.)

A strong retainer policy is essential for cash flow management in most law practices. Chasing clients for fees for work already done and billed and for disbursements long since paid by the firm is one of the most demanding, demeaning, unremunerative, debilitating, stressful things a lawyer has to do. The amount of time and energy a lawyer has to put into collections is directly related to the lawyer's retainer policy. A lawyer who always requires a retainer will have no collections problems. That lawyer may have less work than a lawyer who works "on spec", but will get paid for all work done. Jay G. Foonberg elevated this principle to a law:

**Foonberg's Law**

It is better to not do the work and not get paid than to do the work and not get paid.

A sound retainer policy involves more than just getting a few hundred dollars "up front" for expenses on each file.

- If the amount of the account is relatively small and the work will be done in a relatively short and compact period of time, the retainer should amount to a reasonable pre-estimate of the total cost of the work to be done.
- If the amount of the account is anticipated to be larger and/or the work will take a longer period of time, the initial retainer should amount to at least enough to cover the first block of work to be done.

When it comes time to bill the first block of work, remember that the retainer is your security for getting paid. Instead of paying the initial account out of trust, which is what most lawyers do, you should require your client to pay the account, leaving the retainer at its former level. If the next block of work will cost more than the last, the client should be required to increase the retainer. In this way, the retainer will always be available to secure the **last** work done. As well, you will learn early on if the client is willing to pay you more than the initial retainer.

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In the real world, of course, you can't always get a retainer. Many lawyers become quite successful doing cases on speculation. "Spec" files are files where you get paid when the matter is finished, including but not limited to contingency files. It takes time, experience and deep pockets to build a practice based on spec files. Lawyers who succeed in this kind of practice learn how to evaluate the risks involved in the cases that are presented to them. When dealing with an established client, the risk in a spec file may be close to nil. With new clients, the situation is completely different, and they have learned when and how to say No. After many years, their practices have developed to the point of having cases at all stages of development, with a relatively stable cash flow from the small cases and less frequent bulges of cash from larger settlements. This state of grace is not available to the newly established lawyer, for whom large, time-demanding spec files can be a disaster.

The bottom line is this: if you speculative work, be very clear about what you are doing: spending your time and your overhead, which you must pay for currently, in the hope that you will get paid in the future. Some lawyers take spec files on the basis that they are willing to invest their time, but the client must pay for the disbursements on an ongoing basis. They rationalize this practice on the basis that they "will not have to lay out any cash to support the case." This is an illusion. Will your legal assistant wait for her salary until the file is settled? Will your landlord wait for the rent? Even where the client pays the disbursements, the lawyer is investing out-of-well pocket cash in overhead to support the file in the future.

Here is some good advice from an article called "Practical Billing Techniques" by Theodore P. Orenstein:

*Considerations of whether the client can afford the retainer should not focus on the client's spare cash or expendable savings. If the matter brought to you by the client is not important enough to the client to cause him or her to borrow the retainer or liquidate assets, perhaps the client should think twice about undertaking the matter.*

*... if a sacrifice must be made in order to pursue the matter, it should be the client's sacrifice, not yours.*

*Do not be fooled by the feeling that you do not want to lose the client's business. **That business has no value to you if you are not paid for it. Do not look for an opportunity to lose money.** [emphasis added]*

*If the client balks at liquidating or liening some of his or her income-producing assets to pay the retainer, explain that a refundable retainer remains the property of the client until billed against, that it must be kept in a separate account, that it cannot be commingled with your money and that you could be disbarred for violating these rules.*

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*Also, explain that all unused retainer money will be returned to the client immediately upon the conclusion of the matter or at any time the client should decide to terminate your work on the case. If the retainer is large enough, offer to keep it in a high-interest account and give the client the option to receive the interest from the unused balance periodically.*

The fact that the client does not have sufficient funds to retain you on your normal terms is not your fault. You are not responsible for the client being in need of legal services. You are not morally or ethically bound to represent every client that comes to you (although you may be ethically bound to continue representing a client once you have started). By turning the file down, you may have less work, but a faster response time to your other clients, a more effective (because less pressured) staff, more time to devote to marketing and the management of your office, less stress, more money and a happier family.

If a new client cannot afford a retainer, you may decide that the client's case is of sufficient interest or importance that you are willing to take on the case as a charity or a learning experience. There is nothing wrong with that provided the client receives competent legal services. However, you should make your decision for sound moral and business reasons, not because you were flattered that someone asked you to be their lawyer or because the client is convinced that the case so cries out for justice that no lawyer could reasonably turn down the opportunity to work on it for nothing.

You should discuss your retainer policy with your client right at the beginning of your representation (usually in the first interview) and you should confirm the conversation in writing, preferably in a written fee agreement.

## 4. Keeping Track of Time

Studies confirm that lawyers who keep time bill more than lawyers who don't.

Time-keeping has become very wide-spread in the legal profession, particularly since computers have arrived in smaller firms. Many practitioners bill only on the basis of time; others combine time-based billing with other methods, such as block fees, contingency fees and quantum meruit.

There is considerable controversy over how lawyers should use time records in setting their fees. Many bill their clients the amount of time booked multiplied by their hourly rate. Others use time as just one of a number of factors to be taken into account. Still others believe that time is only a measure of the cost of legal services, and that the fees billed should be based on the value of the services to the client. However you chose to use them, detailed time records help to produce the kind of accounts clients are more willing to pay (see below) and are invaluable if a fee dispute arises.

It is very important that your time records be kept up to date.

Computer-based time records can contribute to cash flow by providing management information.

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For example, an aged work-in-progress list will identify files where the work was done several months ago and has not been billed, and an aged accounts receivable listing shows which accounts are at risk of becoming uncollectable.

## 5. Disbursements, Part 1: Disbursements Control

### Uncontrolled disbursements: A death of a thousand cuts.

Uncontrolled disbursements can have a major negative impact on cash flow. Disbursements are, by definition, payments to third parties, such as court fees, transcription charges, and courier fees. Uncollected disbursements, then, are loans to clients. Reread the comments earlier in this article about your credit policy. Are you in the lending business? You certainly may take a legal matter on contingency with the expectation and agreement to advance the costs to the client pending the outcome of the matter. But if you do not want to be in the banking business, then make it clear in your fee agreement that the client is responsible for these third-party expenses. Depending on the rules in your jurisdiction, you may want to seek an advance for costs from the client.

Some suggested rules for controlling disbursements:

- Make sure every disbursement generates a piece of paper.
- Post the disbursement against the file from the first piece of paper that indicates that the disbursement has been incurred. Do not wait until they are invoiced or paid. For example, post courier charges from the courier slip, not the statement (this may require training the couriers to write the charges on the slips when they pick up or deliver, or getting the courier company's rate sheet so the secretary can tell what the charge will be).
- Do not estimate disbursements; disbursements are actual amounts paid out on a client's behalf, and it is dishonest to represent an amount as such if you are not sure of the actual amount.
- Adopt a system to mark invoices, receipts, and other disbursement documents to show that the disbursement has been posted (e.g., use a self-inking stamp).
- Whenever possible, pay for disbursements by check; it is too easy to lose track of out-of-pocket cash disbursements. Out-of-pocket cash disbursements that cannot be avoided should be recorded on a timely basis.
- Discuss disbursements with your client at the initial interview. Make sure the client understands that disbursements will be charged in addition to fees and other charges and how the disbursements will be calculated. Confirm this information in your written fee agreement.

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## 6. Disbursements, Part 2: Bean-counting vs. Rain-making

Technology should be a tool used by the law firm to achieve its goals; it should not drive the law firm.

Like all other aspects of practicing law, disbursements control requires judgment. The practitioner must balance a variety of competing positions and interests and make the best decision in the circumstances.

The disbursements control policies discussed in this article are made possible or much easier by modern electronic technology. For example, electronic interfaces with fax machines, photocopiers and telephones make automatic disbursements posting possible. However, just because technology is available, it does not follow that it should always be used to do everything it can do. Technology should serve the practice of law, not vice versa.

In particular, lawyers need to be careful about the impact of technology on their relationship with their clients. Do not let your eagerness to collect all your disbursements sour your relationship with good clients. Like a "shop charge" in an auto repair shop, a nickel and diming approach can annoy clients. We do no favor to ourselves or our profession if we seem so intent on recovering every disbursement that we lose perspective on the total amount the client is being asked to pay. Does it really make sense to charge an extra \$7.25 for photocopies as the only disbursement on an account for \$1,500.00 in fees? As well, sending out small accounts for disbursements long after the final bill was rendered and paid can make you look like you lack sound business acumen.

If you need to recover disbursements, try one of the following solutions:

- Charge each client a one-time administrative fee to cover in-office charges, such as postage, in-office copying, long distance telephone charges, and other similar office fees. This will also save staff time by not having to input each charge into your computer billing system. Out-of-office disbursements may still be billed directly to the client.
- Raise your billing rates to cover the in-office charges. When you charge a client for copies, postage, and the like, you are passing along overhead.

By adding it into your billing rate, the client still pays of the charges, but it is not singled out as a separate item each month on the client's bill.

Implementing changes in disbursements tracking and charging policies will therefore require careful consideration of the repercussions the new policies and practices on clients. Be sure to make the changes in your written fee agreement form.

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## 7. Interim Billing

Interim billing: Essential for cash flow and peace of mind.

Most clients like to be billed on an interim basis—usually once per month. It keeps them apprised of the amount of fees and disbursements they are incurring as the matter proceeds, so they can make the necessary arrangements if the cost of pursuing the matter exceeds their initial expectations. They are also in a position to decide to end the matter if the costs reach the point that they exceed the value of the outcome. Interim billing also relieves clients of the anxiety of an unknown and unmanageable bill when the matter is finished.

Interim billing is also good for the lawyer. It smoothes out cash flow, and as soon as the cost of a matter exceeds the amount the client has available to commit to it, the lawyer becomes aware of the fact that a file that was expected to be an ongoing contributor to cash flow has in fact become a spec file.

There are four common interim billing intervals:

- on a regular time cycle, such as monthly, bi-monthly or quarterly;
- when the fees and/or disbursements reach a predetermined amount;
- at specific intervals in the processing of the matter, such as after delivery of pleadings, after discovery, during trial preparation and after trial; and
- when a cash flow crisis generates a billing frenzy (not recommended).

The choice will depend on the nature of your practice, your arrangements with your clients and the availability of technology (monthly billings based on time records are very easy with a computerized accounting system, but almost impossible otherwise).

Interim billing should be discussed with the client at the initial interview and confirmed in writing in the written fee agreement.

## 8. Final Billing

Final billing: it's easy when there's money in trust.

For too many lawyers, the end of the legal work on a file signals the beginning of the really hard work—getting paid. Other, more interesting, challenging and urgent matters grab the lawyer's attention, and before long, two or three months have passed and the bill still hasn't gone out. The lawyer is embarrassed, and, because of the delay, feels hesitant to charge full value for the work done. By the time the discounted account goes out, the client has forgotten the wonderful result the lawyer achieved. Moreover, the client is annoyed at having been subjected to months of stewing about how much the final account will be. The client is liable to treat paying the account with the same degree of diligence as the lawyer displayed in getting it out, so eight or ten months after the work was done, the lawyer is sweating bullets trying to extract the money from a now ungrateful client.

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Obviously, final billing problems are partly solved through a strong retainer policy. If the money is sitting in a trust account and the rent is due, all those other more interesting or challenging or important matters will fade into the background, and getting that final bill and report out will become a priority.

The client is impressed by how quickly you finalize the matter. You may even send some money back to the client, which will almost always guarantee the client's loyalty forever.

Another procedure that will help to alleviate final billing problems is to set a time limit for final billings--say, a week after the final legal work is done on a file--and delegate the responsibility for doing the preparatory work and meeting the deadline to staff. For example, a secretary or bookkeeper can be trained to prepare a draft account, saving you valuable dictation time, and, more to the point, getting the account moved quickly toward completion.

The person to whom you delegate this responsibility should also have the authority to **demand** your time to review and finalize the account within the pre-established time frame. It will be very frustrating for the person operating the system if the lawyer's part of the work is not performed diligently.

## 9. Presentation of Your Account

The format of your account should encourage prompt payment.

While it may never be possible to produce accounts that **every** client will **want** to pay, it is possible to draft your accounts in such a way that clients may be less disinclined to delay payment. You can project effort, concern, ethics and competence in your account by:

- clearly describing **all** work done by the entire staff team
- using verbs and verb-related words to give each description of work its rightful impact (for example, use preparing rather than preparation of)
- avoiding colorless and meaningless abbreviations like "TT" and "TF"
- including a personal note of thanks or acknowledgment
- writing off small amounts of fees and disbursements
- making sure the client can easily and quickly tell how much is owed by putting all the financial information on the front page of the account and the time details in an attached appendix (if you have a computer-based accounting system, spend the time necessary to modify the default format supplied by the software vendor to meet your requirements)
- making sure your account looks good
- whenever a bill is paid out of your client trust account, provide the client with a trust statement showing the balance
- if you reduce the amount of your bill, show the reduction on the face of the bill so the client knows that the amount of the account has been given your personal attention and special consideration

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- if the client will be surprised at the amount of the account, provide an explanation in an accompanying letter or, better, initiate a phone call or office visit before the account goes out

Finally, consider as well the following statement from "Practical Billing Techniques", cited above:

*Contrary to the belief of most lawyers, clients consider a fee to be fair if the lawyer has put great effort into the matter, rather than whether the lawyer has achieved success. If the client believes the lawyer has worked for him, he will pay the fee without objection, and if the client believes that the lawyer did not put much effort into the matter, he will be unhappy about a sizable fee even if success has been achieved.*

## 10. Collections

Collections ignored are revenues foregone.

If you have accounts receivable, you need a system to monitor them. The administration of this system should be delegated to staff.

Most computerized law office accounting systems automate accounts receivable tracking and produce an **aged accounts receivable report** which shows outstanding balances broken down in columns for current (under 30 days), 31-60 days, 61-90 days and 90+ days. The aged A/R report becomes the foundation for collection activity.

Here is a simple system:

- Each time an account moves from one category to the next, some step must be taken towards collection. For example, when an account moves from current to 30 days, a reminder letter is sent or a phone call is made by the secretary or bookkeeper. At 60 days, more serious action is taken, such as a stiff letter or a phone call from the lawyer. At 75 days, the responsible lawyer must make contact with the client, preferably in-person, and determine whether the bill will be paid, written off, or turned over for collection. (The details of the steps to be taken at the various intervals, and the length of the intervals, is a matter to be decided by each law firm).
- Twice a month, on the same days each month, the bookkeeper (or whoever fulfills that function) reviews the aged accounts receivable list and identifies all accounts that have moved up a category and prepares the documentation necessary to take the next collection step

Note: for the system to work, the person operating the system has to have the authority to **require** the lawyer to make decisions, sign letters and make phone calls on a timely basis.

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## 11. Tracking Your Progress

Chart your course and mark your path on the map.

**Managing** your cash flow, as opposed to merely administering it, requires you to be future-oriented, pro-active and creative. It also requires you to take responsibility for organizing the systems within your law office that will routinely provide you with the necessary information on which to base decisions. The attached Monthly Cash and Credit Analysis Form can be used as is or modified as you see fit (many firms do a weekly cash flow analysis).

A budget, regularly reviewed and revised as necessary, will provide valuable information about the financial performance of your practice.

A simple budget consists of a monthly estimate for each expense listed in your chart of accounts. A Revenue and Expenses Analysis Form is also attached. As each month is completed, the month's expenses and the year-to-date total are recorded for each expense category.

This report should automatically be prepared when the monthly trust reconciliation is done. Although the information produced by such a simple budget process may be limited, it will provide you with a basic monthly overview of how your practice is doing.

A more sophisticated budget will include items such as revenues, capital expenses, expense/revenue ratios, loans, cash-flow requirements for disbursements and other more complex law office management variables.

There is no limit to the potential complexity of a law office budget, and common sense should prevail to ensure that the information produced is really useful.

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## Rarely a Borrower Be

When you are starting a new law firm, you will likely need to borrow some money, or at least establish a line of credit. Paying back the debt will a growing pain you will have to endure.

As your firm matures, you will have to consider from time to time whether to incur new debt. Sometimes borrowing money will be a sensible decision, but in a mature firm the need to borrow is sometimes a sign of serious trouble.

### Borrowing Options

The table shows some law firm financing options, along with recommendations regarding re-payment.

<b>Law Firm Financing Options</b>		
<b>Purpose of Financing</b>	<b>Financing Option</b>	<b>Recommended Repayment Plan</b>
Tenant Improvements	Term Loan	Pay out loan over the life of the lease or less
New Technology	Term Loan	Pay out loan over the useful life of the technology or less
	Lease	Pay out lease over the useful life of the technology or less
To smooth out cash flow irregularities	Overdraft Protection	Keep overdraft limit as low as possible; return account to positive balance as soon as possible; suspend draws while in overdraft
To finance disbursements in injury cases	Line of Credit	Keep amount equal to or less than total of un-paid disbursements; apply disbursements portion of every settlement to reduce the outstanding balance; when disbursements become uncollectible, pay down the line of credit from general
To facilitate searches, transactions and filings	Trade credit accounts (e.g.: Land Titles)	Pay off accounts monthly; suspend draws in any month when accounts cannot be paid fully
To simplify accounting by using a credit card	Revolving credit	Pay off accounts monthly; suspend draws in any month when accounts cannot be paid in full
To finance draws v. receivables	Not recommended; if done, should be on Line of Credit	Pay line to zero as soon and as often as possible; suspend draws in any month when there is an outstanding balance at the end of the month
To finance draws v. WIP	Not Recommended	
To finance personal obligations	Not Recommended	

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## Decisions with consequences

You may find my recommendations too conservative. However, if you are aggressive about using your credit and casual about paying off your debt, you will make your practice vulnerable. When there is a downturn in your revenues—and eventually there is always a downturn—you will find yourself squeezed from several directions:

- you will have difficulty keeping up with the current overhead expenses and disbursements needed to keep your business going
- you will have to spend time and energy fending off your creditors
- you will be unable to make capital investments (e.g., new equipment or software)
- you may not be able to take draws, resulting in extreme difficulties in your personal life

Sometimes, financial pressures produce ethical pressures. You may be tempted to forego a needed medical report because you still owe the doctor for the last three you ordered, or you may urge a client to settle more quickly than they should because you need the money. Your trust account may begin to look awfully tempting.

Sooner rather than later, your life will become a miserable round of temporizing measures as you try to balance the financial pressures. You will dread the daily calls from the bank and other creditors. Your bookkeeper will want to know where you are going to get the money for the rent, salaries and other payables. By the time the recovery comes—and eventually, there is always a recovery—you may be in so deep that you can never get out.

On the other hand, if use your credit conservatively, you have a better chance of building a sound, financially secure practice.

- if you use overdraft protection or trade credit accounts, you will pay them off in full every month.
- when you consider buying capital assets, you will try to finance them from cash flow. If that's not possible, you will structure your payments so the debt is reduced faster than the assets are used up. And if you can't afford the payments, you won't make the purchase.
- your bottom line will be, **debt always takes priority over draws**. You will not borrow to pay yourself and you will trim your personal needs to match your income. Although your draws will be less spectacular in the short run, they will be more stable and secure over the long haul.

The payoff will be that you will be able to concentrate on practicing law because you won't be distracted by financial worries.

Some may think that this is a counsel of perfection. I know it's not; I see plenty of law firms on both sides of this fence, and I can assure you that the ones on the conservative side are much happier and more secure than the others.

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## Slow Death from Exposure

When you run a law office, you have to manage your cash flow.

The irreducible reality is that you have to lay money out for overhead and disbursements before you can bill your clients. You may then have to wait until you client decides to pay you.

Your **cash flow exposure** is the value of your work in progress (WIP), unbilled disbursements and accounts receivable (A/R's). It represents the work you have done and not yet been paid for, plus the amount you have advanced to third parties on your clients' cases.

To find your **exposure factor** for a month, divide the cash flow exposure at the end of the month by the amount of fees and disbursements collected in the month.

Knowing the exposure factor for one month isn't particularly useful, but the trend in this number over a period of time is important information about the speed of the cash flow cycle in your practice. Down is good, up is bad.

To find your **average exposure**, determine your exposure numbers for the last day of several months, then average them. To find the **average exposure factor**, which tells you the number of months of average collections you have outstanding in WIP, unbilled disbursements and A/R's, divide your average exposure by the average of your collections over the same period.

Different kinds of practice produce different exposure profiles.

- A contingency practice has a very high WIP exposure because you can't bill fees until the matter settles; the disbursements exposure depends on whether you bill disbursements as the case proceeds; there should be no accounts receivable exposure because your bills are immediately paid from settlement proceeds.
- A transactional practice--real estate or commercial--normally has a volatile short-term WIP and unbilled disbursements exposure, but should have low A/R's exposure because the files should be billed and collected when the transaction closes.
- An insurance defense practice that interim bills on a monthly basis should be able to keep its WIP and unbilled disbursements exposure to a minimum; its A/R's exposure will depend on how quickly its clients pay.
- General practices and family law practices often have high exposure factors, particularly if the lawyer has a weak retainer policy, incurs disbursements with little thought to their impact on cash flow, fails to bill regularly and has weak A/R's followup procedures.

As a general rule, you should try to keep your exposure factor as low as possible. There are several ways to do this:

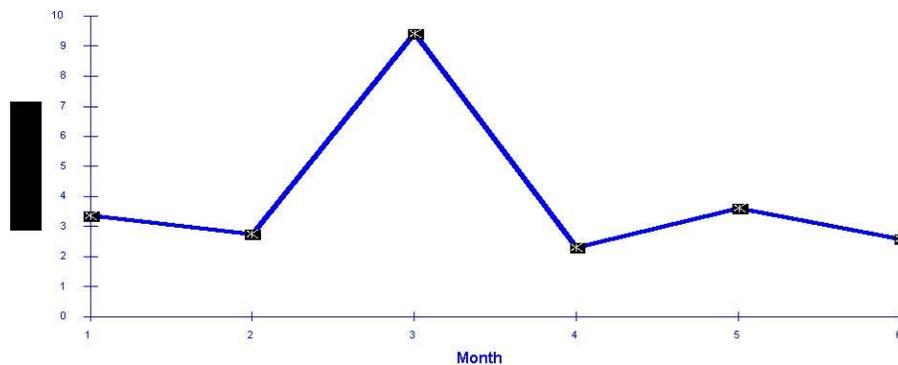
- Avoid unremunerative work unless you consciously decide to take it pro bono.
- Don't start files until you have an adequate retainer in trust.
- Keep your WIP low by billing it out as soon as possible.
- Keep your unbilled disbursements low by paying them out of trust or billing them out to clients as soon as possible.

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- Keep your A/R's low by getting paid as soon as possible, preferably out of funds in trust, and by pursuing your receivables aggressively.

Today's computerized accounting programs make it easy for any firm to produce monthly or even more frequent bills and aged WIP, unbilled disbursements and A/R reports, which you use as the basis for your billing and collections activities.

Month	WIP	Unbilled Disbursements	A/R	Exposure	Collections	Exp. Factor
1	20,000	5,466.33	15,750.00	41,216.33	12,232.34	3.37
2	25,350.00	6,544.98	16,344.00	22,878.98	8,343.22	2.74
3	32,025.00	9,343.23	19,323.23	60,691.46	6,434.00	9.43
4	16,400.00	4,534.32	28,343.23	49,277.55	21,434.34	2.30
5	17,335.00	4,893.12	19,030.83	41,258.95	12,434.33	3.32
6	12,232.00	2,434.93	14,343.83	29,010.76	10,043.43	2.89
Avg	20,557.00	5,536.15	18,854.19	40,722.34	11,820.28	4.01



This spreadsheet and chart are for a hypothetical solo firm. The firm has an average exposure factor of 4.01. Its exposure factor peaked at 9.43 in month 3 due to a significant increase in all three exposure categories and a drop in collections, then bottomed out at 2.30 the next month when the collections recovered. On average, it takes 4 months from the time money is spent on overhead and disbursements until it is recovered from clients.

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## Debt and the Small-Firm Lawyer:

### "Be careful out there!"

Many small-firm lawyers have clients with limited resources. Those who aren't firm about payment often end up with cash flow problems caused by excessive unbillable time, high accounts receivable and exorbitant write-offs.

Some try to alleviate their problem by establishing a bank line of credit. However, they can propel themselves into even deeper financial problems if they fail to carefully assess the ability of their practice to carry the debt.

Let's say your bank offers a line of credit of \$20,000.00 with interest at 8% per annum. If you, draw down the full amount, how long will it take to pay it back?

We'll make a few assumptions about the **average** performance of your practice:

- your expenses (including bad debts) are 55% of your billings
- your average tax rate is 35%
- your unbilled disbursements are more or less steady
- you don't need any capital investments
- you don't expect any huge cash windfalls
- you have no other sources of income
- you need to take home \$3,500 per month, after taxes

The table shows three monthly billings scenarios, \$12,000, \$15,000 and \$25,000.

		Scenario 1	Scenario 2	Scenario 3
1	Billings	12,000.00	15,000.00	25,000.00
2	Pre-tax profit	5,400.00	6,750.00	11,250.00
3	After-tax income	3,510.00	4,388.00	7,313.00
4	Take-home	3,500.00	3,500.00	3,500.00
5	Available for debt repayment	10	888	3,813.00
6	Months needed to retire debt	Forever	25	6
7	Repayment as a percentage of #3	N/A	20.2%	52.1%

On these assumptions, a \$12,000 per month practice cannot sustain a \$20,000 line of credit.

Even at \$15,000 per month, the \$20,000 line is still too much: you would be able to pay off the line in two years, but you would have to discipline yourself to pay the bank over 20% of your net profit every month.

Even at \$25,000 per month, it would take you 6 average months to pay back a \$20,000 line of credit. At that level of billing, you would not likely be happy taking home \$3,500 a month, but to meet your target you would have to discipline yourself to pay the bank more than you pay yourself.

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You might try to justify the line of credit with the argument that your billings and your profit are bound to go up. But that's a dangerous game; if things don't turn out as you expect, you will be in deep trouble.

So what should you do? Start by analyzing the swings in your cash flow. Get **overdraft protection** to protect yourself so that if you have a bad month or two, you're covered. If you have several poor months, tighten your belt by

- focussing, at least for a while, on work you can bill and collect quickly
- eliminating unnecessary overhead
- reducing your draws

When your cashflow recovers, pay off the overdraft before your resuming your old level of draws.

If you have a line of credit, only use it to accelerate receipt of extraordinary bumps in cash flow that are guaranteed (for example, a settlement that has been reached and you are waiting for the cheque or a bill has been sent to a good client who always pays within 30 days). Pay the line of credit off as soon as the money comes in.

And don't use the overdraft to surreptitiously increase your draws until you are sure your monthly average collections have permanently increased.

The moral of this article? Just this, from a long-dead cop show called Hill Street Blues: Be careful out there!

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# Ten Myths ABOUT Collecting Fees

By Linda J. Ravdin

**W**hat makes a client pay a bill and pay it promptly? We all cling to certain myths about what it takes to collect our fees successfully. Let's take a look at some of them.

**Myth No. 1:** If you do good work, your client will appreciate the quality and will pay for it.

Doing good work is essential. The myth is that good work alone is sufficient to cause the client to pay the bill for that work. It is not. First, the client must recognize the *quality* of the work. Just because you know you had a brilliant insight that enabled you to devise a solution, to the client's problem does not mean the client will recognize that unless you reveal it. Among the ways to communicate the value of your work is in the description you provide of the work you did. Compare the following:

Legal research on various theories of invalidity of marital agreement, including undue influence, violation of fiduciary obligations, fraud, duress, unconscionability, and overreaching; review elements of proof and possible defenses; and draft counterclaim for divorce, including request for determination of invalidity of agreement.

6 hours \$1,200

Library research; draft counterclaim.

6 hours \$1,200

The first description communicates the value of your labor. The second does not.

**Myth No. 2:** If you send a reasonable bill, your client will pay it.

This myth is similar to the preceding myth in that it assumes the client recognizes that the bill is reasonable. You assume, because you know the bill is reasonable, that this is apparent to the client as well. It is not. You send a bill to a client for \$1,200 for six hours of work—more than the client makes in a week—and you think the client is supposed to know the bill is reasonable? You must communicate the value of your work to the client. You must communicate to the client what the stakes are and show through those communications how your efforts were of benefit.

Compare the following:

Review cases from this and other jurisdictions on court's power to allocate pendancy exemption to noncustodial parent and draft memorandum for the court arguing client should be awarded exemption valued at \$2,100 per year.

11 hours \$600

Tax research 11 hours \$600

The first description of services does not require the client to accept the proposition

## ARTICLE ABSTRACT

Clients view their legal services bills from a radically different perspective from that of the lawyers sending the bills. Recognizing clients' attitudes and potential foibles can help you formulate sensible billing policies—and avoid deadbeat client prospects.

and the potential client are discussing what you require to take on a matter. It's fine to work out a payment plan with a client who legitimately cannot afford to pay you any other way and who you are convinced will live up to obligations. It's usually a mistake to agree to one for a client who cannot afford to pay an adequate fee advance or keep up with the monthly billings because of heavy debt. Such a person will put your bill at the bottom of the stack.

that \$150 per hour is a reasonable amount to pay for a service. It only requires the client to recognize that \$600 is a reasonable amount to pay for a service that may provide a \$2,100 exemption on the tax return every year.

Myth No. 3: If you do not charge the client for all the work you did, the client will be more likely to pay the bill.

This myth is premised on the belief that if you give the client something free, the client will pay for the rest of the work out of gratitude. In my experience, there is little or no connection between giving away work and getting paid. Certainly, it is appropriate to write off time if you feel the overall charges are too high or if it took too long to get the job done. And certainly the writeoffs should be shown on the bill. It is important that the client know you are trying to be fair in your billing.

What does not get the bill paid any faster is writing down the bill for no reason other than the belief that your generosity will get you paid. In my judgment, the appropriate way to give something away is as a reward to a client who has already paid a substantial amount. For example, a client has faithfully paid your bills each month over a long period of time. You might write off a portion of the last bill as a way of saying thanks.

Myth No. 4: Paying your bill is as high a priority for your client as getting paid is for you.

This myth becomes questionable the first time you have a client who reportedly cannot pay a fee advance, so you agree to accept a payment schedule of \$100 a month. Or a client cannot pay the current bill, so you grant a reprieve until next month—only to learn the client just bought a new pair of skis and is off to Aspen for a week.

Part of your job is to establish with your clients your expectation that your bills will be treated with the priority they deserve. The best time to establish that is before the attorney-client relationship is formed, when you

Myth No. 5: Your client understands you have bills to pay, too, and you need the money.

Of course, clients do not understand you need the money. They think we are all rich. What do you expect them to think, when you charge more for one hour of your time than some people make in a week?

Actually, the last thing you want them to think is that you need the money. Clients want to go to successful lawyers. What does it say about you if you communicate to a client that your law practice will go under if you don't get the \$600 payment right away?

More fundamentally, the issue is not whether you need the money; it is that you performed a service and you are entitled to be paid for it.

Myth No. 6: Your client *cares* that you need the money and will therefore pay your bill.

Since when is your needing the money the client's problem? Clients do not pay because you need the money. They pay because they need your service and recognize their obligation to pay for it. Your job is to educate those clients who do not understand they must pay your bills if they want to receive the benefit of your service.

Myth No. 7: If you charge lower rates than the competition, you will get more clients *and* they will pay their bills.

Charging less than the competition may well net you more new clients. Will those clients be more likely to pay you because your hourly rate is lower than some other lawyer they could have hired? (See myths 2 and 3.)

Myth No. 8: People of modest means are more likely than wealthy people not to pay their bills.

It is easy to make this assumption because it is logical to assume that the client with fewer resources will have greater difficulty paying the bill. The flaw in this reasoning, is

thinking clients do not pay because they arc unable to pay. Surely there arc clients who become wholly unable to pay their bills, but they arc rare. I have a client who paid me \$10 a month for 10 years, but he paid his bill in full, bless his heart. The client who wants to pay will find a way. Those who expect to get something for nothing will not, and there are just as many rich people as there are poor people who have that attitude.

Myth No. 9: The client's gratitude for the good job you did will endure after you have finished the job.

The diminution over time in the client's feelings of gratitude for a job well done is a well-known phenomenon. Still, we often cling to the belief that a client with a large award at the conclusion of a matter will remember six months later the sweet taste of victory and will therefore keep making those monthly payments on the fees that made it all possible. (See myths 1 and 2.)

Myth No. 10: The new client sitting in your office right now is the last client you will ever get. Therefore, a) you better not make the client angry by insisting on a substantial fee advance, b) you better take whatever the client is willing to pay because something is better than nothing and c) if you give a big break, the client will bring you a lucrative personal injury case because you're a nice person.

Suppose you're right and this is the last client you will ever get. You would be better off to close up shop right now and save the expense of running an office than to take a \$2,000 case for \$200 up front and expose yourself to the same amount of malpractice liability you would have had if you had been fully compensated. Of course, the client who calls today is not the last client you will ever get; in your rational moments you know that.

Fear and anxiety make us do foolish things. Take, for example, the fear that the client will walk if you insist on an adequate fee advance. What is the message a potential client sends when getting angry at the idea that you should receive money up front? I think the message this person is sending you is: "I want your services, but I do not feel I should have to pay for them, except on my terms."

Remember what your grandmother told you: "Put your money where your mouth is." Grandma was right. The client who is unwilling to do that in the beginning and who tries to intimidate you through anger to back down from what you consider a fair fee ad-

vance is a client you would be better off without. Instead of being fearful that a client will get angry and walk, be happy you got rid of a troublemaker before you invested much time in the case.

How about the idea that something is better than nothing? This is a false dichotomy. It defines the lack of a new client today as "nothing" versus getting a new client with \$200 up front for a \$2,000 case as "something." Wrong. No new client today is not nothing; it's an opportunity. Spend today writing an article in your area of expertise. Submit it to a professional publication. Do that whenever you do not have a case to work on. These efforts are investments of your time that will bring you better quality business in the future. Handling a \$2,000 case for a client who will not pay you a fair fee is no investment at all. It means potentially doing \$1,800 worth of work for nothing.

Finally, take a case for less than it's worth and the client will make it up to you later on. Sure, it can happen. But too often the client who is not willing to pay a fair fee advance to secure your services is just the sort of person who feels no obligation to reciprocate your kindness. Moreover, if you've proven yourself to be a fool by not getting an adequate fee advance (especially if the client succeeds in making you a fool by not paying your bills), why would the client bring a really good case with a potentially large fee to you?

Most of us start out with some funny ideas about what it takes to collect the fees we are owed for the work we do. They come from naivete, inexperience and anxiety. Once we learn the techniques for setting fees, billing and collecting, it can make the difference between a practice that scrapes by and one that thrives.

For more ideas on this subject for solos as well as small and medium firms, see *Flying Solo: A Survival Guide for the Solo Lawyer; 2nd Edition*, edited by Joel P. Bennett (ABA Law Practice Management Section, 1994, 320 pages). For details on ordering this publication, see the advertisement on page 00 of this issue. ■

Linda J. Ravdin  
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■ Linda J. Ravdin is a shareholder in Ravdin & Wolford, PC, Washington, DC 20036. The firm practices family law and estate planning and administration.



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## Practice Management

### Selected Titles

*30 best practices: strategies for law firm management* (Ottawa: Canadian Bar Association, 2004). Online at: <http://www.cba.org/cba/PracticeLink/pdf/clientcare.pdf>  
Call Number: [KF 318 T45 2004](#)

Calloway, James & Mark Robertson, eds., *Winning Alternatives to the Billable Hour: Strategies that Work*, 2d ed. (Chicago: ABA, Law Practice Management Section, 2002).

Call Number: [KF316 W52 2002](#)

Elefant, Carolyn, *Solo by choice: how to be the lawyer you always wanted to be* (Seattle, Washington: Decision Books / Niche Press, c2008).

Call Number: [KF300 Z9 E44 2008](#)

Empson, Laura, *Managing the Modern Law Firm: New Challenges, New Perspectives* (Oxford: Oxford University Press, 2007).

Call Number: [KF318 A2 M36 2007](#)

Ewalt, Henry W., *Through the client's eyes: new approaches to get clients to hire you again and again* (Chicago: ABA, Law Practice Management Section, c2002).

Call Number: [KF311 E63 2002](#)

Gibson, K. William, ed., *Flying solo: a survival guide for the solo and small firm lawyer*. (Chicago: ABA, Law Practice Management Section, 2005).

Call Number: [KF300 Z9 F59 2005](#)

Greene, Arthur G., *The lawyer's guide to increasing revenue: unlocking the profit potential*

*in your firm* (Chicago: ABA, Law Practice Management Section, 2005).

Call Number: [KF316.5 G74 2005](#)

Hardie, Robert A., *A Practical Guide to Successful Law Firm Management* (Markham: LexisNexis Butterworths, 2006).

Call Number: [KF318 H36 2006](#)

Hyman, Harvey, *Upward Spiral: Getting Lawyers From Daily Misery to Lifetime Wellbeing*

(Piedmont, CA: Lawyers' Wellbeing, Incorporated, 2010).

Call Number: [KF300 H96 2010](#)

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Kennedy, Dennis and Tom Mighell, *The lawyer's guide to collaboration tools and technologies*

(Chicago: ABA, Law Practice Management Section, c2008).

Call Number: [KF320 A9 M54 2008](#)

Macfarlane, Julie, *The new lawyer: how settlement is transforming the practice of law*  
(Vancouver: University of British Columbia Press, c2008).

Call Number: [KF9084 M33 2008](#)

*Practice Workshop: Opening Your Law Practice* (Toronto: Continuing Legal Education, Law Society of Upper Canada, 2004).

Call Number: [KF318 A2 L393 2004](#)

Rose, Jennifer J. ed., *How to capture and keep clients: marketing strategies for lawyers*  
(Chicago: ABA, General Practice, Solo & Small Firm Section, c2006).

Call Number: [KF316.5 H69 2006](#)

Schmidt, Sally J., *Business development for lawyers: strategies for getting and keeping clients* (New York: ALM Pub., 2006)

Call Number: [KF316.5 S37 2006](#)

*Solo and Small Firm Conference* (Edmonton: Legal Education Society of Alberta, 2008).

Call Number: [F300 A2 S64 2008](#)

*Starting Your Own Law Practice* (Edmonton: Legal Education Society of Alberta, 1993).

Call Number: [KF318 A2 S72](#)

Thiffault, Denyse, *Marketing, Communication and Business Development in the Legal Profession* (Cowansville: Éditions Y. Blais, 2008).

Call Number: [KF318 T44 2008](#)

Trautz, Reid F., *The Busy Lawyer's Guide to Success: Essential Tips to Power Your Practice* (Chicago: ABA, Law Practice Management Section, 2009).

Call Number: [KF315 T73 2009](#)

For assistance locating additional materials please contact Alberta Law Libraries.



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... your legal information navigator

Alberta Law Libraries are here to be your legal information navigator. As you pursue your career as a solo or small firm practitioner, Alberta Law Libraries' team is here to assist you in accessing the best sources of legal information, effectively.

Located in 23 communities throughout Alberta, the libraries are a connected system, working together to bring you legal information anywhere your practice takes you: in the province, or around the globe for that matter.

### **Reference and Information Services**

A dedicated team of skilled information professionals work collaboratively to meet your legal information needs. The use of our collections and reference support are provided at no cost to all members of the bar. Our team will help you locate relevant legal information in person at one of our locations, via telephone and electronically via e-mail or our Ask a Question service.

### **Fee Based Research and Information Service**

Alberta Law Libraries also offer fee-based research services including noting-up cases and legislation as well as subject specific research requests. Subject specific research requests include a more extensive search across multiple databases including LexisNexis' Quicklaw and Westlaw Canada's LawSource. A flat fee of \$50.00 for this service includes a variety of delivery options. Noting-up of cases or legislation is available at a cost of \$10.00 per note-up.

### **Training and Tours**

To optimize the use of our legal information resources and services, we offer one-on-one and group tours, library skills instruction and research consultations. Our general tour introduces clients to the layout of the library and highlights the resources and services offered by our team. Our library skills instruction provides an opportunity for clients to refresh their legal research skills and learn how to use the latest resources effectively.

Customized research consultations provide specialized legal research assistance on a particular legal topic. For more information or to request a tour or training session, please contact your local library or complete the Request Training form online through our website.

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## The Library. Delivered to you.

For those who have to be in too many places at once, let us send the material to you. As a service to members of the Law Society of Alberta, we offer a comprehensive document delivery service out of our Calgary and Edmonton locations. We will find, borrow or photocopy, and deliver case reports, legislation, journal articles, historical documents, conference proceedings or other legal information to you, in agreement with existing copyright law.

There is a flat fee of \$5.00 per order (one order may include up to 5 documents) and \$0.50 photocopying charge per page. Documents requested will be delivered by the next business day (available Monday through Friday, excluding holidays) with a 2 hour priority service available for an additional \$5.00 fee. To access this service, please contact your local library or complete the Document Request Form available through our website.

## Collections

Alberta Law Libraries maintain outstanding collections of practice materials including a broad range of legal treatises, legal periodicals and loose-leaf services. We collect legislation and law reports from across Canada, as well as additional materials from the Commonwealth.

Our print resources are complemented by an array of electronic resources that support provincial, federal and international legal research. Many of these databases are directly accessible at public computers in our libraries; all are accessible through our team of skilled information professionals. Electronic resources include:

Alberta Queen's Printer – QP Source Professional  
HeinOnline  
O'Briens Forms  
LexisNexis, Quicklaw (coming soon to Calgary and Edmonton)  
Westlaw Canada, LawSource (available outside Calgary and Edmonton)  
LexisNexis (available through Alberta Law Libraries' research services only)

Further information about each of these resources is available on our website.

**Library Website:** [www.lawlibrary.ab.ca](http://www.lawlibrary.ab.ca)

Our website connects you with our library catalogue, where you are able to search for materials, place holds and renew materials online. Research guides on a variety of topics and video tutorials may also be accessed through the website. Clients are able to submit reference and research questions through our *Ask a Question* form on the website.

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We will be launching a new website shortly that will include some new and exciting features.

Enhancements include mobile access to our library catalogue and a news feed on the main page to keep up-to-date on new legislation and case law.

### **Library Cards and Borrowing Privileges**

A valid Alberta Law Libraries card is your passport to library collections and services. Library materials can be borrowed with your card which doubles as a photocopy card. Stop by our circulation desk if you wish to have photocopy credits added to your card. Please note, the libraries are not currently set up to accept debit or credit cards. To obtain a library card, bring your Law Society of Alberta membership card to any of the locations listed below\*. Textbooks may be borrowed for 14 days with one 14 day renewal, provided they are not required by another client. Law reports and journals may be borrowed for 7 days with no renewals. Clients may place holds or renew items either online through our website or by contacting your local library. To ensure that all clients have equitable access to our resources, a charge of \$1.00 per day per item are levied on overdue materials.

For more information, please contact your local library or:

Susan E. Platt  
Information, Research and Training Services Manager  
Alberta Law Libraries  
Suite 2001-N, 601 – 5 Street SW  
Calgary, Alberta T2P 5P7  
Phone: (403) 297-7355 Fax: (404) 297-2981  
Email: [susan.e.platt@gov.ab.ca](mailto:susan.e.platt@gov.ab.ca)

\* Calgary, Edmonton, Red Deer, Lethbridge, Drumheller, Ft. McMurray, Grande Prairie, Medicine Hat, Peace River, St. Paul or Wetaskiwin.

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## Resource Links

### Practice Information Forums



#### **SoloNet**

**SoloNet** is a pilot project, aimed at providing lawyers in solo and small firm settings with a forum for discussion of issues and topics of interest to them. **SoloNet** is a secure online social network system open only to members of the Law Society of Alberta who are practicing in solo settings or in locations outside of major urban centers.

This network is intended to be an opportunity to share collective professional knowledge and experience, provide a sounding board for lawyers in similar practice settings, and otherwise connect with each other in a closed online environment.

**For more information, or to register as a member of SoloNet, please e-mail [solonet@lawsociety.ab.ca](mailto:solonet@lawsociety.ab.ca) .**

### General Reference Material

#### **Law Society of Alberta – Practice Advisor Page**

The Practice Advisors are available to discuss with lawyers anywhere legal, ethical and practice concerns, and personal matters such as stress and addiction. They also mediate and arbitrate inter-lawyer disputes. Practice Advisors provide assistance and resources to lawyers in relation to strategic planning, practice management, marketing, and technology and systems, with focus on the needs of sole practitioners and lawyers practising in smaller settings. Practice Advisors will travel anywhere in Alberta for personal meetings with lawyers where appropriate. All contacts are strictly confidential. Services are provided without charge. Members are invited to call at any time.

<https://www.lawsociety.ab.ca/lawyers-and-students/practice-advisors/>

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## Law Society of Alberta – Practice Management

The Practice Management team develops effective ways to assist lawyers in learning good practice and client management skills. The department works with others across the organization to determine which lawyers are at risk for complaints and actions preventative programs and resources such as the Responsible Lawyer Initiatives, [Office Consultations](#), [Mentor Connect](#) and the [Law Firm Start-Up Kit](#).

Practice Management also conducts general reviews and assessments of lawyers who are referred through the complaint process or through the conduct hearing process.

<https://www.lawsociety.ab.ca/resource-centre/key-resources/practice-management/>

## Legal Education Society of Alberta

LESA is the primary organization in Alberta providing pre-call and continuing education for lawyers, in addition to education for legal office staff. Their mandate is to serve the spectrum of educational and professional development needs of Alberta's lawyers, articling students, and their staff.

Main: [www.lesa.org](http://www.lesa.org)

- Educational Resources Page  
<https://www.lesaonline.org/educational-resources/>

## CanLII – Canadian Legal Information Institute

CanLII is a non-profit organization managed by the Federation of Law Societies of Canada. CanLII's goal is to make Canadian law accessible for free on the Internet. This website provides access to court judgments, tribunal decisions, statutes and regulations from all Canadian jurisdictions.

<http://canlii.org/>

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## **Alberta Lawyers Assistance Society (ASSIST)**

Assist helps Alberta lawyers, articling students and their immediate families cope with personal problems such as stress, depression, anxiety, alcohol, drug and all other forms of abuse or addiction, relationship difficulties, burnout and anger. The program is voluntary and confidential. Individuals seeking help are not identified to the Law Society of Alberta, the Canadian Bar Association or any other entity. The first four hours of professional assistance supplied by Assist are free of charge. After that, the individual is responsible for costs incurred.

<http://www.albertalawyersassist.ca/>

## **Law Society of Alberta – Frauds & Loss Prevention Information**

Fraud is a real and growing problem for all lawyers, law firms and their staff. The Law Society of Alberta strives to provide information about fraudulent schemes targeting Alberta lawyers, and share tips to help lawyers prevent frauds and losses from occurring.

<https://www.lawsociety.ab.ca/lawyers-and-students/fraud-and-loss-prevention/>

## **Canadian Lawyers Insurance Association - Loss Prevention Bulletins**

CLIA was established as a reciprocal insurance exchange and issued its first policies on July 1, 1988. The subscribers now include Nova Scotia, Prince Edward Island, New Brunswick, Manitoba, Saskatchewan, Alberta, Yukon, Nunavut, Newfoundland and Labrador and Northwest Territories. The participating societies agree on standard limits and policy terms, and each select a member society retention appropriate to their circumstances. CLIA continues to issue a master policy to each member society for the benefit of its practicing insured members.

Most of the member societies manage their own programs, including claims management within their retained limits. CLIA administers claims which exceed the society deductibles, and performs a coordinating role. CLIA Loss Prevention Bulletins are an electronic source of information for current and updated loss prevention tips for lawyers.

<http://www.clia.ca/documents/documentsList.cfm>

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## **Alberta Law Library**

Alberta Law Libraries is a network of 50 law libraries existing to provide research support and information services to the legal community (including the Judiciary, Members of the Bar, Crown Prosecutors and Justice Department Employees), self represented litigants and all Albertans. Alberta Law Libraries was formed in 2009, when the Alberta Law Society Libraries (serving members of the bar and public) were joined with Alberta Court Libraries (serving the judiciary and crown) under one leadership.

<http://www.lawlibrary.ab.ca/>

## **LawPRO**

Lawyers' Professional Indemnity Company (LAWPRO) is a wholly Canadian owned insurance company that provides professional liability insurance to lawyers in Ontario and TitlePLUS title insurance coast-to-coast. LAWPRO is headquartered in Toronto, Ontario, Canada. LAWPRO provides errors and omissions insurance to more than 23,000 members of the Law Society of Upper Canada. Through its TitlePLUS operation, LAWPRO also provides comprehensive title insurance and legal services coverage for residential purchase and mortgage-only/refinance transactions handled by lawyers.

Incorporated in 1990 by the Law Society of Upper Canada, LAWPRO has operated independently of the Law Society of Upper Canada since 1995, with its own management and Board of Directors. For more than 15 years, the LAWPRO team has provided the Ontario bar with cost-effective liability insurance, expert claims administration, and proactive risk and practice management initiatives to help prevent claims.

<http://www.lawpro.ca/>

## **PracticePRO**

practicePRO provides risk management, claims prevention and law practice management information to Ontario lawyers to help them meet these challenges. Our resources, precedents and checklists will help you take proactive steps to avoid a legal malpractice claim, and show you how to grow a successful and thriving law practice.

<http://www.practicepro.ca/>

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## **LSBC – Practice Support and Resources Page**

The Law Society provides a wide range of support, resources and advice to BC lawyers to help ensure the professional delivery of competent legal advice. The link below provides access to practice support and resources for lawyers to review.

<https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/>

## **The Counsel Network**

The Counsel Network is Canada's oldest and most established legal recruitment firm, with permanent offices in Vancouver, Calgary and Toronto. In addition to lawyer recruitment, The Counsel Network also has expertise in lawyer career consulting.

<http://www.thecounselnetwork.com/>

## **ZSA Legal Recruitment**

ZSA Legal Recruitment has offices across Canada specializing in legal recruitment for both large firms and sole practitioners.

Their legal division specializes in the recruitment of partners, associates, general and in-house counsel.

<http://www.zsa.ca/>

## **Law Based Web Logs**

Below is a list of some of the law based web logs available in Canada.

Davis LLP: <http://www.davis.ca/en/blogs>

ABLawg (U of C Faculty of Law): <http://ablawg.ca/>

U of A Faculty of Law blog: <http://ualbertalaw.typepad.com/>

Blogosaurus Rex (law blog of the Legal Resource Centre):  
<http://www.legalresourcecentre.ca/blog/>

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The Court (Osgoode Hall blog on decisions at SCC): <http://www.thecourt.ca/>

Canadian Law Blogs List: <http://www.lawblogs.ca/>

Slaw: [www.slw.ca](http://www.slw.ca)

## **Membership Organizations**

### **Canadian Bar Association (Members Only)**

The Canadian Bar Association is a professional, voluntary organization which was formed in 1896, and incorporated by a Special Act of Parliament on April 15, 1921. Today, the Association represents some 37,000 lawyers, judges, notaries, law teachers, and law students from across Canada. Approximately two-thirds of all practising lawyers in Canada belong to the CBA.

The CBA also maintains branches in each of the provinces and territories in Canada.

Main: <http://www.cba.org/cba/>

- Small, Solo and General Practice Forum  
[http://www.cba.org/CBA/conf\\_gpssf/General\\_Practice/](http://www.cba.org/CBA/conf_gpssf/General_Practice/)
- CBA Practice Link  
<http://www.cba.org/cba/PracticeLink/Home/>

### **American Bar Association (Members Only)**

The American Bar Association is the world's largest voluntary professional organization, with nearly 400,000 members and more than 3,500 entities. Founded in 1878, the ABA is committed to supporting the legal profession with practical resources for legal professionals while improving the administration of justice, accrediting law schools, establishing model ethical codes, and more. Membership is open to lawyers, law students, and others interested in the law and the legal profession. The ABA also maintains several divisions which may be of interest to practitioners in Canada, such as law practice management and

Main: <http://www.americanbar.org/aba.html>

- Law Practice Management Division  
[http://www.americanbar.org/groups/law\\_practice\\_management.html](http://www.americanbar.org/groups/law_practice_management.html)
- Solo, Small Firm and General Practice Division  
<http://www.americanbar.org/groups/gpsolo.html>

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