PRACTICE MANAGEMENT

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Chapter 1

Practice Management

[§1.01] Introduction

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

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

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

For guidance around how to increase the effectiveness and profitability of your practice, and for designing and implementing file management systems, see *Opening and Maintaining Client Files* (February 2002, updated in June 2006): www.lawsociety.bc.ca/practice_support.

[§1.02] Loss Prevention

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

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

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

Lawyers, in their own interests, are expected to identify practice problems and implement more effective office procedures. To assist, the Law Society makes available to members practice advisory services. The Practice Management Advisor, Dave Bilinsky, develops educational programs and materials on practice management issues, with a special emphasis on technology and will answer questions including those regarding setting up and maintaining office systems (daveb@lsbc.org or 604.605.53311 or 800.903.5300). The Law Society's Practice Advisor, Barbara Buchanan, Conduct & Ethics, is available to give confidential advice concerning a wide variety of professional conduct issues, including questions about undertakings, confidentiality and privilege, conflicts, courtroom and tribunal conduct and responsibility, withdrawal, solicitors' liens, client relationships, lawyer-lawyer relationships and other ethical and practice questions (604.669.2533; 1.800.903.5300) and directing lawyers to other persons or facilities who can help. In addition the Practice Advice group provides useful materials that may be accessed via the Law Society of BC website.

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

[§1.03] Lawyer's Responsibilities and Support System

Managing a practice includes the proper delineation of duties among the participants. The following outline of the lawyer's responsibilities and support system sets out one way in which law office responsibilities may be divided where the law office includes a lawyer, a legal assistant and a paralegal.

1. The Lawyer's Responsibilities

   Lawyers are responsible for legal services. A lawyer has complete responsibility for all business entrusted to him or her. A lawyer must maintain personal and actual control and management of each of the lawyer's offices, as well as maintain direct supervision over staff and assistants to whom particular tasks and functions may be delegated (*Professional Conduct Handbook*, Chapter 12, Rule 1). A lawyer must ensure that all matters requiring a lawyer's professional skill and judgment are dealt with by a lawyer. A lawyer must ensure that unauthorized persons do not give legal advice, whether in the lawyer's name or otherwise (*Professional Conduct Handbook*, Chapter 12, Rule 2).

The lawyer's tasks include the following:

> [**Articling students** are restricted in the tasks they may perform; see the "Articling" section of the *Members' Manual* and the Law Society Rules.]

(a) Providing legal advice
- (i) ensuring accuracy of instructions,
- (ii) assessing issues,
- (iii) researching the law,
- (iv) establishing alternatives, including alternatives to litigation and procedural alternatives,
- (v) providing legal opinions,
- (vi) making recommendations;

(b) Managing staff and files
- (i) providing concise, unambiguous instructions to staff,
- (ii) supervising staff;

(c) Setting fees
- (i) making and confirming fee arrangements,
- (ii) collecting or supervising collection of fees;

(d) Handling client complaints directly;

(e) Reviewing material obtained in information searches;

(f) Drafting or supervising drafting of legal documents;

(g) Retaining experts
- (i) providing unambiguous instructions to experts,
- (ii) ensuring that proper fee arrangements have been made with each expert,
- (iii) determining the focus of the expert's attention;

(h) Preparing and conducting interlocutory applications
- (i) preparing or reviewing documentation for all interlocutory applications,
- (ii) appearing on applications in chambers;

(i) Demanding and responding to discovery of documents
- (i) ensuring that all relevant documents are disclosed,
- (ii) determining whether any documents are privileged;

(j) Preparing and conducting examinations for discovery
- (i) preparing clients for examination,
- (ii) conducting examinations and attending at clients' examinations;

(k) Conducting settlement negotiations;

(l) Preparing for trial
- (i) interviewing witnesses,
- (ii) preparing minutes of evidence of each witness,
- (iii) preparing for direct examination and cross-examination of witnesses;

(m) Conducting trials;

(n) Preparing orders and bills of costs; and

(o) Enforcing orders (collections).

2. The Legal Assistant's Responsibilities

A legal assistant can act only under the supervision of a lawyer. The lawyer has full professional responsibility for the legal assistant's work. See the *Professional Conduct Handbook*, Chapter 12, Rules 4 to 9 for guidelines as to what a legal assistant can and cannot do, and the responsibilities of the lawyer with regard to a legal assistant's work. Within this framework, here are some examples of tasks that a legal assistant may undertake:

(a) Collecting information
- (i) interviewing clients and witnesses for information purposes only (the lawyer must advise and take instructions from clients on substantive issues),
- (ii) collecting information from other sources (e.g., the Land Title Office);

(b) Conducting correspondence relating to routine administration;

(c) Preparing draft pleadings and other court forms;

(d) Researching the law and preparing legal memoranda;

(e) Organizing documents; and

(f) Drafting statements of account.

3. The Secretary's Responsibilities

The secretary works under the supervision of the lawyer or legal assistant. The secretary's tasks include the following:

(a) Organizing files
- (i) opening files,
- (ii) organizing components of files,
- (iii) securing all file contents on fasteners and

ensuring that files remain organized (see also chapter 4);

(b) Making appointments for the lawyer and referring potentially urgent matters to the lawyer for assessment;

(c) Preparing correspondence not involving legal expertise (e.g., requests for information and strictly informative correspondence);

(d) Sending copies of relevant file material to clients;

(e) Taking telephone calls when the lawyer is not available, ascertaining the nature of the problem and providing non-legal assistance to the client, if possible;

(f) Maintaining bring forward and diary systems (see chapter 4);

(g) Screening incoming mail
   (i) highlighting areas of potential urgency,
   (ii) dealing with all items of a routine nature,
   (iii) noting any dates for bring forward and diary systems;

(h) Arranging examinations for discovery
   (i) preparing and sending out appropriate demands,
   (ii) taking out necessary appointments,
   (iii) taking care of conduct money and travel expenses;

(i) Arranging trials
   (i) setting trial dates,
   (ii) preparing trial records,
   (iii) arranging for attendance of witnesses;

(j) Preparing standard form legal documents for the lawyer's review (e.g., most land title documentation); and

(k) Organizing the lawyer's trial briefs, books of documents, and books of authorities.

4. Accounting and Technology Management Responsibilities

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

5. Information Resources

(a) Library

If a paper library is to be maintained, all looseleaf updates must be regularly inserted to keep pace with changes in the law. Clerical or paralegal staff can be responsible for this. Support staff should be aware of the importance of updating looseleaf services both accurately and on a regular basis.

In addition, many looseleaf texts are available electronically. Again, clerical or paralegal staff can be responsible for maintain subscriptions to ensure that these are available and current when the lawyers need them.

Further assistance can be obtained by speaking with the librarians with the Courthouse Libraries of BC (for example, the Vancouver Courthouse Library staff) and by contacting the Vancouver Association of Law Librarians. Finally, also look to Catherine Best's website http://www.legalresearch.org/electron.html for a comparison of electronic research tools.

(b) Research and Opinion File

The practice of law generates many opinion letters and research memoranda. These can become a valuable resource. To ensure that your efforts are not duplicated in the future, catalogue and file in a way that makes them readily accessible. There are many ways to save and organize electronically retrieved research, and to organize legal research memoranda and opinions. For optimal benefit to all lawyers in the practice, and to make these documents easy to retrieve later, consider the software that you are using for office and case management and be sure to create a system for filing these valuable resources that best matches those existing systems. Often it is easiest to organize by author, title and subject with cross-referencing.

(c) Precedents

Most materials that are prepared and relied on in practice should be retained as precedents. A simple method of organizing precedents is to retain them in file folders or in an indexed binder. However, the more effective method is to create electronic files and store them using whatever filing system fits best with your office, file and case management software. It is important to use an off-site storage and back-up system for which you have developed a document retrieval system that allows for easy identification of each document.

[§1.04] Lawyer Training

Most lawyers recognize the need for continuing lawyer training. Traditional views such as "sink or swim" have yielded to a more positive and realistic view that better training creates better lawyers. Law school, PLTC, and CLE courses are only part of the answer. The other part is the commitment of senior lawyers and partners to train junior lawyers, and the commitment of junior lawyers to devote the necessary time to learn.

The emphasis of lawyer training should be introduced but not "finally" covered in law school and PLTC. Skill training is probably the best example. All lawyers need continuing training in the areas of negotiating, legal writing and drafting, leadership, time management, research, conducting meetings, and dispute resolution. Skills training can be done formally through seminars and workshops, organized in-house or through outside organizations, and even more importantly, on an informal basis—when lawyers are working together on files, teaching and learning by example. By being aware of the skills and the importance of them in our practice, we can be alert to cultivating them in others.

Effective **January 1, 2009**, all practising lawyers in BC are required to complete 12 hours of continuing professional development. See the website for details about approved educational activities.

Benchers Approve Rules Implementing Continuing Professional Development

[*What's New*, posted July 8]

At their July meeting, the Benchers approved amendments to the Rules [Rule 3-18.1] to implement the new continuing professional development program, starting January 1, 2009.

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

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

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

- Attendance in person, as well as online or by telephone, provided there is an opportunity to ask questions, at courses offered by the Continuing Legal Education Society of BC, the Trial Lawyers' Association of BC, the Canadian Corporate Counsel Association, the Canadian Bar Association, the Federation of Law Societies of Canada, the Law Society of BC, or a Canadian law school. As the Law Society continues to consult with course providers and local Bar associations, this list of course providers will expand.
- Attendance in person, as well as online or by telephone, provided there is an opportunity to ask questions, at Law Society approved, law-related courses offered by other organizations.
- Video repeats of an approved course provided it is done with one or more other lawyers so there is an opportunity for discussion.
- Completion of an online self-study course offered by a provider approved by the Law Society, provided that a testing component is included in the course.
- Teaching a law-related course (one hour of teaching will equal three hours of reporting credits to take into account preparation time).
- Attending CBA section meetings or education-related activities offered by a local or county Bar association.
- Participation in (including teaching at) a legal education program offered by a lawyer's firm or employer provided the program is offered in a group setting.
- Participation in a study group of two or more people provided the group's study focuses on law related activities. Guidelines for study groups are still being developed.
- Writing law books or articles relating to the study or practice of law for publication.

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

(a) plan your personal training objectives carefully;

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

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

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

(e) evaluate your program critically over time.