PRACTICE MANAGEMENT

CLIENT FILE MANAGEMENT

[§4.01] Introduction 23

[§4.02] File Opening 23
1. File Opening Sheet 23
2. File Opening Book/Record 24
3. File Management Index Systems 25
4. Accounting Records 25

[§4.03] Retainers and Retainer Letters 28
1. Meaning of "Retainer" 28
2. When to Discuss the Retainer 28
3. Amount of the Cash Retainer 28
4. Scope of the Retainer 28
5. Retainer Letter or Agreement 29
6. Contingent Fee Agreements 30
7. Non-Engagement Letters 31

[§4.04] Limitation Reminder/Bring Forward (BF) Systems 32
1. Introduction 32
2. Basic Principles for Good Reminder Systems 32
3. Accordion File Folder System 33
4. Electronic System 33
5. Double Diary System 33
6. Card System 34
7. Examples of Dates to Note in the Bring Forward System 34
8. Management Review Procedures 35

[§4.05] File Organization 35
1. Introduction 35
2. Organization of the File Folder 35
3. Organization of Simple Files 36
4. Organization of Complex Files 36
5. Corresponding Computer Files 37

[§4.06] Maintaining Communications 37
1. General 37
2. Keeping Written Notes of Conversations 38

[§4.07] Fees and Disbursements 38
1. Communication and Fees at the Beginning of the Retainer 38
2. Communication and Fees - Ongoing 39
3. Setting the Fee 39
4. Client Protection Devices 42
5. Lawyer Protection Devices 42
6. Solicitor and Own Client Reviews 43
7. Solicitor and Client Collections 43
8. The Registrar's Perspective of Solicitor and Own Client Reviews 43
9. Chapter 9 of the Handbook 44
10. Disbursements 45
11. The GST and PST and Client Billing 45
12. Solicitors’ Liens 46
13. Getting Paid: Asserting and Defending a Solicitor’s Lien 47
14. Final Reporting Letters 62

[§4.08] File Closing 62

[§4.09] Whose File is it Anyway? 71

[§4.10] Model Engagement/Retainer Letters 78

PRECEDENTS — *NOT INCLUDED IN WEB VERSION*

Precedent A - Draft Retainer Agreement for Estate Administration 78
Precedent B - Draft Hourly Retainer Agreement for Personal Injury 81
Precedent C - Draft Retainer Agreement for a Personal Injury Contingent Fee 86

[§4.11] Non-Engagement Letters— *not included in web version* 91

SEE: HTTP://WWW.LAWSOCIETY.BC.CA/PRACTICE_SUPPORT/ARTICLES/LTR-NON-ENGAGE.HTML

Chapter 4

Client File Management[1]

[§4.01] Introduction

Good file management includes developing a good rapport as well as an appropriate relationship with the client from the start. (See chapter 5 for more information on client relations).

Client file management systems and procedures are essential for the smooth and efficient handling of client matters. Some of the most important systems and procedures are:

(a) the file opening procedure (discussed in §4.02);

(b) the retainer letter (§4.03 and §4.10);

(c) the limitation reminder/bring forward system (§4.04);

(d) the use of checklists (§3.04);

(e) file organization (§4.05);

(f) the written record of advice given (§4.06.2);

(g) the billing procedure (§4.07); and

(h) the file closing procedure (§4.08).

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

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

For further details on all topics in this chapter, see "Opening and Maintaining Client Files" available on the LSBC website (http://www.lawsociety.bc.ca), following the *Practice Support* link.

[1] Reviewed annually from 2002 by PLTC. Reviewed annually from February 1994 to March 1999 by Jacqueline Morris and Gayle Myers, then staff lawyers at the Law Society of B.C. Reviewed annually from 2002 by PLTC.

[§4.02] File Opening

1. File Opening Sheet

A properly completed file opening sheet helps to prevent critical questions from being overlooked. Ultimately, this information will affect the quality of the representation given. At the same time, the file opening sheet provides a checklist to ensure that all the incidental, administrative, and file index procedures involved in file opening are accomplished. However, it does **not** take the place of a comprehensive client information interview form. Also remember that you may be required to obtain and retain documents to fulfill your obligations under the client identification and verification Rules. Law Society of British Columbia Rules 3-91 to 3-102 require lawyers to follow client identification and verification procedures when retained by a client to provide legal services, subject to various exceptions. The client *identification* rules require that lawyers make reasonable efforts to obtain basic identification information about clients. Additionally, client *verification* rules apply when a lawyer receives, pays or transfers money on behalf of a client, or gives instructions on behalf of a client in respect of the receipt, payment or transfer of money.

The rules specify timing for identification and verification procedures (Rules 3-98 and 3-99), procedures for clients who are individuals not present before the lawyer (Rule 3-97), information and documents to be recorded or copied (Rules 3-93 and 3-95), and retention periods (Rule 3-100). The rules also require lawyers to withdraw if, while retained or when obtaining client identification and verification information, they know or ought to know that they would be assisting in fraud or other illegal conduct (Rule 3-102).

To help lawyers, the Law Society has produced a Client Identification and Verification Checklist. This a checklist may be used to record information required under the client identification and verification rules. However, lawyers should refer to the rules themselves when determining the information necessary to identify clients and verify their identity. In particular, lawyers should note that "client", "control", "financial institution", "financial transaction", "interjurisdictional lawyer", "money", "organization", "public authority", "reporting issuer", and "securities dealer" are defined. Lawyers are encouraged to pay close attention to all of the definitions in Rule 3-91 as they may not be consistent with common usage, and

identification and verification requirements vary according to the type of transaction and entity. (Defined words and phrases are bolded in this checklist.)

For details about these obligations, see the Rules and see the *Client Identification and Verification Checklist* available through *Practice Support* on the Law Society of BC website at http://www.lawsociety.bc.ca/practice_support/articles/practice_intro.html.

While file opening sheets vary, they should include space for: the client's name; previous name or alias; home address and phone number; fax number; occupation; business phone number and address; alternate addresses and phone numbers; (especially important if the client may be moving, has no fixed address or is living in a women's shelter) opposing party name(s); other possible conflicts; opposing lawyer name; subject matter of the file; responsible lawyer's name; date the file is opened; applicable limitation dates; referral sources; billing information; file closing date and file destruction date.

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

(a) record special instructions and keep them highlighted (i.e., don't give out client's address);

(b) record a critical limitation date or closing date on the file;

(c) ensure that you communicate your understanding of the instructions directly back to the client, particularly if you have received your instructions from a party other than the client;

(d) help ensure that there is no conflict of interest in acting in the matter; and

(e) provide evidence that these procedures have been completed or information recorded.

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

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

When, after the initial instructions, you indicate that you will "get back" to the client, you should ensure that this is done. You can do this by noting a call back date in your reminder system.

2. File Opening Book/Record

The file opening "book" provides a chronological record of all files opened. Historically the "book" was a looseleaf binder; however, the essential entries are now most often made on the file opening lists created in accounting programs, case management software, or spreadsheet programs and stored on a backup system. A hard copy should be printed and reviewed regularly (weekly).

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

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

(a) the number of files being opened per month;

(b) the number of files categorized by area of law; and

(c) the files still open beyond a reasonable time (particularly those indicating limitation dates).

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

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

3. File Management Index Systems

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

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

The indices may consist of entries in office management system or 3" by 5" or 5" by 7" cards (one for each client matter). Files are typically indexed in one or more of the following ways.

(a) Alphabetical Index by Client Surname

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

(b) Alphabetical Opposing Party Index/List

This index helps you and your staff to respond to queries from opposing parties and facilitates conflict searches by providing cross-references to the client file name.

(c) Custodial Index

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

(d) Chronological Index

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

4. Accounting Records

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

(a) individual client trust ledger card or electronic file record;

(b) individual client accounts receivable/ disbursement ledger card or electronic file record; and

(c) individual client time billing record.

The initial information to be recorded on each card would include the following:

(a) name of client;

(b) address;

(c) file number;

(d) matter; and

(e) responsible lawyer.

The trust ledger card or record is often combined with the accounts receivable/disbursement ledger card or record.

For discussion of time recording systems refer to chapter 6 in these materials. For a discussion of accounting systems refer to chapter 8.

FILE OPENING SHEET [§16.67] [1]

Client identification and verification. In November 2008, the Benchers adopted 12 new rules, Rules 3-91 to 3-102, based on the Federation of Law Societies of Canada's Model Rule regarding the identification and verification of clients. The Benchers revised Rules 3-91 to 3-92 and Rule 3-94 in December 2008 at the Federation's request. The rules took effect on December 31, 2008. In January 2009, the Benchers revised the definition of "reporting issuer" in Rule 3-91 at the Federation's request, effective January 30, 2009. These rules require lawyers to take reasonable steps to identify their clients and where "financial transactions" are involved, to verify their clients' identity. Lawyers must comply with the rules in all new matters commenced on or after December 31, 2008 regardless of whether the client is an existing client or a new client. See the Client identification and verification checklists at http://www.lawsociety.bc.ca/practice_support/checklists/table.html#CIDV

FILE OPENING INFORMATION

File opening date:______________________ Limitation date: ______________________

CLIENT INFORMATION Client's E-mail:

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

Client Full Name: ______________________

Client Home Address: ______________________

Client Business Address ______________________ ______________________

Telephone Numbers Business local: ______________ Home: ______________

Cell:______________ Cell: ______________

Pager: ______________

Fax:______________

Secretary's name: ______________________

Company YES [ ] or NO [ ] Business Type: ______________________

Web Page:

Individual YES [ ] or NO [ ] Occupation: ______________________

Employer: ______________________

Spouse's Name: ______________________

MATTER INFORMATION

Brief Description: ______________________

____

Opposite Party: ______________________

Address: ______________________

Postal Code: ______________ Telephone: ______________

[1] ©The Continuing Legal Education Society of British Columbia. This form appears as [§16.67] in the *Managing Your Law Firm Practice Manual* and is reprinted and modified here with permission. All rights reserved.

Opposing Lawyer's Name: ______________________________

E-mail: ____________________

Fax: ____________________

Address: ______________________________

Postal Code: ______________ Telephone: ______________

Secretary's name: ____________

OTHER INFORMATION ______________________________

(including other parties to the matter) ______________________________

____

ADMINISTRATION (initial when done)

____ Client index checked for conflict ____ Client advised of conflict (if applic.)

____ Retainer/engagement letter sent ____ Retainer/letter returned & approved

____ Limitation/BF dates diarized and entered on system

BILLING INFORMATION

Responsible lawyer: ____________________

Billing Frequency: Monthly [ ] Quarterly [ ] Annually [ ] On Completion [ ]

Agreed fee ($): ____________________

Or Fee Basis: [ ] *Hourly Rate* OR [ ] *Contingency* OR [ ] *Other Explain:*

____

Fee agreement signed? [ ] Yes [ ] No - Why Not:

____

If hourly, note estimate if given: ______________________________

BRING FORWARD DATES Is there a limitation period? YES [ ] What is it? ______________

or NO [ ] Lawyer's initials: ______________

Diarized by: ______________________________

IMPORTANT DATES

LIMITATION/BF DATES	REASON	INITIAL WHEN DONE

FILE CLOSING DATE: ____________________

[§4.03] Retainers and Retainer Letters

1. Meaning of "Retainer"

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

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

2. When to Discuss the Retainer

The matter of retainer, both in terms of money payment and the scope of the work you will do for the client, must be canvassed early—preferably at the first meeting. There is no reason to be reluctant to discuss either the method and amount of payment required or the work to be done, and there is every reason to bring it up early. Lawyers sometimes find it embarrassing to talk about fees. Clients do not find it embarrassing. They do find it more than annoying when they finally receive an account when they had no idea it would be that large.

The client wants to know what to expect, how much it will cost, when they have to pay, and what the lawyer is authorized to do. It may be that a fee cannot be set without further investigation, but the subject should at least be raised, even if only in general terms (you should make it clear that you are providing only an estimate). Otherwise, the client cannot make an informed decision on whether to proceed. Avoid quoting maximum fees; it is impossible to know when the unexpected will happen.

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

3. Amount of the Cash Retainer

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

The amount of the retainer will depend upon the task for which the lawyer is being engaged. It may be a set amount for reviewing the matter and expressing an opinion. It may be to counsel to prepare a court action and to proceed to trial. In any event, the client should clearly understand what work the retainer covers and whether a further retainer might be required. This should be confirmed in writing in the retainer letter.

4. Scope of the Retainer

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

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

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

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

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

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

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

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

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

5. Retainer Letter or Agreement

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

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

Generally, the purposes of the retainer agreement are to

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

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

(c) confirm and clarify billing practices; and

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

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

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

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

(c) the services to be performed (and, where necessary to clarify the cash retainer, the services the lawyer will *not* be performing; for example, in real estate and commercial

matters, those matters which remain the responsibility of the client or a third party such as a realtor, accountant, surveyor or engineer);

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

(e) the terms under which the whole retainer will be terminated.

Note that you are entitled to charge interest on unpaid accounts only if you have entered into an express agreement with the client as to the interest at the time the client entered into the contract for services.

There are many other topics you should include, such as the charging of PST and GST, and whether any trust funds held will earn interest.

In *Arctic Installations (Victoria) Inc.* v. *Campney & Murphy* (1994), B.C.L.R. (2d) 345, the Court of Appeal denied the firm the right to charge the client a bonus for a "notably successful result" where that wasn't a term of the retainer. The Court held that "[b]ecause the solicitor, when he accepts a retainer, is contracting with his own client, he has a duty to advise the client fully and fairly concerning the terms of that contract".

The wording and length of the retainer agreement will depend upon the task to be performed and the clients. For example, when a banker asks a lawyer to act on behalf of the bank in collecting a simple debt, a simple letter from you to the bank confirming your retainer should suffice.

If you act for clients who have trouble with written English, the letter should be written in simple terms that can be translated easily.

Two other important points often made in retainer letters involve telephone calls. Explain to the client how the nature of your practice often makes it difficult to return calls immediately (e.g. you are often in court or discoveries, or you are a solicitor frequently involved in lengthy client meetings). Tell the client you will always do your best to answer calls within 24 hours. Urge the client to speak to your secretary or, if the message is urgent, the client should say this, so you will call back as soon as you can that day.

Also, if you are billing on the basis of time spent, tell your client you charge for time devoted to telephone communications with the client and others connected with the case and that the billing will include time spent on any necessary review of file material before the call and making a note of the contents of the call.

At the end of this chapter (§4.10), there are two plain language retainer letters. As with other precedents, these standard form letters should not become substitutes for the exercise of your own judgment. There may be topics that you will add and others you will delete. The text under each topic must be modified to fit the circumstances of each situation and client.

6. Contingent Fee Agreements

A contingency agreement, or contingent fee agreement, is one that provides that a lawyer's fee is contingent, in whole or in part, on the successful disposition of the matter in which the lawyer's services are provided (*Legal Profession Act*, Part 8, s. 64).

A contingent fee agreement must be written (*Legal Profession Act*, ss. 65, 66 and Law Society Rule 8–3). It is important that the terms of such an agreement are clear. The terms should identify work contracted for and exclude work not to be done by the lawyer, for example a review of accounts or an appeal. They should also provide for getting off the record and terminating the solicitor-client relationship. Failing to do so may result in an inability to withdraw unless the client consents: *Edwards* v. *Barwell-Clarke* (1980), 22 B.C.L.R. 6 (S.C.). The agreement should also clarify whose responsibility it is to pay for disbursements and whether a retainer for disbursements is required.

When entering into a contingent fee agreement, the client is entitled to independent advice as to its terms. As a matter of practice, the lawyer should require the client to consider the contingent fee agreement at his or her leisure and in the lawyer's absence. However, ensure the agreement is signed and returned together with the monetary amount of the retainer (if any) before or very soon after you start work.

A lawyer has an overriding duty to ensure that a contingent fee agreement is fair and that the remuneration charged is reasonable in the circumstances (Law Society Rule 8–1). Thus, if a registrar reviews the agreement eventually under s. 68(5) of the *Legal Profession Act*, the registrar may, where he or she considers that the agreement was unfair or unreasonable, modify or cancel the

agreement.

In *Commonwealth Investors* v. *Laxton*, 50 B.C.L.R. (2d) 186, leave to appeal refused (1991), 54 B.C.L.R. (2d) xxxiv (S.C.C.), the B.C. Court of Appeal held that s. 68(9) contemplates a two-step inquiry. The first step, on the issue of "fairness", investigates the mode of obtaining the agreement and whether the client understood and appreciated its contents. Assuming the contract is found to be fair, the second inquiry entails investigation of its "reasonableness", in which the court will consider all of the ordinary factors in the determination of the amount a lawyer may charge a client (these factors are reviewed in §4.07(3)).

The Law Society has enacted rules limiting what a lawyer can charge under a contingent fee agreement in personal injury cases. Rule 8–2 provides that, subject to the court's approval of higher remuneration, the maximum remuneration to which a lawyer is entitled under a contingent fee agreement, when acting for a plaintiff in a claim for personal injury or wrongful death arising out of the use of a motor vehicle, is 33 1/3% of the amount recovered, and in any other claim for personal injury or wrongful death, is 40%. Note that the maximum limits apply only to trial work and not to appeals. All contingent fee agreements must include wording tat informs the client that the limit is restricted to trial work (Rule 8-4, prescribes the wording).

Rule 8–2(2) provides that a lawyer and the client may enter into a contingent fee agreement in which the lawyer may elect to forego any remuneration based on a proportion of the amount recovered and receive instead an amount equal to any costs awarded by order of the court. This amendment to the Rules followed a consideration of the effect of *Managh* v. *ICBC*, [1995] B.C.W.L.D. 33, where the Court of Appeal determined that the plaintiff's lawyer could not accept the costs as agreed between counsel due to the 33–1/3% restriction. See (January–February 1996) 1 *Benchers' Bulletin*, for a description of the decision and for the Ethics Committee's reasons for amending the Rule.

In *Pierce*, *van Loon* v. *Davro Investments Ltd*., (7 May 1996), Vancouver Registry, CA19833, the Court of Appeal considered a contingent fee agreement where the client alleged that the contract was unfair or unreasonable when made. The lawyer had agreed to work at an hourly rate plus a "bonus for success" at an agreed rate on the recovered judgment. The registrar agreed with the client that the contract was unreasonable and cancelled the contract, directing the lawyer to submit a new bill.

Contingent fee agreements relating to child custody and access are void, and those relating to services for other matrimonial matters are void unless approved by a judge of the Supreme Court (*Legal Profession Act*, s. 67(3), (4), (5)).

In *Cook* v. *Mission Memorial Hospital*, [1996] B.C.W.L.D. 1752 in which the lawyers fee was substantially reduced, Oliver J. said:

> [H]aving regard to the way in which the law is developing and the way that *Yule* v. *Saskatoon* [(1955) 17 WWR 296 (Sask. C.A.)] has been applied in recent contingency fee review cases, it is my view that any lawyer who hereafter fails to keep time records when undertaking contingency fee litigation in circumstances where there is a possibility of his [sic] bill being taxed is foolhardy—for the lack of detailed time records deprives the Court of important information necessary to protect the legitimate interests of the provider of legal services.

In deciding whether an agreement is fair and reasonable, the registrar or court may look at the percentage charged and may modify it and lower it (*Pohorecky* v. *Remedios* (21 February 1995), Victoria Registry, No. 950101 (S.C. Registrar)).

Note that s. 10 of the model contingency agreement (see Precedent C at the end of §4.10) includes a notice to the client of his or her right to have the lawyer's account reviewed under s. 68 of the *Legal Profession Act*. Such a notice is required under Rule 8–3 of the Law Society Rules.

A contingent fee agreement must not include a provision that allows the lawyer to contract out of liability for negligence, to exercise a veto on settling a matter, or to prohibit a change of solicitors (Rule 8–3(c)). The agreement must set out that the fee is not based on taxable costs and disbursements.

Subsection 68(9) of the *Legal Profession Act* provides that the Rules of Court apply to the assessment of costs review of bills and examination of agreements.

See Precedent C at §4.10 for a sample agreement.

7. Non-Engagement Letters

After initial consultation, you may decide not to take the work. In these circumstances, it is often wise to send a "non-engagement" letter to the person confirming your decision. Your letter should state clearly that your firm will not represent that person in the matter. Avoid commenting on the merits of the case, since any comments might be construed as legal advice. Clearly point out the limitation period if any and urge the individual to consult another lawyer as soon as possible.

There are model non-engagement letters at §4.11.

[§4.04] Limitation Reminder/Bring Forward Systems

1. Introduction

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

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

For current information about commonly missed limitations in each area of practice, see the Law Society publication, *Beat the clock: Timely lessons from 1600 lawyers* (2007), available online at: http://www.lawsociety.bc.ca/regulation_insurance/insurance/docs/beat-the-clock.pdf.

Missed limitation dates are almost impossible to defend as the Lawyers Insurance Fund Claims Counsel can rarely dispute liability. The most that can be done is to "repair" the damage by applying for an order that the cause of action has been confirmed pursuant to s. 5 of the *Limitation Act*, or that the limitation period has been postponed pursuant to s. 6. If successful, the lawyer must pay for the cost of "repairs" which is usually within the lawyer's deductible ($5,000 for the first paid claim, $10,000 for the second). In short, the lawyer will pay for the mistake, not the insurer.

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

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

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

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

2. Basic Principles for Good Reminder Systems

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

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

The coordinated efforts of the lawyer and secretary are normally required to make a system work. While lawyers make most decisions about which dates to note in the calendar, the secretary's attention to detail and willingness to double-check entries are integral to most systems. If the lawyer fails to note a date, the secretary should have the authority to set one.

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

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

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

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

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

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

3. Accordion File Folder System[3]

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

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

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

4. Electronic Systems

There are a number of electronic "BF" systems. These features often are incorporated into legal accounting packages and case management software so that there is no need for separate systems or software. However, you should review possible software to ensure that multiple dates for the same file and reasons for each reminder can be entered.

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

The person responsible for noting the reminder dates should enter the appropriate information: the client name, file number, reminder date, dates leading up to the reminder date and the reason. A report should be run daily, weekly and monthly.

While some lawyers prefer to have a diary in paper form for convenience in setting up appointments when out of the office, some prefer hand-held electronic organizers.

5. Double Desk Diary System

When a limitation date is noted, the lawyer makes an entry under the appropriate date in the lawyer's personal desk diary, recording the file number, client name and action required.

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

Corresponding entries are then made in the secretary's desk diary.

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

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

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

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[3] This section is based on material prepared by Jacqueline Morris for the CLE publication, *Law Office Management for Small Firms - 1991* (April 1991).

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

6. Card System

The basic element for this type of reminder system is a file drawer or tray to hold 3" x 5" index cards and dividers. Plain white index cards or printed forms can be used. The file drawer contains two sets of dividers numbered 1 though 31 for each day of the current and following months, followed by a set of monthly dividers, and then yearly dividers for upcoming years.

After the limitation date is recorded in the lawyer's personal diary, the date is entered on the limitation reminder card. In addition, five follow-up reminder cards are prepared with dates of one year, six months, three months, two months, one month, two weeks and daily up to the final expiry of the limitation reminder card.

The index cards may be colour-coded so the lawyer can tell quickly which category the cards relate to. In particular, you may want to colour code the ultimate date card.

Each morning, the secretary pulls all cards filed under that date, then pulls the appropriate client files and places them on the lawyer's desk. Calendar cards regarding office administration or personal reminders are also placed on the lawyer's desk after they are pulled. The secretary double-checks the desk calendar to make sure that all cards filed for that date are present and accounted for.

At the end of the day, the secretary collects from the lawyer those reminder slips not dealt with and re-files them for bringing forward the next day. A client file is never shelved or even set aside until a pull date is entered into the reminder system.

7. Examples of Dates to Note in the Bring Forward System

(a) Client Services

(i) Due dates for

- trial court briefs and record filings
- expert reports
- probate proceedings
- filings with government agencies
- corporate or securities matters
- appellate briefs
- tax returns
- estate matters
- responses to correspondence

(ii) Renewal dates for

- licences
- copyrights, trademarks and patents
- writs
- judgments
- leases
- insurance coverage
- charters

(iii) Appearance dates in

- chambers
- trial court
- bankruptcy proceedings.

(iv) Review dates for

- wills
- trusts
- buy/sell valuations of business interests

(v) Expiration dates for statutes of limitations, builders' lien limitations and other statutory limitations

(vi) Closing dates for real estate transactions

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

(b) Office Management

Due dates for tax returns, GST and PST remittances

(i) Renewal dates for

- office lease
- insurance
- practice certificates
- notary certificates

(ii) Review dates for

- staff evaluations and raises
- accounts receivable

8. Management Review Procedures

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

Daily

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

Weekly

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

Weekly

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

Weekly (at least)

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

Periodically

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

Periodically

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

Periodically

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

Monthly

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

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

[§4.05] File Organization

1. Introduction

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

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

2. Organization of the File Folder

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

(a) manila file folder;

(b) pocket file;

(c) plastic folder;

(d) multi-file folder (with divided sections);

(e) concertina file.

All file papers should be

(a) fastened down (Acco or equivalent fasteners);

(b) securely fastened in file pockets; or

(c) placed in an envelope which is itself fastened.

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

The remainder of this section illustrates how some files may be organized.

3. Organization of Simple Files

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

- (a) file opening sheet
- (b) retainer letter or contingency fee agreement
- (c) client information checklist
- (d) dated notes of conversations
- (e) other correspondence and memos to file

Right-hand side: Documents or Pleadings

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

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

4. Organization of Complex Files

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

(a) Commercial Files

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

(b) Family Files

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

(c) Civil Litigation Files

Litigation files often contain the following sub-files: "pleadings", "client documents", "opposing party documents", "case law", and, if it is a personal injury case, "medical evidence" and "wage loss evidence". Other sub-files may include "expert reports", and "appraisals".

Alternatively, consider the following organization using a trial book.

- (i) Correspondence File
- (ii) Pleadings file or binder
- (iii) Trial Book—organized and segregated with tabs
  - index
  - trial plan
  - pleadings
  - opening comments to the court
  - statements of witnesses (separately tabbed)
  - direct and cross-examination questions
  - briefs of law on anticipated evidentiary problems; liability questions, quantum (separately tabbed)
  - discovery questions (to be read in or used in cross-examination) (separately tabbed)
  - outline of argument
  - closing statement

5. Corresponding Computer Files

An increasing number of active client files exist in paper *and* electronic format. Use ranges from storing client documents on specific files, to adopting an electronic case management program, to complete electronic filing of all incoming and out going documents.

[§4.06] Maintaining Communications

1. General

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

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

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

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

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

Therefore follow these guidelines.

(a) Confirm all instructions in writing and adopt a comprehensive form of retainer agreement (as discussed in detail §4.03, *supra*).

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

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

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

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

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

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

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

2. Keeping Written Notes of Conversations

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

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

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

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

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

[§4.07] Fees and Disbursements

1. Communication and Fees at the Beginning of the Retainer

One of the most frequent complaints by clients against lawyers is that the fees charged are excessive. All too often these complaints arise because the lawyer failed to specify in advance the basis upon which fees would be charged. Misunderstandings with clients often can be avoided if there is a full and frank discussion of fees at the commencement of the matter. Arrangements should be recorded on the file opening sheets and confirmed in writing: see §4.03.

The Practice Advisor, in (February–March 1994) 2 *Benchers' Bulletin* had this advice concerning fees (at p. 6):

> Are you discussing your fee with a prospective client *immediately and up front*? Or are you reluctant to discuss the fee? Are you *afraid of rejection* when the client hears how much the legal work will cost?
>
> *Clients want and have a right to know* the basis on which you will arrive at the fee.
>
> The Court of Appeal refused to allow a firm to charge the client a bonus for a "notably successful result", when that was not a term of the retainer. In *Arctic Installations (Victoria) Inc.* v. *Campney & Murphy* (1994), 86 B.C.L.R. (2d) 345, the Court said, "[b]ecause the solicitor, when he accepts a retainer, is contracting with his own client, he has a duty to advise the client fully and fairly concerning the terms of that contract".
>
> Discuss your charges and your *billing procedures*. If you charge by the hour, tell the client whether you will be billing for phone calls and travel time. Do you bill for postage, long-distance charges, and photocopies? If you are offering a flat fee for some services, indicate what is covered in the package price.
>
> If you are charging the client a *contingent fee,* you will strengthen your relationship with your client by an open and frank discussion of what costs are covered by your fee, and whether and when you expect disbursements to be paid by the client. You should also explain the risks for you and for the client, in particular the risk that the client may be ordered to pay *costs to the other*

side if unsuccessful. Remember that a contingent fee agreement must be in writing.

If you *ask for a retainer*, explain how a retainer is used. Often clients do not understand the concept.

Fees are often *a major worry* for clients. When you have openly discussed the fees, the client will be better able to focus on the substantive matters—as will you. Clients who do not understand the fee structure tend to get *angry when billed*, delay paying, complain about your work or blame you for their losses.

A potential client needs to know whether it is worthwhile to proceed at all—and *if your client can't afford you, you should both know that before you do the work.* You are practising your profession not only to provide a public service but also as a means of livelihood. Unless you generate the dollars necessary to fund the activity, you will not be in business.

Upfront discussion of fees gives you better options. You may decide to waive the fee, or work for less than you normally charge. You may decide to refer the client elsewhere, to ask someone else in your office who bills at a lower rate to handle the case, or simply to turn down the work and take your children to the park. You will not be happy if it is your client who suddenly initiates his or her *pro bono* status because you did not reach a clear understanding about fees. Talking about fees is important *not only for the client but also for you.*

2. Communication and Fees—Ongoing

No matter what the basis of payment, a lawyer must keep in touch with the client, and keep the client advised of progress on the file. If the lawyer is billing hourly, he or she should send out **monthly bills**, setting out the work done on the client's file during the time covered by the bill. This is a good method of keeping the accounting current, and letting the client know that the file is being dealt with. Firms that bill regularly (e.g., not six months after the service was performed) tend to look more professional to the client and get paid more quickly.

Do not be afraid to ask clients how they would like to be billed; for extended matters, most will **request monthly billing**, a few will prefer bimonthly. Another method of interim billing is to bill in stages. For example, the client might be billed after the initial opinion has been done, after the pleadings are closed, and after examinations for discovery. For extended matters, advantages of interim billing include knowing where things stand (for both you and the client), and exposing misunderstandings and unreasonable clients at an early stage.

Interim billing also is appropriate for "set fee" files, such as criminal files as these files may be billed in stages.

For contingent fee arrangements a form of interim account may be a useful reporting method. The fee may be left blank with a note saying that it is governed by the contingency agreement, or the fee may be estimated for the benefit of the client as if it were payable on an hourly basis, with a notation that no money is due or owing at present. If a lawyer tends to lose money on contingencies, these interim billings will have the added benefit of convincing your clients that they are getting a tremendous bargain for their money, which they are.

Billing should be done promptly at the completion of the service. It is good practice to schedule a time during the week to attend to billing. Consider meeting with or telephoning the client, in appropriate circumstances, to discuss the bill before its delivery.

The work must have been performed or the service actually rendered before billing, unless there are specific arrangements to the contrary. This applies to both interim and final billing.

In order to comply with Rule 3–62 of the Law Society Rules, it is necessary to maintain a copy of all fee bills. One copy should be kept in the client file. Another copy should be kept in a separate file that is filed alphabetically by client or numerically. It is usually preferable to keep separate files for "paid" and "unpaid" bills.

3. Setting the Fee

Basic rules regarding "Fees and Review" are set out in Part 8 of the *Legal Profession Act*. Other important points of reference for setting fees are found in Chapter 9 of the *Professional Conduct Handbook*, Chapter XI of the *Code of Professional Conduct*, and Canon 3 of the Canons of Legal Ethics. For an interesting review of the various types of fee structures see Derek Lundy, "Brave New Bills" (October 1998) *Canadian Lawyer* 14.

There are no set schedules on how much lawyers may charge. The method of calculating fees varies with each lawyer and with different types of legal services.

The following are the most common methods for arriving at a fee:

(a) A fixed fee

For example, a flat charge of $ X for a particular service such as a conveyance, an incorporation, an impaired driving defence, or an uncontested divorce, used only when you can calculate approximately how much time will be required;

(b) An hourly rate

For example, $ X per hour for every billable hour spent on preparing a complicated lease or handling a child custody dispute, used when you cannot predict how much time will be involved. For trials, many lawyers set a rate for each day or half day at trial;

(c) Percentage fee

For example, a charge of X % of the value of the subject matter when collecting debts;

(d) A contingent fee

For example, a charge of X % of what you recover on your client's behalf in an I.C.B.C. claim or a medical negligence action, used when the client has a fairly strong case and has no funds to pay the lawyer at the beginning. The percentage normally will vary depending on the amount of the client's claim, the degree of risk involved, and the stage in the proceedings the case is resolved; see §4.03(6) for rules governing contingent fees;

(e) *Quantum meruit*, or lump sum fee

For example, a fee based on a number of considerations, including the amount involved, the time spent, the result achieved, the complexity of the matter, the importance of the matter to the client, and the means of the client: *Yule* v. *City of Saskatoon* (1955), 17 W.W.R. 296 (Sask. C.A.). But see also the factors set out in s. 71(4) of the *Legal Profession Act*. These factors are referred to in the event that services do not fit conveniently into any other category and when, at the end of the file, the lawyer and the client are unable to agree on a fair fee.

Two Court of Appeal cases have examined *quantum meruit* billing. In *Arctic Installations (Victoria) Ltd.* v. *Campney & Murphy*, *supra* the Court of Appeal upheld the lower court's ruling that the law firm was not permitted to claim a "bonus" or "premium", in addition to its hourly fee. The court said a law firm must advise its clients up-front exactly how it intends to bill. When a lawyer accepts a retainer, he or she has entered into a contract with the client. The lawyer has a duty to advise the client fully and fairly concerning the terms of the contract. Moreover, if the firm agrees on an hourly rate with interim bills, it cannot add a bonus at the end just because the litigation was successfully concluded in the client's favour.

In *Nathanson, Schacter & Thompson* v. *Albion Securities Co. Ltd.*, 2004 BCSC 909, as in *Arctic*, no agreement had been made about the basis on which charges would be made. The firm followed a monthly billing practice (forty in total) and included a $250,00 bonus in the final account. The Registrar distinguished *Arctic*, finding "…the solicitors intended to bill a "fair fee", although agreement to do so was never reached with the clients, and the clients proceeded on the incorrect understanding that they were going to be billed at straight hourly rates". On appeal to the Supreme Court, and then the Court of Appeal, the clients argued that the firm was estopped from charging on a "fair fee" basis because of the established practice of hourly rate billing, and because the lawyers never explicitly informed the clients that they intended to charge a fair fee. The Court of Appeal upheld the Registrar and Supreme Court decision noting: "The test for a representation sufficient to found an estoppel is an objective standard. In any particular case, it is a factual inference whether a reasonable person in the position of the client would conclude that the solicitors' represented by words or conduct that fees would be charged on an hourly rate basis only. Here the Registrar has concluded that the monthly accounts and other circumstances did not objectively demonstrate to the Client a pattern of billing based exclusively on hourly-based charges": *Nathanson, Schacter & Thompson* v. *Albion Securities Co. Ltd.*, 2004 BCCA 515 at para. 23.

Lawyers sometimes bill solely by one method, but more often than not, particularly in complex matters, factors such as those mentioned in *Yule* and

Nathanson, s. 71(4) of the *Legal Profession Act* come into play.

Time spent on a file does not entitle you to bill automatically. In this respect, the law is clear: “what the lawyer has done”, “what the lawyer has accomplished”, “the magnitude of the interests concerned”, “the skill which the lawyer manifests on behalf of the client”, these are the things which count most in the assessment of the lawyer’s fee; not “the number of interviews the lawyer may have”, nor “the time spent” (see *Yule*).

Other considerations are as follows:

(i) Means of the client

The client’s ability to pay becomes a significant factor if the client’s means are modest; can the client pay in installments? Note Canon 3(9) of the Canons of Legal Ethics, which states in part that “[t]he client’s ability to pay cannot justify a charge in excess of the value of the service, though it may require a reduction or waiver of the fee”;

(ii) Complexity

Was special difficulty, novelty, or responsibility involved beyond that which is normally expected in the general field of the law concerned? Note that in *Connell Lightbody* v. *Yoo,* [1996] D.C.L. 96–5383 (S.C., Master), Master Tokarek expressed difficulty in “appreciating what was actually done by [the solicitor] and why it took so long to do it” despite the fact that the solicitor repeatedly explained that the matters in issue were complex, while providing summaries of the work and services related to each interim account. The court concluded that the mere stating that matters were complex and difficult without actually explaining how that led to greater fees did not in and of itself lead to the conclusion that the fees were reasonable;

(iii) Result

Were the instructions successfully and promptly carried out to the satisfaction of the client?;

(iv) Amount involved

For example, where a specific amount is involved, a lawyer might start an assessment of the fee at 15% of that amount, if warranted by the amount and nature of the work done, but consider that a 20% fee requires some special justification related to the particular case;

(v) Time

Bill the lesser of the number of hours actually spent on the task and the number of hours that would have been spent by the average practitioner.

Remember, however, that a lawyer’s retainer is a matter of contract, and that a departure from the retainer agreement may amount to a breach of contract. The retainer letter should clearly indicate the considerations that may apply in the lawyer’s calculation of the fee.

Note also Canon 3(10) of the Canons of Legal Ethics:

> A lawyer should avoid controversies with clients regarding compensation so far as is compatible with self-respect and with the right to receive reasonable recompense for services. A lawyer should always bear in mind that the profession is a branch of the administration of justice and not a mere money-making business.

It goes without saying that the principles of billing are easier to state than to apply. Practical guides are hard to find. The only real guide on which a lawyer can rely in settling on a proper fee is his or her judgment and conscience, coupled with the judgment of his or her colleagues in the firm. The article by Gordon Turriff, “Remuneration and Professionalism” in (November 1991) 49:6 *Advocate* 867 is recommended to all new lawyers. Gordon Turriff also wrote a paper entitled “Lawyers’ Remuneration” which outlines recent developments in this subject. You can find the article in CLE’s *Annual Review of Law & Practice—1994* at pp. 439–448 and more recent articles in subsequent editions of the *Annual Review of Law & Practice*.

4. Client Protection Devices

The primary client protection devices with respect to lawyers' fees are as follows:

(a) review of fees by the registrar (*Legal Profession Act*, s. 70);

(b) statutory prohibitions (for example, *Legal Profession Act*, s. 67, with respect to contingent fees); and

Clients should be advised of their rights under s. 70 and the time limits to exercise them.

The following excerpt from the Benchers' Bulletin (2006) describes the Law Society's fee mediation program, which can be an alternative process to a formal fee review:

Bencher's Bulletin

2006: No. 3 July-August

Volunteers wanted for fee mediation roster

No lawyer wants to end up in a dispute with a client over fees. Thankfully there are some time-tested practices to build a common understanding about fees — discussing fees at the beginning of a retainer, asking clients to enter into fee agreements and billing for legal services promptly.

But what if a legal bill becomes a point of controversy regardless, and both lawyer and client find themselves at an impasse? That is where the Law Society's fee mediation program comes in.

Fee mediation is an accessible and informal alternative to fee review before a registrar. Mediation can be requested by either a lawyer or client, but it will go forward only if both agree to participate. The success of each mediation depends on the engagement of the participants and the help of volunteer lawyers. That is were you come in.

If you are a BC lawyer who has experience in mediation, and you would like to make a contribution to the profession, consider volunteering for the fee mediation roster. The Law Society receives a modest number of requests for mediation each year, but it strives to fulfil those requests quickly, so having an active roster is important. The Society selects a small number of lawyer-mediators for the roster, as well as some non-lawyers who are members of the BC Mediator Roster Society or equivalent body. If you would like to be considered, please let us know.

In brief, here is how the program works.

Fee mediation – how is one requested?

Either a lawyer or client who is in a fee dispute can request a mediation by completing and submitting an application to the Law Society. After checking to see if both are agreeable to mediation, the Society appoints an independent, neutral mediator from its roster. Mediators are volunteers and receive a very small honorarium from the Society, along with reimbursement of reasonable expenses. The views of the lawyer and client who participate in the mediation are taken into consideration on selection of the mediator.

What does the mediator do?

Once appointed, a mediator independently contacts the lawyer and client to arrange a mediation of up to three hours. The form of mediation — such as a face-to-face discussion or a telephone meeting — is up to the mediator and participants. The mediator encourages a lawyer and client to explore their interests, develop and consider potential options for resolution based on those interests and try to reach a mutually agreeable resolution.

The mediation is on a "without prejudice" basis. Any negotiations during the fee mediation process cannot be used in evidence in any subsequent proceedings, including a court proceeding or fee review by a registrar of the Supreme Court of BC.

Participation in the fee mediation program is entirely voluntary. Neither the client nor the lawyer is in any way obliged to opt in and either can withdraw from the mediation at any time.

Because the results of a fee mediation are not binding on the parties, fee review remains an option after fee mediation if either party wishes to pursue it, provided the matter has not been settled and the time limit for applying for the review has not expired. The fee mediation service is only available if the fees have *not* already been subject to a fee review.

How do mediators offer to join the roster?

If you would like to be considered for the fee mediation roster, please send an expression of interest and a summary of your background experience to Lynne Knights, Complaints Officer, at the Law Society office (see page 2) or by email to lknights@lsbc.org.

5. Lawyer Protection Devices

To prevent client complaints and claims, and to recover full payment from the client, the lawyer has the following protection devices:

(a) early discussion of fees;

(b) keeping the client informed;

(c) keeping time sheets to record the time spent and work done on a file;

(d) interim billing;

(e) prompt billing on completion;

(f) retainers and advance payments on account of fees and disbursements;

(g) solicitors' liens on papers or on property received or recovered; and

(h) providing a full and final report to the client along with the bill.

6. Solicitor and Own Client Reviews

Clients should be encouraged to discuss the bill with their lawyer before applying to a registrar; there may be a genuine misunderstanding about what the lawyer had to do to resolve the client's legal problem.

Under s. 70(1) of the *Legal Profession Act*, a client charged with a lawyer's bill may apply to a Supreme Court Registrar, before or after payment of the bill, for an appointment to review the bill. The lawyer must receive five days' notice of the appointment, and of any affidavit in support (Supreme Court Rule 57(29)). Unless special circumstances exist, the client must have the bill reviewed within one year after receiving it, or within three months after paying it, and will be barred from a review if the lawyer has received a judgment for the amount of the bill (s. 70(11)).

Section 71 states that a registrar is responsible for conducting review hearings; however, a master has the same powers and jurisdiction as a registrar (Rule 53(2) and *Supreme Court Act*, s. 11(8)). In this chapter, the review officer is referred to as the registrar.

Unless special circumstances exist, the lawyer must pay the costs of the review if 1/6 or more of the total amount of the bill is subtracted from it, otherwise the client must pay the costs of the review.

7. Solicitor and Client Collections

By refusing to pay or otherwise challenging a lawyer's bill, a client waives solicitor-client privilege to the limited extent necessary to resolve the dispute. Accordingly, lawyers have the right to bring an action in contract to recover fees (*Wilson, King & Company* v. *Torabian* (1991), 53 B.C.L.R. (2d) 251 (S.C.)).

A lawyer may bring an action in Small Claims Court (for actions under $25,000), or in the Supreme Court ($25,000 or over), or, under s. 70, a solicitor may apply to have an account reviewed against his or her own client (on the expiration of 30 days after the bill has been delivered or sent, and after having served the client with five days' notice in writing of the appointment and any affidavit in support). On conclusion of the review, the registrar may issue a certificate, which operates in the same manner as a judgment. The fee review is a nullity if the lawyer applies before the 30 days expire (*Bull, Housser & Tupper* v. *Mr. T. International Agencies Ltd.* and *Daljit Toor* (6 July 1999), Vancouver Registry, CA022827).

Naturally, your first step in proceeding against an overdue account is to send out reminder letters. Next, you should send a demand letter if the client fails to respond or if it becomes clear that the client does not intend to pay.

Your method of proceeding will depend on a number of factors, such as whether your relationship with the client is still friendly, whether the client can afford to pay, whether the client has retained another law firm, where the client resides, and the likely outcome of the dispute. In some circumstances, it may be worth reducing part of a disputed amount in exchange for payment and the abandonment of any claims by the client; after all, a fee dispute can waste much of your time, and the client will complain to others about you if the dispute is not settled.

If the client refuses to pay because he or she believes the amount of an account is too high (and is not disputing the validity of the retainer), it will often be easier to pursue a review rather than a judgment. If the client does not respond to demand letters, commencing an action may be the better route, because the client may not defend, and the lawyer may be able to obtain a summary judgment with little cost and effort (particularly in Small Claims Court).

8. The Registrar's Perspective of Solicitor and Own Client Reviews[4]

A good part of the time of registrars is spent reviewing bills between solicitor and client. A review hearing is conducted like a trial. The onus is always upon the lawyer to prove the bill; accordingly, the lawyer's case is presented first. Witnesses are called; parties may be subpoenaed. At the conclusion of the evidence, submissions are received from the lawyer, the client and, if necessary, the lawyer in reply. The lawyer arranges for attendance of a court reporter if a transcript of the proceedings is required. A party to a review may appeal the registrar's decision to the Supreme Court under s. 75 of the *Legal Profession Act*.

Section 69 of the *Legal Profession Act* and Supreme Court Rule 57(35) prescribe the requirements of a proper bill:

Section 69(4)

> A bill under subsection (1) is sufficient in form if it contains a reasonably descriptive statement of the services with a lump sum charge and a detailed statement of disbursements.

[4] Prepared originally by Gordon Turriff for the CLE course "Practice Before the Registrar – 1984" (September 1984); reviewed in February 1997 and March 1999 by Jacqueline Morris, then staff lawyer for the Law Society of B.C. For an update regarding what the Registrar will consider on a Section 70 Review, see Registrar Carolyn P. Bouck, "Assessments of Costs and Reviews of Lawyers' Accounts" (September 2004) Vol. 62 Part 5, *The Advocate* 679-686, at 683-686.

Rule 57(35)

> A lump sum bill shall contain a description of the nature of the services and of the matter involved as would, in the opinion of the registrar, afford any solicitor sufficient information to advise a client on the reasonableness of the charge made.

In an application by a lawyer, the registrars will decline to review "bills" which are not sufficiently descriptive of the work done. A "one-liner" bill—"To all professional services rendered in connection with matrimonial matter"—is undoubtedly not sufficiently descriptive (*Re Campney and Murphy* v. *Fong*, [1982] 1 W.W.R. 446 (B.C.S.C.)). But common sense and the knowledge possessed by the client must be taken into account. In any event, the registrar can always order particulars or details of the services for which the bill was rendered.

The registrar will decline to review disbursements claimed by a solicitor where they are not itemized (*Re Hastings* (7 August 1981), Vancouver No. A811608).

It is usually not enough for a solicitor to direct an articled student to appear to speak at the review of a bill, because the student will not have personal knowledge of the work done. A client is normally entitled to expect the lawyer who performed the services to be present. The registrar may decline to review the bill where someone else attends, even if the client has not appeared to raise an objection (*Schlecter* v. *Ruhr* (1957), 25 W.W.R. 178 (B.C.C.A.)). One potential solution is for the solicitor is to file an affidavit containing information of the kind considered to be relevant under the *Legal Profession Act*, and to send the student only if the lawyer is sure that the client will not attend. However, Registrar Carolyn P. Bouck suggests that since the onus of proving the reasonablenss of a bill rests with the lawyer, the lawyer who performed the work described in the bill must be available to give evidence and be available for cross-examination and "affidavit evidence will rarely, if ever, suffice" (See Registrar Carolyn P. Bouck, "Assessments of Costs and Reviews of Lawyers' Accounts" (September 2004) Vol. 62 Part 5, *The Advocate* 679-686, at 683).

Section 71 sets out the criteria that must be in the mind of the registrar when he or she is called upon to determine the propriety of a lawyer's bill.

The lawyer should remember that time spent is only one criterion. The lawyer may need to prove what is an appropriate hourly or daily rate. Of three lawyers who use the same rate, one may be hopelessly unproductive, another just slow, and the third, greedy. See, for example, *Treasury Solicitor* v. *Registrar*, [1978] 1 W.L.R. 446 (Q.B.), which emphasizes that an arithmetic bill—hours multiplied by hourly rate—often does not accurately reflect the value of the solicitor's work and often undervalues it. It suggests that "hours by hourly rate" is only a "cross-check" of value and that it is not itself indicative of value.

The principles for adducing evidence when a party and party bill is presented for assessment (see chapter 7 of the *Practice Material: Civil Litigation*) apply with equal force to the review of a bill between solicitor and client. Counsel for a client should file the client's affidavit, be prepared to call the client as a witness and be ready to adduce any other evidence which is necessary. This evidence can include, under Rule 57(36), another solicitor's expert opinion as to

> . . . the nature and importance of the services rendered and of the matter involved and the reasonableness of the charges made.

The solicitor has the same right to call opinion evidence. The weight to be accorded the expert evidence is a matter for the registrar, who may be influenced by the fact that the expert gave an opinion with knowledge of the amount of the bill. The registrar has jurisdiction to decide whether a lawyer was retained.

Most reviews are the product of the failure of lawyers to take the time, when they get instructions, to explain to their clients the way in which the fee to be charged will be calculated—in a general way at least—and to keep their clients informed about mounting charges and the alternatives that might be available. Some reviews result because lawyers have simply stopped treating their clients in a polite way.

9. Chapter 9 of the Handbook—"Fees"

Chapter 9 of the *Professional Conduct Handbook* provides that a lawyer must not:

(a) charge an excessive fee;

(b) pay a referral fee to any person other than a lawyer, or act for a client when the lawyer knows someone other than a lawyer was paid a referral fee;

(c) share, split or divide fees with any person other than a member of the Law Society or an employee of the lawyer's firm;

(d) fail to apportion fees and disbursements equitably when acting for two or more clients in the same matter (in the absence of an agreement to the contrary); or

(e) fail to fully disclose any hidden fees to the client, or any financial interest the lawyer

has in a person to whom disbursements are made, such as an investigating, brokerage or copying company. A lawyer may not accept a hidden fee or reward that has not been disclosed.

10. Disbursements

(a) General

Disbursements paid on behalf of a client may be billed to that client provided they are for bona fide specific amounts. Typically they include such transactions as corporate and land title searches, registration fees, medical reports and the like. Such amounts should be separately shown on the fee account under the description "disbursements" or "amounts paid on your behalf".

It is a customary practice to charge as a "disbursement" certain costs that may potentially include an element of "overhead fees". Such costs are:

(i) photocopies (number of copies actually used, multiplied by the rate per copy);

(ii) delivery charges, including courier, taxi and postage, provided that the delivery charges in excess of the postage rate were not incurred because of some tardiness or default on the part of the lawyer;

(iii) long-distance telephone calls at the lower of actual cost or minimum station to station rate where the lawyer uses a private Watts line or similar service; and

(iv) automobile traveling expenses at a reasonable rate per kilometer parking and actual air, taxi and similar transportation expenses directly incurred on a client's behalf providing that the charges are reasonable in amount and incurred with the client's knowledge and consent.

When disbursements, such as for travel expenses, are incurred for the benefit of two or more clients, the actual expenses must be pro-rated on a reasonable basis, and charged to the client accordingly.

(b) Other Overhead Fees and Charges

In certain cases an amount for overhead or administration costs can be specifically allocated to the handling of a client matter. Such amounts might typically include word processing charges and file opening fees.

Such amounts may be shown as a separate fee or as an amount included in the fee for services. In no circumstances may the foregoing items be described on the fee account as "disbursements" or "amounts paid on your behalf" or similar descriptions.

(c) Agency Fees

Fees paid to other lawyers under agency arrangements are often charged as a disbursement. This practice is permissible, provided that the agency arrangement is entered into with the client's prior consent and is reasonable and necessary and provided that it is not entered into on a regular basis for the purposes of fee splitting.

When a person not connected with the law practice performs agency or research work this work may only be done with the client's prior agreement and the amount charged as a disbursement cannot exceed the amount actually paid.

When a cost is incurred on behalf of a client in a transaction carried out by a management company or a person or firm with whom the lawyer is not dealing at arm's length, only the direct cost may be charged as a disbursement. No amount may be included for labour, service, overhead or profit.

Subject to the foregoing, the overriding consideration in determining amounts to be characterized as disbursements on a fee account is that **such amounts must be limited to amounts actually paid or incurred on behalf of the client.**

11. The GST and PST and Client Billing

The GST is a form of value-added tax, with each business in a chain of supply is required to collect a tax of 5% of the sales price from its customers. "Service" is very broadly defined and clearly includes legal services. Most legal services are a taxable supply. Every person who carries on a commercial activity, which includes the practice of law, is required to register with the Canada Revenue Agency, and to collect GST on all supplies of goods and services. Since legal services are a taxable supply, lawyers are required to collect 5% tax on the fees (and on some disbursements) they charge their clients. The tax which the business must remit to the government is the net of total tax collected from

clients in a given reporting period, less the total tax paid to suppliers (called "input tax credits") for the same period.

Partners in a firm do not have to register individually. The partnership is considered to be carrying on the commercial activity, for GST purposes, as a separate entity from individual partners. Associates, articling students and employees of a corporation or the Crown are not required to register. Generally, sole practitioners must register and obtain a GST number.

The *Social Service Tax Amendment Act (No. 2) 1993*, imposes a 7% tax on legal services. Generally speaking, fees for services of lawyers (and notaries) that come within the definition of the practice of law under the *Legal Profession Act*, and specified disbursements (e.g., secretarial services and word processing charges), are subject to the tax. Generally, clients who live or carry on business in B.C. must pay the tax, unless the legal services have no connection to British Columbia, as defined. Thus, most law firms in British Columbia will have to register to collect the tax.

More information about the PST tax is available in the Act and in the *Social Service Tax Act* Regulations, and is available in Consumer Taxation Branch and the Law Society.

12. Solicitors' Liens

If you bill a client and a client doesn't pay or a client retains another lawyer when you have outstanding fees and disbursements (billed or as yet unbilled), you may be entitled to a lien—either a retaining (or possessory lien) or a charging lien. These two types of solicitor's liens and the procedures connected with them are discussed in the article by Jacqueline Morris and Felicia Folk "Getting Paid: Asserting and Defending a Solicitor's Lien" in (January 1997) Vol. 55 Part 1 *The Advocate*, 71–78, reproduced and printed with permission of the authors.

The article "*Whose File is it Anyway?*" is also of interest regarding solicitors' rights and is found at §4.09 and on the Law Society website, by following the Practice Support links http://www.lawsociety.bc.ca .

14. Final Reporting Letters

    The absence of a final reporting letter can lead to dissatisfaction by clients and complaints about fees. It is not appropriate to simply send a covering letter with your account at the end of the file.

    A final report should briefly summarize what has been done for the client and what result has been achieved. Most lawyers send a final reporting letter to buyers and banks (on the standard form) on completion of a conveyance, where the client is advised that the transfer and mortgage have been accepted for registration. However, some lawyers forget to do this very simple letter when acting for sellers. Many lawyers do not provide any kind of final report to wills litigation, estate, family or criminal clients. Not only does this failure not properly complete a file, but you also miss an opportunity to invite future business from the client and from friends and acquaintances. Some firms go a step further by requesting feedback from the client to improve the firm's services.

[§4.08] File Closing

The last acts you will need to perform for most files are to properly close, store and eventually destroy the file. Those topics are discussed in the following article by Felicia Folk, Jacqueline Morris and Karen Munro "Closed Files: What shall we do with them?" (May 1996) Vol. 54 Part 3 *The Advocate*, 403–416, reproduced with permission of the authors.

See also *Managing Your Law Firm* (Vancouver: CLE, updated), Chapter 17.

See

Closed Files: Retention and Disposition

[§4.09] Whose File is it Anyway?[5]

See

Whose File is it Anyway? Who Owns Client File Documents when the Retainer Ends,

[5] The following article by Jacqueline Morris, Felicia Folk, and John Vamplew was first published in January 1994, 52:1 *Advocate*, 87-99. The authors concluded that the case of *Kingswood Explorations* v. *Elkind*, *infra* appeared to be an anomaly in that a claim of solicitors' lien on corporate records was successful. The authors note that a recent Tax Court of Canada decision seems to indicate that under limited circumstances a solicitor's lien on a corporate minute book will be valid: *Kaiser* v. *Canada*, 2002 TCJ, No. 196, April 2002.