



Winding Up a Firm: A Checklist

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In most cases lawyers join and leave firms and the firms continue on in business. There are sections of the Law Society Rules and *Professional Conduct Handbook* to cover these situations. However, when a group of partners decides that a firm is going to dissolve, considerations arise that are different from winding up a solo practice or having a lawyer or group of lawyers leave a firm. If you are faced with the situation of having to deal with the wind up of a firm, the following is meant to guide your thoughts on the issues to be considered and tasks to be undertaken. Needless to say, there may be other matters for you to consider which are not included here.

This paper is not intended to deal with a situation involving the sale of a practice. If you are considering selling your practice, kindly contact the [Practice Advice Department](#) at the Law Society for further information (tel: 604-669-2533).

Rule 3-80 of the [Law Society Rules](#) provides a starting point for winding up a firm. In particular, Rule 3-80 requires that the report to the Law Society as to the matters raised in Rule 3-80 occurs within 3 months of a lawyer leaving a firm in BC. Other pertinent sections of the *Legal Profession Act*, the Law Society Rules and *Professional Conduct Handbook* are raised in the context of this paper.

If your firm has a partnership agreement, review it relative to dissolving the firm.

Practice Considerations

1. When a firm dissolves, lawyers will be faced with the decision to continue in private practice, to take a position as in-house counsel or to retire from practice. To continue in private practice would necessitate having a letter sent to all clients for whom the lawyer was the responsible lawyer, pursuant to [Appendix 4](#) of the *Professional Conduct Handbook*, and reviewing the considerations raised by [Chapter 6](#) dealing with Conflicts of Interest between Clients and in particular subsection 7.1 dealing with conflicts arising as a result of transfer between law firms. Lawyers should also review [Appendix 5](#) for additional information on dealing with conflicts arising as a result of transfer between law firms.

* This article is based on a paper originally prepared by Felicia Folk and Jacqueline Morris on Winding Up a Sole Practice.

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2. Moving to a position as in-house counsel or retiring from practice involves having to make a disposition of ongoing files and closed files in the context of the firm windup. Lawyers considering taking this step need to consider the points raised below.
3. The Law Society requires notification under Rule 2-8 of all of the lawyer's places of business and any changes therein and of the status or proposed status (practising, non-practising, retired) resulting from the wind up of the firm and the effective dates thereof.
4. The annual practice declaration is due September 30 of each year. Consider how this will be completed and filed by all lawyers in the firm before the break up.

Disposition of Open Files

5. There will be a disruption in your practice that in most cases will necessitate deciding to cease to accept new files to allow time to accomplish the tasks necessary in order to allow an orderly wind up of the firm's business. This would include the transfer of files, going through the topics on this checklist, as well as dealing with other matters that may be required in your circumstances.
6. Decide who is continuing in practice, who is going in-house and who is retiring. Discuss with the clients and seek instructions on the disposition of their open files. Before transferring files, discuss possible conflicts between your clients and the clients of the lawyer or firms taking over your files.
7. Contact current clients in writing to notify them that you will be closing your practice. Advise them that you intend to transfer their files to another lawyer unless instructed otherwise. Clients must be told that they have a choice about where files are sent, but their silence will be taken as an agreement to the proposed transfer. (You may wish to include other matters as noted herein.)
8. Contact your firm's accountant and consider reviewing all your time records, outstanding files and other financial matters with them. In particular:
 - a) Prepare accounts for work in progress and outstanding disbursements to date for all files to the date of termination, for all lawyers in the firm. This should be straightforward for files that are billed on an hourly basis.
 - b) If the billing is on a contingency fee basis, refer to the provisions in the contingency fee agreement relating to the amount to be paid if the lawyer withdraws. If the contingency fee agreement does not provide for such an eventuality, you should try to make arrangements with the client and the new lawyer. Otherwise, *quantum meruit* arguments will have to be made.
 - c) On continuing files that are not billed on a time or a contingency basis, an agreement must be reached between the partners on the division of the Work in Progress (WIP) up to the time of wind up of the firm and the WIP thereafter.

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Necessarily there will be accounting and disclosure requirements to ensure the fair treatment of the firm, the lawyers who put time into the files and the lawyers who take over conduct of the files.

- d) Note any outstanding accounts and accounts receivable generated by the wind up of the firm. These outstanding accounts will necessarily be collected over a period of time—consider how these will be collected, by whom, what records will be kept and by whom, who has access to these records and, not the least, how the proceeds (less costs of collection) are going to be distributed.
- e) Send all accounts to the clients.
- f) If necessary, assert a solicitor's lien over files. (Note that a solicitor's lien is usually possessory—you must hold onto the file—which is counter to your intention to dispose of your practice. It is better to make arrangements with the new lawyer. See note below.) If this is necessary, again agreement will be required as to who will assert the lien, how the account will be settled and how the proceeds will be accounted for and divided among the partners.

NOTE: Even after you cease membership in the Law Society, you may collect fees for work done while you were practising. You may also be compensated for files transferred to another lawyer by receiving a percentage of future billings. (The Ethics Committee decided this is not a “fee split” within the meaning of Chapter 9, s.6 of the *Professional Conduct Handbook*.)

- 9. For each active file being transferred to another lawyer, prepare a detailed memo on the nature of the file and the work that remains to be done on it. Limitation and trial, chambers or examination for discovery dates among others, should be prominently noted.
- 10. If there are any imminent dates, discuss how to proceed with your client and the lawyer who will be assuming the file. If necessary, seek instructions to obtain adjournments or extensions and notify your client and opposing counsel.
- 11. Legal Aid referrals are not transferable to another lawyer. If a legal aid file is being transferred, call the referring office to request a change of counsel for the client. The client will have to attend at the Legal Services Society office to get the new referral. You should then send in your referral form as a final bill, marked “Final.”
- 12. For insurance purposes, you may need to copy portions of files which are transferred to another lawyer or returned to the client. For further guidance, refer to the article by F. Folk and J. Morris — “Closed Files—Retention and Disposition” (revised June 2000), available from the Law Society.
- 13. For all open family and civil litigation cases where you are the counsel of record, make arrangements to get off the record or have a change of solicitor filed or have the client file a Notice of Intention to Act in Person, as appropriate. Refer to Rule 16 of the *British*

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Columbia Supreme Court Rules. You may also arrange for the new counsel to remove your name from the record.

14. For criminal cases, send a letter to the Criminal Court Registry advising of a change of counsel or that you have ceased to act, and copy this letter to your client and to the Crown.
15. Seek instructions from corporate clients for new addresses for their registered and records offices, prepare the necessary resolutions and notices and ensure that the notices are filed with the Registrar of Companies. Seek instructions on changing the attorney and BC head office for extra-provincial companies and file the appropriate forms. Remember that you will continue to be responsible for any corporate records where instructions are not received to change the addresses, and you will have to continue to allow access to those records.
16. File a change of address notice if the practice or any lawyer is named in any builders' liens, trademark registrations, registered or records office for corporations or other address for service or notice requirements.
17. Decide what will happen with any original wills. If they are to be transferred to another lawyer there is the matter of filing new Wills Notices. Remember that the partners of the dissolving firm continue to be responsible for any original wills in the firm's possession unless you can find another lawyer to take them. The Law Society will only store original wills in very exceptional circumstances.
18. Ideally, a new wills notice should be prepared and filed with Vital Statistics after consultation with the client, if possible, to note the new storage location of each original will. Vital Statistics charges a flat fee of \$1,500 for any number of wills notices in excess of 100 notices. An individual notice must be filed for each will, but pre-approved computer generated notices will be accepted. Filing a notice with Vital Statistics is voluntary. However, notice to the Law Society under Rule 3-80 is mandatory.
19. In order to advise the public and clients you have not been able to reach, you may place an ad in the local newspaper that the practice will be closing as of a specific date, who will be continuing in practice and who may be contacted after that date about files or wills and their new practice addresses and contact information. Keep a copy of these advertisements.

Disposition of Closed Files

20. The disposition of closed files presents a particular problem when winding up a firm. Often there are hundreds if not thousands of closed files—many of which will relate to matters handled by lawyers who have since left the firm, retired, died or ceased practice. Arrangements must be made for the files to be available for future retrieval and reference and for their eventual destruction. The Law Society needs to be advised as to the files' whereabouts and what arrangements have been made for appropriate parties to access these files. The existing partners could make at least two broad arrangements: First, all closed files could be divided among the partners and each partner makes independent

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arrangements for the storage, retrieval and destruction of the files. Alternatively, the firm could contract with Iron Mountain or an equivalent records storage facility for the storage of the files. (Consider setting a reserve to cover the storage costs up to and including the final destruction of all files.) In this latter case, the Law Society will require at least one contact person who will maintain the list of files and will be responsible for their retrieval and eventual destruction. It may be appropriate to review closed files to determine whether they could be stripped and material returned to the clients. Alternatively files could be stored, destroyed or transferred to the lawyer who will be assuming ongoing files, depending on the circumstances. For further guidance, refer to “Closed Files—Retention and Disposition” (revised June 2000), available from the Law Society. Return client property held in safekeeping to the owner.

Undertakings and Obligations

21. Consider all files with ongoing obligations, such as undertakings and make arrangements to be relieved of them or to have them transferred to another lawyer. Obtain written acknowledgement for the change in location and confirmation of all undertakings and trust obligations. Keep copies for your records.
22. Wills should be reviewed to determine whether any lawyer, past or present, has been named as executor or trustee. Consider asking the testator to revise the will or to add a codicil to appoint someone else. If the testator cannot be located, you may wish to attach a renunciation to the will (which may or may not be effective). Arrangements must be made as to the storage of the will. The Law Society needs to be advised as to the disposition of the wills and wills indices.
23. If you have any certificates of title or other important documents and records held in safekeeping, determine if they are held pursuant to undertakings, conditions of trust or an agreement which will continue to apply. Seek written instructions from the necessary parties to alter the arrangements and to transfer the documents to a new location. Again the Law Society needs to be advised as to the disposition of these titles, important documents and records and other valuables.
24. Trust and general account records must be retained for 10 years pursuant to Law Society Rule 3-68. Again, since the firm is dissolving, appropriate arrangements must be made for the storage of these records, their retrieval and eventual destruction. Consider using Iron Mountain or equivalent storage for these records and appointing one or more people as contacts for these records. Note that Revenue Canada also has requirements for the keeping of records.
25. Corporate records must be kept for 10 years if you are the last registered and records office for a company, as that is the time allowed for restoration of a company after dissolution. Ongoing companies will have their registered and records office and corporate records transferred to new counsel. Consider that there will be companies that are on the road to being struck—who will maintain these records and act as an address for service on these

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files? Appropriate resolutions should be obtained to transfer corporate records as directed by the client. Notices of change of offices should be filed with the Registrar of Companies.

Finances

26. Review trust accounts. After billing clients and deducting fees where appropriate, either return trust funds to clients or other persons on whose behalf they were held or, on your client's direction, transfer funds to the lawyer who will be assuming the client's ongoing file. Advise clients that their silence will be taken as an agreement that the funds will be transferred in trust to the lawyer receiving the client's file unless contrary written instructions are received.
27. If trust monies are held pursuant to agreements with or undertakings to third parties, the consent of those parties will be needed before the monies can be transferred. Estate and trust files may have funds being held for substantial periods of time and such funds may be placed in long term deposits. Banks may not agree to change the name on these long-term investments and as such particular arrangements must be made. It may be that the original trust account of the firm will have to be maintained until all transactions for which the funds are held in trust are completed.
28. If you hold any unclaimed trust funds, Law Society Rules in Division 8, rules 3-81 to 3-87 set out the procedure for paying them to the Law Society.
29. When all the trust monies have been disbursed, inform the bank that the trust accounts can be closed.
30. Review Law Society Rules 3-70, 3-72, 3-73, 3-74 and 3-78 and arrange for the preparation of your last Form 47, which should be filed within three months of the termination date of your practice provided that this is not over the 12 month period for filing the Form 47. Contact the firm's auditors and give instructions on the wind-up of the trust accounts and on the requirement for the final trust audit.
31. Pay any outstanding firm liabilities including payroll, trade debts, GST, PST, WCB, etc. Consider making arrangements in the event of a reassessment by any government of the required remittances. Consider any outstanding lawsuits of the firm concerning disputed liabilities.
32. Determine whether it will be necessary to leave open a general account with a reserve to satisfy any outstanding obligations or for receipt of any accounts receivable after the closure of your firm. Determine how you will pay for ongoing matters such as the storage of closed files.
33. Consider all outstanding liabilities such as long-term leases for space or equipment and how these will be resolved.

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34. Consider all practising insurance and excess insurance and whether or not the firm will apply for a refund of all or any portion of these premiums and, if so, what alternate arrangements must be made by the lawyers in the firm.
35. Discuss the tax implications of the wind-up of the firm with the firm's accountant. The accountant (or other mutually agreeable individual) may be helpful to act as a mediator in the event of disagreement between the parties.
36. Consider how all funds realized on the disposition of all assets will be divided. Consider how any losses arising from the wind-up of the firm will be covered.

Staff

37. Give staff sufficient notice of termination or compensation in lieu of notice. Verify statutory notice requirements. Ensure sufficient experienced staff will continue for whatever period of time is necessary to wind up the firm.
38. Make arrangements to cancel or otherwise deal with any benefit plans for employees.
39. Direct your accountant or bookkeeper to prepare Records of Employment, calculate all necessary holiday pay or other benefits accrued, prepare T-4 slips and make all necessary remittances to Canada Customs and Revenue Agency.
40. If you have an articling student(s), make arrangements to assign the articles to another lawyer who is qualified to act as a principal if the articles are not being continued by a former member of the firm.

Premises and Office Equipment

41. Contact your landlord at the earliest possible date and, if necessary, make arrangements to sub-let rented premises or to assign the lease.
42. Arrange for the disposition of the firm's assets. Consider seeking your firm's accountant's advice relative to the valuation and disposition of all firm assets. Contact law schools, community colleges and courthouse libraries to see if anyone would consider purchasing all or part of your library. Post notices in the local courthouse barristers' lounge.
43. When disposing of computer equipment, take steps to erase client confidential information on the hard drives. This may necessitate having the hard drives removed and destroyed.
44. Arrange to dispose of office furniture and equipment. Where physical assets are sold to individuals without a tax number, provincial sales tax must be collected and remitted to the Province. Otherwise, the purchaser remits the taxes owing.
45. Where equipment has been leased, contact leasing companies to terminate leases and maintenance agreements or to arrange assignments. When neither cancellation nor

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assignment is possible, you should have available a pool of funds sufficient to continue the payments on the leases or to pay them out.

46. Notify publishers of law books and legal directories and cancel subscriptions to reports and journals. Send letters to all suppliers advising them that the practice will be closing and notifying them of the address to which future correspondence may be directed.
47. Notify public utilities. Arrange to forward incoming telephone calls, mail, email and faxes as appropriate.
48. If you have a web page, arrange for it to be cancelled. Consider the disposition of intellectual property such as internet domain names, email addresses and any service marks. If you have been using internet services such as an Application Service Provider (ASP) or electronic work spaces, ensure all client information is removed and erased.
49. Consider how the firm's electronic data will be stored, archived and retrieved (email, electronic documents and images, accounting data, electronic databases, case management entries, etc.) that may be required in the future for liability or other purposes. Consider how this data will be reviewed, accessed and deleted over the passage of time.

Memberships and Insurance

50. Discuss membership status with the Law Society. If you resign as a member, the Law Society will not refund your membership fee for the balance of the year. However, a partial refund may be possible if you move to a non-practising or retired status. Membership in the Law Society will lapse if you fail to pay the annual fee by December 31.
51. No refunds are given for Canadian Bar Association memberships.
52. Make arrangements to cancel practice insurance. You will receive a pro rata refund from the date of cancellation. Currently coverage under the group compulsory professional liability insurance program will continue, free of charge, for future claims covered by the program arising from professional services rendered while you were insured, subject to the terms, conditions and limits in place at the time the claim was reported (tail insurance). To continue excess coverage, contact a broker or the Law Society's brokers—Jardine Insurance Services. If you have any concerns, call the Law Society insurance department.
53. Contact your broker to discuss terminating your property and general liability insurance, and obtaining coverage for your stored files and records.

Notify the Law Society

54. Review Law Society Rule 3-80 and send a letter to notify the Society of:
 - a) date of termination;

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- b) disposition of open files;
 - c) disposition of closed files;
 - d) disposition of corporate records;
 - e) disposition of wills, wills indices, titles and other important documents and records;
 - f) disposition of any trust accounts and trust funds and the date trust accounts were closed;
 - g) disposition of clients' valuable papers, personal property, etc.;
 - h) details of any continuing personal appointments such as executorships, committeeships, etc.; and
 - i) the address and telephone number at which all lawyers at the firm can be contacted.
55. Consider making reports to the Lawyers Insurance Fund on any potential liability problems on files, prior to the break up of the firm.
56. Determine if any members of the former firm can use any part of the name of the former firm. Under Rule 2-8, all members must notify the Law Society of the names under which they will be carrying on business. In the absence of an agreement, no part of the old firm name should be used by a former partner unless it is the portion that relates to their own name or another living person with whom he or she may form a new partnership.