

# Winding Up A Sole Practice: A Checklist

Updated by Barbara Buchanan, Practice Advisor:  
June, 2007



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If you are thinking about leaving practice, the following will assist you with decisions and tasks to be completed. Since practices vary greatly, there may be other matters for you to consider which are not included.

This paper does not specifically deal with the sale of a practice. If you are considering selling your practice, you will need to consider valuation and accounting issues which are beyond the scope of this paper.

## Short Checklist

- A. Dispose of open files.
- B. Deal with closed files.
- C. Recognize any ongoing obligations.
- D. Close trust account(s) and file last trust report (may require an accountant's report).
- E. Give notice to staff.
- F. Terminate rental agreements and leases.
- G. Change Law Society membership and insurance status.
- H. Notify the Law Society pursuant to the Rules.

## Detailed Checklist

### Disposition of Open Files

1. Decide when you will cease to accept new files to allow time to accomplish the applicable topics on this checklist, as well as any others that may be required in your circumstances.
2. Before transferring files, discuss possible conflicts between your clients and the clients of the lawyer or lawyers taking over your files.

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3. 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 topics in this letter such as paragraphs 4, 6, 7, 9 through 14 and 23 below.)
4. Review all your time records and files:
  - (a) Prepare an account for work in progress and outstanding disbursements to date of termination of practice. This should be straightforward for files which 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) Note any outstanding accounts.
  - (d) Send the account to the client.
  - (e) If necessary, assert a solicitor's lien over the file. (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.)

**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, Rule 6 of the *Professional Conduct Handbook*.)
5. 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 should be prominently noted.
6. 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.
7. 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.”

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8. 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 J. Morris, F. Folk and J. Vamplew, "Whose File is it Anyway? Who Owns File Documents when the Retainer Ends" (1994) 52 *The Advocate* 87, also available from the Law Society.
9. For all open family and civil litigation cases where you are the counsel of record, make arrangements to get off the record. Refer to Rule 16 of the *British Columbia Supreme Court Rules*. You may also arrange for the new counsel to remove your name from the record.
10. 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.
11. 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.
12. File a change of address notice if the practice is named in any builders' liens.
13. Decide whether you will store any original wills or transfer them to another lawyer. Remember that you will continue to be responsible for any original wills in your possession unless you can find another lawyer to take them. The Law Society will only store original wills in very exceptional circumstances.
14. Ideally, a new wills notice should be prepared and filed with Vital Statistics ([www.vs.gov.bc.ca/](http://www.vs.gov.bc.ca/)) after consultation with the client, if possible, to note the new storage location of each original will. Vital Statistics charges a flat fee of \$1,700 for any number 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 (see paragraph 45 below) is mandatory.
15. 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 and who may be contacted after that date about files or wills.

## Disposition of Closed Files

16. Review closed files to determine whether they should be stored, destroyed, returned to the client or transferred to the lawyer who will be assuming ongoing files. For additional

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information on the disposition of closed files, refer to “[Closed Files — Retention and Disposition](#)” available from the Law Society.

17. Return client property held in safekeeping to the owner.

### Undertakings and Obligations

18. Consider whether you have any ongoing obligations, such as undertakings, and make arrangements to be relieved of them or to have them transferred to another lawyer.
19. Wills should be reviewed to determine whether you have agreed to be executor or trustee. If so, you may still wish to act in that capacity. If not, 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).
20. If you have any certificates of title or other documents 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.
21. Trust account records, general account records, records of cash transactions and billing records must be retained for at least 10 years pursuant to Law Society Rules 3-60 to 3-62 and 3-68.
22. Try to return corporate records to the client or client’s new lawyer. Under the former *Company Act*, it would have normally been sufficient to keep corporate records for 10 years if your office was the last registered and records office for a company. However, under the *Business Corporations Act*, it is possible to restore a dissolved company or the cancelled registration of an extraprovincial company after 10 years of the dissolution or cancellation.

### Finances

23. 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.
24. 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.
25. If you hold any unclaimed trust funds, Law Society Rule 3-82 sets out the procedure for paying them to the Law Society.

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26. When all the trust monies have been disbursed, inform the bank that the trust accounts can be closed.
27. Review Law Society Rules 3-72, 3-74, 3-75, and 3-78 and arrange for the preparation of your final trust report, which should be filed within three months of the termination date of your practice.
28. Pay any outstanding firm liabilities including payroll, trade debts, GST, PST, WCB, etc.
29. 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 practice.

### Staff

30. Give staff sufficient notice of termination or compensation in lieu of notice. Verify statutory notice requirements.
31. Make arrangements to cancel or otherwise deal with any benefit plans for employees.
32. 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 the [Canada Revenue Agency](#) (CRA).
33. If you have an articling student, make arrangements to assign the articles to another lawyer who is qualified to act as a principal.

### Premises and Office Equipment

34. Contact your landlord at the earliest possible date and, if necessary, make arrangements to sub-let rented premises or to assign the lease.
35. 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.
36. 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.
37. Where equipment has been leased, contact leasing companies to terminate leases and maintenance agreements or to arrange assignments. When neither cancellation nor assignment is possible, you should have available a pool of funds sufficient to continue the payments on the leases or to pay them out.

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38. Notify publishers of law books and legal directories and cancel subscriptions to reports and journals.
39. 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.
40. Notify public utilities. Arrange to forward your telephone calls and mail.

### **Memberships and Insurance**

41. 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.
42. Make arrangements to cancel practice insurance. You will receive a pro rata refund from the date of cancellation. 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.

Although the compulsory policy insures lawyers for claims arising from errors that occurred while the lawyer was practising (and paying the insurance fee), but the claims are not discovered until after the exemption is claimed (subject to the terms and conditions of the policy in effect at the time the error is discovered), excess insurance does not operate in this manner. If you have purchased excess insurance and are considering winding up your practice, contact your broker for advice to ensure your interests are protected. If you have any questions about the compulsory policy, please contact the Lawyers Insurance Fund.

43. 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**

44. Review Law Society Rule 3-80 and send a letter to notify the Society of:
  - (a) date of termination;
  - (b) disposition of open files;
  - (c) disposition of closed files;
  - (d) disposition of corporate records;

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- (e) disposition of wills, duplicate titles and valuable documents;
- (f) disposition of wills index;
- (g) disposition of any trust balances and the date trust accounts were closed;
- (h) disposition of clients' valuable papers, personal property, etc.;
- (i) details of any continuing personal appointments such as executorship, power of attorney, committee ship, etc.;
- (j) the address, telephone number, and email address at which you can be contacted.

