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Practice Material

Professionalism: Practice Management

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## PROFESSIONALISM: PRACTICE MANAGEMENT

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Chapter 1

Practice Management

[§1.01] Introduction

A law practice must be properly organized in order to ensure that client files are handled appropriately and practice obligations are met. Managing one’s practice effectively is a component of competence, as set out in the Code of Professional Conduct for BC (the “BC Code”), rule 3.1-1(i). Being properly organized involves efficient use of office systems and productivity tools, as well as careful and consistent practices in client file management, timekeeping, trust accounting and financial management.

Law offices vary in terms of their composition, structure, systems and procedures, as well as the responsibilities assigned to personnel. In order to enhance the public’s access to competent and affordable legal services, and in response to recommendations by the Delivery of Legal Services Task Force, the Benchers approved a plan in 2011 to increase the services that paralegals and articled students can perform under the supervision of a lawyer. Since then, the Benchers have also studied the role of non-lawyer legal service providers, including in the Alternative Legal Service Providers Task Force.

In establishing guidance for competent practice, the Law Society has also taken a role in regulating law firms. The Law Society Rules and Legal Profession Act were amended in 2018 to give the Law Society authority to regulate law firms and set standards for ethical, professional law firm practice. Law firm registration began in May 2018.

A lawyer must continually assess and respond to changing technology, evolving practice areas, varying personnel resources, and any other factors that may affect the effectiveness of systems and procedures used in the firm. For further guidance, see “Law Office Administration” on the Law Society of BC website (www.lawsociety.bc.ca/support-and-resources-for-lawyers/law-office-administration/).

[§1.02] Loss Prevention

The term “loss prevention” refers specifically to insurance losses. In addition, the term is commonly used to describe the systems, procedures and practices necessary to ensure that client matters are competently and completely addressed. It involves the effective management of all aspects of the law practice.

Most insurance claims arise from inadequate office systems and file-management errors, not from a lawyer’s failure to know the law or poor legal judgment. For lawyers to continue to obtain affordable errors and omissions coverage, lawyers must do better in increasing their awareness of common practice pitfalls and in recognizing the need to organize, document and improve procedural aspects of delivering legal services.

Lawyers must assess their own practice management on an ongoing basis. It is in their own interests to identify practice problems and improve office procedures wherever possible. To assist, the Law Society makes practice advisory services available to members. The Law Society’s practice advisors give confidential advice concerning a wide variety of practice management and ethics issues, including undertakings, confidentiality and privilege, conflicts, client identification and verification, courtroom and tribunal conduct and responsibility, withdrawal, solicitors’ liens, client relationships and lawyer–lawyer relationships. Contact information for practice advisors, as well as additional resource material, is available on the Law Society of BC website.

The Canadian Bar Association also provides assistance. The CBA’s Practice Advisory Panels, consisting of senior practitioners, are prepared to assist all lawyers with practical advice on a volunteer basis.

[§1.03] Lawyer’s Responsibilities and Support Systems

Managing a law practice includes effectively delegating and dividing duties among personnel. The following outline of the lawyer’s responsibilities and suitable support systems sets out one way to divide law office responsibilities where the law office includes a lawyer, an articled student, a paralegal and a legal administrative assistant.

1. The Lawyer’s Responsibilities

Lawyers are responsible for legal services. As set out in rule 6.1-1 of the Code of Professional Conduct for BC (the “BC Code”):

A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

Law Society Rule 2-60(1) permits articled students to provide all the legal services that a lawyer is permitted to provide (subject to certain exceptions), so long as the lawyer ensures that the student is,
(a) competent to provide the services offered,
(b) supervised to the extent necessary in the circumstances, and
(c) properly prepared before acting in any proceeding or other matter.

Articled students may appear unsupervised as counsel in Provincial Court, or on some preliminary matters in proceedings by way of indictment: Rule 2-60(3). However, according to Rule 2-60(2), articled students are not permitted to appear as counsel in certain proceedings unless they are being supervised by a practising lawyer. Those proceedings include appeals, jury trials, and proceedings by way of indictment. Appearances by temporary articled students are subject to stricter limitations, as set out in Rule 2-71.

Articled students cannot give or accept undertakings unless the principal also gives or accepts the undertaking, in keeping with the limitations of Rule 2-60. Under an amendment to s. 60 of the Evidence Act, R.S.B.C. 1996, c. 124, effective September 1, 2015, articled students, including temporary articled students, are allowed to act as commissioners for taking affidavits.

With respect to the other tasks articling students may perform, see the “Articling” section of the Member’s Manual and the Law Society Rules.

Non-lawyers, as defined in the BC Code, rule 6.1-2, are neither lawyers nor articled students. BC Code rule 6.1-3 says that a lawyer must not permit a non-lawyer to provide the following services:

(a) accept new matters on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;
(b) give legal advice;
(c) give or accept undertakings or accept trust conditions, except at the direction of and under the supervision of a lawyer responsible for the legal matter, providing that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;
(d) act finally without reference to the lawyer in matters involving professional legal judgment;
(e) be held out as a lawyer;
(f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a supporting role to the lawyer appearing in such proceedings;
(g) be named in association with the lawyer in any pleading, written argument or other like document submitted to the court;
(h) be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer’s firm, unless the non-lawyer is an employee of the lawyer or the law firm;
(i) conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;
(j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;
(k) sign correspondence containing a legal opinion;
(l) sign correspondence, unless:
(i) it is of a routine administrative nature,
(ii) the non-lawyer has been specifically directed to sign the correspondence by the supervising lawyer,
(iii) the fact the person is a non-lawyer is disclosed, and
(iv) the capacity in which the person signs the correspondence is indicated;
(m) forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer’s knowledge and direction;
(n) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or
(o) issue statements of account.

However, rule 6.1-3.1 provides that these limitations do not apply when a non-lawyer is:

(a) a community advocate funded and designated by the Law Foundation;
(b) a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and

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(c) with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.

As well, rule 6.1-3.3 (discussed in the next section) sets out exceptions with respect to designated paralegals.

2. The Paralegal’s Responsibilities

Paralegals have legal training and knowledge of the substantive and procedural aspects of law. A paralegal can perform a range of tasks, but the lawyer has full professional responsibility for the paralegal’s work.

The BC Code defines a paralegal as “a non-lawyer who is a trained professional working under the supervision of a lawyer” (BC Code, rule 6.1-2). A lawyer may also determine whether a paralegal is suitable to be a “designated paralegal”: a paralegal who has the necessary skill and experience to give legal advice and represent clients before a court or tribunal as permitted, or at family law mediations (BC Code, rules 6.1-2 and 6.1-3). A lawyer may supervise no more than two designated paralegals at a time (Law Society Rule 2-13). Appendix E to the BC Code provides further guidance with respect to the supervision of paralegals.

A lawyer has a duty to ensure that paralegals employed by that lawyer are competent, under the BC Code, rule 6.1-3.2:

A lawyer may employ as a paralegal a person who

(a) possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;

(b) possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and

(c) carries out his or her work in a competent and ethical manner.

The commentary to rule 6.1-3.2 provides:

[1] A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner.

[2] In arriving at this determination, lawyers should be guided by Appendix E.

[3] Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

The additional services that designated paralegals may provide are set out in the BC Code, rule 6.1-3.3:

Despite rule 6.1-3, where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal

(a) to give legal advice;

(b) to represent clients before a court or tribunal, other than a family law arbitration, as permitted by the court or tribunal; or

(c) to represent clients at a family law mediation.

The commentary to BC Code rule 6.1-3.3 notes that a lawyer can supervise a limited number of designated paralegals under Law Society Rule 2-13, and provides:

[2] Where a designated paralegal performs the services in rule 6.1-3.3, the supervising lawyer must be available by telephone or other electronic means, and any agreement arising from a family law mediation must be subject to final review by the supervising lawyer.

Within this framework, here are some examples of duties a paralegal may carry out:

(a) interviewing clients and witnesses (the lawyer must advise and take instructions from clients on substantive issues);

(b) collecting information from other sources (e.g. the Land Title Office);

(c) conducting correspondence relating to routine administration;

(d) preparing draft pleadings and other court forms;

(e) researching the law and preparing legal memoranda;

(f) organizing documents;

(g) drafting statements of account; and

(h) if the paralegal is a designated paralegal with the necessary skill and experience, the additional duties set out in rule 6.1-3.3.

In November 2018, legislation passed that, if brought into force, would create a “licensed” paralegal who could engage in limited legal practice under the Legal Professions Act and be regulated as a member of the Law Society of BC. At the 2018 Annual General Meeting, Law Society members
voted to direct the Benchers to ask the government
to delay bringing the legislation into force and also
that the Benchers not authorize licensed paralegals
to practice in the area of family law. The Benchers
have established a Licensed Paralegal Task Force to
consult broadly with the profession to identify op-
portunities for the delivery of legal services by li-
censed paralegals in areas where there is a substan-
tial unmet legal need and the public would benefit
from the provision of those services by licensed paralegals. If the task force identifies such areas, it
will consider the scope of services that would be
appropriate for licensed paralegals to provide; con-
sider what education, qualification, credentials, and
insurance would be necessary for the licensed para-
legals; and make recommendations to the Benchers
for a regulatory framework.

3. The Legal Administrative Assistant’s
Responsibilities
The legal administrative assistant works under the
supervision of the lawyer or paralegal. The legal
administrative assistant’s tasks include routine of-
face procedures and clerical tasks:

(a) Organizing files, including
   (i) opening files,
   (ii) organizing components of files, and
   (iii) securing file contents with fasteners
       and ensuring that files remain orga-
nized (see also Chapter 4);

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

(c) Preparing correspondence that does not
    involve legal expertise;

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

(e) Taking telephone calls when the lawyer is
    unavailable, ascertaining the nature of the
    problem and providing non-legal help to
    the client where possible;

(f) Maintaining bring-forward and diary sys-
    tems (see Chapter 4);

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

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

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

(j) Preparing standard form legal documents
    for the lawyer’s review; and

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

4. Accounting and Technology Management
Responsibilities
The level and scope of technology used to manage
accounting, office, billing and file systems in firms
varies widely. These systems are critical to the reli-
able and efficient operation of a law firm, not only
for accounting and case management but also for le-
gal research, legal drafting, and document produc-
tion. In addition, different types of practice demand
different approaches. Lawyers who are not knowl-
geable in these areas should consult with experts
and experienced colleagues before instituting an ac-
counting system or selecting file, office and case
management software and systems. Contact a prac-
tice advisor at the Law Societ y for guidance and di-
rection on practice management, case management
and accounting issues.

5. Information Resources
(a) Library

While more and more legal offices are relying
on subscriptions to online versions of resources,
some still maintain at least some form of a pa-
per library. If they do, materials should be up-
dated and loose-leaf updates regularly inserted
to keep pace with changes in the law. Legal
administrative assistants or paralegal staff can
be responsible for this.

Electronic subscriptions also need to be main-
tained. Clerical or paralegal staff can be re-
sponsible to maintain subscriptions so that
these resources are available and current when
the lawyers need them.

Further assistance is available from librarians
and staff at the Courthouse Libraries of BC.
Also consult the Canadian Legal Research and
Writing Guide on CanLII at 2018 CanLII Docs
161 (also at www.legalresearch.org) for both basic and advanced guidance on legal research as well as a comparison of electronic research tools.

(b) Research and Opinion File

The practice of law generates many opinion letters and research memoranda. These can become a valuable resource for future files, so long as personal information does not find its way from one file to another.

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

(c) Precedents

Most written materials used in practice should be retained as precedents. A simple manual method of organizing precedents is to retain them in file folders or in an indexed binder. However, the more effective method is to create electronic files and store them using whatever filing system fits best with your office filing protocols and your case-management software.

It is important to use an off-site storage and back-up system, coupled with a document retrieval system that allows for easy identification of each document.

One important warning about saving documents: ensure that you know how to remove metadata from the file, and that you remove the metadata before storing a document as a precedent.

[§1.04] Lawyer Training

The Law Society requires that all practising lawyers in BC complete 12 hours of continuing professional development per year, including at least two hours pertaining to any combination of practice management, professional responsibility and ethics. See the Law Society website for details about approved educational activities.

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

All lawyers need continuing skills training in the areas of effective legal analysis, professional responsibility, negotiation and dispute resolution, and legal writing and drafting. Most in-house training programs involve substantive law issues (such as new legislation) and practice issues. By being aware of these skills and their importance in our practice, we can be alert to cultivating them in others. Skills training may include formal seminars, webinars and workshops organized in-house or through outside organizations, or informal mentoring when lawyers are working together on files, teaching and learning by example.

Lawyers also need ongoing training in leadership and managing staff, cultural competence, time management and the use of technology, and business development.

To develop a continuing training program for yourself or your firm, follow these steps:

(a) plan your personal training objectives carefully;
(b) budget the time and money you plan to spend;
(c) identify realistic and appropriate priorities;
(d) survey available resources—you may be pleasantly surprised by the expertise at your firm, or the free resources available from BC Courthouse Libraries or the Law Society (LearnLSBC.ca); and
(e) evaluate your program critically over time.
Chapter 2

Opening a Law Practice

[§2.01] Overview

This chapter reviews some basic considerations that apply to opening a law practice.

BC lawyers who enter into a solo or small firm practice are required to complete the “Practice Management Course.” This course is offered free of charge to all BC lawyers through the Law Society of BC’s Online Learning Centre (learnlsbc.ca/). Under the Law Society Rules, the course is also mandatory for articled students and lawyers who have been ordered to complete the course by the Practice Standards Committee.

The Practice Management Course covers the essentials of operating a practice. The course allows lawyers to complete it at their own pace and measure their own progress in understanding key practice issues—ranging from practice management to trust accounting to technological issues and various pitfalls of practice. A lawyer completes each self-testing component of the course before moving to the next. The entire course takes six to eight hours to complete.

The Law Society also offers a practice resource called “Opening Your Law Office” on its website at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/openingyourlawoffice.pdf.

Member Services at the Law Society offers forms and general information on incorporating a law practice (phone: 604.669.2533; fax: 604.687.5232; TTY: 604.443.5700).

Incorporation precedents are provided in the Support and Resources for Lawyers area of the Law Society’s website. Consult the Law Society’s Practice Checklists Manual for a checklist on incorporation under the BC Corporations Act procedure.

1. Choosing a Form of Practice

Before establishing a law practice, a lawyer should consider what form the practice will take. The following are the most common types of arrangement.

(a) Sole Practitioner

One lawyer, often working with support staff.

(b) Informal Association or Group Practice

Many group arrangements exist. They range from a sole practitioner assisted by one or more salaried lawyers to a group of lawyers associated together. Arrangements for remuneration range from a fixed salary to a percentage of billings.

(c) Space-Sharing Arrangements

This arrangement consists of two or more lawyers practising within one suite of offices, but carefully maintaining separate identities as sole practitioners. Note the distinction between this type of practice and an informal association. See rules 3.4-42 and 3.4-43 of the BC Code, and the practice resource “Lawyers Sharing Space” on the Law Society website at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/SharingSpace.pdf.

(d) Partnership and Limited Liability Partnerships

A partnership consists of two or more lawyers practising under a common firm name and bound together by either an informal arrangement or a formal partnership agreement (see §2.06). Partnership means a sharing of responsibilities, expenses and profits.

A limited liability partnership (“LLP”) is a modified form of general partnership. LLPs have many of the same advantages as limited partnerships. The added benefit is that the members of an LLP can take an active role in the business of the partnership without exposing themselves to personal liability for the acts of their other partners, above the amount of their investment in the partnership (See §2.07).

(e) Multi-Disciplinary Partnership

Lawyers may form partnerships with non-lawyers in limited circumstances. Lawyers must have actual control over the delivery of legal services, and the services provided by non-lawyers must support or supplement the delivery of legal services to clients of the law partnership. See the BC Code, Chapter 3, rules 3.4-17, 3.6-7 and 3.6-8; Chapter 6, rules 6.1-1, 6.1-3, 6.1-3.1, 6.1-3.2, 6.1-3.3, and 6.1-4; and Chapter 4, rules 4.2-8, 4.3-3 and 4.3-4.

2. Factors in Selecting the Arrangement

A number of business factors must be taken into account when selecting the appropriate form of business organization, to avoid regulatory and client difficulties. These are beyond the scope of these materials, but they include considerations such as lawyer compatibility (e.g. on marketing, areas of interest, lifestyle), income tax factors, and client

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1 This chapter was prepared by staff lawyers and accountants or auditors of the Law Society of British Columbia. It is regularly updated, and was last updated in December 2018.
perceptions (e.g. some institutional clients will not deal with sole practitioners).

What is the most appropriate form of business for a particular lawyer may also be influenced by personal factors, such as preferred areas of interest, preferred hours or location of practice, and preferred salary arrangements.

3. Lawyer Incorporation

Part 9, ss. 80–84 of the Legal Profession Act (the “Act”) permits the incorporation of law practices. Authorization to practise is by way of permit issued by the Executive Director (Act, s. 82 and Rule 9-4).

A law corporation that has a single shareholder is analogous to a sole proprietorship, and one with two or more shareholders is analogous to a partnership. The corporation’s name must include the words “law corporation”, and all the voting shares must be legally and beneficially owned by practising lawyers or by law corporations.

All directors must be practising lawyers. All the non-voting shares must be legally and beneficially owned by persons specified in s. 82(d) of the Act (specified individuals include practising lawyers, law corporations that are voting shareholders, and certain persons defined in the legislation (usually relatives of shareholders)) (Act, s. 82).

Incorporation may be beneficial for many reasons. Generally, there will be income tax advantages that will be more significant for the individual or small firm. Tax considerations include the potential for income splitting and advantages for longer-term estate planning and succession planning. For more information, see the incorporation agreements and other resources about law corporations by David G. Thompson of Thorsteinssons LLP published on the Law Society’s website: www.lawsociety.bc.ca/support-and-resources-for-lawyers/law-office-administration/law-corporations.

4. Starting a Practice

These are the most common approaches to getting started in the practice of law:

(a) acquiring or earning an interest in a practice over time, by working as an associate with an established practitioner;
(b) acquiring an established practice (opportunities arise upon the death, retirement or disbarment of a practitioner); or
(c) establishing a practice of your own.

[§2.02] Pre-Opening Checklist

(a) Order telephone, voicemail, fax and internet installation and service. Consider how your telephone answering system will protect confidential messages.
(b) Consider reserving a website name and designing a website for your law practice. Consider your presence on social media, including Twitter or blogging.
(c) Consult Chapter 4 of the BC Code regarding marketing of legal services.

The Law Society strongly recommends that you carefully review all written advertisements that you prepare, to ensure that they comply with Chapter 4. You may in fact wish to ask someone else to read your advertisement before it is published to get further thoughts on its suitability.
(d) Order business cards and stationery.
(e) Advise the Law Society (Member Services) in writing of the firm name, names of firm members, business address, telephone and fax numbers, email address, and date of opening.
(f) Select an accounting system. Do so before ordering cheques. Refer to Chapters 6 and 7 for alternative accounting systems.
(g) Open a trust account and a general account at one or more appropriate savings institutions, and order cheques. Refer to Chapter 6. In opening the trust account, confirm instructions in writing with the savings institution and the Law Foundation. Refer to §6.02.
(h) Obtain a local business licence (if necessary, depending on applicable bylaws).
(i) Obtain a GST number from the Canada Revenue Agency (CRA) for remitting taxes collected on legal fees. To set up an account call 1.800.959.5525 anywhere in Canada.
(j) Register with the provincial Registrar of Companies if you are going to operate under a business name as a sole proprietor, partnership or limited company.
(k) Register with service providers. If you will be filing land title documents electronically, you must register with Juricert. If you will be accessing or filing some provincial government documents online, you may need a Business BCeID. If you will be filing court documents electronically, you may need an account with Court Services Online.
(l) Obtain an employer account number for remitting employer’s federal and provincial income tax deductions, employment insurance premiums and CPP contributions. Contact the CRA and ask for an Employer’s Kit.
(m) Determine the fiscal year-end date for the practice. Note the advantages of ending in the first quarter of the calendar year.

(n) Determine and advise the Law Society of the year-end for Trust Report filing purposes. Remember that your practice and insurance fees are payable in December and June.

(o) Consider obtaining excess liability insurance and any optional coverage (see Practice Material: Professionalism: Ethics, Chapter 5, for what is covered by the Lawyers Insurance Fund).

(p) Adopt privacy policies to comply with privacy legislation (see a model privacy policy on the Law Society of BC’s website at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/PrivacyPolicy-gen.pdf).

[§2.03] Opening Checklist

1. Firm Name

Your firm name must not mislead or communicate false impressions to clients or the general public. You may give your firm a name such as “The XYZ Street Law Group”, as long as the name does not offend Chapter 4 of the BC Code. Only members in good standing may be included on the firm letterhead. The firm name is not required to be the surname of the sole proprietor or partners.

If you intend to incorporate, you must comply with the Law Society Rules with respect to corporate names (see Part 9, Division 1 – Law Corporations). A lawyer may apply to the Law Society for a certificate that the Society does not object to the proposed corporate name (Rule 9-2).

The Ethics Committee has said a member will be prohibited from using a law corporation name that refers to a geographic location within British Columbia if the name refers to the member’s geographical area.

A sole practitioner should refer to the annotations to rule 4.2-5 of the BC Code regarding restrictions on the firm name.

2. Financing

It is common to obtain financing to run your office. Before approaching potential lenders you should prepare a budget and a business plan, have an office location in mind, and meet with an accountant.

A business plan contains these elements:

(a) your short- and long-term practice goals;
(b) the type of law you plan to practise;
(c) the kind of clients you hope to attract;
(d) the sources from which you expect to attract those clients, and
(e) the expected time-frames within which you intend to achieve these goals.

For more information about business plans, see www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/openingyourlawoffice.

Be as precise as possible when drafting the financial part of your plan, including your budget. Prepare a detailed monthly budget for at least the initial year. Include all known or anticipated expenses, and when they will come due. Factor in a margin for unexpected expenses (anywhere from 10 to 20 percent, according to Dave Bilinsky and Laura Calloway in “Six Steps to Improve Your Practice Profitability,” published in Benchers’ Bulletin (2006: No. 1 January-February)). Build in marketing time and expenses as well, and don’t forget to pay yourself.

Remember that you will need at least two accounts at a financial institution: a general account and a trust account. The general account is your account for money belonging to your practice, and the trust account is for money belonging to your clients. Your choice of lender may have a significant impact on where you place your accounts.

You may borrow from any lender you choose, including a bank, trust company, credit union or your family. A general account may be placed with any bank, trust company or credit union; however, your lender will usually expect your general account to be kept at the lending institution.

Your trust account must be placed only in a designated savings institution. For convenience, you may choose a designated savings institution as your lender, so that you can keep your accounts in the same place.

The lender will expect you to provide, in addition to your budget proposal, a statement of your assets and liabilities. If you have no assets, the lender may require a guarantor before agreeing to lend you any money.

3. Secure Space

Deciding where to practice is related to the type of practice you will have, as well as potential arrangements for rent or space-sharing.

(a) Location

What type of practice will you have? Should you be near a courthouse or a Land Title Office, in the business district, or in the suburbs? Or do you intend to dedicate a part of your living space to your work, and rent boardroom space for meetings?
(b) Office Size and Shape

How many people will you have in your firm? What will be the ratio of support staff to lawyers? How much space will you need, including space for meeting clients that is separate from space for storing confidential documents? When you plan your layout, consider using an architect or a design consultant. Keep in mind the potential for future growth.

(c) Negotiating the Lease

You will want to consider the following:

- Will the lessee be the partnership or a management company?
- Is it possible to take over space that is already suitable for a law practice?
- Will the landlord construct leasehold improvements to minimize your initial outlay? What services will the landlord provide?
- What building security is provided, and during what hours? Know who is able to access your office when you are not there.
- Are there proper connections and outlets for telephones and other electrical equipment (e.g. computers, copiers, printers)?

(d) Consider the BC Code

If you are offered space in a client’s premises or by a landlord who wants to make an arrangement that includes referrals, be careful. If there is any potential impact on rent payments as a result of the referrals, you may offend the BC Code.

Rule 3.6-7 provides that a lawyer must not:

(a) directly or indirectly share, split or divide his or her fees with any person other than another lawyer; or

(b) give any financial or other reward for the referral of clients or client matters to any person other than another lawyer.

Note the exception in rule 3.6-8:

3.6-8 Despite rule 3.6-7, a lawyer permitted to practise in a multi-disciplinary practice (MDP) under the Law Society Rules may share fees, profits or revenue from the practice of law in the MDP with a non-lawyer member of the MDP only if all the owners of the MDP are individuals or professional corporations actively involved in the MDP’s delivery of legal services to clients or in the management of the MDP.

Be careful also if a client offers you rental or use of an office with or without secretarial or receptionist services. Note that rule 6.1-1 says:

A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

You must ensure that, whatever arrangements you make, you maintain the supervisory role and do not compromise the confidential environment you must maintain for clients.

4. Staff

Determine what staff you will require. Do you need a receptionist, legal assistant, paralegal, and accounting staff, or will you start out with just one assistant, or even a virtual office?

If your practice is growing, consider the benefits of delegating law-office administration and freeing yourself to look after your clients and your billable work. The paper “Law Firm Management – How to Think Big” presented at the Continuing Legal Education Society of BC’s Solo and Small Firm Conference-2011 discusses the benefits of having an office administrator and how to know when your firm has reached the point where it will benefit from having one.

If your practice is small, consider ways to leverage the resources available to you. For example, the CBA operates SoloLink (www.cbabc.org/Our-Work/Initiatives/SoloLink) as an online information network and support resource. It lets practitioners share questions and answers with other practitioners, as well as with the CBA practice advisory panel, online in real time.

Also consider whether you have the capacity to hire an articled student. Note the provisions of the Law Society Rules, especially Rule 2-58, on hiring articled students.

Organize a payment system for your staff. Remember that you will be responsible for deductions such as income tax. When you plan your budget, consider your obligations to pay EI, CPP, Workers’ Compensation premiums, and vacation pay.

5. Legal Administrative Assistants and Paralegals

Consider whether you will have the type of practice in which legal assistants and paralegals can be useful (e.g. conveyancing, litigation). Many lawyers use legal administrative assistants and paralegals to help with procedural and administrative aspects of

client matters. The lawyer is ultimately responsible for the work performed by the law practice, regardless of whether part of it was delegated to non-lawyers. See also §1.03.

Chapter 6 of the BC Code gives an indication of the types of functions that may be performed in part by a non-lawyer. The extent to which a lawyer may use the services of a non-lawyer to perform some of these functions is, of course, dependent upon the skill and competence of the particular assistant.

When work is delegated to a paralegal, a checklist of procedures should be used. Since the lawyer is ultimately accountable for the quality and completeness of the work, a properly completed checklist can provide the best evidence that the required tasks have been performed.

Note that “designated paralegals” can presently perform some legal services, under the supervision of a lawyer. Also, legislation passed in November 2018 which, if brought into force, would allow a category of “licensed paralegals” to become members of the Law Society and be regulated as such.

Lawyers must give proper direction to clients, both as a matter of liability and as a matter of client service. If clients feel that they are dealing solely with assistants, problems may develop in collecting legal fees or ensuring client satisfaction.

Also ensure that you train your staff. Each year the Continuing Legal Education Society of BC offers courses and publishes guides aimed at developing the professional skills of legal support staff.

6. Furniture and Equipment

Office security and protection of confidential information is a critical concern. Depending on your practice and your client needs, you might need to invest in safes, fireproof filing cabinets securely bolted in place, or alarm and security systems. You must protect confidential information, both physically and electronically.

(a) Hardware, Software, Wireless Environment

Technology is essential to the practice of law. Swift advances in technology provide both increased dangers for data security and increased opportunities for practice flexibility.

A computer with internet access is essential for performing electronic legal research, completing online forms, and accessing government registries and services. You will also need to purchase software suited to your practice.

If you are using multiple pieces of equipment or software, be alert to issues of compatibility and network configuration, so that data collected in one device can be seamlessly transmitted to another and stored securely. For example, all your in-office equipment should be able to access the same systems, and when you go outside the office, perhaps using voice-recognition software on your laptop to record proceedings, you want to be able to upload that to your office system.

You should also be aware that when you access software applications you may be required to accept terms of use. These terms may specify that data is transmitted to servers outside of Canada, which could have privacy implications.

One helpful source of information is the Continuing Legal Education Society of BC, which holds annual courses to familiarize the legal profession with advances in technology.

Technology consultants who specialize in law office systems may be helpful.

(b) Paper, Printing and Fax

Your printing needs will depend on how paper-intensive your practice is, or what your ambitions are in terms of going “paperless.” Always consider compatibility issues and networking issues when selecting devices. And for disposing of printed material, create protocols for confidential shredding and destruction.

(c) Telecommunications System

Be sure your equipment is reliable, and if you are travelling consider whether your cellphone service or internet coverage might be interrupted. Also consider if you are crossing borders where your telephone or electronic equipment might be subject to scrutiny by border officials. If your messaging system might receive confidential voice messages, perhaps after normal business hours, be sure that you have a way to keep the messages confidential. You might also consider a system for videoconferencing or live webinars, or a system that allows staff in different locations to use the same phone line and system.

7. Announcements

Announce your new practice to other lawyers and potential clients. Consider publishing listings in the CBA’s BC Legal Directory, as well as in national lists such as Carswell’s Canadian Law List. Consider advising The Advocate of your move and developing a presence on social media.

8. Library

Should you dispense with a paper-based library, combine some paper resources with electronic subscription services, or start to develop a library?
Consider the nature of your practice, as well as your proximity to a branch of the BC Courthouse Libraries. Note that the BC Courthouse Libraries provide free in-person access to computers equipped with research resources and free online access to some subscription databases.

The cost of establishing and maintaining your own law library can be high. Consider alternatives such as sharing use with other firms, or using Courthouse Library facilities and online services. However, do consider buying traditional or online texts and practice manuals that are key to your practice area.

Consider what is available free on CanLII and how best to supplement it, according to your expected needs, with suitable resources from services such as CLE Online, Quicklaw/LexisNexis and Westlaw.

9. Filing and Accounting Systems

What filing, accounting, and timekeeping systems will you use? Consider practice and document management software, which helps you manage the information, people, schedules, communications, and documents on your client files. Further information on filing and bring-forward (BF) systems is in the Practice Material: Professionalism: Practice Management, Chapter 4.

In selecting a timekeeping system, consider whether it incorporates or can be integrated with software to centrally manage billing.

Consider the accounting requirements under Part 3, Division 7 of the Law Society Rules. Determine the fiscal year for the partnership and appoint auditors. Seriously consider using a professional accountant. Accounting functions also can be contracted out to a bookkeeping organization. For more information on accounting and bookkeeping see §3.02 and §7.01 to §7.09.

10. Budgeting

A budget is a financial forecast that guides a business into the future and makes it possible to establish hourly rates. It will set the tone for the whole financial operation of the firm. Compare actual monthly income and expenses against the budgeted projections.

The start-up capital budget will be as important as the yearly budget. The start-up of a law practice involves commitments to a number of capital expenditures. This budget will be used to determine the amount and type of financing that is required.

Prepare a budget for the first year of operation. Set billing goals for lawyers and legal assistants based on required income, and establish billing policies for the firm.

Determine the contribution by each partner and the extent to which bank financing will be required.

For a sample worksheet, see the Law Society publication “Twelve-Month Law Practice Cash Flow Budget Worksheet” on the Society’s website (www.lawsociety.bc.ca/support-and-resources-for-lawyers/law-office-administration/).

11. Insurance

Errors and omissions insurance is compulsory (see Practice Material: Professionalism: Ethics, Chapter 5).

Consider also obtaining the following types of insurance:

(a) special riders to cover loss or damage to valuable papers and corporate records;
(b) public liability insurance;
(c) tenant’s liability insurance;
(d) life insurance for lawyers and other staff;
(e) disability insurance to cover continuing overhead and loss of income; and
(f) additional medical and dental coverage.

§2.04] Cost-Sharing

Before entering into a cost-sharing arrangement, or a partnership or association, there must be a full and frank discussion among the participants concerning all the issues, rights and duties. In particular, all of the potentially contentious issues should be addressed and policies defined. Individual philosophies on firm style, work habits, and expenses are often the most contentious items.

(a) Define common expenses and individual expenses, and how to deal with them.
(b) Define how to build working-capital cash and how to pay out surplus cash.
(c) Agree on office protocols, such as telephone answering and message-taking arrangements.
(d) Make an inventory of all assets of each party at the inception of the arrangement.
(e) Formally agree on some key terms:
   • review the main lease to determine term, restrictions, and so on;
   • define the duration of the agreement, its renewal and cancellation provisions; and
   • consider a first-refusal clause or buy-out provision on termination of one of the parties.
(f) Define policies and responsibilities for referred work and billing procedures.
(g) Define policies on administrative duties, such as arranging maintenance and repairs, staff hiring and supervision.

(h) Consider whether the lawyer participants should have consistent levels of errors and omissions coverage.

(i) Clarify a public relations policy. Avoid activities that suggest lawyers are “holding out” themselves as being associated if that is not the arrangement.

(j) Define precisely what amenities are included:
   • space for lawyers and support staff,
   • reception, photocopying, file storage, and boardroom services,
   • library and database access, and telecommunications services.

(k) Optional items to include in a cost-sharing agreement would include the following:
   • whether the sharers are co-guarantors on equipment leases;
   • periodic bookkeeping services; and
   • arrangements for petty cash or credit cards to cover common expenses like office supplies, couriers, etc.

See the practice resource “Lawyers Sharing Space” on the Law Society’s website (www.lawsociety.bc.ca).

[§2.05] Virtual Firm

As an alternative to the traditional office, you may be considering a virtual firm. You will need permission from the Law Society to deliver online legal services. Many virtual firms use cloud computing, which involves accessing data processing and storage applications via the internet. The Law Society published guidelines to assist lawyers in performing due diligence when deciding whether or not to use a third-party service provider for electronic data storage and processing, including cloud computing. Lawyers and law firms considering cloud computing should consult the Law Society’s Cloud Computing Checklist and Cloud Computing Due Diligence Guidelines, available on the Law Society’s website.

Lawyers face the same types of risks in managing a virtual practice as in managing a traditional practice. For example, lawyers must always follow the client identification and verification rules (Law Society Rules 3-98 to 3-109), and client information must be kept confidential pursuant to the BC Code, rule 3.3-1.

In a virtual firm, lawyers might manage some risks differently. Maintaining client confidentiality in a virtual office could include all of these things:

• scrutinizing terms of use set by online service providers and before uploading apps to your network;
• keeping the server in the lawyer’s office, or if that is not possible, using a service provider who maintains a server in Canada and offers strong data backup and protection to avoid concerns about data being subject to disclosure under foreign laws such as the US Patriot Act;
• maintaining firewall and network security, including training staff not to click on links that could expose the system to phishing or hackers;
• encrypting data before transmitting it over the internet, and upgrading encryption standards;
• considering ongoing upgrades and changes that would impact your data security, such as allowing clients to access the firm’s website through a password-protected environment; or
• reviewing the viability and security of artificial intelligence services such as chatbots, and automated legal services like smart contracts (see §3.06).

[§2.06] Partnership

If you choose to practice in a partnership, a number of considerations follow. You might want to incorporate a management company to lease the space, so as to protect tangible assets of the law practice, such as computers and furniture, from the claims of potential creditors, and to split income with family members. Consult your accountant about whether a management company would be beneficial. Should the partners create a management company or a partnership of management companies?

These are relevant considerations:

(a) share ownership—should it be equal or in proportion to partnership interest;
(b) payment of support staff;
(c) who will be the lessee of office space, or the lessee or owner of office equipment or vehicles;
(d) what the banking arrangements will be;
(e) how to document the role of the management company or partnership of management companies;
(f) the need for a shareholders’ agreement to establish principles of profit distribution, admission of new shareholders and the management contract with the firm; and
(g) appointing a lawyer as managing partner.

Note that in most firms the items in this section are continually re-examined. Answers given in the initial months of the practice will be modified as time passes.
[§2.07] Limited Liability Partnership

BC lawyers and law corporations may participate in limited liability partnerships (“LLPs”); see the Partnership Amendment Act, 2004, ss. 30, 83.1 and 84 of the Legal Profession Act and Rules 9-12 through 9-20 of the Law Society Rules, as amended.

A limited liability partnership structure shields an individual partner from personal liability for the debts of the partnership or for negligence and wrongdoing of other partners, except to the extent of the partner’s share in the partnership’s assets. Individual partners continue to incur personal liability for their own negligence or wrongful acts, and for the negligence or wrongful acts of persons they directly supervise or control.

Before applying to register as a limited liability partnership under the Partnership Act, law firms must apply and be approved by the Law Society. To receive a statement of approval, the firm must satisfy the Law Society that the intended name of the LLP complies with Chapter 4, section 4.2 of the BC Code (marketing provisions) and that all partners of the partnership are members of the Law Society or a recognized legal profession in another jurisdiction (Rule 9-15(3)).

Rule 9-15(4) states:

Despite subrule (3), an LLP that is an MDP in which a lawyer has permission to practise law under Rules 2-38 to 2-49 may include non-lawyer members as permitted by those Rules.

When a law firm offers services as an LLP it must ensure that all of its advertising shows that it is offering legal services through a limited liability partnership. In accordance with requirements of the Partnership Act, the firm must also take reasonable steps to notify existing clients in writing that it has registered as an LLP and that there are resulting changes in the liability of the partners. To guide firms in meeting this disclosure requirement, Law Society Rule 9-17 sets out a sample notification statement.

The partners of an LLP are personally liable for a partnership obligation if and to the same extent that they would be liable if the obligation was an obligation of a corporation and they were directors of that corporation (Partnership Act, s. 105(1)); however, the partners are not subject to the duties imposed on directors of a corporation by common law or under s. 142 of the Business Corporations Act.

[§2.08] Termination of Practice

Part 3, Division 7, Rule 3-87 of the Law Society Rules governs withdrawal from practice.

A lawyer must advise the Law Society in writing of the lawyer’s intention to withdraw from practice and of how the lawyer intends to dispose of:

(a) open and closed files;
(b) wills and wills indices;
(c) titles and other important documents and records;
(d) other valuables;
(e) trust accounts and trust funds; and
(f) fiduciary property.

The lawyer must also file the final Trust Report for the period from the date of the last Trust Report to the date of termination (see Rule 3-84).

Finally, the lawyer must advise the Law Society within three months of termination of the disposition of any trust balances existing at the date of termination.

See the Law Society’s online manual Closed Files—Retention and Disposition and the checklist Winding Up Practice, available on the Law Society’s website (www.lawsociety.bc.ca).

[§2.09] Termination of Employment

If an employed lawyer leaves a law firm to practise independently or to join a firm, the lawyer should carefully review rules 3.3-1, 3.3-7, 3.5-1 to 3.5-5, 3.7-1 (especially commentaries [4] to [10]), 3.7-7 to 3.7-9, 3.4-17 to 3.4-23, 3.4-26.1 and 7.2-11. The Rules place a responsibility on both the lawyer and the firm the lawyer is leaving to inform clients for whom the departing lawyer is primarily responsible (as soon as practicable) that the client has the right to choose which lawyer will continue the matter. However, the duty to inform the client does not arise if the lawyers affected by the changes, acting reasonably, conclude the circumstances make it obvious that the client will continue as a client of a particular lawyer or law firm (rule 3.7-1, commentary [5]). See “Ethical considerations when a lawyer moves on” in the Summer 2017 Bencher’s Bulletin (www.lawsociety.bc.ca/Website/media/Shared/docs/bulletin/BB_2017-02-Summer.pdf#practice).

Precedent letters to a client on withdrawal from representation when departing a law firm appear on the Law Society’s website (www.lawsociety.bc.ca/support-and-resources-for-lawyers/law-office-administration/lawyer-leaving-law-firm/).

A departing lawyer has a duty, upon receiving client authorization to take a file, to deliver a copy of the authorization to the firm, arrange security for outstanding fees and disbursements on any file taken, and abstain from removing a file until reasonable attempts to fulfill these duties have been made (Vertlieb Anderson v. Nelford (1992), 67 B.C.L.R. (2d) 365 (C.A.)).
Chapter 3

Law Office Systems and Procedures

§3.01 Introduction

Office systems keep the work in a law office organized, timely and consistent. Efficient systems promote effective work. Since many important functions and tasks are delegated to non-legal staff, establishing and maintaining office systems and procedures assists staff and lawyers alike.

Delegation must be done responsibly. Each system must be supervised. Often, a system is successfully implemented but ultimately breaks down because no one is ensuring that lawyers and staff understand its purpose, or that they follow it, or that they update it.

The practitioner must also ensure that new or temporary employees are properly instructed. Periodic internal review and testing of the operation of systems is necessary so that it will reveal any breakdowns.

For further details on topics related to law office management and the Loss Prevention Planning Checklist, see the Law Society website (www.lawsociety.bc.ca).

§3.02 General Office Procedures

1. Office Manual

It is important to take the time to establish an office policy, procedure and system manual. A well-documented manual ensures consistency. It helps ensure that systems operate predictably and roles are clear. It enables everyone to use time more effectively.

In addition to outlining firm policy matters, the manual should explain office systems and procedures and how to perform particular procedures. It should also include copies of any applicable forms or documents, annotated to show how to use them. Lawyers and staff should be required to familiarize themselves with the documents, systems and procedures and to update themselves when the manual is updated.

Many firms have electronic manuals and forms. Delegate one person to edit and update the master copy. Set an annual review date.

2. Filing System for Open Files

Create a system for opening, closing, storing and destroying files. Keep active files separate from closed files and “non-client” files. You should also consider another file to keep track of one-time consultations in a given year. Explore the possibility of using a storage firm to store and retrieve old files.

Record storage must comply with Law Society Rules 10-3 and 10-4. If the lawyer holds fiduciary property, records must also comply with Rule 3-55(3).

How should files be arranged and where should they be located in the office? Files are commonly arranged alphabetically, numerically or alpha-numerically, often by area of law and by responsible lawyer. They may be colour-coded by practice area. Files can be located centrally within the office or near the responsible lawyer or legal administrative assistant. The least desirable location is inside a lawyer’s office (support staff cannot access them), unless there are security or confidentiality concerns (as there may be in a space-sharing or packaged office situation). Consider creating a system for keeping track of files if they are temporarily removed for use by the lawyers and other staff.

Consider how you will store electronic files. Most firms have both paper and electronic files. Systems vary from storing documents in specific electronic folders by client to using case management software, to creating a system within which all incoming and outgoing documents are scanned, digitized, and filed electronically.

As the responsible lawyer, you must consider individual and network security and how to protect client confidentiality by using adequate network access protections and by updating these as more advanced technologies become available. Educate yourself; the time spent up-front should enhance your efficiency and ability to protect clients.

An article in the Canadian Bar Association’s National magazine (“Why Law Firms Need to Worry About Quantum Computing,” by Agnese Smith, December 7, 2018) noted that current data encryption and security protocols are inadequate to address security in the future: “Anyone who needs to keep data protected for more than a decade should start thinking beyond today’s common encryption standards.” The concern is that current security protocols are based upon algorithms that are vulnerable to being hacked by increasingly faster computers with increasing computing capacity. James Kosa, a lawyer and president of the Canadian Technology Law Association, says that law firms, as part of their data retention policies, need to think about why data is being kept, and why it is kept accessible (and therefore vulnerable).

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1 This chapter was prepared and is reviewed regularly by staff lawyers at the Law Society of British Columbia.

Professionalism: Practice Management
If you are storing files in the cloud, investigate cloud-computing platforms designed for lawyers with lawyers’ ethical and privacy responsibilities in mind. Also consider “safe harbouring” your data: in other words, if you are storing it in the cloud, then also store it somewhere else, to guard against data loss or the possibility that the provider might go out of business. The Law Society also recommends advising a client if that client’s records are being stored on a server outside of British Columbia. The Law Society has developed guidelines on cloud computing, available on the Law Society’s website: www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/guidelines-cloud.pdf.

The Law Society has also prepared a cloud computing checklist, which includes these steps:

- read the provider’s terms;
- assess the provider’s record of breaches;
- assess the sensitivity of your data, including whether it is aggregated and de-identified;
- determine if you can encrypt your data;
- consider a “private” cloud compared to a “public” cloud;
- assess the critical nature of your data, and what impact the loss of that data could have on your business;
- confirm the location of the cloud provider’s servers to ensure that you can comply with applicable BC laws governing protection of privacy, such as the Freedom of Information and Protection of Privacy Act, s. 30.1;
- confirm that your data would comply with standards for electronic discovery in BC courts; and
- retain cash receipts in hard copy.

3. Closed File System

Keep closed files stored separately from active files and “non-client” files. Usually a minimum of two years of closed files are stored at a firm, with the older files stored off-site. The best organization is to assign and store by a new closed-file number. See “Closed Files – Retention and Disposition” for more details on closed-file procedures and suggested file destruction dates, available on the Law Society website (www.lawsociety.bc.ca).

4. Accounting System

Consider Part 3, Division 7 of the Law Society Rules: “Trust Accounts and Other Client Property.”

Seriously consider obtaining assistance from a professional accountant. Accounting functions may be contracted out to a bookkeeper. Ensure that your accountant or bookkeeper is familiar with the Law Society accounting procedures.

You need to consider two basic types of accounts: general accounts and trust accounts. The general account is the basic operating account for the law firm business. The trust accounts include both a pooled trust account and separate trust accounts. Funds received from a client in trust will usually be placed in a pooled trust account. For some clients, the firm will set up a separate trust account so that interest may be earned on those funds. Since all withdrawals from trust accounts must be by way of trust cheques or e-transfer, you will need to develop a policy relating to withdrawals from trust and the use of trust cheques.

Accounting records should be established for each client matter when the file is opened, whether or not a monetary retainer has been or will be received.

Arrange a system for following up on overdue accounts. At what point should you send out reminders? At what point should you send the matter to a collection agency or commence an action to recover your fees?

For more detailed information regarding trust accounting, see Chapter 6 of these materials.

5. Timekeeping Systems

Consider the various timekeeping systems for lawyers. Most lawyers use software that tracks billing and time.

Consider the merits of integrated accounting and case (practice) management software for preparing the following statements monthly:

- accounts receivable (classified by age);
- fees billed by individual lawyers;
- work-in-progress summary;
- summary of cash received and cash disbursed;
- reconciliation of trust accounts; and
- reconciliation of the general account.

For more information on accounting and bookkeeping see §7.01 to §7.07.

6. Handling Incoming Messages

Many complaints to the Law Society come about because the client is unhappy over the lawyer’s failure to communicate. Among other things, a failure to communicate may give the client a false impression that the lawyer has been inactive or has done inadequate work, which may compound the effect of some other lawyer default, such as a failure to act promptly or a clerical error.
The Benchers’ concern over this problem is expressed in rule 3.2-1 of the BC Code. You are required to serve your clients in a conscientious, diligent, and efficient way. That service is measured by many factors, including whether you keep your clients reasonably informed.

Fax machines, email and voicemail might all be used in the office. All staff must be familiar with the tools used in the office. They also need to appreciate the confidentiality and privacy risks that attach to each form of technology in use.

Here are some suggestions for handling incoming telephone communications:

(a) if you are unavailable, the receptionist should forward your calls to your assistant (even if you have voicemail), who will usually be familiar with the client and may be able to help;

(b) your assistant must be instructed to make a memo of each incoming phone call;

(c) your assistant should have the authority to book your appointments;

(d) tell your clients that if they leave messages it helps if they mention the purpose of the call, so you can be prepared when you call them back;

(e) wherever possible, have your receptionist tell clients you will call back “as soon as possible” rather than at a specific time;

(f) if you cannot call as promised, have your staff call and explain why; and

(g) re-record your voicemail message often, so clients know where you are and when you will return.

7. Handling Mail

Avoid confusion by using separate baskets for incoming mail, outgoing mail and mail for pick-up.

(a) Incoming Print Mail

Set aside a specific time each day to deal with the mail—both print and email. Some lawyers review mail daily with their assistants, because much can be delegated and this is a good opportunity to coordinate the work and workload.

Follow these practices:

(i) establish procedures in your office for managing mail and enclosed documents;

(ii) date/time stamp all incoming print mail and documents to establish when it was received;

(iii) do not stamp original documents, but affix a slip for stamping, or stamp on the back;

(iv) attach incoming print mail to the front of the appropriate file for review by the lawyer;

(v) respond to correspondence, with the lawyer reading letters then dictating replies or distributing it to others for filing;

(vi) diarize all items that need follow-up, including items that do not need immediate action but should be noted in the bring-forward system;

(vii) establish procedures in your office for filing incoming correspondence, documents, etc. in the main file and in the sub-files; and

(viii) delegate tasks to the assistant such as drafting replies, making copies, and filing documents.

(b) Outgoing Print Mail

Usually, the lawyer should sign the letters. If staff are authorized to sign certain correspondence, they should sign either with their own names or per the lawyer or firm. Note rule 6.1-3 of the BC Code, which states, in part:

A lawyer must not permit a non-lawyer to:

[…]  
(k) sign correspondence containing a legal opinion;

(l) sign correspondence, unless

(i) it is of a routine administrative nature,

(ii) the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,

(iii) the fact the person is a non-lawyer is disclosed, and

(iv) the capacity in which the person signs the correspondence is indicated[.]

Ensure that “Encl.” is included on letters whenever there is an enclosure. Staff responsible for mail preparation must then ensure that documents are enclosed before mailing.

Make a copy of all outgoing correspondence to be retained in the appropriate file. Make an entry for follow-up in a bring-forward system, if necessary. Clients should be copied with relevant documents and “copy” should be noted on the documents.
Email and Electronic Messaging

Many of the same considerations that apply to paper correspondence apply to electronic communications. For example, you must develop systems to manage the flow of email (who receives, has access, has authority to reply, etc.) and how you will store and retrieve email and attachments (e.g. print and file, store electronically using file-management software). You also want to consider managing client expectations given the near-instantaneous nature of email. It may not be practical or efficient to respond to mail as you receive it, since it can seriously interrupt your work flow.

Standardize your approach so that it best suits your practice and work style. Perhaps most critically, electronic systems raise security issues that you need to appreciate and deal with.

Email offers benefits such as speed and ease of reply, but it can also create problems.

(i) Manage your mail:
- Ensure that your clients provide informed consent as to whether or not you can deal with them by email and at what addresses. Deal with it in your retainer.
- Advise your clients that they may wish to set up private email addresses to which only they — not, for instance, employers or family members — have access.
- Before you send email, ensure that the address you have is current. If you have more than one address for a recipient, ensure that you are sending to the proper address. If you are unsure, phone first to check. You do not want to send a sensitive message to the wrong person.
- Add a signature line containing your contact information and asserting that the information in the message is privileged.
- If you do not get a response to your mail, follow up with a phone call. If your mail is urgent, ensure that you or your assistant are following up on it.
- Create a protocol to handle mail when you are out of the office or unable to address urgent matters. Either have a colleague monitoring your mail or use an automated message that gives details as to whom to contact in case of an emergency.

(ii) Manage your message:
- Be wary of responding too heatedly. You might make it a habit to always pause when you are upset, or type a draft message with the address field blank. Reconsider before addressing the message and hitting “send.” Remember that a lawyer has a duty under the BC Code, rule 5.1-5, to be courteous and civil to all persons with whom the lawyer has dealings.
- Take the time to consider your response. Don’t respond before you have fully read the message or the relevant documents, or before you have considered the matter.
- Draft email carefully. Be wary of giving less attention to drafting email than you give to other legal correspondence. For example, one lawyer who made a claim with the Lawyers Insurance Fund forgot to add “without prejudice” to an offer sent too hurriedly by email.
- Spell-check your messages.
- Always communicate effectively. Avoid legalese or complex sentences that the other party might misunderstand. Communications where the parties misunderstand each other or only partially grasp the significance are ineffective. Sometimes meeting face-to-face is better.

(iii) Manage your information:
- Gather relevant mail in one place. For example, you probably have more than one email account, and you probably access email on more than one device. It may be that a client has sent some documents to you and some to your assistant’s account.
- Ensure that you have a record of important messages. If you are using instant messaging, create a copy that you can store and retrieve.
- Back up data stored on all of your devices.
- Periodically clean out your inbox by saving email in folders and deleting email that has no business value.
- Establish policies in your office for email or internet use, as well as for information management.
- Train yourself and employees on phishing scams, and avoid clicking suspicious links in email or giving out personal information.

(iv) Manage your security:
- Maintain current software for firewalls, anti-virus scanning and malware detection. Guard against threats to your system, and prevent your system from transmitting malware to your clients.
• Change passwords regularly and use strong passwords. Guard against the possibility that hackers or even former employees could access office networks remotely and disturb data on the system.

• Encrypt especially sensitive email and send it with a generic subject line such as “For your consideration.” Ensure that the recipient can unencrypt it.

• Install software so that you can remotely wipe data in the event that a device is lost or stolen.

• Consider where metadata may be stored in a document, and remove it before transmitting that document outside your office. Particularly if you are using documents as precedents for work on other files, you don’t want a client to be able to see the names of those other clients, or the substance of your advice to them. Nor do you want a client to feel that you overbilled for time spent on a file where you copied a document that you had already prepared for another file.

• Before you dispose of hardware, securely delete all data.

8. Confidential Information

Read section 3.3 of the BC Code (discussed in the Practice Material: Professionalism: Ethics, Chapter 6). Note particularly rule 3.3-1 and commentary [8] to that rule: a lawyer should avoid indiscreet conversations and other communications, even with the lawyer’s spouse or family, about a client’s affairs and should shun any gossip about such things even though the client is not named or otherwise identified. Similarly, a lawyer should not repeat any gossip or information about the client’s business or affairs that is overheard or recounted to the lawyer.

Aside from ethical considerations or questions of good taste, indiscreet shoptalk among lawyers, if overheard by third parties who can identify the matter being discussed, could result in prejudice to the client. Moreover, gossip or indiscreet talk by lawyers that is overheard by others would tend to lessen the respect for lawyers and the legal profession.

While you must not violate the client’s confidence and must preserve solicitor-client privilege, you must also instruct your staff on these obligations. Some staff may be unaware that the client’s name, or the fact that the client has retained the firm, is confidential. Remind staff not to discuss client matters outside the office, as they may be overheard. Include this reminder in your office manual.

9. Office Security

Office security is often overlooked or presumed. It deserves attention and a defined policy. The Law Society receives a number of errors and omissions claims relating to lost or missing documents. Remember there is always a danger of sensitive documents coming into the wrong hands.

(a) Physical Security

Access by the public to your office must be restricted and/or supervised. Fire exits often give unsupervised access to file storage or other critical areas.

Where space-sharing arrangements exist with other tenants, ensure that files are secured and maintain locked filing cabinets.

Firms need to be familiar with all electronic privacy issues and to install and implement systems for maintaining security of the office network, desktops and remote access capabilities. Accounting records, precedents, work in progress, and other material stored in electronic systems should be backed up daily, if possible, and the backup copy stored off-site. The off-site copies will prove invaluable if the computers are stolen or destroyed by fire.

Be careful not to throw away entire legible documents at the photocopier or in recycling boxes. Use a paper shredder.

(b) Custody of Valuable Documents

Lawyers often have temporary or permanent custody of valuable documents (e.g. wills, security certificates, bonds, etc.). Ensure that a “Valuable Property Record” for such items is kept in a permanent bound book. Physically verify the existence of these items from time to time.

Keep these documents in a fire-proof locked safe or filing cabinet, or in a safety deposit box.

Generally no document should be released to a client or others without the lawyer’s specific knowledge and approval.

Develop a special policy that provides for (1) storage in a locked place, (2) maintenance of an alphabetical list, and (3) a lawyer’s signature before a document can be released.

(c) Security of Corporate Records

Corporate records, agreements, and other documents are often filed together in one binder. For this reason, from time to time, unauthorized parties may inadvertently gain access to privileged information. Section 42 of the Business Corporations Act lists documents to be retained...
at the company records office. Some documents are not available to the public, or even to shareholders. Lawyers must be careful that people who want to review corporate records are only able to access those records they are entitled to. Lawyers must remove all privileged, restricted, and excluded documents from view by people who are not entitled to see them.

[§3.03] Conflicts System

Lawyers must understand how to recognize conflicts of interest, how to prevent them from occurring, and what might happen if they do occur.

A conflict of interest is a situation that impedes the lawyer or firm’s ability to serve a client with undivided loyalty. Each law firm must have a system for determining whether there is a conflict of interest before starting to act for a client. Whether manual or electronic, the system requires a centralized index, book or database. A conflict check should be performed a minimum of twice during the course of a file: when a potential client contacts the firm, and again after the first interview.

For the first check, your assistant or receptionist should, at a minimum, obtain the client’s and opposing party’s names (and any former names) when a potential client contacts you initially. This check is done to eliminate a potential client before that person discloses any confidential information. Once a client discloses confidential information, you and the whole firm may be unable to act for anyone in the matter.

The second check is a much more detailed one after you interview the client about all relevant parties and witnesses. Check further whenever a new party enters the case, such as when a new defendant is added. Finally, enter “one-time consultations” in whatever system you are using.

Each conflict index should contain the following (provided the information exists):

- the client name (including any alias);
- current and former clients;
- affiliates or partners of the client;
- directors or officers of the client;
- affiliated corporations/entities of a corporate client;
- adverse parties;
- co-plaintiffs or co-defendants;
- known relatives of the client as well as other parties;
- common-law spouses of the client and others;
- one-time consultations;
- names of counsel representing any party to the matter; and
- names of lawyers and staff in the firm.

There are several different conflict systems available. An integrated electronic accounting and case-management system with a conflict-checking component is the most reliable method. Failing that, the following procedures will assist in checking for conflicts:

(a) completing the file opening sheet including identifying your client, the opposing party (or parties) and any other interested person(s);
(b) circulating (weekly) the file opening sheet to all lawyers in the firm, or circulating a list of new clients and other related parties; and
(c) checking the names of clients, opposing parties and interested parties periodically in the alphabetical indexes.

Remember that you are responsible for identifying conflicts between multiple clients on the same file. This identification requires a review of the ethical issues and often of the substantive law.

Assign the responsibility for ensuring that conflicts are checked to someone, and establish a method for recording that the checks are completed. Record whatever procedure you are using in your office manual. For a system to work, everyone in the firm must understand how the system operates and participate in its operation.

You should also develop a policy for what actions to take when a conflict arises. Include that policy in your office manual and ensure that staff understand what steps to take.

A model conflicts of interest checklist is available on the Law Society’s website (www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/checklist-conflicts.pdf).

[§3.04] Use of Checklists

1. General

Checklists are useful not only for dealing with administrative procedures in a law practice, but also for substantive client matters. For many procedures, it is useful to create separate checklists for lawyers and non-lawyer staff.

Detailed checklists for substantive client matters such as for Real Estate, Civil Litigation, Personal Injury, Wills and Family Law may be found in the Law Society’s Practice Checklists Manual, updated annually and available on the Law Society’s website (www.lawsociety.bc.ca). These may be used as a basis for creating checklists in your firm.

Checklists serve these main purposes:

(a) all required procedures are identified and then performed consistently, systematically and completely;
(b) there is maximum efficiency in handling routine functions; and
2. Checklist Preparation

Checklists should be designed by the lawyer or senior staff, or adapted by them from other sources. Checklists should be easy to read and review, and contain designated areas for the initials, dates, and other data for the user to complete. Functions or procedures should be listed in the order of occurrence, where practical. To make the checklist as versatile as possible, set aside additional space at appropriate places for additions or explanations. Checklists should be reviewed and revised at regular intervals.

Checklists are different from client interview forms. Separate interview forms can also be prepared.

[§3.05] Creating a Precedent System

Lawyers use precedents all the time. It is important to spend adequate time setting up a good precedent system and establishing procedures to ensure it is updated and maintained even under time pressure.

All lawyers should have access to and be required to refer to the precedents that have been adopted by the firm. Sometimes it is best for a firm to develop a standard set of precedents in discrete areas of law. This ensures that users begin from a common point each time. Users can then add any optional clauses to the precedent bank separately, as they are developed, so that the standard precedent stands alone and may be supplemented in particular situations.

When the precedent system is established, or added to, each precedent should first be edited, preferably by more than one senior lawyer. Accordingly, precedents should be included in the precedent file or electronic file only after a responsible lawyer has formally approved them for quality and appropriateness.

An “approval” and “date” stamp (or electronic equivalent) should be put on the precedent before it is added to the precedent system (to validate the precedent and determine its currency).

The precedent should be purged of specific names, dates, amounts, and other information unique to the originating file. Instructions should be inserted at appropriate locations for subsequent users of the precedent (such as, “Set out names of parties here in full”).

Precedents should be stored in a centralized location. A comprehensive precedent index will facilitate the ongoing use of precedents. The precedents and the precedent index may be stored in print or digital versions, or both.

Ensure that only one master hard copy of each precedent and precedent index is in circulation, to prevent unauthorized variations. Ensure that the precedents are updated as required, and exert control over who is authorized to update precedents.

Ideally, the precedent index will be arranged by title, and where appropriate, by practice area, by type (e.g. all “directors’ resolutions”), and by transaction in the sequence in which they are usually required. If the index is maintained electronically, the data entered into the precedent index can be used to print out the different types of precedent indices that are needed. In addition, the precedents indicated in the database can be retrieved by keyword, date, author, client and whatever other way that suits a particular practice area. A database also makes it possible to access a larger bank of documents that can be repurposed, including opinion letters and research memos.

The database might store the “full text” of precedents, indexed summaries of the precedents, or both.

In some firms, frequently used precedents are made part of a document production system or expert system. In an expert system, the user creates the first draft of a document or set of documents by responding to a series of questions about the client and the file: the software program then completes the draft precedent using the answers.

It may be desirable to create a drafting style guide for documents produced by the firm to ensure consistency of style and to enhance the document quality.

[§3.06] Document Drafting and Production

1. Document Production

(a) Using Forms and Precedents

Ensure that personnel are trained on the use of forms and precedents, and that they are used consistently, which contributes to the quality, reliability and efficiency of office procedures.

Each time a new draft is produced, ensure that the operator stamps it with a control stamp indicating the draft number (if done manually), the date, his or her initials and the file number.

When creating and revising electronic documents, lawyers and non-lawyer staff need to guard against inadvertent exchange of confidential information. Remember that when you create an electronic document you are also creating metadata, some of which you may not see on your monitor. That metadata can include previous versions of a document, and even the names of client files where the document was used. This is even more critical when documents are being exchanged outside the firm.

Make sure you understand the metadata in your software and how to remove it from documents. To learn this, check the software manufacturer’s website.
(b) Smart Contracts

In “smart” contracts, parties come to an agreement simply by inserting an electronic signature in a digital document. Once the electronic contract is “signed” in this way, payments can be generated automatically. Smart contracts are also capable of enforcing themselves when specific conditions are met. Typically, smart contracts are implemented over a blockchain, and payments are in cryptocurrency. It is also possible to have digital “smart” contracts that are not linked to blockchain for execution and enforcement.

“Smart Contracts: Coming Soon to a Law Firm Near You,” (Ann Macaulay, PracticeLink, February 26, 2018, published by the Canadian Bar Association) describes the future of smart contracts. Usman Sheikh, head of a national law firm’s Blockchain & Smart Contracts Group, says that smart contracts will usher in a new business model for law firms. The new model will include multidisciplinary teams where lawyers work alongside software coders, or must themselves understand coding:

Lawyers will have to understand not only how to read and probably prepare written contracts but also be able to understand the coding that is affecting those contracts and make sure they are expressing the black and white text of the written contract itself.

In a post on Slaw (January 3, 2019), Jason Morris, an Alberta lawyer, agrees that “Smart contracts really will impact the future of the legal profession,” but Morris says that whether the contracts are implemented over a blockchain or not is a separate question. They need not be, Morris says, adding that blockchain is a benefit where trust is an issue between the parties.

According to Xavier Beauchamp-Tremblay, CEO of CanLII (cited by Macaulay in the PracticeLink article), blockchain’s biggest advantage is that it is “trustless.” In other words,

you don’t need to trust or know the other party, there’s no central player that actually handles all of the payments between the players. This is where the magic is.

Conveyancing is one area where use is growing, according to Sheikh, who notes that there are “smart real-estate lawyers” using smart contracts.

Beauchamp-Tremblay does not foresee smart contracts and blockchain creating radical changes in the legal profession in the short term, but agrees that lawyers should learn as much as they can about technology, because change is coming.

2. Proofreading

Documents should be proofread, not just spell-checked by software. The final draft should be read in its entirety—not just where it has been changed or updated—since changes to one part often affect other parts.

Use an “approval” stamp or an equivalent electronic version. The approval should be initialed by a lawyer before documents are duplicated or saved.

When documents produced include accounting information, ensure that a calculator is used to re-add amounts to supplement proofreading and identify errors (such as transposition of numbers, which can occur in the case of manual calculations).

Once a document is finalized, consider making it “read only” to prevent it being further modified.

3. Off-Premises Storage

When back-up copies are stored off the premises, ensure that there is a procedure for having them periodically updated. If there is a fire in the office, it will be crucial that the off-premises back-up is current. Similarly, if documents that are stored in the cloud are lost, it will be critical to have other copies that are current.

[§3.07] Breakdown of Office Systems

Too often an office system or procedure is implemented but later abandoned for the following reasons:

(a) If a key employee departs, ensure that the knowledge is maintained and is passed to new employees. Keep written policies and instructions about office systems in your office manual for ongoing reference.

(b) The system may not have been followed by staff or lawyers who felt it was inefficient or ineffective. Develop feedback loops to improve and upgrade systems on an ongoing basis.

(c) Sometimes people learn something they might not use or practice for a while, so they forget how to do it. Ensure that office systems and procedures are not only documented but updated, and are supported with training and refreshers.

(d) Identify one person in the office with authority to enforce adherence to a system.

(e) Lawyers or staff may feel too flustered or busy to diligently follow procedures, or they may feel that no one else needs to know what they are doing. Ensure that all staff (and lawyers) take the time to follow, document and support proper procedures.
Chapter 4

Client File Management and Timekeeping

[§4.01] Introduction

1. The Importance of Systems

Good file management allows lawyers to provide reliable professional services to clients. (See Chapter 5 for more on client relations.) Maintaining careful file management procedures, document practices, and diary systems is critical to ensuring that you deliver the quality of service that is expected of a lawyer.

Maintain these important systems and procedures:

(a) file opening procedure (§4.02);
(b) file organization protocols (§4.03);
(c) limitation reminder/bring-forward (“BF”) system (§4.04);
(d) time recording and billing systems (§4.05);
(e) retainer protocols (Chapter 5 at §5.05); and
(f) file closing procedure (§4.07).

Ideally, compile information about these systems in an office manual. Keep the manual updated and review it periodically to ensure that it accurately reflects current and proper practices, and that it is being followed by all personnel.

If you or your staff resist adopting particular practices, consider whether those practices are unhelpful and need to be revised. If they do need to be followed, consider whether better training would help.

For further details on all topics in this chapter, see “Opening and Maintaining Client Files” on the LearnLSBC website: learnlsbc.ca/sites/default/files/LSBC_SF_FileManagement_ClientFiles.pdf.

Also see the “Checklist – Practice and Planning Considerations” available on the Law Society’s website: www.lawsociety.bc.ca/Website/media/Shared/docs/practice/coverage/checklist-planning.pdf.

1 Reviewed annually from 2002 by PLTC. Reviewed annually from February 1994 to March 1999 by Jacqueline Morris and Gayle Myers, who were staff lawyers at the Law Society of BC.

2. Integrated Client File Management, Timekeeping, Billing and Accounting Systems

Much of this chapter discusses the systems for file management and timekeeping. While some firms still use some manual systems, many lawyers and managers of law practices recognize the benefits and economies of using automated systems to streamline work and increase productivity. Lawyers need to educate themselves on technology that can improve the efficiency and accuracy of practice.

Most case management software integrates with numerous other office systems. For example, Amicus Attorney has features that allow you to integrate your telephone call slips and messages and your email, and will link to MS Outlook. An integrated accounting and case management system can include calendaring, contact management and communications, document management, conflict searches and research, as well as other features. Examples of integrated accounting and practice management software packages include PC Law, Billing Matters with Time Matters, and ProLaw.

[§4.02] File Opening

1. File Opening Sheet

A carefully designed file opening sheet gathers all the information on critical questions. It is a starting point in providing quality representation on the file. It provides a checklist to ensure that it accurately reflects current and proper practices, and that it is being followed by all personnel.

Also remember that you may be required to obtain and retain documents to fulfill your obligations under Law Society Rules 3-98 to 3-109 on client identification and verification. The point of client identification is to require lawyers to make reasonable efforts to obtain basic identification information about clients. For example, lawyers representing clients who are individuals should obtain the clients’ full names, home and business addresses, telephone numbers and occupations (Rule 3-100), then verify this information in original government-issued identification (Rule 3-102).

The rules specify timing for identification and verification procedures. Under Rule 3-105, if the client is an individual, then the lawyer must verify the client’s identity at the time the lawyer provides legal services in respect of a transaction. Under Rule 3-106, if the client is an organization, then the lawyer must verify the client’s identity within 60 days of engaging in a financial transaction.
A client who is not meeting personally with the lawyer might need to obtain an attestation from a commissioner of oaths or a guarantor attesting that the commissioner or guarantor has seen the client’s identification documents (Rule 3-104).

Lawyers must retain the client identification documents in the form and for the duration required under Rule 3-107. Generally, retain the documents for six years after concluding the particular legal service or until the solicitor–client relationship is at an end, whichever is longer.

The Law Society has produced a Client Identification and Verification Procedure Checklist as part of the Practice Checklists Manual. However, lawyers should always refer to the current rules when determining the information necessary to identify clients and verify their identity. Lawyers should review the definitions in Rule 3-98 and note that the identification and verification requirements vary according to the type of transaction and the type of client. Also note that the Law Society has been participating with the Federation of Law Societies in developing model rules to reduce money laundering, which could affect the client identification and verification rules in the near future.

Currently the rules 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 3-109).

For the checklist and other resources on this topic, search for “Client ID & Verification” on the Law Society of BC’s website: www.lawsociety.bc.ca.

File opening sheets should include basic data:
- the client’s name (previous name or alias);
- home and business addresses and phone numbers, including cell phone numbers;
- alternate addresses and phone numbers (especially important if the client may be moving, has no fixed address or is living in shelter or temporary accommodation);
- client’s occupation;
- opposing party and lawyer name(s), as well as other possible conflicts;
- subject matter of the file and responsible lawyer’s name;
- date the file is opened, and referral sources;
- applicable limitation and other critical dates;
- billing information; and
- file closing date and file destruction date.

The file opening sheet reflects special instructions and proper diligence:
- it records special contact instructions (i.e. do not give out client’s address);
- it records critical limitation dates or closing and destruction dates on the file;
- it enables the lawyer to check or confirm that there is no conflict of interest; and
- it provides evidence that these procedures have been completed and recorded.

The responsible lawyer should complete the file opening sheet at the initial client interview. It will likely become the first document in a manual file and will be prominent in an automated filing system. The staff member responsible for opening files should use it to record entries in other administrative systems such as a file opening book, a digital client file management system or client index, the accounting system, as well as bring-forward systems marking limitation dates. If a conflicts check has not already been performed, the staff member will perform it.

Record all promises made, and follow up on them. When taking the initial instructions, if you say that you will follow up with the client, make an entry in your bring-forward or reminder system.

A sample file opening sheet is provided on the following page.

2. File Opening Book/Record

The file opening “book” provides a chronological record of all files opened. It 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; and the opposing party name(s). It will likely also include blank spaces for the date the file is closed and for the file destruction date.

The file opening book provides valuable management information:
- the number of files being opened per month, and per lawyer or per area of law;
- the number of files any given client has with the firm; and
- the files still open beyond a reasonable time (particularly those with 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 for prompting lawyers to follow up on files regularly.
Sample File Opening Sheet

**Client identification and verification.** Rules 3-98 to 3-109 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 www.lawsociety.bc.ca.

**FILE OPENING INFORMATION**

<table>
<thead>
<tr>
<th>File opening date:</th>
<th>Limitation date:</th>
</tr>
</thead>
</table>

**CLIENT INFORMATION**

<table>
<thead>
<tr>
<th>New Client? [YES] or [NO] If NO, existing Client #:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client Full Name:</td>
</tr>
<tr>
<td>Client Home Address:</td>
</tr>
<tr>
<td>Client Business Address:</td>
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<tr>
<td>Telephone Numbers</td>
</tr>
<tr>
<td>Business local:</td>
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<tr>
<td>Cell:</td>
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<td>Cell:</td>
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<tr>
<td>Pager:</td>
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<tr>
<td>Fax:</td>
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<tr>
<td>Assistant’s name:</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Company [YES] or [NO]</th>
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<tbody>
<tr>
<td>Business Type:</td>
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<td>Web Page:</td>
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<tr>
<th>Individual [YES] or [NO]</th>
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<tr>
<td>Occupation:</td>
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<td>Employer:</td>
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<tr>
<th>Spouse’s Name:</th>
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**MATTER INFORMATION**

<table>
<thead>
<tr>
<th>Brief Description:</th>
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<table>
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<tr>
<th>Opposite Party:</th>
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<tbody>
<tr>
<td>Address:</td>
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<tr>
<td>Postal Code:</td>
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<tr>
<td>Telephone:</td>
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</table>
Opposing Lawyer’s Name: __________________________________________________________
Email: _______________________
Fax: _________________________
Address: ___________________________________________________
Postal Code: _________________ Telephone: __________________
Assistant’s name: _____________

OTHER INFORMATION
(including other parties to the matter)
________________________________________________________________________

ADMINISTRATION (initial when done)

____ Client index checked for conflict     ____ Client advised of conflict (if applicable)
____ 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

<table>
<thead>
<tr>
<th>LIMITATION/BF DATES</th>
<th>REASON</th>
<th>INITIAL WHEN DONE</th>
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FILE CLOSING DATE: __________________________
Each new client should have a separate file, except for clients who came in once only (such as clients seeking independent legal advice, powers of attorney, and notarizing), whose paperwork may be filed together in an annual folder, provided these files are indexed and closed at the end of each year and the client names are entered into the conflicts system.

3. File Management Index Systems
The type of index system used will depend in part on the size and diversification of the law practice. Use naming conventions that are compatible with your accounting system or case management software. Files are typically indexed (or searchable) in one or more of the following ways:

(a) alphabetical by client surname;
(b) alphabetical by opposing party name;
(c) chronological;
(d) by custodial inventory, showing files that contain inventory such as wills or fiduciary property in the custody of the firm.

4. Accounting Records
Accounting records should be established for each new file matter when the file is opened, 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 digital-file record;
(b) individual client accounts receivable/disbursement ledger card or digital file record; and
(c) individual client time billing record.

The initial information to be recorded would include the following:

(a) name of client;
(b) address;
(c) file number;
(d) matter; and
(e) responsible lawyer.

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

[§4.03] File Organization

1. Introduction
Creating and maintaining tight protocols for information management makes locating files swift and reliable. 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 Profession 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 proper file storage system.

Active client files may be in paper or digital format, or both. Content of electronic files ranges from storing client documents on specific files, to adopting a case management program, to complete electronic filing of all incoming and outgoing documents, emails, negotiations, communications, etc. in the “paperless office.”

2. Organization of the File Folder
Even if you maintain primarily digital files, you will likely still generate paper files. In either case, create a file folder for each new matter.

In a paper file, documents should be securely fastened to keep the documents in order and to stop them from falling out.

The remainder of this section illustrates how some paper files may be organized. Obviously, the software you use will determine how electronic files might be organized in a standardized way.

3. Organization of Simple Files
The left-hand side of a file is typically used for billing and communications (chronological order):

- file opening sheet,
- retainer letter or contingency fee agreement,
- client information checklist,
- dated notes of conversations, and
- other correspondence and memos to file.

The right-hand side is typically used for all other documents (chronological, if possible):

- searches (e.g. for real estate files or corporate/commercial files), and
- top document—procedural checklist or current file status report.

Additional documents such as expert reports or appraisals may be fastened to a separate sub-file and ordered chronologically.

4. Organization of Complex Files
Organize complex files 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.
Sub-files might be gathered in a multi-file folder or a concertina file. Use divider tabs or file flags. Using coloured sub-file folders or sub-file labels might make identification clearer.

Attach a detailed index if possible.

(a) Commercial Files

Sub-files commonly used in commercial files are “searches” (to include letters to and from taxing authorities and registrars) and likely both “drafts” and “final documents” (if there are numerous documents). This last sub-file is useful in 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 might add further sub-files labelled “assets,” “liabilities,” “maintenance,” “custody/access,” “case law,” “expert reports” and “pensions.”

(c) Civil Litigation Files

Litigation files often contain standard 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

§4.04] Tracking Dates in BF Systems

1. Introduction

It is critical to maintain a suitable reminder system for limitation dates and routine bring-forward (BF) matters. 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 more on the Lawyers Insurance Fund, see Practice Material: Professionalism: Ethics, Chapter 5. That chapter also includes the Law Society publication, Beat the clock: Timely lessons from 1600 lawyers, which lists commonly missed limitations in each area of practice and the statutes where they are found. Beat the clock is also available on the Law Society’s website (www.lawsociety.bc.ca). Note that Beat the clock has not been updated since 2014, so be sure to note up relevant statutory sections.

Very few claims arise from ignorance of the law. Rather, they tend to be systems failures and slips. “Systems failures” include ignoring or failing to maintain office systems that have been put in place. They are most often to blame in failing to meet shorter limitation periods, such as notices to admit under the Supreme Court Rules and notice requirements under the Local Government Act. “Slips” include simple mistakes, such as paper notices being buried under piles of documents, or communication problems, such as people misunderstanding who was to do what. Law firms are extremely vulnerable to limitation errors when lawyers or secretaries in the firm depart or arrive.

Bring-forward dates are specific dates planned for contact or review. They might relate to specific matters such as responses to correspondence, receipt of instructions, reminders to take steps, etc. Alternatively, they may simply identify when it is time for a routine check on the file. 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. Characteristics of Good Reminder Systems

There are many reminder systems to choose from. Your reminder system could include alerts in your case management software, flags in your desk
diary, or paper in an accordion file. In any event, it should be designed so that reminders are not only brought to the lawyer’s attention but are active until someone takes a step confirming that the matter has been properly completed. Further, the reminder date should give sufficient time so the legal work can be completed before the final deadline.

One rule is that each reminder date or limitation date should be noted 3–4 times before the ultimate date. To ensure that no file “slips through the cracks,” make it a rule 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 administrative legal assistant are normally required to make a system work. While lawyers make most decisions about which dates to note in the calendar, the legal administrative assistant’s attention to detail and willingness to double-check entries are integral to most systems. Accordingly, a “double” reminder system involving both lawyer and assistant is strongly recommended. (If no assistant 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.

Reviewing and follow-up on reminders should become a critical 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.

If the reminder system is paper-based, it should be kept in a central location and secured at night. Whether paper or digital, it should be 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.

4. Accordion File Folder System

If your office procedures are paper-based, it can be simple to use an accordion file numbered 1-31 for a monthly reminder system. Copy a document or write a BF note showing whatever you need to be reminded of. This BF note should clearly identify four items: the client, the file, whatever you need to be reminded of, and the bring-forward date. Each document is filed according to the day on which you need to take action.

It then becomes your legal administrative assistant’s job to pull the BF documents daily and bring them to your attention.

The main advantages of this system are that it is easy to use and it takes up very little time. The BF note tells you at once what your task is. It works well for files requiring many reminder dates.

5. Desk Diary System

When a limitation date is noted, the lawyer makes an entry under the appropriate date in the lawyer’s personal diary (paper or digital), recording the file number, client name and action required.

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

Corresponding entries are then made in the legal administrative assistant’s diary.

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

3 This section is based on material prepared by Jacqueline Morris for the CLE publication, Law Office Management for Small Firms - 1991 (April 1991).
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 describing reasons for the reminder; and administrative legal assistants may forget to make the notes.

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

6. Sample Dates to Note in BF Systems
(a) Client Services
   (i) Dates tasks are due:
   - commencing an action, taking steps, or filing court documents and records,
   - serving expert reports,
   - corporate or securities meetings or registry filings, or
   - following up on demands.
   (ii) Dates for renewals:
   - licences, leases, or trademarks, or
   - notices of claim, judgments.
   (iii) Dates of appearances:
   - chambers, trial, discoveries or other proceedings.
   (iv) Dates to perform updates:
   - wills and trusts, or
   - buy/sell business valuations.
   (v) Expiration dates for limitation periods.
   (vi) Closing dates for real estate transactions.
   (vii) Responses to correspondence and settlement offers, 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, and
   - practice licences, memberships.
   (ii) Review dates for:
   - staff evaluations and raises, and
   - accounts receivable.

7. 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 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 with your staff.

Weekly
   Systematically review open client files in filing cabinets to detect overlooked matters.
   Scan office desks, filing rooms and other locations for misplaced files or documents.
   Hold staff discussions to discuss the status of particular files, client complaints, unresolved issues, backlogs, and other concerns.

Periodically
   Review the client file opening book for open files to identify any that have been misfiled or classified improperly.
   Review the accuracy of the limitation reminder system to ensure that reminders 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 files that need to be billed and files with little or no activity in the previous month.

[§4.05] Recording Time and Billing
   1. Reasons for Recording Time
      Statistical data, accumulated by every bar association that has appointed a section or committee on law office economics and management, has proven that lawyers who keep time records earn more than those who do not.
Timekeeping is not only about billing. It also provides information about the practice:

(a) dividing time by type of work—criminal law, real estate transactions, corporate work and so on—forms a basis for eliminating unprofitable or undesired work;

(b) in reviewing time records, lawyers can identify tasks that occupy large proportions of time, which encourages the lawyer to seek ways to automate those processes or reduce time spent on repetitive work;

(c) time records promote efficiency;

(d) time records constitute a basis for supporting any fee challenged by a client;

(e) solicitor-client rapport is enhanced when a client receives not only a statement but also a detailed description of the work done on the client’s behalf;

(f) time records are an excellent basis for monitoring the efforts of new associates.

In Merle Campbell Law Offices v. Pattinier, 2002 BCSC 978, a client complained about a lawyer’s bill where the fees alone exceeded $206,000. The Master found that the lawyer had failed to record time effectively or accurately, and provided no adequate explanation for what was clearly improperly recorded time. The Master considered evidence from other lawyers as to what would have been a reasonable hourly rate and time to complete the legal services, and allowed the lawyer $135,000 in fees, a reduction of nearly $80,000.

In summary, there are many reasons for a lawyer in private practice to keep accurate time records.

2. Timekeeping Systems Generally

A progressive system will automatically render a statement to the client at the end of the billing period; it could compile the data into monthly, quarterly and annual reports rendered to lawyers; it might also remind lawyers to record time. A timekeeping system should be simple to operate and it should reduce duplication of effort throughout the office, otherwise it will soon be abandoned.

Lawyers must record time as it is spent, because they may forget it, or estimate it inaccurately, if they record it later.

The timekeeping system must distinguish time spent for different purposes:

(a) time chargeable to each individual client;

(b) time expended by each lawyer but not chargeable to any client; and

(c) total time expended by each lawyer, day by day.

The timekeeping system must:

(a) explain each service performed, in a format suitable for billing purposes;

(b) accumulate the total time expended on each client by all lawyers of the firm; and

(c) provide comparative information on time charged and time billed for each client.

3. Automated Time Recording

With automated time recording, lawyers record their time directly into the system, adding a narrative describing the lawyer’s activities or selecting established codes for various services. The time is charged and calculated at the specified lawyer rates. Most automated systems permit more than one billing rate for each lawyer, based on the type of work. In addition, fixed fees may be specified instead of an hourly rate.

The time is input and remains on the system in detailed form until it is billed. When billing time comes, automated disbursements can be added. Expenses such as long-distance charges, courier fees, court reporter fees and photocopy fees are input on a daily basis.

With an automated system, each lawyer is provided with a regular work-in-progress (often called a pre-bill report) that indicates, for each client:

- unbilled time and disbursements;
- accounts receivable; and
- trust balances.

Documenting unbilled time and disbursements acts as a reminder to lawyers to bill on a more regular basis. It can also show progress toward billable targets. A report that includes trust balances reminds a lawyer, at least, to bill the trust balance in order to transfer funds into law firm accounts.

More frequent billing can improve cash flow and client relations. Clients will be aware on an ongoing basis of the fees and disbursements, which reduces the potential for disputes, and helps to identify billing problems at an early stage.

4. Non-Automated Time Recording

A simple manual recording system is as follows:

(a) each lawyer records time as expended on each client on a daily sheet;

(b) the legal administrative assistant maintains a summary record for each client, filed alphabetically by client;

(c) total time expended by each lawyer, day by day.
(c) at the end of each day, the legal administrative assistant transfers each individual time entry from the day’s sheet to the appropriate client summary record indicating the description of services;

(d) any time not chargeable to clients is transferred to separate records for each category: business development, education, etc.;

(e) the total charged to all clients for the day is recorded on a monthly summary with separate columns for each lawyer, and the daily totals of non-chargeable time are transferred to a separate monthly summary sheet for management information;

(f) at billing time, the client summary record is pulled and the time is totaled and written on the summary record; and

(g) if the amount billed is less than the total expended, make a notation on the card indicating whether the difference is to be written off or carried forward to a future billing.

If the lawyer is precise in completing the time description column of the daily charge sheet, the bill can be prepared directly from the sheet.

§4.06 Work-in-Progress

1. General

Work-in-progress (“W.I.P.”) represents the unbilled hours accumulated on client files, usually valued at the standard hourly rate charged by the lawyer. Sometimes this is referred to as unbilled value of time. It represents an inventory of lawyers’ time, which increases each time a charge is recorded on a file. Each time a client is billed, the time relating to that billing is reduced from the work-in-progress inventory.

Remember that the work-in-progress record is for information purposes only. The value of your work-in-progress has to be realized, that is, converted to billings and collected from the client.

2. Controls

Certain controls should be implemented over unbilled time to ensure that it stays manageable:

(a) time records must be submitted promptly;

(b) time for each client must be summarized and billed regularly; and

(c) accumulated unbilled time for each client should be reported to the lawyer regularly.

Billing policies based on accumulated unbilled time should be established for the firm. An example of such a policy is to bill at the earlier of

(a) completion of the client matter;

(b) monthly; or

(c) when the value of unbilled time exceeds $___.

§4.07 File Closing

The last acts you will need to perform for most files are to properly close, store and eventually destroy the file. Use a file closing sheet for this process.

A file closing sheet should contain this information:

- the name of the file;
- the date the file was closed;
- who closed the file;
- file stripping checklist indicating what if anything was removed from the file and where it was sent or placed; and
- instructions about storage and eventual destruction of the file.

The responsible lawyer should review the file to be certain that no outstanding matters remain (such as undertakings). The responsible lawyer should then sign off that the file has been reviewed and is ready to close.

Next the lawyer should send a closing letter to the client and return whatever documents should be returned from the file, carefully documenting what has been sent. The client should acknowledge receipt of those file contents before the file is closed.

Bill the client for the final time, making certain that the bill and disbursements have been paid before the file is closed.

All proper storage and retention dates need to be entered in the file and in the office storage system.

On closing, strip the file. Follow the suggestions in “Closed Files – Retention and Disposition,” on the Law Society of BC’s website: www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/ClosedFiles.pdf. This article provides excellent tips on things such as what materials should go to the client, what material should be destroyed, what material you should keep, etc. The article also includes a checklist. Using a checklist, or incorporating a checklist as part of the file closing sheet, can help ensure that the essential steps and procedures are performed before the file is closed.

Ultimately, make sure the file is properly coded and filed within your system as a closed file.
Ownership of Documents in a Client’s File

Who owns the documents in a client’s file? The client? The lawyer? The ownership of documents arising out of a lawyer-client relationship is a matter of law, not a subject determined by the Law Society; however, the Law Society Rules and the BC Code include professional responsibility requirements for lawyers in relation to a client’s file documents and property. Document ownership has not received much attention in Canadian jurisprudence but is something that lawyers deal with regularly. For example, ownership is relevant to the distribution of documents and property when closing a file, transferring a file to a successor lawyer, undergoing discovery of documents, asserting a lien, and other situations. Some of the issues around ownership of documents are as commonplace as whether it is proper to charge clients for photocopying.

While this article provides guidance to assist lawyers, lawyers will ultimately have to do their own research to determine document ownership and to ensure that they meet their professional responsibilities. Note that this article does not deal with copyright. Lawyers (or their firm) generally have copyright in their work product. An exception is where the retainer agreement provides that copyright in the work product goes to the client. Lawyers are allowed to use documents they have prepared for an earlier client as precedents or templates as long as the earlier client’s confidential information is not disclosed.¹

If you are asked to produce your file in a situation where you think that a client or former client might make a claim against you, you should consult the Lawyers Insurance Fund for guidance as to what you should disclose.

Professional responsibility rules

Who owns a client’s file documents is a matter of substantive law; however, the Code sets out ethical guidelines for lawyers to take into consideration as well. For example, rule 3.5-6 provides that lawyers must account for clients’ property that is in the lawyer’s custody and deliver it upon request or, if appropriate, at the conclusion of the retainer. When a lawyer withdraws, the lawyer must try to minimize expense and avoid prejudice to the client and must do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor lawyer (rule 3.7-8). Code rule 3.7-9 requires that, on discharge or withdrawal, a lawyer must, subject to the lawyer’s right to a lien, deliver all papers and property to which the client is entitled. Law Society Rule 3-54(1) requires a lawyer to account in writing to a client for all funds and valuables (as defined in Rule 1) received on behalf of the client.

When closing or transferring a file, lawyers should be aware that they have an ethical duty, upon request, to make reasonable efforts to provide a client with electronic copies of documents in the same form in which the lawyer holds them at the time of the request.
If a client requests copies of documents that the lawyer has previously provided to the client, the client is generally entitled to receive the same copies again, however, a lawyer is entitled to bill a fair and reasonable amount for the time and cost of providing the documents a second time. In the case of electronic documents, a lawyer may bill a reasonable amount for providing the documents and for the cost of materials (e.g. a memory stick or disk). For more information on electronic documents and billing for their production and billing for photocopies see Ethical considerations when a lawyer moves on in the Summer 2014 Benchers’ Bulletin.

If documents are delivered to the client on file closing, it is important for the lawyer to retain copies, made at his or her expense, of all relevant documents in order to defend against negligence claims or complaints. See Closed Files: Retention and Disposition for more information, as well as for information regarding other ethical requirements, e.g. in relation to retention, disposition, confidentiality and security. For information on solicitors’ retaining liens, see the practice resource, Solicitors’ Liens and Charging Orders – Your Fees and Your Clients, July 2013.

The law

Neither the Code nor the Law Society Rules outline how to determine what documents are the client’s property. The remainder of this article provides guidance to determine ownership of client file documents. The primary position of Canadian courts at the time of writing this article has been to follow the English authorities and Cordery’s Law Relating to Solicitors. Document ownership is determined by legal principles, not by ethics. There are two broad categories to consider:

- documents created before the retainer;
- documents created during the retainer.

Documents created before the retainer

Documents created before the retainer generally belong to the client or a third party. These might include documents from a previous lawyer-client relationship or documents sent to the lawyer by a third party. As outlined in Cordery, such documents are held by the lawyer as agent for either the client or third party, and as such the lawyer does not own them. At the conclusion of the retainer these documents should, as directed by the client, be returned or disposed of.

Documents created during the retainer

Documents created during the retainer make up the primary area of contention. As noted above, the courts have generally chosen to adopt the approach in Cordery in determining document ownership. In Cordery, the basis for a determination lies in payment: if a client pays for a
document, then it belongs to the client. Cordery classifies documents created during the retainer into four broad categories:

- Documents prepared by the lawyer for the client’s benefit or protection and paid for by the client, belong to the client.
- Documents prepared by the lawyer for the lawyer’s benefit or protection, at the lawyer’s expense, belong to the lawyer.
- Documents sent by the client to the lawyer, the property in which was intended to pass from the client to the lawyer, belong to the lawyer.
- Documents prepared by a third party and sent to the lawyer (other than at the lawyer’s expense), belong to the client.5

**Documents prepared for the client’s benefit and paid for by the client**

The client generally owns documents created by the lawyer for the client and paid for by the client. Examples of documents in this category include:

- memoranda of law;
- documents created for use in court;
- witness statements;
- notes on attendances for the client’s benefit.

Generally, as long as the primary purpose underlying the creation of a document is to benefit the client, it falls under this category. Such documents are necessary for the client’s case and would be expected to be transferred to a successor lawyer if the client switched firms.

**Documents prepared for the lawyer’s benefit at the lawyer’s expense**

The lawyer generally owns documents created for the lawyer’s benefit at the lawyer’s expense. In Chantrey Martin & Co v Martin, a case concerning chartered accountants, the English Court of Appeal noted that “even in the case of a solicitor there must, we should have thought, be instances of memoranda, notes, etc., made by him for his own information in the course of his business which remain his property, although brought into existence in connexion with work done for clients.”6 This principle applying to lawyers was adopted into both Nova Scotia and Ontario law.7 Examples of documents in this category include:
inter-office memoranda;

internal notes or communications (including conflicts checks);

lawyer’s working notes meant to aid memory;

internal requisition forms;

ethics consultation notes.

In Cordery, entries of attendances belong to this category, but in practice these documents are more difficult to categorize. Notes of meetings with witnesses or officers of the court, for example, will likely be made primarily for the client’s benefit. Hope JA of the New Zealand Court of Appeal criticized the Cordery categories at pages 358-359 in Wentworth v de Montfort where he found

The notes made by a solicitor of telephone conversations with persons other than his client, but relating to the client’s affairs, may obviously fall into an almost indefinite number of classes. . . . As I have indicated Cordery suggests that both “entries of attendance” and “proofs of evidence” are the property of the solicitor. No authority is cited for these suggestions, and I would have thought that they each both fell squarely within the first of the four categories described in Cordery and that they each belonged to the client. “The Guide to the Professional Conduct of Solicitors” issued by the (English) Council of the Law Society (1974) states (at 39) that a memorandum of a telephone conversation with a third party made by a solicitor is the property of the client, and is accordingly to be handed over on a change of solicitors. On the other hand, a solicitor may well make a note of a telephone conversation which he has with a person relating to the work he is doing for a client, but the conversation may be solely for the benefit of the solicitor and not be chargeable to the client.

Determining who owns a lawyer’s entries of attendances and notes requires an examination of who the third party was and the content of the notes or recordings.

Documents sent to the lawyer by the client

Documents sent to the lawyer by the client generally belong to the lawyer. These include instructions and other correspondence. In the same way, letters and correspondence sent by the lawyer to the client belong to the client.
Documents sent to the lawyer by third parties

Documents sent to the lawyer by third parties belong to the client. The lawyer receives them as the client’s agent. Examples of such documents include letters, receipts, vouchers for disbursements, or expert witness reports.¹⁰

Documents that do not appear to fit into one of the four categories

If a document does not seem to fit into any of the four categories, consider the principles that appear to underlie the Cordery categories to make a determination.

1. If a lawyer comes to control a document through his or her role as the client’s agent, the client owns the document.¹¹

2. If a document is created for the client’s benefit, it likely belongs to the client; and if the document is created for the lawyer’s benefit, it likely belongs to the lawyer.

3. If the client paid for the document, it likely belongs to the client.

Once ownership has been established, a lawyer can refer to the Law Society’s practice resource article, Closed Files – Retention and Disposition, July 2015 to review document retention and disposition considerations. This article includes discussion of statutory, regulatory, ethical and practical reasons for retention (defending against claims and complaints) and a suggested minimum retention and disposition schedule for specific records and files.

Summary

The following is a non-exhaustive list based on the above principles of ownership. It is meant as a guide and is not definitive.

The client owns:

- documents in existence before the retainer;
- correspondence from the lawyer or third parties;
- expert reports;
- client’s medical records;
- examination for discovery transcripts;
- trial transcripts;
- notes or recordings of conversations with witnesses or officers of the court;
- documents for use in court (case law, briefs, pleadings, factums);
- memoranda of law;
- originals, copies and drafts of wills, powers of attorney, representation agreements, contracts;
- receipts for disbursements;
- corporate seals.

The lawyer owns:

- correspondence from client;
- time entry records;
- inter-office memoranda and other internal communications (including conflicts checks);
- internal requisition forms;
- calendar entries;
- accounting records;
- cash receipt book of duplicate receipts;
- notes prepared for lawyer’s benefit or protection at the lawyer’s expense;
- ethics consultation notes.

Conclusion

While this article provides guidance to assist lawyers, lawyers will ultimately have to do their own research to determine document ownership and to ensure that they meet their professional and legal obligations. To help prevent issues, lawyers should consider how they will respond to document requests and develop a law firm policy for the organization, retention, and disposition of client files (see Closed Files: Retention and Disposition). Also, lawyers may wish to include wording in their retainer agreements as to how file documents and property will be managed during the course of the lawyer-client relationship and when transferring or closing the file. As
part of a lawyer’s duty to provide courteous, thorough and prompt service to clients (Code rule 3.2-1), providing a client with correspondence and copies of documents regularly during the course of the engagement may lessen the likelihood that a client will request the same information again later. However, the fact that a lawyer has already provided the information to the client once does not mean the client is not entitled to receive the same information again.

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3 Aggio, at para 17. See note 2.
4 Cordery, at 89. See note 2.
5 Ibid, at 89.
6 Chantrey Martin & Co v Martin, [1953] 2 QB 286 (Eng CA) at 695.
7 Spencer v Crowe, 1986 CarswellNS 251 (NSSC) at para 20; Bowman v Rainy River (Town), 2007 CarswellOnt 1053 (ONSC) at para 14.
8 Cordery, at 90. See note 2.
10 Re Ellis & Ellis, [1908] WN 215 (Ch D).
11 Leicestershire County Council v Michael Faraday & Partners Ltd, [1941] 2 KB 205 (Eng CA) at 215.
The lawyer’s time is the most important asset of the law practice. Lawyers who fail to manage time effectively might spend too long on some matters, resulting in unhappy clients or lost income. It might even result in missing other deadlines, or not having time for matters that warrant full attention.

Lawyers should develop time-management skills at an early stage in their practice careers.

Legal case management programs can help lawyers save time and effort. These software packages automate and integrate many manual law office systems. Most of the software allows lawyers to keep track of billable time, maintain limitation dates and BF dates, keep to-do lists, do conflicts checks, keep client lists, and track other work. For an introduction to using case management programs, see “25 Benefits of Case Management in 40 Minutes” and “Building an automated practice: it’s not so tough,” available on the Law Society of BC’s website (www.lawsociety.bc.ca).

Tasks must be organized and priorities identified. Keep organized by dedicating time for routine tasks:

- planning the day, week, month;
- dealing with mail and communications;
- meeting with clients;
- evaluating reminders and prioritizing work, then performing legal work;
- recording time;
- marketing and developing your practice;
- ensuring compliance with legislative and regulatory matters such as accounting records, taxes, etc.; and
- networking and continuing professional development.

Ultimately, ensure that you follow through and complete the tasks you have identified.

1. Lawyer’s Handbook

This section has been adapted from material in The Lawyer’s Handbook, published by the American Bar Association.

Lawyers must develop good work habits and use time profitably. These are some guidelines.

(a) Establish and maintain regular office hours.
(b) Set aside time at the beginning of the day to think and to plan your work.

(c) Establish regular times for particular tasks, such as handling correspondence only in the morning and meeting clients only in the afternoon.
(d) Delegate as much as possible, and give clear instructions to minimize time spent correcting.
(e) Keep accurate written records of every working hour in the day (not just billable time, but all time available for work). Most lawyers are astonished to learn how few hours are actually spent in billable legal work in the average day.
(f) Throughout the day, continually question where and how you could work more efficiently.

2. Technology and AI

(a) This section is adapted from “Technology and Legal Services” by the Solicitors Regulation Authority in the UK (November 2018), (www.sra.org.uk/sra/how-we-work/reports/technology-legal-services.page).

**General Benefits of Legal Technology**

Increasing use of technology can benefit the legal market by improving access to legal services, meeting demand, driving competition in the market, and improving standards of service.

If firms can increase their efficiency and productivity, they can reduce costs to meet the needs of those who would not otherwise be able to afford legal services. Also, remote legal systems and services that are accessed via phone and the internet also help to deliver legal services to those who may be able to afford legal services but cannot physically access them.

Increasing access to legal services should increase demand in the market. Rather than reducing the work available for lawyers, advanced technology increases it.

Evidence shows that there is an increasing demand for online legal services and service via email. Firms are working to meet that demand and so are court services. Online claims resolution is now working in the UK and in Canada (including at BC’s Civil Resolution Tribunal).

Technology helps firms compete. It helps firms work more quickly and accurately, especially with AI (artificial intelligence) applications that can automate routine processing work.

That efficiency frees up lawyers’ time to focus on offering better value and more engagement with clients. Those improved standards of service promise greater client satisfaction.
Specific Productivity Opportunities

The legal services marketplace is innovating to improve existing processes:

- online document portals improve communication within firms or with clients and remote users;
- unbundling allows legal services to be broken down into components, many routine parts of which can be automated;
- electronic documents can be completed with digital signatures (such as smart contracts using blockchain for payment in cryptocurrency);
- using AI in document management improves the speed and accuracy of legal opinions, document disclosure and regulatory compliance;
- virtual firms offer services at lower cost due to lower overhead; and
- chatbots offer clients interactive self-service legal advice.

In one example, a law firm introduced a chatbot to do routine tasks. It was able to tell telephone callers which lawyers were available, carry out conflicts checks, and book appointments with particular lawyers. The firm was able to reduce hours for all its staff without reducing pay.

In another example, a legal technology company held a competition between its AI software and 20 experienced lawyers to detect issues in contract clauses. Both humans and AI were highly accurate, but the humans took an average of 92 minutes while the AI took 26 seconds.

In another example, two opposing parties were able to work together with a chatbot facilitating their negotiation to come to an agreement.

(b) This section is adapted from “AI and the Future of the Legal Profession” by Suzanne Dansereau, published by the Canadian Bar Association in National (Spring 2018).

Xavier Beauchamp-Tremblay (CEO of CanLII) and Kang Lee (in-house counsel at an international company) discussed AI, and agreed that AI offers significant benefits to lawyers, but also warn that it might mean job losses, too.

We will be able to have a more complete picture of a case in less time [...] the rigorous verification, analysis and collection of evidence will all become less time-consuming and costly. [...] The automation of repetitive tasks will enable lawyers to focus more on reflection and strategy.

Nevertheless, they point to an American bank that recently replaced about 60 lawyers with software programs.

3. Improve Your Practice Profitability

This section has been adapted and updated from “Top 10 Tech Tips” by David Bilinsky in Benchers’ Bulletin (2010: No. 4, Winter) and “Six Steps to Improve Your Practice Profitability” by David Bilinsky and Laura Calloway, in Benchers’ Bulletin (2006: No. 1, January–February).

Improving productivity involves both using new tools and developing strategies for working smarter. Here are some examples.

Tools: Voice Recognition

Voice recognition software translates speech to text on the computer. The productivity gains that can be realized are wonderful. It can transcribe dictated correspondence or notes, transcribe voicemail messages, transcribe recorded proceedings, and even authenticate voices for biometric identification.

Many products are available, including

- Dragon’s Naturally Speaking (Nuance),
- IBM’s ViaVoice (Nuance), and
- Microsoft’s VR.

Tools: Cloud Storage

Need to send a big file but the recipient’s email inbox is too small? There are many storage and transmission options such as Dropbox, WeTransfer and Yousendit. Upload the (encrypted) file, then create an email with a link to the file.

Worried about confidentiality? Consider where the host servers are based, for data protection and privacy. There are some Canadian-based options, such as Sync.com, OneDrive for Business, and ServerCloudCanada.

Tools: Safeguarding Data

Safeguarding data means saving it reliably. An external hard drive or private cloud for backup purposes prevents re-doing lost work.

ioSafe is an external hard drive. It is USB-enabled, fireproof (it can withstand 1550°F for 30 minutes), waterproof (it can be submerged up to 10 feet deep in fresh or salt water for three days) and can be physically locked or bolted to the floor.

Strategy: Revisit Your Business Plan

A business plan is your road map to the financial future. All successful businesses are planned on paper well before the doors actually open, but if you’ve been in business for many years, revisit it.
Does it still represent your outlook and direction? Review the goals you’ve set on an ongoing and regular basis. If you find yourself failing to hit your targets, take corrective action by cutting unnecessary expenses and thinking strategically about potential new business—before it’s too late.

**Strategy: Implement a Financial Reporting System**

After developing your business plan, you need to implement a system that can deliver financial information. To determine whether you are meeting your targets, you need sufficiently detailed and timely reports:

- a statement comparing actual income and expense numbers against your budget, for both the current month and the year to date;
- a statement showing worked but unbilled hours (WIP) for every lawyer, for both the current month and the year to date;
- a statement showing actual billings by lawyer for the current month and the year to date;
- a statement showing collections by lawyer for the current month and the year to date;
- a statement showing aged accounts receivable by lawyer, by client and by area of practice;
- a statement showing unbilled disbursements by file and comparing them to the previous month to show if they are increasing or decreasing;
- a statement showing funds in trust by client and whether those funds are retainers or funds held on behalf of clients; and
- a statement of upcoming trials and motions that compares the expense and retainer funds in trust for each client against expected costs and fees for the courtroom work.

**Strategy: Assess Your Cash Flow**

Even if you use accrual-based bookkeeping (based on amounts payable, as opposed to cash accounting, which is based on amounts paid), your firm will still live or die by its cash flow. Accordingly, your accounting system has to forecast cash flow needs and compare them with expected cash inflows. Any cash shortages must be covered either by the lawyers (by way of lowered draws or capital contributions) or by increasing the firm’s debt (usually by increasing the line of credit).

Long-term chronic cash deficits usually herald problems. Simply increasing firm WIP can drive you to ruin unless you are also converting that WIP to cash. A law firm’s objective is not just to perform legal work, but to change that work into cash. A cash flow statement ensures that this is being done at a rate sufficient to sustain the business.

One cash flow item many lawyers fail to monitor and anticipate is taxes. Amounts to be remitted to the government—whether they are collected taxes or employee withholdings—are deemed to be trust funds, and failure to pay those charges in a timely manner could have dire consequences.

**Strategy: Track Your Time**

Many lawyers do not track their time. They give various reasons, including, “I only handle matters on a contingency basis, so the hours I put in don’t really matter,” or “Tracking billable hours just takes away from the time that I can be doing legal work.” For the individual lawyer, financial performance really comes down to two measures:

1. effective hourly rate (EHR), and
2. total billings.

You determine your effective hourly rate on a file by taking your fees billed and dividing them by the total hours put into a client’s file (not just the hours billed but all the time worked, whether billed or not). When you measure the EHR for all your files and rank the results from largest to smallest, you can see which clients and files generate high dollars for the effort involved.

After you’ve determined your EHR, calculate total collections per lawyer, per file, per month. This is a quantity indicator, and the usual metric used by lawyers. When you look at total collections, you have an indication of which files generate large bottom-line results.

Now—to work smarter and not harder—concentrate on clients and case types that are at the top of the list for both EHR and total collections.

**Strategy: Reward Behaviour You Want to Encourage**

If you want your firm to move toward certain goals, you need to make sure that your compensation system is designed to reward the behaviours that will help you reach those goals. For example, if you want to encourage your firm’s lawyers to refer more business within the firm, but each lawyer is paid solely on the number of hours he or she bills, there is no incentive to engage in cross-marketing activities.

Improving the bottom line isn’t just a result of working harder. There are ways to increase the cash in your pocket that do not involve more billable hours. However, they do involve looking at your practice—including the numbers that underlie it and seeing what those numbers reveal.
Chapter 5

Client Relations

[§5.01] Introduction

Consumer expectations around legal services have become increasingly focused on client satisfaction. Clients have learned to hold their lawyers accountable for the work they do and the fees they charge. The “mystique” of legal services is gone. When we purchase other services such as dental work or auto repairs, we are impressed if the service meets our expectations. Typically, we expect the service provider to identify the problem, specify the work to be done, estimate the price, commit to when the work will be done, meet that commitment, explain any problems that arise, and provide a readable itemized bill. When our expectations are not met, we become dissatisfied customers.

Our response varies according to our level of dissatisfaction and our individual propensity to complain. We might not return to the same establishment in the future; we might complain to friends, particularly the friend who gave us the referral. Some might complain to management or to a consumer protection group, or even threaten litigation.

Consumers of legal services react as consumers generally do when dissatisfied with goods or services they have purchased. We have to learn how to satisfy the customers we serve and how to effectively deal with customer dissatisfaction when it occurs.

[§5.02] Ten Guidelines of Good Practice

This article recommends ten guidelines for lawyers to help them avoid professional liability claims by clients.

1. Sell your firm and your services fairly. It can be dangerous to use superlatives when describing your firm in websites and publications. Clients may later refer to these pieces when a problem arises in the services performed. Be careful that you do not “oversell” your professional services.

   Review the rulings on marketing contained in Chapter 4 of the BC Code. Note also that rule 2.1-3(a) of the Code advises lawyers to “be wary of bold and confident assurances to the client.”

2. Educate your clients on the nature and extent of your professional services and the details of your retainer. Clients tend to have optimistic views of what you can provide, and often it is not until a problem arises that you and your client discuss your actual mandate. Claims sometimes arise against lawyers as a result of time or cost estimates being exceeded, where the client misunderstood that the estimates were “guaranteed.” A client who understands that many factors affect the timing and costs of your services will be less likely to complain.

3. Insist on a written retainer letter. You can expect that if a client claims against you, the client had a different idea of what services should, or should not, have been performed.

4. Avoid performing services outside your capacity as a lawyer. For example, business investment advice may fall outside the common description of professional services rendered by a lawyer. Giving business investment advice may jeopardize your professional liability insurance coverage.

5. Develop a specific plan for performing professional services. It is important that personnel assigned to new files be identified and advised as soon as possible. The team should be briefed with regard to the overall plan, and then be instructed to study the details of the retainer.

6. Keep your client informed. The more informed the client, the less chance of surprises and claims that you have not properly carried out your engagement.

7. Deal promptly with problems. When a problem arises, discuss it with your client and explain the consequences. If you hide it, that invites problems, including explaining why you failed to disclose it.

8. Keep written records of conversations with your client. Many professional liability claims emerge from a breakdown in communications. The retainer letter sets out your mandate, but it is equally important to keep notes of meetings with your client because the notes can be vital written evidence.

9. Communicate your efforts on your client’s behalf so as not to create an impression of inattention and neglect. Let your client know what work you have done by providing the client with copies of letters and pleadings you have drafted.

10. Think carefully before suing for fees. Lawyers are entitled to fees for services rendered, but a suit for unpaid fees usually results in a counterclaim alleging professional negligence, often for a much higher amount. There are a number of possible reasons for non-payment of your account, including the client’s inability to pay and dissatisfaction with your services. You must weigh the amount of the outstanding fee against the time spent pursuing it plus any liability you might face in a counterclaim.

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1 Reviewed annually by PLTC, most recently in December 2018.
3 Prepared for PLTC by Donald R. Cherry, March 1990. Reviewed annually by PLTC.
[§5.03] Screening the Client

1. Where Do Clients Come From?

Clients might find your name in a directory, on a website, or in your advertising. Note the BC Code rules 4.2 and 4.3 on marketing and advertising legal services.

Clients might be referred to you by other lawyers or other businesspeople, or by other clients. Under the BC Code, rules 3.6-6, a lawyer may accept a referral fee for referring a client to another lawyer because of the expertise and ability of the other lawyer, where the referral was not made because of a conflict of interest. Under BC Code rule 3.6-7, however, a lawyer must not give any reward for referrals to any person other than a lawyer.

You might also register with referral sources, such as the Legal Services Society (Legal Aid). For further information or to register online as a vendor, visit www.lss.bc.ca/lawyers/newLawyers.php.

Another referral source is the Canadian Bar Association’s Lawyer Referral Service. The BC Branch of the Canadian Bar Association operates the Lawyer Referral Service in the Lower Mainland on behalf of the Bar. The service helps the public locate lawyers practising in particular fields. A lawyer provides up to half an hour of consultation for $25, or arranges a retainer at the regular rate. After the initial interview the lawyer is free to decide whether to accept instructions and open a new file for the particular individual. For further information, contact the BC Branch of the Canadian Bar Association at 604.687.3221 in the Lower Mainland, or toll free at 1.800.663.1919, or online at www.cbabc.org/For-the-Public/Lawyer-Referral-Service.

A referral should be treated in the same manner as any other professional conversation with a client. Open a file with complete information, as described in Practice Material: Practice Management, Chapter 4, §4.02.

2. Screening

There are many reasons to screen a client before agreeing to take on the case. For example, you want to determine conflicts, avoid taking on difficult clients, avoid taking on clients who are fraudsters, and stay within your areas of experience and capability.

Sometimes a claim or a complaint, whether valid or not, could have been prevented by the lawyer exercising better judgment when deciding whether to accept a case or a client. There are a number of unpleasant side effects of accepting the wrong case or client: it detracts from the enjoyment of practising law; it can cause frustration or anxiety over uncollected fees; it leaves less time for other files; and it produces disappointing results for both you and the client.

Here are some warning signs when screening clients:

- the client has had more than one other lawyer, or has contacted multiple representatives;
- the client’s expectations are unrealistic;
- the client insists on proceeding with the case because of principle and regardless of cost;
- the client expresses distrust of you or seems unwilling to fully co-operate;
- the client and you cannot agree on the fee and retainer, or the client insists on a contingency fee arrangement that you are uncomfortable with;
- the client is insisting you proceed urgently when the matter does not appear to be that urgent, or the case really is so urgent that you could not adequately prepare;
- the case requires more fees and costs than you anticipate will be recovered, or the outcome is doubtful and the client could not pay if the case did not succeed;
- the case is outside your expertise, or would overextend your time or staffing capacity; or
- the case has a potential conflict of interest.

You should keep in mind your ethical duties under the BC Code, including your duty under rule 2.1-1(c) to “accept without hesitation, and if need be without fee or reward, the cause of any person assigned to the lawyer by the court.” Also, you need to weigh your obligations to the administration of justice, such as doing pro bono work or taking on just causes, against your time and ability to give proper representation.

In the Law Society’s Bencher’s Bulletin (Winter 2018, p. 4), Practice Advisor Barbara Buchanan commented on being aware of unsavoury clients. She spoke about the importance of following proper client identification and verification procedures, and how that is a solid start in avoiding becoming the dupe or victim of a scam.

The Law Society of BC’s Client Identification and Verification Procedure Checklist (which is current to September 1, 2018 and part of the larger Practice Checklists Manual), FAQs and an online course are based on Law Society Rules 3-98 to 3-109. In October 2018, the Council of the Federation of Law Societies of Canada (the coordinating body of Canada’s 14 provincial and territorial law societies) approved amendments to the Federation’s Model Rule on Client Identification and Verification and the Model Rule on Cash Transactions. In addition, the Council approved a new Model Trust Accounting
Good client identification and verification practice consists of more than simply complying with the basic technical requirements of the rules and retaining records for the requisite period. Knowing one’s client goes beyond this. Keep informed about common and new money laundering or terrorist financing schemes to prevent being duped. Unsavoury clients may try to involve lawyers in sham litigation, improper real estate transactions, phony loans, and creating companies, trusts and charities for the purpose of money laundering or terrorist financing. Red flags may include the client’s choice of lawyer (e.g., frequent change of lawyer, engaging an inexperienced lawyer, engaging a lawyer from an unrelated jurisdiction). The client may be willing to pay higher fees than normal for little or no substantive legal services. Obtain information about the amount and source of funds related to the retainer (e.g., third-party funding; funds from high-risk countries; a large transaction, especially if involving a recently created entity).

Other things to consider include who the client is (e.g., whether the client is a politically exposed person, either domestically or for a foreign government). The definition of “client” is broad. Consider the type of service requested and whether the transaction involves a tax haven, high-risk jurisdiction or sanctioned country. Further federal legislation and regulations may also need to be considered. For example, might this involve a person whose assets are subject to regulations under the Freezing Assets of Corrupt Foreign Officials Act? Is the person’s name (individual or entity) on the Lists of Names subject to the Regulations Establishing a List of Entities made under subsection 83.05(1) of the Criminal Code? Does the Canadian government have sanctions against the client under the regulations to the Special Economic Measures Act? The regulations impose various sanctions against designated individuals and entities. Is the individual a listed foreign national in the schedule to the regulations to the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)? You may be restricted or prohibited from providing some legal services (e.g., facilitating, directly or indirectly, a financial transaction related to property, wherever situated, of the sanctioned client).

Lawyers must assess whether they could be knowingly or unknowingly assisting a client in dishonesty, fraud or other illegal conduct. This is an ongoing professional responsibility and, where there are signs of dishonesty, fraud or other illegal conduct, the lawyer should not act or withdraw from representation (Law Society Rule 3-109 and BC Code rules 3.2-7 to 3.2-8).

If you decide, after careful consideration, to take on a difficult client or case, strive to maintain a good relationship with the client. Ensure that you protect yourself by keeping good records of your conversations with the client and all the steps you take on the file. If you decide not to take it on, write a clear and polite non-engagement letter. (See §5.05(7) and the sample non-engagement letters at the end of this chapter.)

§5.04 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. Their legal issues loom large in 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. That is good for the lawyer, as satisfied clients tend to pay their bills and refer work back.

Note the following passage from the Canadian Lawyers Insurance Association publication, Safe and Effective Practice (4th ed., 2018, p. 60):

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 in §5.05).

(b) Use plain language when explaining what you will do, when, and how long it will take. Every time you see your client, ask if the client has any questions.

(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 step is completed or a new development is pending, 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. Your assistant might 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 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 notes documenting the 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 of what was done or agreed.

Most case-management programs allow you to make a time entry to the file and also note a conversation, meeting, telephone call, or other communication. Remember to add sufficient detail to your notes, including the date and time of the call or meeting, who called or attended, what information or instructions were received; and what advice was given. Using this method, the lawyer can easily consult the file history and notes in one place. All notes, like other entries, should be backed up.

If you are using a paper filing system, create a systematic written record of all advice given to a client. All handwritten notes (or print copies from computer recordings) should be dated and placed in chronological order and fastened in the communication section of the paper 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.

[§5.05] 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,” even 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
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. Canvass it early. The client wants to know what to expect, how much it will cost, when 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.

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. 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 ask the client to pay 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.

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. The retainer defines the extent of a lawyer’s duties.

Not only will defining terms in writing prevent any misunderstanding from arising, it may protect the lawyer if the client later sues for negligence. Any implied duty of care must be related to what
must promptly disclose the limited scope retainer to the court and any other interested person in the proceeding, if failure to disclose would mislead the court or that other person (see commentary to rule 3.2-1.1, and “Managing the Risks of a Limited Scope Retainer” on the Law Society website: www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-insurance-fund/risk-management/practice-management-risks-and-tips/limited-scope-retainers-unbundling/).

Lawyers must be aware of the risks associated with limited scope retainers. A lawyer cannot contract out of liability for negligence, and a provision in the agreement purporting to exempt the lawyer from liability for negligence or relieve the lawyer from regular responsibilities is void (see Legal Profession Act, s. 65(3) and Law Society Rule 8-3(c)).

Finally, a lawyer should always identify exactly who the client is. Anyone else who might be seen to have a “relationship of proximity” to the lawyer should be clearly advised in writing that the lawyer does 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: Professionalism: Ethics.

5. Retainer Letter or Agreement

It is important to have a written retainer letter or agreement with every client. Setting out the scope and amount of the retainer, as well as the billing practices, clarifies the important issues for clients and provides useful documentary evidence for lawyers, if problems arise with the client later.

There may be situations where the terms are set out in writing after steps have been taken. This might occur with simple real estate transactions (where purchasing clients should be provided with an interim reporting letter on title, which will cover the points such as fees and billing) and simple wills (where a final letter confirms these same 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 the lawyer says. If there is any doubt, it is often resolved against the lawyer: Johnson v. G.E. Greene Law, 2011 BCSC 1444.

Generally, the retainer agreement has these goals:

(a) confirm key instructions, such as the legal services to be provided and any restrictions on those services;

(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.

Retainers should not be lengthy or intimidating, but should clearly set out 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 retainer, the services the lawyer will not be performing, such as matters being handled by the client or third parties;

(d) the manner of remuneration (including the amount of the retainer and the basis for calculating fees), an explanation of the disbursements, and the billing arrangements (including frequency of payments and interest); 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 entered into an express agreement about interest at the time the client entered into the contract for services.

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

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.

Retainer agreements often describe how the lawyer will respond to client telephone calls or messages. Explain to the client how the nature of your practice often makes it difficult to respond immediately (e.g. you are often in court or in lengthy client meetings). Tell the client you will always do your best to answer calls within 24 hours. Tell the client to expect to speak to your assistant unless the matter is urgent, in which case the client should make that clear, and you will respond 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 or email 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 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 sections that you will add and others you will delete, 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 an event (Legal Profession Act, Part 8, s. 64).

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.

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 explicitly identify work contracted for and exclude work not to be done by the lawyer. It should clarify whose responsibility it is to pay for disbursements and whether a separate retainer for disbursements is required. It should also provide for getting off the record and terminating the solicitor-client relationship. If the contingency agreement does not provide for getting off the record, and the lawyer determines that it is necessary to do so anyway, the lawyer may still be entitled to fees for work done on the basis of quantum meruit (see Mailiot v. Murray Lott Law Corp., 2002 BSCS 343 and Green v. John M. Richter Law Corporation, 2018 BCSC 1840.

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 review the contingent fee agreement at the client’s leisure and not in the lawyer’s presence. However, ensure the agreement is signed and returned together with the retainer (if any) before or very soon after you start work.

Note that Part 4 of the model contingency agreement (see Precedent B at the end of this chapter) includes a notice to the client of the client’s 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 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.

As to what is fair and reasonable, in Commonwealth Investors v. Laxton, 50 B.C.L.R. (2d) 186, leave to appeal refused (1991), 54 B.C.L.R. (2d) xxxxiv (S.C.C.), the BC Court of Appeal held that s. 68(9) contemplates a two-step inquiry. The first step looks at “fairness” and asks whether the client understood the agreement. The second step is to look at “reasonableness” of the fee.

In deciding whether an agreement is fair and reasonable, the registrar or court may look at the percentage charged and may modify it. In Mide-Wilson v. Hungerford Tomyn Lawrenson and Nichols, 2013 BCCA 559, the firm initially billed the client $16 million for resolving her claim to estate assets worth $100 million. The registrar determined that the fee agreement was fair and reasonable, but lowered the fee to $9 million. On appeal to the Supreme Court, the judge agreed that the agreement was fair and reasonable, but found that a $9 million fee was excessive, and lowered it to $5 million. That result was affirmed on appeal.

The Law Society has enacted rules limiting what a lawyer can charge under a contingent fee agreement in personal injury cases. Rule 8-2(1) 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 for these types of claims must include wording that informs the client that the limit is restricted to trial work (Rule 8-4 prescribes the wording).

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) and (5)).

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.
The fact that fees are to be paid based on the end result does not excuse a lawyer from keeping proper records of work done on the file. In *Cook v. Mission Memorial Hospital*, [1996] B.C.W.L.D. 1752 in which the lawyer’s 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 W.W.R. 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 fool-hardy—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.

For a sample agreement, see Precedent B at the end of this chapter, or go to the online Practice Management course: [www.learnlsbc.ca/node/146](www.learnlsbc.ca/node/146).

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 the end of this chapter.

**[$5.06]** Fees and Disbursements

1. Communicating Fees at the Beginning of the Retainer

Lawyers sometimes find it embarrassing to talk about fees. Clients do not find it embarrassing. They do find it more than annoying to receive an account that is much larger than they expected.

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 §4.02.

Discussing fees up front gives the client a fair idea of what pursuing the matter would involve. If the fees are a problem, better to know that at the start than later. Further, it allows the client and lawyer to have a frank discussion about options. You might refer the client to a more junior lawyer whose fee is lower, or you might decide to reduce your fee in the particular case. The client might qualify for Legal Aid or services through Access Pro Bono, or there might be other advocacy agencies that could help. Even if you end up not providing legal services, you might still provide helpful customer service.

2. Ongoing Communication About Fees

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 3-71 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 section 3.6 and rule 2.1-3 of the BC Code.

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. Avoid quoting maximum fees, as unexpected events could affect fees.

These are the most common ways of setting fees:

(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 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 §5.05(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 $250,000 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, Nathanson, and s. 71(4) of the Legal Profession Act come into play.

It is not spending time on a file that entitles you to bill, but doing work. The things that count most in assessing a lawyer’s fee are not the hours spent but “what the lawyer has done,” “what the lawyer has accomplished,” “the magnitude of the interests concerned” and “the skill which the lawyer manifests on behalf of the client” (see Yule).

Other considerations are as follows:

(a) 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 rule 2.1-3(i) of the Code, 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”;

(b) Complexity
Was special difficulty, novelty, or responsibility involved beyond that which is normally expected in the general field of the law concerned?

(c) Result
Were the instructions successfully and promptly carried out to the satisfaction of the client?

(d) 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;

(e) 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 rule 2.1-3(j) of the BC Code:
A lawyer should try to 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.

For recent articles on the topic of lawyers’ remuneration, see the Annual Review of Law and Practice, published by the Continuing Legal Education Society of BC.

4. Client Protection
Clients who complain about legal fees might rely on these protections:

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

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

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

5. Lawyer Protection
Lawyers who want to prevent client complaints or protect themselves against them might rely on these protections:

(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 basic misunderstanding about what the lawyer did 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 Civil Rule 14-1(21)). 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 (Supreme Court Civil Rule 23-6 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 by 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 $35,000, as of June 1, 2017), or in the Supreme Court ($35,000 or over, as of June 1, 2017), 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 your bill if the client agrees to pay the lower amount. After all, a fee dispute can take up your time, and the client could complain to others about you if it is not settled.

If the client refuses to pay because he or she believes the amount of an account is too high (but is not disputing the validity of the retainer), it will often be easier to pursue a review rather than a judgment. On the other hand, 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 on Solicitor and Own Client Reviews

A good part of a registrar’s time is spent reviewing bills between solicitor and client. A s. 70 review hearing is conducted like a trial. Subsection 70(13) of the Legal Profession Act provides that the Rules of Court apply to reviews of lawyer’s bills.

The onus is always on 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 Civil Rule 14-1(31) prescribe the requirements of a proper bill:

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4. Effective June 1, 2017, the jurisdiction of Small Claims Court increased from $25,000 to $35,000. As well, with few exceptions, claims under $5,000 will no longer be resolved in Small Claims Court and instead will be resolved by the Civil Resolution Tribunal. See the Provincial Court website for further information (www.provincialcourt.bc.ca).

5. Updated by PLTC. Originally based on the CLE course “Practice Before the Registrar – 1984” by Gordon Turriff, QC. Reviewed in February 1997 and March 1999 by Jacqueline Morris, then staff lawyer for the Law Society of BC.
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.

Rule 14-1(31)

A lump sum bill must contain a description of the nature of the services and of the matter involved as would, in the opinion of the registrar, afford any lawyer 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” that are not sufficiently descriptive of the work done. In Tungohan et al. v. Gebara, 2011 BCSC 1538 the registrar said it was critical that a bill specify an amount payable. The “bill” in issue had no charge and no description of disbursements, and was mere “notations” as to what a fee might be.

It is usually not enough for a solicitor to direct an articulated student to appear 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 (Schlechter v. Ruhr (1957), 25 W.W.R. 178 (B.C.C.A.)). One potential solution is for the solicitor 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 Bouck suggests that since the onus of proving the reasonableness 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 Bouck, “Assessments of Costs and Reviews of Lawyers’ Accounts” (September 2004) Vol. 62 Part 5, The Advocate 679–686, at 683.)

Section 71 of the Legal Profession Act sets out the criteria the registrar must consider when reviewing a lawyer’s bill, which includes the following:

(a) the complexity, difficulty or novelty of the issues involved,
(b) the skill, specialized knowledge and responsibility required of the lawyer,
(c) the lawyer's character and standing in the profession,
(d) the amount involved,
(e) the time reasonably spent,
(f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
(g) the importance of the matter to the client whose bill is being reviewed, and
(h) the result obtained.

The principles for adducing evidence when a party and party bill is presented for assessment (see Practice Material: Civil, Chapter 7) 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 Supreme Court Civil Rule 14-1(32), 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 given to the expert evidence is a matter for the registrar, who may be influenced by the fact that the expert gave an opinion knowing 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 how fees are 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. Section 3.6 of the BC Code—“Fees”

Section 3.6 of the BC Code contains rules regarding fees and disbursements.

Rule 3.6-1 of the BC Code provides:

A lawyer must not charge or accept a fee or disbursement, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion.

Commentary [2] to Rule 3.6-1 states:

The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. No fee, extra fees, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where
the lawyer’s fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such agency or other person.

Rule 3.6-4 provides that a lawyer acting for two or more clients in the same matter (i.e. on a joint retainer) must divide the fees and disbursements equitably between them, unless the clients agree otherwise.

Rules 3.6-5 to 3.6-7 govern the division of fees and referral fees. These rules state:

3.6-5 If there is consent from the client, fees for a matter may be divided between lawyers who are not in the same firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

3.6-6 If a lawyer refers a matter to another lawyer because of the expertise and ability of the other lawyer to handle the matter, and the referral was not made because of a conflict of interest, the referring lawyer may accept, and the other lawyer may pay, a referral fee, provided that:

(a) the fee is reasonable and does not increase the total amount of the fee charged to the client; and

(b) the client is informed and consents.

3.6-6.1 In rule 3.6-7, “another lawyer” includes a person who is:

(a) a member of a recognized legal profession in any other jurisdiction; and

(b) acting in compliance with the law and any rules of the legal profession of the other jurisdiction.

3.6-7 A lawyer must not:

(a) directly or indirectly share, split or divide his or her fees with any person other than another lawyer, or

(b) give any financial or other reward for the referral of clients or client matters to any person other than another lawyer.

Note that there is an exception to rule 3.6-7 for lawyers practising in multi-disciplinary practices under the Law Society Rules (rule 3.6-8).

10. Disbursements

(a) General

Disbursements may be billed to a client provided they are for bona fide specific amounts properly incurred on behalf of the client.

Typically, disbursements include such transactions as corporate and land title searches, registration fees, or medical reports. Such amounts should be separately shown on the fee account under the description “disbursements” or “amounts paid on your behalf.”

It is customary to charge as a “disbursement” certain costs that may potentially include an element of “overhead fees”:

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

(ii) delivery charges, including courier 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; and

(iv) travel expenses, such as automobile expenses at a rate per kilometer, parking fees, and any air, taxi, or similar travel expenses directly incurred on a client’s behalf, providing that the charges are reasonable amounts 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 clients accordingly.

(b) Other Overhead Fees and Charges

In certain cases a fraction of overhead or administration costs can be specifically allocated to a particular client matter. Such amounts might 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. The foregoing items must not be described on the fee account as “disbursements,” “amounts paid on your behalf,” or the like.

(c) Agency Fees

Fees paid to other lawyers under agency arrangements are often charged as disbursements. 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 on a file, this work may only be done with the client’s prior consent, 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.

The overriding consideration is that disbursements must have been actually paid on behalf of the client and they must be reasonable amounts. If a registrar is asked to assess disbursements, SCCR 14-1(5) says that the registrar must determine those that have been necessarily or properly incurred, and assess reasonable amounts for those disbursements. For further guidance, see Li v. Giesinger, 2015 BCSC 2414, at paras. 21–25.

11. GST and PST and Client Billing

The GST is a form of value-added tax, with each business in a chain of supply 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. Businesses must remit to the government the net of the total tax collected from clients in a given reporting period less the total tax paid to suppliers (“input tax credits”) for the same period.

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

For information on registration, exemptions and credits, see the Canada Revenue Agency website (www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/menu-eng.html). See also Canada Revenue Agency Policy P-209R, Lawyers’ Disbursements, for further information.

Regular suppliers of legal services must also register for PST purposes. If a lawyer is a member of a law firm, then the law firm or the partnership registers, rather than the individual or partners.

Providers of legal services are required to charge and collect 7% PST on all fees charged for legal services (including certain disbursements) with some limited exceptions. Certain legal services, including certain Legal Aid services and certain legal services provided to Indigenous people or First Nations, are exempt from PST, as are legal services provided to a client who neither resides in nor carries on business in BC, and where there is no connection in the legal services to BC. Most law firms in BC will have to register to collect the tax.

More information about PST is available on the Law Society website, in the Provincial Sales Tax Bulletin PST 106, and in the Provincial Sales Tax Act, S.B.C. 2012, and c. 35.

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 lien (or possessory lien) or a charging lien (or lien at common law). These two types of solicitor’s liens and the procedures connected with them are discussed in the practice resource “Solicitors’ Liens and Charging Orders—Your Fees and Your Clients” (July 2013), available on the Law Society’s website (www.lawsociety.bc.ca). See also §4.08.

13. 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 (see §5.07 for a Model Survey).
[§5.07] Model Client Survey

This survey is short and limited in scope, but should be a useful reference for lawyers who are interested in building stronger client relations.

The changes you make as a result of a client survey should reflect your goals in practice. What are those goals? How do you think your clients see you? How do you want your clients to see you?

You may wish to send a survey with your account, demonstrating that you care about your client’s satisfaction with your work, as well as your payment for the work.

Before conducting a client survey, however, ask yourself whether you are really prepared to make changes once you receive the responses. If a client expresses unhappiness when asked to comment on your services, you should take some action. You will be marketing to your own clients—probably a better use of your marketing budget than advertising for new clients.

* * *

Did you feel welcome the first time you walked into the office?  

☐ Yes  ☐ No

If not, why not?

____________________________________________________

Did the receptionist call you by name?  

☐ Yes  ☐ No

Did someone offer to:

☐ Yes  ☐ No

☐ Yes  ☐ No

☐ Yes  ☐ No

Did the lawyer take time to listen to everything you wanted to say?  

☐ Yes  ☐ No

Did the lawyer:

☐ Yes  ☐ No

☐ Yes  ☐ No

☐ Yes  ☐ No

Tell you how long the process would take?  

☐ Yes  ☐ No

Tell you how fees were charged?  

☐ Yes  ☐ No

Estimate your total bill?  

☐ Yes  ☐ No

Explain that you would be making decisions about your case?  

☐ Yes  ☐ No

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1 This Model Client Survey is from the Law Society of British Columbia Practice Advice Department and can be downloaded from the Law Society’s website (www.lawsociety.bc.ca).

© The Law Society of British Columbia
Keep you informed of developments?  □ Yes  □ No
Promptly respond to your requests?  □ Yes  □ No
Promptly return your phone calls?  □ Yes  □ No
Promptly reply to your letters and/or email messages?  □ Yes  □ No

Did we meet your expectations?

☐ Yes, very well, in the following areas:

________________________________________________________________________

☐ Somewhat, in the following areas:

________________________________________________________________________

☐ No. Improvement could be made in the following areas:

________________________________________________________________________

Thank you for taking the time to answer these questions. We will review your answers and strive to make appropriate changes to serve you and our other clients better. We thank you for selecting us as your lawyers and helping us to improve our client service.

Name (optional): ____________________________________________

Date: ________________________________________________________

Professionalism: Practice Management
Retainer agreement

General

Dear [name of client]:

Re: [description of matter]

1. Description of services

You have asked us, and we have agreed, to act for you in the matter described below. On [date], we [met/spoke] to discuss the scope of our firm’s intended representation. We covered this subject in some detail and considered the nature of our fee arrangement. The purpose of this letter is to summarize and confirm the terms of your engagement of us.

You retain us to represent you in connection with [description of matter]. We anticipate that our representation will involve taking the following steps on your behalf:

   a. [describe]

   b. [describe]

   c. [describe]

At this time we have not been retained to represent you generally or in connection with any other matter. We will not be performing the following services:

   d. [describe]

   e. [describe]

   f. [describe]

[Note: Before undertaking a “limited scope retainer” (a defined term in BC Code rule 1.1-1) the lawyer must advise the client about the nature, extent and scope of services that the lawyer will provide. The lawyer must confirm in writing to the client as soon as practicable what services will be provided. This assists the lawyer and the client in understanding the limitations of the service and the associated risks. The lawyer must carefully assess whether, under the circumstances, it is possible to render the services competently. See BC Code rules 3.1-2 (and in particular commentary [7.1]), 3.2-1.1, 7.2-6, and 7.2-6.1 and Preventing Claims – Limited retainers/unbundling.]
[Optional] Your desired outcome and time frame for resolution of this matter is as follows:
[describe]

[Optional] We will work with you towards your desired outcome. However, all legal actions are subject to many possible variables such as the demeanour and recollection of witnesses, the availability of substantiating documents and other evidence, and the evidence marshalled by the other side—all of which affect the decision of a judge or jury. Accordingly, we cannot guarantee that your desired result will in fact be achieved. For us to work towards your desired outcome, it will be necessary for you to abide by the terms described in this letter.

[Optional] The firm uses cloud-based programs to store client files and business records. Some of these programs may use servers located outside of Canada. You acknowledge that these programs may create some risks for the security of your information.

2. Lawyers

We expect that most of the work will be performed or supervised by myself (a partner in this firm) who will be assisted by [name], an [associate/articling student] in this firm. However, we reserve the right to assign other lawyers in our firm to perform legal services if in our judgment that becomes necessary or desirable.

3. Fees

a. Our fee will be based principally on the time spent by us on your behalf. Records of all time will be kept and accounts will then be prepared and sent to you periodically.

Our hourly rates range from $[amount] for articled students to $[amount] for my associate to $[amount] for me.

While we expect that our fee will be calculated on the basis of our regular hourly rates, we reserve the right to charge more in appropriate cases, such as pressing circumstances, the requirement for work outside normal business hours, exceptionally successful or efficient representation, or special demands on us.

[Optional] Based on our consideration of the materials and information you have provided to us, and assuming that there are no further developments or information which would cause us to vary our preliminary opinion and that nothing out of the ordinary is encountered in the course of completing this matter, we estimate that our fee, excluding disbursements and other charges, will be approximately $[amount]. We are not guaranteeing that we can accomplish the work for that sum, but are representing to you that in our judgment that amount appears reasonable under the circumstances.
4. **Disbursements**

You will also be responsible for reimbursing us for expenses (also called disbursements) we incur on your behalf and that must be paid to third parties. These include long distance calls, postage, deliveries, travel expenses, out of office photocopying and printing, government filing and search charges and the fees of agents who conduct investigations, searches and registrations and all other reasonable out of pocket expenses. If an unusual disbursement or expense arises involving substantial cost, such as, for example, fees for expert evidence, we will consult with you before incurring that cost.

5. **Other charges (this paragraph must be adapted to particular business practices of the firm)**

You will also be responsible for office charges allocated to your file. These include charges for paralegal time, word processing charges, computer costs, in-house photocopying and faxes. (Note: changes must be transparent and understandable to the client (see BC Code rule 3.6-3))

6. **Interest**

Payment is due on all of our accounts when rendered. If any account is not paid within 30 days, interest will be charged on the outstanding balance at a rate of [rate] % per annum from the date of the account, until paid.

7. **Taxes**

You will be charged the applicable taxes on fees and on some disbursements or other charges.

8. **Client identification and verification**

Lawyers are required to follow client identification and verification procedures when retained by a client to provide legal services. Accordingly, before we begin work on your behalf, we will require information from you concerning your identity. In addition, for some transactional work, we will require information to verify your identity (to confirm who you are) before the transaction occurs.

9. **Retainer**

Before we begin work on your behalf, we require a retainer in the amount of $[amount] by [insert required date]. The retainer will be placed in our trust account and will serve as a source of payment for all or part of our account or accounts when rendered. You will be asked to replenish the retainer from time to time. Any unused portion will be returned to you upon the completion or termination of our services.
10. **No cash (this paragraph must be adapted to the particular practices of the firm. Check Law Society Rules for the limited circumstances in which cash may be accepted)**

Please note that we do not accept any funds in cash, including our retainer. As protecting your legal interest may require paying funds within certain time limits, we recommend that you discuss with us any necessary arrangements in advance to provide payment to us by way of certified cheque, money order, bank draft, or electronic transfer.

11. **Acting for more than one client (Refer to the Law Society precedent letter ‘Joint Retainers’)**

12. **Termination of legal services**

You have the right to terminate our services to you upon written notice to us.

Subject to our obligations to you to maintain proper standards of professional conduct, we reserve the right to terminate our services to you for good reasons which include, but are not limited to:

a. if you fail to cooperate with us in any reasonable request;

b. if there is a serious loss of confidence between us and you;

c. if our continuing to act would be unethical or impractical;

d. if our retainer has not been paid; or

e. if you fail to pay our accounts when rendered.

(Note: see BC Code section 3.7 and rule 3.6-2 [2] for the provisions on withdrawal. In some circumstances, you may not be entitled to withdraw without risk of valid complaint, unless there is reasonable notice or other special considerations (e.g. lack of reasonable notice for any withdrawal that is not obligatory under rule 3.7-7 or a serious loss of confidence under 3.7-2.))

If you terminate our services or we withdraw, you would only have to pay our fees, disbursements, other charges, and the applicable taxes incurred up until the time we stopped acting for you.

13. **Agreement**

[Optional – consider whether it would be prudent under the circumstances to recommend another law firm review your letter] We recommend that you consider whether you want to have this agreement reviewed by another lawyer.
If you want us to proceed on the basis described above, please sign the enclosed copy of this letter in the space provided and return it to us, together with a retainer in the sum of $[amount], in the enclosed self-addressed envelope. If you decide that you do not want us to proceed on your behalf in this matter, please inform us promptly.

Yours truly,

________________________________________
Client’s signature

________________________________________
Date
Contract for Legal Services and Fees

Part 1: Our Services

Legal services covered by this contract

We agree to act for you in your legal claim against [name of defendant], the Defendant, once we receive a signed and dated copy of this contract. We will then be your lawyers throughout the whole legal process including going to trial if necessary. (The attached document called Steps in a Lawsuit explains the basic steps most lawsuits go through as well as some legal terms.)

At the same time, we will try to settle your case to obtain a favourable settlement for you. A settlement is an agreement between the parties to a lawsuit which sets out how they will resolve the claim. If your claim is settled, it would not have to go to trial.

We will keep you informed about matters that arise, and discuss with you any significant decisions you must make. We will give you our best legal advice, but you will make the final decisions. And we will only settle your lawsuit if we have your written consent.

Meeting your expectations

Money

You hope to get a fair and reasonable amount of money for your injuries to compensate you for:

1. your pain and suffering;
2. the wages you lost when you could not work;
3. your medical, drug, and other expenses.

You also hope the Defendant will pay for at least some of the legal fees we will charge you. Even if you win your lawsuit, the Defendant will only have to pay you some of these fees, not the whole amount. You still agree to pay us our fees which are discussed in Part 2 of this contract.

When we have the information we need, we will tell you how much money we think you could reasonably hope to get in a settlement or at trial. We will also tell you if our opinion changes as your case progresses.

Time

It can take up to two years or longer for a lawsuit to go to trial or settle. The amount of time your lawsuit will take will depend on such factors as how soon you recover from your injuries; when
we receive the documents we need; how booked the courts are; and when the other lawyers are available.

Your role as client

You understand the importance of giving us all the facts and of being totally honest with us. We can only do our best job if we have your trust and are fully informed.

In particular, we ask you to give us all information you have, or have access to, which could help us in working on your lawsuit. We need copies of all letters and documents from ICBC; medical reports; physiotherapy records; income tax records; paycheque stubs; and medical, drug, and parking expenses. If necessary, we will ask you to give us written authorization to obtain this information.

Legal services not covered by this contract

If your case goes to trial and either you or the Defendant is unhappy with the court's decision, you or the Defendant could appeal the decision of the court to get a higher court to change that decision. We would tell you what we think the likely outcome of an appeal would be. But this contract does not cover the work that would be involved in such an appeal. If you wanted us to be your lawyers on the appeal, we would ask you to sign another contract to cover those new legal services and fees.

This contract also does not cover any steps you may have to take to get the Defendant to actually pay you. If the court finds a defendant responsible for an accident, ICBC will usually pay the court judgment. But if ICBC does not have to pay the judgment or if the Defendant will not pay, then you have to start proceedings to enforce the court order or judgment to make the Defendant pay. If you ask us to help you enforce a court order or judgment, again, we would ask you to sign another contract. This contract does not cover such enforcement proceedings.

We have not agreed to give you legal advice or perform legal services for you relating to any other matter. [If you are not being retained to assist with another possible cause of action you are aware of, add this sentence: In particular, although you told us [describe cause of action, for example: "you were let go from work"], you have not asked us to take any legal action concerning this.]

Part 2: Our Fees, Expenses, and Billing Arrangements

Our fee is a percentage

There are two main ways a lawyer can bill you:

Option 1: by charging an hourly fee for work done;

Option 2: by charging a percentage of the amount of money awarded in a settlement or court judgment; or, alternatively, by accepting court ordered costs as the fee.
You have asked us to charge you fees based on a percentage of the amount of money awarded to you in a settlement or court judgment, or by accepting court ordered costs as the fee, whichever is greater (option 2). We agree.

The disadvantage to choosing a percentage arrangement (option 2) is that you may end up paying us more in legal fees than if we were to charge you an hourly fee for work done (option 1). This could happen if we are fortunate in favourably settling your lawsuit quickly.

There are also advantages to choosing a percentage fee. First, if we cannot settle your case or if you lose at trial, then you would only have to pay our expenses. You would not have to pay us any fees. Second, if we go to trial and win, the percentage fee may be less than an hourly fee if we have to spend a great amount of time.

**Percentage based on work done**

Our percentage fee will be less if your claim is settled than if it goes to trial. If it is settled, the fee will depend on the stage at which the lawsuit is settled. Our percentage fee will be:

1. \[\text{\[___, for example, 20\]}\% of the settlement money\]
   if we settle your claim before the examination for discovery (Steps in a Lawsuit explains this step)

2. \[\text{\[___, for example, 25\]}\% of the settlement money\]
   if we settle your claim during or after the examination for discovery and at least 90 days before trial

3. \[\text{\[___, for example, 30\]}\% of the settlement money\]
   if we settle your claim less than 90 days before trial or during trial, but before the court judgment

4. \[\text{\[___, for example, 33 \frac{1}{3}\]}\% of the trial judgment\]
   if your claim does not settle and is decided by a trial.

There is one case where our percentage fee will differ. You may want to go to trial even though we recommend that you settle. If the trial judgment turns out to be less than the settlement we recommend, our percentage fee will be based on the amount of the higher recommended settlement, not the trial judgment.

**Costs**

If we successfully settle your claim or win at trial, we will seek a sum of money called *costs* from the Defendant to help cover some of our legal fees and expenses. If our fee is calculated as a percentage of the settlement or court judgment, you will receive the full amount of these costs since these costs are not included in the calculation.
Please note, however, that if we win an award from the court for costs payable by the Defendant to you, we may choose to receive the costs as our fee instead of accepting a percentage fee from you. You understand that the amount of costs may be higher or lower than a percentage fee would be.

If we choose to receive costs paid by the Defendant instead of a percentage fee, you would then receive 100% of the court judgement awarded to you on your claim, less any expenses.

**Legal expenses (also known as disbursements)**

In addition to our percentage fee or court-ordered costs as our fee, you agree to pay all expenses, even if we cannot settle your claim or lose at trial.

**Minor expenses**

We will charge you for the minor ongoing expenses that we have to pay. Some of these expenses are long distance telephone calls; photocopying costs; costs to deliver documents to court or the other lawyers; faxes; court filing fees (which the court charges to keep an official record of court documents); and necessary land or company registry searches (for example, to find out the proper name of the defendant).

We will regularly bill you for these minor expenses once they total $[amount] and we will detail all expenses in our bills. Please pay our bills within 30 days. After 30 days we will begin charging interest at [XX]% per annum.

If we successfully settle your claim or win at trial, the settlement or court judgment most likely will require the Defendant to reimburse you for some of these expenses.

**Major expenses**

We may have to hire other people such as court reporters, expert witnesses, accountants, and property appraisers to help us with your lawsuit. If we need to hire these people, we will first discuss the matter with you.

We usually ask you to pay these major expenses in advance, or we will have the bill sent directly to you to pay. Again, please pay these bills within 30 days. After 30 days we will begin charging interest at [XX]% per annum.

Also, as with the minor expenses, if we successfully settle your claim or win at trial, the settlement or court judgment most likely will require the Defendant to pay you costs to reimburse you for some of these expenses.

**Taxes**

In addition to our legal fees and expenses, you agree to pay any GST/PST/HST that we must charge you.
Billing Arrangements

You agree that any money from a settlement or judgment, including costs, will be paid directly to us in trust. We will then deduct our fee, any GST/PST/HST, and any unpaid expenses, and give you the balance.

Part 3: Dealing with Each Other

Ending the relationship

By you

You are free to end our services before your case is completed by writing us a letter or note. If you do, you agree to pay our expenses and an hourly fee based on the actual time spent up to the date of ending those services.

Our hourly fee will depend on which lawyer or assistant helps with the work. I will be the main lawyer responsible for your case, but some work may need to be done by a more senior lawyer, and other work can be done equally well by a more junior lawyer. There are also many services, such as gathering information and preparing routine documents that our paralegal assistant is well qualified to perform. A paralegal works under the supervision of a lawyer, but may not give legal advice. Our paralegal can serve you at lower cost than one of our lawyers can.

If you end our relationship, our hourly fee will be based on these rates:

<table>
<thead>
<tr>
<th>Rate Description</th>
<th>Rate Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>My rate</td>
<td>$[amount] per hour</td>
</tr>
<tr>
<td>[senior lawyer's] rate</td>
<td>$[amount] per hour</td>
</tr>
<tr>
<td>[junior lawyer's] rate</td>
<td>$[amount] per hour</td>
</tr>
<tr>
<td>[paralegal's] rate</td>
<td>$[amount] per hour</td>
</tr>
</tbody>
</table>

We would ask you to sign a court form which tells the court we no longer act for you.

By us

We are free to withdraw our services at any time if we have a good reason. For example, we would withdraw our services if a client:

1. did not cooperate with us in any reasonable request;
2. asked us to do something unethical or illegal;
3. did not pay our bills on time without making other arrangements for payment.

Again, you agree to pay our expenses and an hourly fee for our legal services up until the time we stopped acting for you.
We would also have to withdraw our services if we learned of a conflict of interest that would make it unethical for us to continue to act for you. A conflict of interest occurs when what is best for one of our clients somehow is not best for or hurts another of our clients. If we have to withdraw our services for you because of a conflict of interest, you would have to pay our expenses up until the time we stopped acting for you.

[Optional] Acting for you and another client

[Note to lawyer: rules 3.4-5 to 3.4-9 of the BC Code provide that a lawyer may jointly represent two or more clients if certain conditions are met. The Law Society website contains a precedent letter that lawyers may use as the basis for compliance with these rules. Refer to the Law Society website and include the provisions of the letter in this agreement, tailored as needed.]

If we have to stop acting for you because of a conflict of interest, you would have to pay your share of our expenses to that date. [Name(s)] would have to pay [his/her/their] share of our expenses. We would also charge you a fair and reasonable hourly fee for our work up to that date if you went on to settle your claim or win at trial with the help of another lawyer.

Confidentiality

As your lawyers, we have to share relevant information about your case with the Defendant's lawyers and the court. But unless we need to share this information as part of our work, all information you give us will be kept confidential between us.

No guarantees of success

We will try our best in acting for you and give you our best legal advice. However, you understand that we cannot guarantee the successful outcome of your lawsuit. Remember that all lawsuits involve risks and uncertainties in the law, the facts, and the evidence.

Part 4: Review of this Contract

The law requires this contract to say:

[use in a motor vehicle action file]

The Rules of the Law Society of British Columbia provide that, subject to the Supreme Court approving a higher fee, the maximum amount that a lawyer may charge in a claim for personal injury or wrongful death arising out of the use or operation of a motor vehicle is 33 1/3% of the total amount recovered. Fees charged by different lawyers vary.
[use for other personal injury files]

The Rules of the Law Society of British Columbia provide that, subject to the Supreme Court approving a higher fee, the maximum amount that a lawyer may charge in a claim for personal injury or wrongful death is 40% of the total amount recovered. Fees charged by different lawyers vary.

Within 90 days after signing this contract or after our relationship has ended, you have the right to apply to a district registrar of the Supreme Court of British Columbia to have the contract examined to see if it is unfair or unreasonable. You have this right even if you have paid us any legal fees or expenses.

We also invite you to ask another lawyer to review this contract, if you wish, to make sure it is fair and reasonable.

**Part 5: Signing this Contract**

This contract contains the whole agreement between us about our relationship with each other and our legal fees and expenses. It will not be changed unless you and we both agree and sign any changes. It will legally bind anyone such as heirs or legal representatives who replace either you or us, but it does not legally bind other lawyers who might act for you if you decide to end our relationship.

If you are satisfied with this contract, please sign and date both copies and return one of them to us.

Keep one copy for your records. If there is anything you do not agree with, or if there is anything you would like to discuss before signing, please write or call us.

______________________________  _____________________
Lawyer                                Date

I have read this contract carefully and I agree with it.

______________________________  _____________________
Client                                Date

**Steps in a Lawsuit**

The timing of a lawsuit is difficult to predict. It depends on many things, including actions the Defendant takes, court schedules, and decisions you make. A lawsuit can take up to two years or longer to settle or go to trial.
However, most lawsuits go through the same basic steps, although not always in the same order. Some lawsuits skip some steps, and some steps are repeated many times over.

The steps listed here are the main steps that occur in a lawsuit. They will give you a general idea of what to expect.

1. **Gathering the Facts**

   With our client's help, we gather all the available facts concerning the claim, including interviewing and taking statements from witnesses. We sometimes hire investigators or experts to help us, so this step can involve expenses.

2. **Starting the Lawsuit**

   We begin the lawsuit by preparing the necessary court documents and filing them in court. This means the court date-stamps all copies of the documents, keeping one copy for their official record. We then deliver filed copies to the Defendant's lawyers. This step also involves expenses such as court filing fees.

3. **Interim Applications**

   After we start a lawsuit, but before trial, we or the Defendant's lawyers sometimes need to ask the court to decide certain things. Going to court to ask for an order is called an *interim application*. These interim applications are usually about how the lawsuit should be handled. For example, we might ask the court to order that the Defendant show us a particular letter or document that the Defendant would rather not let us see.

4. **Examination for Discovery**

   After gathering the facts, either we or the Defendant's lawyers arrange an *examination for discovery*. At the examination for discovery, we question the Defendant under oath about the accident. We also ask the Defendant about relevant documents the Defendant now has, and about relevant documents he or she previously had access to. In return, the Defendant’s lawyers will question you about the accident and the injuries suffered. We give the Defendant copies of relevant documents, and will also identify any relevant documents you previously had access to.

5. **Review of the Law**

   Once we have a good idea of all the facts, we review the law. We then give you our legal opinion about what the likely outcome of a trial would be, and how much compensation you might receive if the matter proceeds to trial.
6. **Negotiation and Settlement**

When it is appropriate, we talk with the Defendant's lawyers to see if they will *settle* the claim. A *settlement* is an agreement between the parties to a lawsuit which sets out how they will resolve the claim. If the claim is settled, it does not go to trial.

7. **Preparation for Trial**

We prepare the case for trial, including getting all the necessary documents together, arranging for witnesses to attend, and preparing any legal opinions.

8. **Trial**

We act for you at the trial. When the judge has decided the case, which could be a few days or weeks after the trial, we prepare the court order for the judge to sign, or approve how the other lawyer(s) write up the judgment to make sure it is correct.

9. **Completing the Claim**

We do all the work necessary to complete the claim. This includes giving you money from a settlement or judgment, after we have deducted our fees and expenses. However, it does not include starting new steps such as *enforcing* or *appealing* a court judgment. To *enforce* a judgment means to start proceedings to force the Defendant to actually pay what he or she has been ordered to pay. To *appeal* a judgment means to start work to get a higher court to change the original court's judgment.
Practice Resource

Model non-engagement letters

Index

- Non-Engagement Letter (Confirming Conversation)
- Non-Engagement Letter (After Consideration)
- Non-Engagement Letter (Conflict of Interest)

Non-engagement letter (confirming conversation)

Dear [client name]:

Re: Legal Representation

This will confirm our conversation when I advised you I would not be able to represent you in connection with this matter.

If you do not have another lawyer in mind to represent you, I would suggest calling the Canadian Bar Association Legal Referral Service, as that service maintains a list of lawyers who may be available to handle your type of case.

You should be aware of the fact that time limits could be involved. I have not researched what these time limits are, so you should contact another lawyer immediately. If you fail to do so, you may be barred from pursuing the matter.

Thank you for your interest in this firm.

Yours truly,

Non-engagement letter (after consideration)

Dear [client name]:

Re: Legal Representation

After consideration, we have concluded that our law firm will not represent you regarding this matter.

This letter is not intended to be an opinion concerning the merits of your case. In declining to represent you, we are not expressing an opinion as to whether you should take further action in this matter.
You should be aware that there may be strict time limitations within which you must act in order to protect your rights in this matter. Failure to begin your lawsuit by filing an action within the required time may mean that you could be barred forever from pursuing your action. Therefore, you should immediately contact another lawyer to obtain legal representation.

We enclose all of the materials that you provided for our review.

Thank you for your interest in this firm.

Yours truly,

Non-engagement letter (conflict of interest)

Dear [client name]:

Re: Legal Representation

As we discussed during our meeting, before [firm name] could agree to represent you in this matter, we had to investigate whether this representation could adversely affect existing or former clients’ interests or there might be some other reason that we would be unable to adequately represent your interests.

After you left our offices yesterday, we performed a conflict of interest check and found that our firm does indeed have a conflict of interest in this case. Unfortunately, we can therefore not represent you and we must decline to do so in this matter.

Please be aware that whatever claim you have may be barred by the passage of time. Since time limitations may be critical to your case, we recommend that you immediately contact another lawyer for assistance regarding your matter.

Although we were not able to assist you in this matter, we hope that you will consider [firm name] in the event that you require legal services in the future.

Thank you again for your interest in this firm.

Yours truly,
Chapter 6

Trust Accounting

[§6.01] Trust Accounting Rules

Lawyers must understand the meaning and intent of the Law Society Rules regulating trust accounting. They must ensure that they implement and maintain a proper system for recording all financial transactions of the law practice, and that the system works. Although the functions covered by the trust accounting rules may be delegated to another person, the lawyer “is personally responsible to ensure that the duties and responsibilities . . . are carried out” (Rule 3-54).

The trust accounting rules are intended to give assurance to clients and to the public that their financial transactions will be handled in a secure, responsible and orderly manner. The rules are also designed to protect lawyers by preventing practices that could lead to breaches of fiduciary duty—a duty that is owed to all clients. Accordingly, the rules create a minimum acceptable standard in accounting procedures and record keeping, and regulate compliance with those minimum standards.

Failure to comply with the rules may result in disciplinary action. Section 37(1) of the Legal Profession Act provides:

The [Law Society] may apply to the Supreme Court for an order that the files or other records, wherever located, of or relating to a lawyer or articled student or a law firm be seized from the person named in the order, if there are reasonable grounds to believe that a lawyer or articled student may have committed or will commit

(a) any misconduct,
(b) conduct unbecoming the profession, or
(c) a breach of [the] Act or the rules.

An application under s. 37(1) may be made without notice or on such notice as the judge requires (s. 37(2)).

If the Chair of the Discipline Committee believes there has been misconduct, the Chair may authorize an investigation of the books, records and accounts of the lawyer or law firm under s. 36(b) and Law Society Rule 4-55. Under Law Society Rule 3-85, the Executive Director of the Law Society may order a compliance audit of the books and records to ensure that proper accounting procedures are followed. Compliance audits are discussed further in §6.13.

The significant features of the rules regulating trust accounting follow.

1. There are many important definitions in Rule 1 including an expansive definition of “trust funds”:

“trust funds” includes funds received in trust by a lawyer or law firm acting in that capacity, including funds

(a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or
(b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds[.]

Rules 3-53 and 3-88 specify that in Division 7—Trust Accounts and Other Client Property and Division 8—Unclaimed Trust Money, the term “lawyer” includes a law firm.

2. Rule 3-55 governs fiduciary property. “Fiduciary property” as defined in Rule 1 means funds (other than trust funds) and valuables for which a lawyer is responsible in a representative capacity or as a trustee, if the lawyer’s appointment is derived from a solicitor-client relationship (Rule 1). Rule 3-55 requires lawyers to produce the following records for any period when the lawyer is responsible for fiduciary property:

• a current list of valuables, with a reasonable estimate of the value of each;
• accounts and other records respecting the fiduciary property; and
• all invoices, bank statements, cancelled cheques or images, and other records necessary to create a full accounting of the receipt or disbursement of the fiduciary property; and any capital or income associated with the fiduciary property.

(See also the practice resource “Fiduciary Property FAQs” on the Law Society website: www.law.society.bc.ca/Website/media/Shared/docs/practice/resources/FiduciaryProperty-FAQ.pdf.)

3. Rule 3-56 deals with the designation of savings institutions with which lawyers may deposit trust funds. A “designated savings institution” is one that has an office in British Columbia and is insured by the Canada Deposit Insurance Corporation or the Credit Union Deposit Insurance Corporation of British Columbia. See also §6.09.

4. Rule 3-58(1) provides that a lawyer must deposit all trust funds received into a pooled trust account, subject to the following exceptions:

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• A lawyer who receives trust funds with instructions to place them otherwise than in a pooled trust account may place them in a separate account in accordance with s. 62(5) of the Legal Profession Act and Rule 3-61 (Rule 3-58(2)).

• A lawyer who receives a cheque payable to the lawyer in trust, which is to be paid over to a third party on behalf of the lawyer’s client, may pay it over to the third party in the form in which the lawyer received it (Rule 3-62).

Under Rule 3-58(3) a lawyer must deposit all trust funds in an account in a designated savings institution, unless the client instructs otherwise in writing.

Note that rule changes are being considered (in April 2019) which would provide that trust accounts must only be used in connection with legal services.

5. Rule 3-60 contains provisions applicable to pooled trust accounts. Pooled trust accounts must be held at a designated savings institution (Rule 3-60(1)(a)).

The lawyer must instruct the savings institution, in writing, to remit the net interest from a pooled trust account to the Law Foundation at least quarterly, and must notify the institution that the trust account will contain the funds of more than one client (Rule 3-60(3)).

Lawyers should arrange with the bank to have all bank charges for the trust account taken from their general account. Sometimes the bank does not follow the lawyer’s instructions and debits the trust account for these bank charges. To cover these rare cases, it is prudent to have an amount on deposit, up to $300, to cover errors in account debiting (as permitted by Rule 3-60(5)).

6. Rules 3-61, 3-66 and 3-58(2) address separate trust accounts.

A separate trust account must be an interest-bearing trust account or a savings, deposit, investment or similar form of account in a savings institution in BC, and the account must be designated as “trust” in the lawyer’s records (Rule 3-61(1)).

Pursuant to Rule 3-66, if the features of the separate trust account don’t include the receipt of cancelled cheques and bank statements, then the lawyer who withdraws funds from the separate trust account must first transfer them to the lawyer’s pooled trust account.

The client must give instructions to the lawyer in order to authorize a transfer of trust funds from the pooled trust to a separate trust account (Rule 3-58(2)), and the lawyer must approve the transfer (Rule 3-68(c)).

See §6.07 for more on separate trust accounts.

7. Rules 3-60(4) and 3-61(3) provide that lawyers must not deposit their own funds into a pooled trust or into a separate trust account (except under Rule 3-60(5) and Rule 3-74). Lawyers may deposit funds that are fiduciary property in a pooled or separate trust account, provided the lawyer complies with the rules pertaining to trust funds (Rules 3-55(6), 3-60(4) and 3-61(3)).

8. There are a number of provisions which specifically address the Benchers’ concern over security of trust funds. These are dealt with in Rules 3-60(3)(b), 3-57, and 3-77.

9. Rule 3-62 provides for the endorsement over of cheques received by lawyers in the form in which they are received. The lawyer must keep a written record of the transaction and retain a copy of the cheque.

10. Rule 3-64 identifies the manner in which lawyers may make or authorize the withdrawal of funds from trust. Rule 3-65 (described later in this list) specifically deals with the withdrawal of trust funds for the payment of a lawyer’s fees.

Under Rule 3-64(1), a lawyer may withdraw funds from a trust account only if those funds are:

• properly required for payment to or on behalf of a client, or to satisfy a court order;

• the property of the lawyer;

• in the account as the result of a mistake;

• paid to the lawyer to pay a debt that the client owes the lawyer;

• being transferred between trust accounts;

• due to the Law Foundation under s. 62 (2)(b);

or

• unclaimed trust funds remitted to the Society under Division 8.

A lawyer cannot make a payment from trust funds unless the lawyer’s trust accounting records are current and there are sufficient funds in the trust account held to the credit of the client on whose behalf the funds are being paid (Rule 3-64(3)).

A number of rules with respect to withdrawal of trust funds, and particularly electronic transfers, changed as of July 1, 2018. New rules have been created that will allow lawyers to transfer trust funds electronically using an online banking platform from the lawyer’s trust account to third parties, from the lawyer’s trust account to the lawyer’s general account, and between the lawyer’s trust accounts.
Rule 3-64(4) and 3-65 have been amended to permit lawyers to withdraw trust funds for the payment of the lawyer’s fees, charges, disbursements, and related taxes, by electronic transfer to the lawyer’s general account. Rule 3-64(6), which required such withdrawals to be made only by trust cheque, is rescinded.

Rule 3-64.1 replaces Rule 3-64(7), and contains requirements with respect to electronic transfers from trust. Under Rule 3-64.1(2), a lawyer may withdraw funds from a pooled or separate trust account by electronic transfer, provided the requirements in Rule 3-64.1 are met.

Rule 3-64.1(2)(a) requires that the electronic funds transfer system used for the electronic transfer of funds from trust must require two people to complete the transfer:

- A person other than the lawyer must enter data into the electronic funds transfer system describing the details of the transfer.
- The lawyer must carry out the final step of authorizing the bank to complete the transfer.

Each person involved in the transfer must use an individual password or access code to gain access to the electronic funds transfer system (Rule 3-64.1(2)(a)).

The lawyer must not disclose the lawyer’s password or access code to another person, or permit another person to use the lawyer’s password or access code (Rule 3-64.1(2)(b)).

The rules contain an exception for sole practitioners with no non-lawyer staff. These lawyers are permitted to execute both the data entry step describing the details of the transfer and the authorization step of the transfer, but must use different passwords for each stage of the transaction (Rule 3-64.1(3)).

Lawyers will be required to complete a Law Society requisition form before performing an online transfer from trust (Rule 3-64.1(2)(e)). Lawyers must also ensure that the electronic funds transfer system produces a confirmation that meets the requirements of the new rule (Rules 3-64.1(2)(c)-(d)). The lawyer must retain the requisition form and confirmation with the lawyer’s records (Rule 3-64.1(2)(g)).

Rule 3-64.1(6) permits lawyers to use electronic transfers to pay property transfer tax on behalf of clients.

Rule 3-64.2 sets out rules with respect to lawyers receiving electronic deposits into trust.

11. Rule 3-65 includes provisions concerning the withdrawal of trust funds for the payment of fees and related taxes. In particular, a lawyer must first prepare and deliver a bill for those fees and immediately deliver it to the client, before transferring the funds.

Rule 3-65(5) prohibits a lawyer from transferring trust funds for fees where the lawyer “knows that the client disputes the right.”

Rules 3-65(1), (1.1) and (2) are amended, effective July 1, 2018, to provide that a lawyer who withdraws or authorizes the withdrawal of trust funds for payment of the lawyer’s fees must withdraw the funds by either:

- a cheque payable to the lawyer’s general account, or
- electronic transfer to the lawyer’s general account, in accordance with Rule 3-64.1.

12. There are a number of requirements in Rules 3-67 to 3-69 concerning books and records to be maintained. Note the requirements concerning the promptness of recording transactions and reconciling of accounting records in Rules 3-72 and 3-73.

13. Lawyers must report to the Law Society an inability to deliver trust funds when due (Rule 3-74(2)(b)). The obvious situation is when the lawyer is short or overdrawn in his or her trust account, either by accident or other unusual circumstance. There have also been circumstances in which funds have been “held” by the financial institution, which prevented or jeopardized the lawyer’s drawing on those funds to meet obligations and undertakings. Rule 3-74 gives other examples of trust shortages (for example, caused by service charges, credit card discounts and bank errors). Rule 3-60(4) allows a lawyer to keep up to $300 in the pooled trust account in case bank charges inadvertently are debited from the pooled trust account. All trust shortages of greater than $2,500 must be reported to the Law Society.

14. Rule 3-78 preserves the lawyer’s right to claim funds standing to the credit of the client in a trust account, whether by way of lien, set-off, counterclaim, charge, or otherwise.

15. A number of provisions in Division 7 of the Law Society Rules deal with the Trust Report. A Trust Report must be filed each reporting period (Rule 3-79). In some cases, law firms may be eligible to file a Self Report, which is completed entirely by the practice. In other situations, the firm may be required to file an Accountant’s Report which requires the firm to engage a Chartered Professional Accountant. See §6.12 for more on this topic.

16. Provisions concerning unclaimed trust funds are dealt with under Division 8 of the Law Society Rules. The provisions set out a vehicle by which lawyers may remit to the Law Society trust funds that are unclaimed and for which the lawyer has
been unable to locate the appropriate beneficiary for two years.

In addition, this Division sets out the procedure for investigation and adjudication of subsequent claims against the unclaimed trust funds being held by the Law Society. The Law Society from time to time must conduct or authorize efforts to locate the owner of funds held under this Division. Note that s. 34 of the *Legal Profession Act* is also relevant to unclaimed trust funds. This section sets out the Law Society’s rights, duties and obligations with respect to their custody of unclaimed trust funds.

### §6.02 Opening a Trust Account

Any lawyer or firm receiving or paying money in trust is required to maintain a trust account at a designated savings institution.

For as long as the trust account is open, the lawyer must comply with all the rules governing trust accounts, including monthly reconciliation of trust balances and annual reporting in the Trust Report.

Instructions for opening a trust account at a savings institution must be given in writing (Rule 3-60(3)). Contact the Trust Assurance Department of the Law Society for assistance with the procedure for opening a trust account.

See §6.03 for a sample letter to be used to instruct a savings institution when opening a new trust account.

### §6.03 Interest on Trust Accounts

Normally, all interest earned on lawyers’ pooled trust funds is required to be paid directly by the savings institution to the Law Foundation of British Columbia or, if remitted to the lawyer, must be forwarded on to the Law Foundation.

The Law Foundation has agreements with various savings institutions as to the rate of interest that will be paid on pooled trust balances. Usually interest is calculated at an agreed rate on the minimum monthly balance, and may, in some cases, be reduced by the amount of cheque processing service charges related to the trust account.

A lawyer or firm opening or maintaining a pooled trust account must ensure the financial institution involved has been instructed *in writing* to pay interest on the account and to remit it directly to the Law Foundation (Rule 3-60(3)).

The following letter can be used to instruct a savings institution.

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*Professionalism: Practice Management*
Sample Letter to Financial Institution

Remitting Interest to the Law Foundation
Law Society Rule 3-60(3)

This Practice Resource has been updated to November 1, 2018. It is available on the Law Society’s website: lawso-
ciety.bc.ca, search for “Remitting Interest to the Law Foundation.” © Law Society of British Columbia.

[Name]

[CONFIDENTIAL]

[Date]

[Addressee]
[Address]

Dear Sir/Madam:

Re: Trust Account – [Number]

By this letter, I am (we are) advising your institution that the above account is a pooled trust ac-
count that will contain the funds of more than one client.

The Law Society of British Columbia requires that a pooled trust account shall:

a. be interest bearing;
b. provide monthly cancelled cheques and bank statements to the lawyer;
c. be readily available to be drawn upon by the lawyer;
d. be designated as a “trust” account on the records of the savings institution (and 
the lawyer); and

e. be an account in respect of which the savings institution has agreed with the law-
yer to pay interest to the Law Foundation

Law Society Rule 3-60 (3) (a) requires that every lawyer who opens or maintains a pooled trust
account “instruct the savings institution, in writing, to remit the net interest earned on the ac-
count, directly to the Law Foundation of British Columbia.”

This letter is my (our) instruction to you to calculate the interest on the above account at the rate
and in the manner agreed upon between your institution and the Law Foundation of British Co-
lumbia, and to remit such interest directly to the Law Foundation according to the terms of that
agreement (in the event that there is no agreement in place, please contact The Executive Direc-
tor of the Law Foundation). This letter authorizes and directs you to provide the Law Foundation
with such information and explanation, as it requires verifying the calculation of the interest re-
mitted, including:
a. account balance information during the reporting period;
b. the interest rate and the gross interest earned;
c. service charges deducted (if service charges are deducted, they are limited to the routine processing of transaction items for: deposits; cheques; return of cancelled (cleared) cheques; stop payment orders; and a reasonable fee for Law Foundation payment processing; and

d. the net interest earned after deduction of service charges.

A standard form remittance report that should accompany that remittance can be obtained from the Law Foundation.

Please forward the interest directly to:

The Law Foundation of British Columbia  
1340 - 605 Robson Street  
Vancouver BC  V6B 5J3

and please advise me (us) of the amount of each transmittal.

Yours truly,

[Name, Title]

cc: Law Foundation
[§6.04] Selecting a Savings Institution

The lawyer should select a particular savings institution carefully. It is usually costly and difficult to close or re-locate a trust account. Similarly, you must ensure that the bank that you choose can accommodate your accounting system’s requirements. For instance, some accounting software requires the use of specific types of cheques.

[§6.05] Number of Bank Accounts

Although at present there is no restriction on the number of trust bank accounts a lawyer may operate, it is strongly recommended that a lawyer maintain at most one or two pooled trust accounts. When many trust accounts are used, errors, shortages, and overdrafts frequently arise. In addition, the lawyer incurs greatly increased bookkeeping, accounting and reporting costs in trying to administer multiple trust accounts.

[§6.06] Ordering Cheques

Many trust account errors arise because of a mix-up between the trust account cheques and deposit books and those of the general account.

Lawyers can reduce the chance of such errors by:

(a) using trust cheques which are a distinctly different colour to the general (non-trust) account cheques;

(b) ensuring that “TRUST” is imprinted in bold letters on each cheque;

(c) ensuring that the account numbers allocated to the trust and general accounts are significantly different so that they will not be confused; and

(d) maintaining the trust and general accounts at separate institutions, where possible.

[§6.07] Separate Trust Accounts

A lawyer or law firm must deposit all trust funds to a pooled trust account, except as permitted under s. 62(5) of the Legal Profession Act:

62 (5) On instruction from a client, a lawyer or law firm may place money held on behalf of the client in a separate trust account, in which case:

(a) this section and the rules made under it do not apply, and

(b) interest paid on money in the account is the property of the client.

The gross trust liability of the law firm must include amounts held in clients’ separate trust accounts. Accordingly, it is necessary to include such amounts in the monthly trust account reconciliation.

[The Benchers’ Bulletin article that follows has been edited to reflect changes to the Law Society Rules that came into effect July 2015.]

1. Trust Accounts—Pooled or Separate?

Benchers’ Bulletin 2005: No. 4 September–October

Lawyers are reminded that, in accordance with section 62 of the Legal Profession Act and Part 3 of the Law Society Rules, funds received in trust are to be deposited into an interest-bearing trust account. In most cases, client trust funds are deposited to a pooled trust account, with interest payable to the Law Foundation. A lawyer, however, may obtain specific instructions from a client to set up and deposit the funds into a separate trust account, with interest accruing to the benefit of the client.

In each case, that lawyer should take into account the amount of the deposit, the time it will be held and the applicable interest rate to ensure that the return will outweigh the administrative costs and specific financial fees involved in a separate account.

Lawyers occasionally deposit funds in a pooled trust account in expectation of an early payout. If a process becomes protracted and the funds will remain in trust longer than anticipated, it is appropriate to reconsider whether to place the funds in a separate trust account.

Client instructions to deposit funds other than to a trust account at a designated savings institution insured by CDIC or CUDIC must be in writing (Rules 3-58 and 3-56).

[§6.08] Proceeds of Crime Legislation and Handling Cash2

To help the legal profession deal with the risks when accepting cash and exposure to money laundering schemes, the Benchers adopted a cash transactions rule—Rule 3-59. Under Rule 3-59(3), a lawyer “must not accept an aggregate amount in cash of $7,500 or more in respect of any one client matter or transaction.” There are some exceptions to the prohibition against accepting $7,500 or more in cash, such as if the lawyer receives the funds in payment of fees, disbursements, expenses or bail; pursuant to a court order; or from a law enforcement agency.

As a further measure to protect against money laundering, the Law Society requires lawyers to follow client identification and verification rules when retained by clients to provide legal services (Rules 3-98 to 3-109). Those rules are described in Practice Material:

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2 See also Professionalism: Ethics, §6.13.
Note that (as of April 2019) rule changes are anticipated regarding trust accounts and cash transactions as part of the Law Society’s ongoing commitment to helping lawyers protect against money laundering. Under the proposed rule changes, trust accounts will only be able to be used for funds directly relating to legal services. Anticipated amendments to the cash transactions rule include changes to some definitions and revising the limit from less than $7,500 to $7,500.

[The Benchers’ Bulletin articles that follow have been edited to reflect changes to the Law Society Rules that have come into effect since their original publication.]

1. Handling Cash

The following Practice Watch articles give lawyers some helpful tips on how to handle cash and what scams lawyers need to be alert to.

Know the Rules for Handling Cash [excerpt]
Benchers’ Bulletin 2007: No. 4 October, Practice Watch, by Barbara Buchanan, Practice Advisor

No cash rule in retainer agreements

Lawyers may only accept or receive cash in the limited circumstances permitted by Law Society Rule 3-59. All lawyers and individuals authorized to handle money should be aware of this rule, which prohibits lawyers from accepting $7,500 or more in cash except in limited circumstances. You may wish to make it your policy not to accept cash in order to reduce your chances of offending the rule.

In an effort to discourage clients from proffering cash, consider adding a paragraph similar to the following in your standard retainer agreement:

Please note that we do not accept any funds in cash, including our retainer. As protecting your legal interest may require paying funds within certain time limits, we recommend that you discuss with us any necessary arrangements in advance to provide payment to us by way of certified cheque, money order, bank draft, electronic transfer or credit card.

If you educate your clients and those who work in your office about Rule 3-59, you are unlikely to find yourself in circumstances that offend the rule. For example, your legal assistant will know not to accept cash in relation to a purchase and sale transaction and your client will know not to offer cash in the first place.

You can find retainer agreement precedents in the Support and Resources for Lawyers section of the Law Society’s website.

Cash receipt book requirement

Lawyers in private practice who accept cash in the limited circumstances permitted by Rule 3-59 must maintain a cash receipt book of duplicate receipts and make a receipt in the receipt book for any amount of cash received (Rule 3-70). All lawyers and individuals authorized by a lawyer to sign the receipt book on the lawyer’s behalf should be aware of the receipt book requirements in Rule 3-70.

Both the lawyer who receives cash and the person from whom the cash is received must sign the duplicate receipt book. In addition to the two signatures, each receipt must identify:

- the date on which the cash was received;
- the person from whom the cash was received;
- the amount of cash received;
- the client who provided the cash; and
- the number of the file in respect of which cash was received.

Withdrawing cash from trust

A lawyer who is required by Rule 3-59(5) to withdraw funds in cash from a pooled or separate trust account must make a record of the transaction and that record must be signed by the person to whom the cash is paid. The transaction record must also identify:

- the date on which the cash was withdrawn;
- the amount of cash withdrawn;
- the name of the client in respect of whom the cash was withdrawn;
- the number of the file in respect of which the cash was withdrawn;
- the name of the person to whom the cash was paid; and
- all dates on which the record was created or modified.

For further information regarding Practice Watch, contact Barbara Buchanan, Practice Advisor, at 604.697.5816 or bbuchanan@lsbc.org.

Cautions on Cash and New Scams [excerpt]
Benchers’ Bulletin 2008: No. 2 May, Practice Watch, by Barbara Buchanan, Practice Advisor

Cautions on cash and new scams

- Handling cash refunds
- List of valuables for monthly trust reconciliation
- Counterfeit bank drafts—yet another trust account scam
• Signing trust cheques
• United States subpoena scam
• Direction in a will to retain a particular solicitor
• PST news

Cash under the mattress, or in a safety deposit box? Think twice about whether you can deposit it in your trust account.

If you are acting for a personal representative of an estate who discovers cash amongst the deceased’s possessions and who wants you to deposit it into your trust account, be careful. You may deposit into trust cash that in the aggregate amounts to less than $7,500, but you may not deposit cash amounting to $7,500 or more (Rule 3-59(3)). Be mindful of the words “aggregate” in subrule (3). Here’s how it works.

If your client finds $2,000 in the deceased’s safety deposit box, you may deposit that amount in your trust account, following accounting rules for the deposit of cash. If your client finds $5,500 in the cookie jar a few days later and wants you to deposit the $5,500 into trust, don’t do it. In the aggregate, you would have received $7,500 in cash in a circumstance not permitted by the rule.

What can you advise the estate client who brings too much cash to your office? Here are two options:
• You can suggest that the client open up an estate account and deposit the cash into that account.
• You can suggest that the client use the cash to get a bank draft payable to your firm in trust.

Handling cash refunds

Lawyers may only receive or accept an amount of $7,500 or more in cash in the very limited circumstances permitted by Law Society Rule 3-59. Where a lawyer has received a cash retainer in accordance with subrule (4), and the client is later entitled to a refund, there are rules governing when the refund must be made in cash rather than by cheque.

What happens if a lawyer receives an $8,500 cash retainer (permitted) but when the lawyer issues the final invoice, $3,000 is left in trust? How does the lawyer refund the $3,000 to the client? Subrule (5) requires that any refund greater than $1,000 out of the $8,500 retainer must be made in cash. The lawyer must refund $3,000 to the client in cash, not by trust cheque.

What if a lawyer receives a $7,000 cash retainer but when the lawyer issues the final invoice, $2,000 is remaining in trust? How does the lawyer return the $2,000 to the client? Because the lawyer received less than $7,500 from the client, subrule (5) does not apply and the lawyer is permitted to return the $2,000 to the client by way of a trust cheque.

What if the client provided a cash retainer in a foreign currency? Subrule (7) requires the lawyer to convert the foreign currency into Canadian dollars based on the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada’s Daily Memorandum of Exchange Rates in effect at the relevant time. If no official conversion rate was published, the lawyer would use the conversion rate that the client would use in the normal course of business.

Lawyers are being cited for breaches of Rule 3-59. Make certain that you and your firm understand the rule. Breaches of the “no cash rule” are treated seriously. This is an important matter to the Law Society, for the legal profession and for the protection of the public.

List of valuables for monthly trust reconciliation

If you have received “valuables” (defined in Rule 1 as anything of value that can be negotiated or transferred) to hold for your client, be aware of the requirement to list the items received and delivered and any undelivered portion as part of your monthly trust reconciliation (Rule 3-73(2)(e)). A sample Valuable Property Record is available on the Law Office Administration section of the Law Society’s website. You can simply attach your list of valuables to your monthly trust reconciliation. You should also be confirming on a monthly basis that you are in fact holding the valuables you have listed.

This may also be a good time to do some spring cleaning. Have a look inside your safe. Are you holding valuables that should be listed?

Counterfeit bank drafts—yet another trust account scam

Recently the Law Society issued a fraud alert relating to counterfeit certified cheques that set out the details of a scam that had arisen in Ontario. Other schemes have surfaced in which counterfeit bank drafts, rather than counterfeit certified cheques, are used as a means of accessing lawyers’ trust funds.

One ruse involves a new client, located outside of Canada, requesting your assistance to recover a debt from a Canadian company. You send a demand letter and receive a bank draft for the full amount from the alleged debtor payable to your firm in trust. The bank draft is drawn on a Canadian bank and looks completely real. If you call the telephone number printed on the bank draft, the call is professionally answered and the bank draft is declared valid. In fact, it’s not.

If you deposit the bank draft in your trust account and then pay out a handsome sum to your new client, minus your fees and disbursements, then you may be a victim.

Regardless of the pretext the rogue uses to lure you into relying on a forged document to pay out trust funds, there seem to be some common elements.

The client presents as a businessperson or someone trustworthy (one individual claimed to be a pastor) and may be located outside of Canada. The services required are for a simple matter. The client wants to be paid quickly and may urge you to transfer the money electronically. The cheque or bank draft required to pay your
Changes to Cash Transaction Rule

Changes to the cash transaction rule, permitting lawyers to accept money and property from clients, were made in November 2009. The amendments to Rule 3-59(6) were made to clarify that the refund-in-cash provision applies only when the client has returned the property or proceeds. The revisions also allow a lawyer to accept money or property from a client beyond the permitted limit; however, the Benchers recognized that there are cases where a lawyer may receive cash in a circumstance beyond their control. For example, a client or other person could deliver a “personal and confidential” envelope containing cash to a lawyer’s office without the lawyer’s knowledge, or someone could make a cash deposit directly to a lawyer’s bank account simply by having the account information. Rule 3-59(6) sets out the procedure for a lawyer to follow in such circumstances.

2. Proceeds of Crime

In addition to the obligations under Rules, lawyers should continue to be mindful of Criminal Code provisions relating to proceeds of crime.

A lawyer who accepts money or property from a client, knowing or being willfully blind to the fact that the funds constitute proceeds of crime, may be charged with the offences of possession or “laundering” (Criminal Code, ss. 354(1) and 462.31). “Proceeds” include funds received by a lawyer as a retainer or funds placed into a lawyer’s trust account in order to complete a legal transaction.

The offence, described in s. 462.31 of the Criminal Code, is committed when a person deals with any property, or any proceeds of property, in any manner and by any means, with the intent to conceal or convert it, knowing or believing that all or part of the property or proceeds was obtained or derived as a result of a designated drug offence or an enterprise crime offence, designated in section 462.3 of the Code.

If a client asks you for services that seem not to be legal services but are more like banking services, or if you cannot define the legal services you are being retained to carry out, be wary. You must ensure that no person uses your trust account to deal with the proceeds of crime. As noted earlier, changes are anticipated to the Law Society rules regarding trust accounts as a means to prevent money laundering. The proposed new rule would provide that lawyers must only use their trust accounts for money directly related to legal services.

A client with no bank account who wants to bring you cash can instead purchase a money order or bank draft and bring that to you. Call the Law Society for advice on how to deal with ambiguous requests for your services.

What course of action should a lawyer take upon learning that funds held in his or her account constitute the proceeds of crime?

The lawyer is liable to prosecution for the offence of laundering if he or she returns the property to the client, transfers it to another lawyer’s trust account on the direction of the client, or distributes it to...
other parties, such as conveyancing vendors or estate beneficiaries.

On the other hand, the lawyer may put herself or himself at risk under the proceeds of crime legislation by continuing to hold the property in trust, unless the lawyer takes proper and adequate steps to safeguard his or her position.

A lawyer who learns that funds placed in trust are the proceeds of crime should act promptly:

1. Retain counsel knowledgeable about the proceeds of crime legislation, disclose to that counsel the lawyer’s state of knowledge respecting the funds, and confirm that information in writing. This action is important for two reasons. First, it evidences the lawyer’s intention to retain the funds in the public interest (until entitlement to the funds is determined by a court), thus negating criminal intent. Second, the lawful options available to the lawyer may vary depending on the circumstances of the case, and the lawyer needs legal advice from a colleague knowledgeable about the legislation.

2. Advise the client that the lawyer is holding funds in trust and that they will be released from trust only by court order.

3. If the client refuses to allow the lawyer to disclose to the beneficiary of the funds why the lawyer continues to hold the funds in trust, the lawyer should tell the beneficiary to ask the client and, if that proves unsatisfactory, to obtain independent legal advice. The lawyer must maintain client confidentiality by not disclosing the tainted nature of the funds.

4. If steps 1 to 3 do not satisfactorily resolve the lawyer’s problem, contact the Law Society for advice as to the proper course of professional conduct to follow.

[§6.09] Security of Trust Funds—Designated Savings Institutions

Rule 3-58(3) requires that a lawyer must deposit all trust funds in an account in a designated savings institution, unless the client instructs otherwise in writing.

Names of designated savings institutions at which lawyers may operate a pooled or separate trust account are no longer circulated to lawyers.

Rule 3-56 summarizes the rules that affect designated savings institutions as follows:

Subject to Rule 3-57 [Removal of designation], a savings institution is a designated savings institution within the meaning of section 33(3)(b) if it has an office in British Columbia accepting demand deposits and is insured by

(a) the Canada Deposit Insurance Corporation; or

(b) the Credit Union Deposit Insurance of British Columbia.

Generally, designated savings institutions include any branch in British Columbia of a chartered bank or trust company provided it is insured under the Canadian Deposit Insurance Act by the Canada Deposit Insurance Corporation (“CDIC”). In addition, British Columbia credit unions qualify as designated savings institutions provided they are insured by the Credit Union Deposit Insurance Corporation of British Columbia (“CUDIC”). CDIC coverage does not apply to credit unions, but each qualifying credit union must be covered by CUDIC.

Rule 3-77 requires each lawyer who holds pooled trust funds in a designated savings institution insured by CDIC to file an Annual CDIC Report with each savings institution where the lawyer maintains pooled trust funds, so that each client’s funds, rather than the account itself, are insured up to the CDIC limit of $100,000. See the next page for an example of a CDIC Report.
To: Each financial institution, except credit unions, where the law firm has a pooled trust account.

Dear Sir or Madam:

Re: Pooled Trust Account – CDIC Report

This is to advise you that account number ______ is a multi-beneficiary trust account which, as at April 30, 20______, contained the funds of various clients as follows:

<table>
<thead>
<tr>
<th>File Number</th>
<th>or</th>
<th>Other confidential identifier</th>
<th>$Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

$TOTAL

We are providing you with this information so that you can comply with CDIC requirements.

We further confirm our instructions that you are to remit net interest earned on the aforesaid pooled trust account to the Law Foundation of BC.

Yours truly,

Notes:

- Deliver the report to the financial institution within 30 days of April 30 each year. Do not use client names. It is also suggested that client initials not be used.
- The total is to agree with the balance per the bank statement of the same date.
- Maintaining a pooled trust account with less than $100,000 does not exempt you from this requirement.
- It is not necessary to file this report with credit unions whose insurers do not require it.
- Whenever you open a new pooled trust account inform your bank, trust company, or credit union, in writing, that this is a pooled trust account that will contain the funds of more than one client. (This advice can be combined with the required letter instructing the bank to forward net interest to the Law Foundation).
- Keep a copy of the CDIC report, with receipt acknowledged by the bank, to give to your auditor, who is specifically instructed by the Law Society to confirm that you have complied with Rule 3-77.
[§6.10] Trust Administration Fee

BC lawyers who maintain one or more trust accounts are required to remit to the Law Society a $15 trust administration fee ("TAF") each time a lawyer or firm deposits funds into trust for a client for a new matter. The fee does not apply to trust funds that are to be used solely to pay legal fees or held as a retainer.

Rules 2-109 through 2-113 provide details about how the TAF operates. The lawyer is responsible for paying the TAF to the Law Society. Remittances are to be made to the Law Society quarterly by April 30, July 31, October 31 and January 31. Each of these remittances will cover the three-month period ending March 31, June 30 and December 31, respectively.

The proceeds of TAF fund the Trust Assurance Program. The Law Society’s trust administration programs are important in monitoring the proper handling of trust funds within the profession. Since the programs relate to lawyers who hold trust funds and carry out trust transactions, it is appropriate for those lawyers to bear a larger portion of the overall expense.

For current information regarding the TAF, visit the Law Society’s website (www.lawsociety.bc.ca).

[§6.11] Deposit Insurance on Trust Accounts

The Canada Deposit Insurance Corporation ("CDIC") is a federal Crown corporation, which was created to protect funds deposited in certain financial institutions, not including credit unions. This protection extends to client trust funds on deposit in banks and trust companies to a maximum of $100,000 (principal and interest combined) for the same client.

When depositing client trust funds in savings institutions, members should be aware of the fact that not all deposits and investment instruments offered by CDIC-insured institutions are insurable. To be eligible for deposit insurance protections, the deposit must be payable in Canada, in Canadian currency. It must also be repayable no later than five years after the date of deposit, and some instruments are excluded.

Coverage does not extend to:

- foreign currency deposits;
- term deposits that are locked in longer than five years;
- debentures issued by a chartered bank;
- bonds and debentures issued by governments and corporations;
- treasury bills; and
- investments in mortgages, stocks and mutual funds.

The Credit Union Deposit Insurance Corporation ("CUDIC") provides similar protection to the provincial credit unions. This is a provincial Crown corporation that administers and operates a deposit insurance fund for funds on deposit with credit unions. Although the principles behind CUDIC and CDIC coverage are similar, there are some significant differences. Both corporations have rules for determining when deposits are covered, as separate deposits, for protection purposes. In November 2008, the Provincial legislature passed amendments to the Financial Institutions Act to provide unlimited deposit insurance protection on all deposits in British Columbia’s credit unions for insured credit unions. Deposits are neither restricted to Canadian currency nor to term deposits of five years or less.

Deposit insurance is one of a number of security factors lawyers should consider in selecting a savings institution for the deposit of client funds.


Under Law Society Rule 3-79, all lawyers must file a Trust Report each reporting period. Law firms are not tied to their fiscal years for the purposes of trust audit reporting, but may choose any reporting period of not more than 12 months. Practising insured lawyers who do not maintain a trust account must submit a Trust Report but are not required to complete the entire document. Rule 3-79(6) exempts non-practising and retired lawyers who do not handle trust funds from filing a Trust Report.

The annual Trust Report consists of filing either a Self Report or an Accountant’s Report. The Self Report is completed entirely by the firm, while the Accountant’s Report requires the engagement of a Chartered Professional Accountant. In both cases, the Law Society is looking to see whether the lawyer has complied with Division 7 of the Law Society Rules and has maintained an adequate system for recording all financial transactions of the law practice in compliance with Division 7.

The annual filing notice indicates which type of report a lawyer is required to file. The current policy is that the following must file an Accountant’s Report with a Trust Report:
lawyers who have not filed Accountant’s Reports for two years immediately preceding the current reporting year;
- lawyers who formerly filed Section-A Trust Reports and now operate a trust account;
- lawyers who terminate their practice during the year; and
- lawyers with a compliance rating that raises concerns about the lawyer’s trust accounting practices.

Note that there is a penalty for filing a Trust Report late: $400 per month under Rule 3-80(3).

Rule 3-81 deals with the consequences of a Trust Report not being received within 60 days of it being due: non-receipt results in suspension.

[§6.13] The Compliance Audit Program

1. The Purpose of a Compliance Audit

In addition to the annual Trust Report filing requirement, each practice holding a trust account will receive a compliance audit, conducted by Law Society auditors, once every 5 to 6 years. These audits are conducted at no cost to the practice and are a complement to the annual Trust Reporting requirement. The Compliance Audit Program is conducted under the authority of s. 33 of the Legal Profession Act and Law Society Rules 3-85 and 3-86.

The purpose of a compliance audit is to ensure a law firm’s books, records and accounts comply with the requirements of the Legal Profession Act, the Law Society Rules, and the BC Code.

Rule 3-53 defines a compliance audit as “an examination of a lawyer’s books, records and accounts and the answering of questions by lawyers.” A primary goal of the compliance audit is to provide on-site guidance to help law firms correct minor problems with record keeping before they lead to serious issues of non-compliance and possible professional conduct issues.

The compliance auditor will also perform an in-depth review of client files to ensure trust funds are being handled properly. Research has shown that certain areas of legal practice historically have been subject to Part B (trust protection coverage) insurance claims, and these areas of practice will be given extra scrutiny.

In addition, the Law Society’s Trust Assurance team will be available to answer any questions lawyers and their staff may have about trust accounting and to assist lawyers—particularly those who are setting up new practices or working in smaller firms—to develop proper accounting systems.

A new law firm may receive a new firm visit in its first year or upon request, to ensure appropriate record-keeping practices and trust-fund handling procedures are established and maintained. The auditor will answer all questions about trust accounting and, in particular, will assist new lawyers regarding proper accounting systems.

2. The Process

For most, the compliance audit will be a straightforward review and will provide the firm with an opportunity to raise any questions they may have on trust systems and procedures.

The auditors will be employees of the Law Society.

The audits generally are selected at random. However, some indicators may trigger an audit, such as:
- failure to file a Trust Report;
- information on a Trust Report that indicates non-compliance with the trust accounting rules and procedures;
- referral from other departments of the Law Society;
- inadequacies that were identified during a previous compliance audit; and
- a compliance rating that raises concerns about the lawyer’s trust accounting practices.

The Law Society determines the compliance rating by reviewing a firm’s past Trust Report history relating to compliance or non-compliance with the Law Society’s trust accounting rules. Any “exceptions” (actions that are not in compliance with the trust accounting rules) are assigned a weight based on the nature of the exception and the risk the exception could pose to the public. Some exceptions are highly weighted:
- prohibited large cash transactions (Rule 3-59);
- deposits to incorrect bank accounts (Rule 3-58);
- insufficient funds in trust (Rule 3-63);
- cheques improperly written on trust accounts (Rule 3-64);
- incorrect amount of funds transferred (Rule 3-64);
- incomplete accounting records (Rule 3-67);
- incomplete trust accounting records (Rule 3-68);
• not keeping records of cash transactions (Rule 3-70);
• late preparation of trust account reconciliations (Rule 3-73);
• trust shortages (Rule 3-74);
• late or incomplete Trust Reports (Rule 3-79); and
• failure to remit taxes in a timely manner.

The auditors will consider other lawyer information, such as areas of practice and the volume and size of trust transactions, together with additional answers given about the Trust Reports.

Firms will be advised about a compliance audit, by letter, approximately four to six weeks before the audit. Included with this letter is a Compliance Audit Books & Records Checklist that lists the books and records the auditor will review, which will include but is not limited to the following:

• trust account bank statements and cheques;
• trust bank reconciliations;
• general/operating account bank statements and cheques;
• GST returns;
• PST returns;
• trust administration fee (“TAF”) returns;
• list of files by area of practice;
• general ledger for main operating account;
• accounts receivable subledger; and
• trust listing detail.

An audit will take approximately three to four days. If the lawyer has a scheduling conflict with the date specified in the letter, the lawyer will need to inform the auditor immediately. The audit may be rescheduled, but it will not be cancelled.

To ensure minimal disruption to the lawyer’s practice, it is best for the lawyer to have all records ready and available on the date of the review and to have a work area set aside for the auditor.

Please note that a lawyer who does not produce and permit the copying of records and other evidence or provide the required explanations may receive an administrative suspension until the records are produced, copying permitted, and explanations provided (Rules 3-85(2)(b) and 3-86(1)). In addition, the lawyer or law firm will not have met an acceptable standard of financial responsibility relating to the integrity and financial viability of the lawyer’s professional practice (Rule 3-49), which may lead to a referral to the Professional Conduct Department.

The Law Society audit staff will review the audit findings with the lawyer and provide a written explanation of any exceptions found during the review. If the deficiencies in the trust accounting records are serious, the Law Society will arrange a follow-up visit to ensure corrections to the records have been made and procedures have been put in place so these errors do not happen in the future.

After reviewing the report of the auditor, the Law Society staff will do one of the following:

• close the file, if minor deficiencies have been corrected or if no deficiencies were found;
• arrange a follow-up visit to address more serious deficiencies, or send a written request for further documentation to support deficiencies in the accounting records; or
• refer the lawyer’s file to the Professional Conduct department, in the event of serious breaches of the trust accounting rules.

3. Confidentiality

Under the Legal Profession Act, information obtained during an investigation is generally confidential and cannot be used in other proceedings except with consent. However, the Law Society is subject to the Freedom of Information and Protection of Privacy Act. As a result, information gathered by the Law Society may be disclosed, on request, to other persons whose interests are affected by it.
Chapter 7

Accounting Records and Bookkeeping

[§7.01] Accounting System (Charts 1 and 2)

The form and methods of recording all financial transactions of the law practice is called the accounting system.

The accounting system includes:

- accounting records (for recording transactions);
- reconciliations for proving accuracy;
- files of invoices, vouchers and documents for retaining the information that has been recorded;
- internal supervisory procedures and approval carried out to help maintain the integrity and accuracy of the accounting system.

Some lawyers have difficulty with their accounting records because they are not familiar enough with their accounting system. Lawyers are urged to seek professional accounting or bookkeeping assistance if they are at all unsure of how to set up a system. For a review of law office accounting requirements and systems, see the Accounting System Learning Module in the Practice Management Course (available through the Law Society Online Learning Centre at learnlsbc.ca). Lawyers should also refer to the Law Society’s Trust Accounting Handbook and the various other resources available on the Law Society’s Trust Accounting web page (www.lawsociety.bc.ca/support-and-resources-for-lawyers/trust-accounting-trust-assurance-program/trust-accounting/).

Various automated accounting systems exist, both stand-alone accounting systems and integrated law practice management systems. Remember that even if you use an automated system, you still must understand your accounting system.

Charts 1 and 2 on the following pages give an overview of the accounting process and show the inter-relationship of the various books and records.
RECORDING OF ACCOUNTING TRANSACTIONS

Accounting Process Overview

Chart 1

1. RECORDING OF TRANSACTIONS

SOURCE DOCUMENTS
Deposit receipts
Fin. institution statements
Bank vouchers

SOURCE DOCUMENTS
Cancelled/voided cheques
Petty cash vouchers
Credit card slips

SOURCE DOCUMENTS
Transaction records e.g.
suppliers’ invoices, fee
bills, etc.

BOOK OF ORIGINAL ENTRY or
DATA SOURCE
e.g. cash book, trust book, valuables

A/R & Disbursement
Ledger

GENERAL LEDGER
(see Chart of Accounts)

Trust Ledger

2. PROVING ACCURACY OF THE RECORDING

General Account
Reconciliation

TRIAL BALANCE

Trust Account
Reconciliation

3. PRODUCTION OF FINANCIAL/MANAGEMENT INFORMATION

FINANCIAL/MANAGEMENT
INFORMATION
e.g. listing of overdue accounts receivable, cash collections, fees written off, income and expense statements

FINANCIAL STATEMENTS
income and expense statements, balance sheet

GOVERNMENT FILINGS
income tax, GST, PST reports and returns
RECORDING OF ACCOUNTING TRANSACTIONS
Law Practice Accounting Records

**Chart 2**

- Receipt (optional)
- General Cheque
- Trust Cheque
- Bank Deposit General Account
- Bank Deposit Trust Account
- BOOK OF ORIGINAL ENTRY General Funds
- BOOK OF ENTRY Trust Funds
- GENERAL LEDGER
- Subsidiary Client Ledger
  - Record bills and payments (separate account for each client)
- Subsidiary Trust Ledger
  - Record deposits and withdrawals (separate account for each client)

**RECONCILIATION**

*Professionalism: Practice Management*
To set up the accounting records, it is necessary to create a CHART OF ACCOUNTS. This is a listing of the different types of assets, liabilities, expenses and income accounts expected to occur in the law practice. It is an inventory listing of the transaction categories (“accounts”) that are most relevant to your practice, i.e. the account names that best describe the typical receipts and payments, etc., that occur. The following Chart is a template for the future recording of all accounting transactions. For that reason, it is important that the account names are carefully chosen; however, they can be changed as required.

<table>
<thead>
<tr>
<th>ASSETS</th>
</tr>
</thead>
<tbody>
<tr>
<td>CURRENT ASSETS</td>
</tr>
<tr>
<td>Cash &amp; General</td>
</tr>
<tr>
<td>Operating Account</td>
</tr>
<tr>
<td>Petty Cash</td>
</tr>
<tr>
<td>Trust Accounts</td>
</tr>
<tr>
<td>Bank of XXXXXX, Pooled Trust</td>
</tr>
<tr>
<td>Bank of XXXXXX, Separate Interest Bearing Trust</td>
</tr>
<tr>
<td>Work-in-Progress</td>
</tr>
<tr>
<td>Work-in-Progress, Fees</td>
</tr>
<tr>
<td>Work-in-Progress, Disbursements</td>
</tr>
<tr>
<td>Accounts Receivable</td>
</tr>
<tr>
<td>Accounts Receivable, Fees</td>
</tr>
<tr>
<td>Accounts Receivable, Disbursements</td>
</tr>
<tr>
<td>Accounts Receivable, Miscellaneous</td>
</tr>
<tr>
<td>Allowance for Doubtful Accounts</td>
</tr>
<tr>
<td>GST Input Tax Credits</td>
</tr>
<tr>
<td>Prepaid Expenses</td>
</tr>
<tr>
<td>Prepaid Expenses</td>
</tr>
<tr>
<td>Refundable Deposits (e.g. Central Registry, Vital Statistics)</td>
</tr>
<tr>
<td>Fixed and Other Assets</td>
</tr>
<tr>
<td>Furnishings and Fixtures</td>
</tr>
<tr>
<td>Library</td>
</tr>
<tr>
<td>Leasehold Improvements</td>
</tr>
<tr>
<td>Equipment</td>
</tr>
<tr>
<td>Software</td>
</tr>
<tr>
<td>Miscellaneous</td>
</tr>
<tr>
<td>Reserve for Depreciation/Amortization</td>
</tr>
<tr>
<td>Other Assets</td>
</tr>
<tr>
<td>Investments (etc.), as applicable</td>
</tr>
</tbody>
</table>

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Total Assets

LIABILITIES & PROPRIETOR’S EQUITY

CURRENT LIABILITIES
Liability for Client Funds Held in Trust
Liability for Employee Withholdings (CPP, EI, etc.)

Accounts Payable
Bank Operating Loan
GST Liability
SST Liability
TAF Liability (if applicable)
Accounts Payable—General

LONG-TERM LIABILITIES
Capital Loan
Equipment Loans
Other

Total Liabilities

PROPRIETOR’S EQUITY
Capital Accounts
Partner XXX
Partner YYY

Drawing Accounts
Partner XXX
Partner YYY

Unallocated Income

Total Proprietor’s Equity

Up to this point in the chart of accounts, the listed accounts all affect the balance sheet. At year-end, net income from the income statement is journalized into the unallocated income account until distribution occurs to the partners’ capital accounts. At this point the assets and liabilities of the firm should be equal. The accounts affecting the income statement are listed next.
<table>
<thead>
<tr>
<th>Revenue</th>
<th>Fees Billed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Other Revenue Disbursements Recovered</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses</th>
<th>Associate Salaries</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Staff Salaries</td>
</tr>
<tr>
<td></td>
<td>Other Payroll Costs (CPP, EI etc.)</td>
</tr>
<tr>
<td><strong>Disbursement and Other Costs</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Occupancy</td>
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<tr>
<td></td>
<td>General Insurance</td>
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<td></td>
<td>Telephone</td>
</tr>
<tr>
<td></td>
<td>Long Distance Charges</td>
</tr>
<tr>
<td></td>
<td>Long Distance Recovery</td>
</tr>
<tr>
<td></td>
<td>Photocopier Expense</td>
</tr>
<tr>
<td></td>
<td>Photocopier Recovery</td>
</tr>
<tr>
<td></td>
<td>Fax Expense</td>
</tr>
<tr>
<td></td>
<td>Fax Recovery</td>
</tr>
<tr>
<td></td>
<td>Postage</td>
</tr>
<tr>
<td></td>
<td>Postage Recovery</td>
</tr>
<tr>
<td></td>
<td>Travel</td>
</tr>
<tr>
<td></td>
<td>Travel Recovery</td>
</tr>
<tr>
<td></td>
<td>Delivery Expense</td>
</tr>
<tr>
<td></td>
<td>Delivery Recovery</td>
</tr>
<tr>
<td></td>
<td>Minister of Finance</td>
</tr>
<tr>
<td></td>
<td>Minister of Finance Recovery</td>
</tr>
<tr>
<td></td>
<td>GST Expense</td>
</tr>
<tr>
<td></td>
<td>GST Recovery</td>
</tr>
<tr>
<td></td>
<td>Office Expense</td>
</tr>
<tr>
<td></td>
<td>Other</td>
</tr>
</tbody>
</table>

| Professional Costs | Practice Insurance |
|                    | Practice Fees |
|                    | CLE |
|                    | Practice development, promotion expense |
|                    | Other |

| General Expenses | Write-offs (Fees) |
|                 | Write-offs (Disbursements) |
|                 | Miscellaneous |

| **Total Expense** | |

| **Net Income** | |

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4 © The Continuing Legal Education Society of British Columbia. This form appears as FP 14.14 in the *Managing Your Law Firm Practice Manual* and is reprinted and modified here with permission. All rights reserved.
[§7.03] Books of Original Entry (Charts 4 and 5)

Most accounting transactions start with one of these:

- a cheque issued or credit card/cash payment;
- a receipt of funds (cash or cheque);
- an invoice received for supplies or services (including client disbursements); or
- a bill issued for legal services.

The transactions are recorded in a book of original entry. The purpose of a book of original entry is to accumulate and summarize the numerous transactions in their appropriate categories (“accounts”). The book of original entry is totalled monthly and the totals “posted” to the General Ledger.

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### CHART 4

**PROCEDURES FOR RECORDING TRUST RECEIPTS, PAYMENTS AND RECONCILIATIONS**

#### TRUST RECEIPTS

<table>
<thead>
<tr>
<th>Accounting Procedure</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Receive trust funds from client and prepare a RECEIPT (where applicable)</td>
<td></td>
</tr>
<tr>
<td>2. Enter details of receipt in the TRUST BOOK OF ENTRY (ensure “source” and form—e.g. cash, bank draft, cheque—of funds received is noted)</td>
<td>Daily</td>
</tr>
<tr>
<td>3. Enter details of receipt in the individual client TRUST LEDGER</td>
<td></td>
</tr>
<tr>
<td>4. Enter details of receipt on copy of BANK DEPOSIT slip</td>
<td></td>
</tr>
<tr>
<td>5. Deposit funds in bank</td>
<td></td>
</tr>
<tr>
<td>6. ADD and BALANCE the TRUST BOOK OF ENTRY</td>
<td>Weekly</td>
</tr>
<tr>
<td>7. Post the TOTALS of the TRUST CASH BOOK/RECORD to the GENERAL LEDGER</td>
<td>Monthly</td>
</tr>
<tr>
<td>8. Obtain the BANK STATEMENT and copies of the front and back images of cancelled cheques from the bank[^5]</td>
<td></td>
</tr>
<tr>
<td>9. See TRUST ACCOUNT RECONCILIATIONS—Outline Procedure (in Chart 5)</td>
<td></td>
</tr>
</tbody>
</table>

#### TRUST ACCOUNT PAYMENTS

<table>
<thead>
<tr>
<th>Accounting Procedure</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Receive request for payment from a properly-authorized official within law firm</td>
<td></td>
</tr>
<tr>
<td>2. Verify that the amount is properly payable out of trust account</td>
<td></td>
</tr>
<tr>
<td>3. Examine individual client TRUST LEDGER and verify that sufficient funds have been recorded, deposited and “cleared” for that specific client</td>
<td>Daily</td>
</tr>
<tr>
<td>4. Record payment details on the trust cheque</td>
<td></td>
</tr>
<tr>
<td>5. Record same details on cheque stub or duplicate copy of trust cheque</td>
<td></td>
</tr>
<tr>
<td>6. Enter details on TRUST BOOK OF ENTRY</td>
<td></td>
</tr>
<tr>
<td>7. Enter details on individual client TRUST LEDGER</td>
<td></td>
</tr>
<tr>
<td>8. Present the trust cheque and supporting information to a lawyer(s) for signature</td>
<td></td>
</tr>
<tr>
<td>9. Optional, if applicable—attend bank to have cheque CERTIFIED</td>
<td></td>
</tr>
<tr>
<td>10. Ensure TRUST CHEQUE is delivered to recipient precisely as directed by lawyer (by mail, courier, pick-up, delivery to bank, upon exchange of documents, etc.)</td>
<td></td>
</tr>
<tr>
<td>11. Record method of transmittal of all TRUST CHEQUES (usually by covering letter)</td>
<td></td>
</tr>
<tr>
<td>12. Add and balance the TRUST BOOK OF ENTRY</td>
<td>Weekly</td>
</tr>
<tr>
<td>13. Post the totals of the TRUST BOOK OF ENTRY to the GENERAL LEDGER</td>
<td>Monthly</td>
</tr>
<tr>
<td>14. Obtain the bank statement and cancelled cheques including front and back images, in electronic form or otherwise from the bank (Rule 3-60)</td>
<td></td>
</tr>
</tbody>
</table>

[^5]: The cancelled cheques must be saved on the lawyer’s server or be in the lawyer’s possession—the lawyer cannot rely on online banking records stored on the bank’s servers.

---
<table>
<thead>
<tr>
<th>CHART 5</th>
<th>PROCEDURES FOR RECORDING TRUST RECEIPTS, PAYMENTS AND RECONCILIATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TRUST ACCOUNT RECONCILIATIONS</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Outline Procedure</strong></td>
<td><strong>Frequency</strong></td>
</tr>
<tr>
<td>The TRUST ACCOUNT RECONCILIATION proves the accuracy of the recording of trust account transactions and identifies errors to be corrected. The reconciliation comprises three distinct steps:</td>
<td></td>
</tr>
<tr>
<td><strong>STEP 1: TRUST BANK ACCOUNT RECONCILIATION</strong></td>
<td></td>
</tr>
<tr>
<td><em>Step 1 identifies any differences—usually bank errors, timing differences or accounting recording errors.</em></td>
<td>Monthly</td>
</tr>
<tr>
<td>For each pooled trust and separate trust account—comparison of balance per bank statement with bank balance per the law firm books and records (i.e. GENERAL LEDGER).</td>
<td></td>
</tr>
<tr>
<td><strong>STEP 2: TRUST LISTING</strong></td>
<td></td>
</tr>
<tr>
<td><em>Step 2 identifies whether any trust account records are missing or incomplete, and whether individual trust accounts have been overdrawn.</em></td>
<td></td>
</tr>
<tr>
<td>Comparison of the reconciled TRUST BANK ACCOUNT balances with a LISTING of the total of individual clients’ TRUST LEDGER balances.</td>
<td></td>
</tr>
<tr>
<td><strong>STEP 3: COMPARISON OF TOTAL TRUST LIABILITY</strong></td>
<td></td>
</tr>
<tr>
<td><em>Step 3 confirms that all bank accounts, including separate trust accounts and deposits “otherwise” under Rule 3-58(2), have been included.</em></td>
<td></td>
</tr>
<tr>
<td>Comparison of the TOTAL TRUST LISTING with the TOTAL of all reconciled pooled and separate bank balances.</td>
<td></td>
</tr>
<tr>
<td><strong>ADDITIONAL CONSIDERATIONS</strong></td>
<td></td>
</tr>
<tr>
<td>1. Diarize the date on which the bank statements are to be picked up from, delivered or transmitted electronically by the financial institution.</td>
<td>Periodically (as required)</td>
</tr>
<tr>
<td>2. Reconcile each trust bank account separately, identifying errors, differences and reconciling items.</td>
<td></td>
</tr>
<tr>
<td>3. Immediately resolve, remedy or correct any errors and notify responsible lawyer.</td>
<td></td>
</tr>
<tr>
<td>4. Immediately upon discovery of a shortage, the lawyer’s own funds must be paid in to eliminate it (Rule 3-74(1)).</td>
<td></td>
</tr>
<tr>
<td>5. If a trust shortage greater than $2,500 is discovered, the lawyer must report it to the Law Society (Rule 3-74(2)).</td>
<td></td>
</tr>
</tbody>
</table>
The General Ledger

The General Ledger is the key accounting record. It is compiled, usually monthly, from the Book of Entry and the Book of Original Entry. This is done by preparing a Trial Balance, which is a listing of all the balances (debit or credit) in each account.

Double Entry Bookkeeping

For accounting purposes, all financial transactions fall into one or more of the following main categories:

- **ASSETS**
  - LIABILITIES
  - PROPRIETOR’S EQUITY, being
    - contributed capital (less draws)
    - undistributed earnings (from previous years)

- **EXPENSES**
  - **INCOME** (including fees and recovered disbursements)

An “increase” in the ASSETS or EXPENSES account is recorded as a debit (dr) whereas an “increase” in LIABILITIES, PROPRIETOR’S EQUITY or INCOME account is recorded as a credit (cr). A “decrease” in an ASSET or EXPENSE account is recorded as a credit (cr) whereas a “decrease” in LIABILITIES, PROPRIETOR’S EQUITY or INCOME account is recorded as a debit (dr).

Traditional double entry bookkeeping requires each accounting transaction to have two balancing aspects. In effect each amount must be entered twice in the accounting records. This recognizes that there are at least two considerations in each financial transaction. For example, if trust funds are received and deposited, this represents an increase in the ASSET (bank account). But at the same time there is an increase in the LIABILITY (amount owed to clients). The same principle applies for other financial transactions. For example, if general account funds are received, this would increase the ASSET (cash) and either decrease a different ASSET (e.g. accounts receivable), or increase a LIABILITY (bank loan) or increase INCOME (fees collected), or decrease EXPENSE (refund/repay on purchases). For each transaction the two amounts must be equal or “in balance”. In simple transactions only two accounts are affected. In more complex ones, a combination of several might be affected.

The General Ledger

One clear advantage of the double entry method of bookkeeping is that the books, when prepared accurately, will be in balance.

Reconciliation

Reconciliation is an accounting process to verify that the transactions have been recorded accurately. Typically, these documents require periodic reconciliation:

- all bank accounts;
- the General Ledger (Trial Balance); and
- any subsidiary ledger of the General Ledger.

(For example, it is usual to keep individual clients’ accounts receivable data in a subsidiary ledger. Reconciliation of this will ensure that this is kept in agreement with the General Ledger totals.)

If the lawyer keeps the accounting records, it is important to not overlook the preparation of these reconciliations and/or listings. If another person performs the bookkeeping role, the lawyer should ensure that the lawyer reviews and approves this information on a monthly basis.

Trust Accounts Records

- Trust Book of Entry (or synoptic)—shows, for all trust funds received and disbursed for each client, the date of receipt, the source and form of funds, the cheque or voucher number, the date of each disbursement, the name of each recipient and the identity of the client on whose behalf the trust funds are received or disbursed.

- Trust Ledger (sometimes referred to as client ledger)—lawyers should keep a separate ledger account for each client on whose behalf trust funds have been received.

- Record of transfers between client’s trust ledgers—records an explanation of the purpose for which each transfer is made and contains the lawyer’s written approval of the transfer.

- Cash Receipt book of duplicate receipts (for both trust and general cash receipts).

- Monthly trust account reconciliations—prepared under Rule 3-73.

- Copies of fee or other billings to clients showing the amounts and dates the charges are made, and identifying each client charged. Fee bills must be filed in chronological, alphabetical or numerical order. See Rule 3-71. Also refer to s. 69 of the Legal Profession Act for information on requirements for the lawyer’s bill.

- Copies of bank deposit slips or ATM slips.

- Copies of all vouchers and documents substantiating the foregoing.

Refer to Checklist of Required Accounting Records on the next page.
<table>
<thead>
<tr>
<th>Law Society Rule</th>
<th>Record Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3-68(a)(i), (ii) and (iii)</td>
<td>Trust Book of Entry</td>
<td>A book of entry or data source showing the date of receipt and source of all trust money received and identifying the client to whom the money belongs or on whose behalf the money is received.</td>
</tr>
<tr>
<td></td>
<td>Trust Receipts Record</td>
<td></td>
</tr>
<tr>
<td>3-68(a)(i), (iii), (iv) and (v)</td>
<td>Trust Disbursements Record</td>
<td>A book of entry showing all withdrawals of trust money and showing the cheque number, the date of the withdrawal, the name of the payee and identification of the client with respect to whose affairs the withdrawal is made (combined with trust receipts journal, together referred to as the trust account records).</td>
</tr>
<tr>
<td>3-68(b)</td>
<td>Trust Ledger or System</td>
<td>A trust ledger consisting of trust ledger accounts, one for each client from whom the law firm has received trust money or on whose behalf or at whose direction or order the law firm has received trust money, with each trust ledger account showing:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1) the name of the client;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) all receipts and withdrawals, in chronological order with the dates of receipt and withdrawal and indicating the source of the money or the person to whom the payment was made, as the case may be; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3) the unexpended balance in the account.</td>
</tr>
<tr>
<td>3-68(c)</td>
<td>Trust Transfer Records</td>
<td>A lawyer must maintain at least the following records:</td>
</tr>
<tr>
<td></td>
<td>(c) Records</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(i) showing each transfer of funds between clients’ trust ledgers, including the name and number of both the source file and the destination file;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(ii) containing an explanation of the purpose for which each transfer is made; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(iii) containing the lawyer’s written approval of the transfer.</td>
<td></td>
</tr>
<tr>
<td>Law Society Rule</td>
<td>Record Name</td>
<td>Description</td>
</tr>
<tr>
<td>-----------------</td>
<td>--------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>3-69(1)(a)(i)</td>
<td>General Book of Original Entry</td>
<td>A lawyer must maintain at least the following general account records: (a) A book of original entry or data sources showing: (i) the amount, the date of receipt and source of all general funds received.</td>
</tr>
<tr>
<td>3-69(1)(a)(ii)</td>
<td>General Book of Original Entry</td>
<td>Book of original entry or data source showing the cheque number or voucher number, the amount and date of each disbursement and the name of each recipient (combined with General Receipts Record, together referred to as the general book of original entry).</td>
</tr>
<tr>
<td>3-69(1)(b)</td>
<td>Client Accounts Receivable Ledger</td>
<td>Accounts receivable ledger or other suitable system to record, for each client, all showing all transactions including: (i) transfers from a trust account; (ii) other receipts from or on behalf of the client; and (iii) the balance owed to the client.</td>
</tr>
<tr>
<td>3-70</td>
<td>Cash Receipt Book of Duplicate Receipts</td>
<td>A lawyer who receives any amount of cash for a client that is not the lawyer’s employer must maintain a cash receipt book of duplicate receipts and make a receipt in the cash receipt book for any amount of cash received (this applies to both trust funds and general funds).</td>
</tr>
<tr>
<td>3-71(1)</td>
<td>Billings Records</td>
<td>A lawyer must keep file copies of all bills delivered to clients or persons charged: (a) showing the amounts and the dates charges are made; (b) identifying the client or persons charged; and (c) filed in chronological, alphabetical or numerical order.</td>
</tr>
<tr>
<td>3-67(6)</td>
<td>Supporting Documents</td>
<td>A lawyer must retain all supporting documents for both trust and general accounts, including but not limited to the following: (a) validated deposit receipts; (b) monthly bank statements; (c) passbooks; (d) cancelled and voided cheques; (e) bank vouchers and similar documents and invoices.</td>
</tr>
<tr>
<td>Law Society Rule</td>
<td>Record Name</td>
<td>Description</td>
</tr>
<tr>
<td>-----------------</td>
<td>-------------</td>
<td>-------------</td>
</tr>
</tbody>
</table>
| 3-68(d) and 3-73 | Trust Reconciliations | A lawyer must prepare a monthly trust reconciliation of the total of all unexpended balances of funds held in trust for clients as they appear in the trust ledgers, with the total balances held in trust bank accounts together with reasons for any differences between the totals supported by:  
(a) a detailed monthly listing showing the unexpended balance of trust funds held for each client, and identifying each client for whom trust funds are held;  
(b) a detailed monthly bank reconciliation for each pooled trust account;  
(c) a listing of balances of each separate trust account or savings, deposit, investment or similar form of account, identifying the client for whom each is held; and  
(d) a listing of balances of all other trust funds received pursuant to Rule 3-58.  
(e) a listing of valuables received and delivered and the undelivered portion of valuables held for each client. |
An automated accounting system is a good way to track GST billed to clients and to maximize input-tax-credit claims. Automating the process keeps records more accurate and timely, enabling more efficient preparation of GST returns and reports. There are many software options including some that offer this component as part of an integrated law practice management package.

Training staff and lawyers should be an important part of GST automation. Staff who enter data into the system must know if the client is exempt, taxable or zero-rated. When inputting, it is necessary to indicate whether disbursements are taxable or non-taxable. A good program will allow coding of disbursements so that the program will know to which ones to add the GST. Some programs have a small pop-up window for verifying the GST posted. The accounts payable program should accommodate the GST amount and the supplier’s registration number. Modify your chart of accounts by adding two new accounts: a receivable account called “GST Input Credits” and a payables account called “GST Billed.” The program must allow for accounts receivable write-offs using the GST formula.

To ease the pain of GST, your system should produce these five reports:

(a) an Input Credit Report to show the cheques and invoices for which you are claiming GST credits;

(b) a GST Billed/Collected Report that lists all the accounts where you have charged or written off GST;

(c) a GST Refund/Remittance Report, which will add up the GST billed and deduct the tax paid out. In addition, this report should show the amount you remit to the Canada Revenue Agency. A good system will also print out a form to send to CRA, along with the cheque or the amount of refund;

(d) an Input Credit Exception Report that lists all cheques and invoices where you did not claim GST. This report is essential so you don’t miss any credits; and

(e) a GST/Collected Exception Report, which lists all bills where you did not charge GST. Now you can verify which clients were exempt or zero-rated. If you are wrong about the exemption, your firm must pay the tax.

An automated accounting system is a good way to track PST billed to clients. Automating the process keeps records more accurate and timely, enabling more efficient preparation of PST returns and reports. There are many software options including some that offer this component as part of an integrated law practice management package.

An automated accounting system is a good way to track those client matters that attract the Trust Administration Fee (“TAF”). Automating the process keeps records more accurate and timely, enabling more efficient preparation of the quarterly TAF return.