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<p style="text-align: center;"><b>INTRODUCTION</b></p> <p><b>Purpose and currency of checklist.</b> This checklist sets out steps that should be undertaken in connection with opening and closing a file. It should be used when taking on a new client, and, in some circumstances, taking on a new matter with an existing client. It is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist, the LAW SOCIETY NOTABLE UPDATES LIST (A-3), and the practice area-specific checklists. It is current to September 1, 2020.</p> <p style="text-align: center;"><b>CONTENTS</b></p> <ol style="list-style-type: none"> <li>1. Threshold Considerations</li> <li>2. Conflicts of Interest</li> <li>3. Client Identification and Verification</li> <li>4. Retainer Agreements, Fees and Other Preliminary Considerations</li> <li>5. Opening the File</li> <li>6. Closing the File</li> </ol> <p style="text-align: center;"><b>CHECKLIST</b></p> <p><b>1. THRESHOLD CONSIDERATIONS</b></p> <ol style="list-style-type: none"> <li>1.1 Is there a conflict of interest? (See “Conflicts of Interest” below.)</li> <li>1.2 Are there any indicators of fraud, money laundering, or other illegal activities? See the <a href="#">Anti-money laundering measures in BC</a>, <a href="#">Client ID &amp; Verification</a>, and <a href="#">Fraud Prevention</a> pages on the Law Society website. Note <i>BC Code</i> rules 3.2-7 to 3.2-8 and Law Society Rule 3-110.</li> <li>1.3 Does the client have capacity? Satisfy yourself that the client is competent to give instructions. Consider factors such as age, intelligence, experience, and mental and physical health. Also consider undue influence (see 1.4). Assess the client’s ability to make decisions. Consider a referral to a professional counsellor or physician. See <i>BC Code</i> rules 3.2-9 and 3.3-1, commentary [10], and the client capacity materials on the “<a href="#">Your Clients</a>” page on the Law Society website.</li> <li>1.4 Is someone exerting undue influence on the client for you to perform the legal services requested against the client’s true wishes? Interview the client alone. Review the “Checklist of Recommended Practices” and “Red Flags to Watch For” in <a href="#">Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide</a> on the BC Law Institute website.</li> <li>1.5 Are there any language, literacy, or other barriers such that you may not be able to communicate effectively with the client?</li> </ol>	

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<p>1.6 Do you have the expertise and competence to deliver the required services on the matter? (See <i>BC Code</i> ss. 3.1 and 3.2.)</p> <p><b>2. CONFLICTS OF INTEREST</b></p> <p>2.1 Check for conflicts as described in <i>BC Code</i> s. 3.4. Do not act for opposing parties. In addressing potential conflicts, consider not only the client(s) but also any third parties who may be involved in the case, including relevant corporate entities, and confirm who is authorized to give instructions. See the <a href="#">Model conflicts of interest checklist</a> on the Law Society website.</p> <p>2.2 Ensure that the client has not retained another lawyer or commenced another proceeding relating to the matter. See <i>BC Code</i> rule 7.2-7 with respect to providing a second opinion.</p> <p>2.3 If you are providing “short-term summary legal services” under the auspices of a not-for-profit organization with the expectation by you and the client that you will not provide continuing representation in the matter, note <i>BC Code</i> rules 3.4-11.1 to 3.4-11.4 and commentaries regarding conflicts and confidentiality.</p> <p>2.4 If you are acting for more than one party to the matter, consider <i>BC Code</i> rules 3.4-5 to 3.4-9 on joint retainers and the precedent <a href="#">joint retainer agreement</a> on the Law Society website. If you are acting for multiple parties in a real property transaction, remember that you can act for more than one party with different interests in the circumstances permitted by Appendix C of the <i>BC Code</i>.</p> <p><b>3. CLIENT IDENTIFICATION AND VERIFICATION</b></p> <p>3.1 Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist.</p> <p><b>4. RETAINER AGREEMENTS, FEES AND OTHER PRELIMINARY CONSIDERATIONS</b></p> <p>4.1 Clarify your role in the matter and that of any other advisors to the client. Make it clear for whom you are working.</p>	

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<p>4.2 Advise the client regarding calculation of your account, method, and timing of payment and the terms and conditions upon which you will act. Advise the client of the rough costs involved in almost every step in the case. The client should be made aware of the factors that may increase the cost of representation, including the choice and urgency of processes undertaken, as well as the level of co-operation from the client, the level of co-operation from other parties and counsel, and any need for outside expertise. Consider <i>BC Code</i> s. 3.6 regarding reasonable fees and disbursements. Note <i>BC Code</i> rule 3.6-1, commentary [2] and rule 3.6-3, commentary [1] regarding the fiduciary relationship with the client requiring full disclosure and a duty of candour in all financial dealings. Note as well the definitions of “consent” and “disclosure” in <i>BC Code</i> rule 1.1-1.</p> <p>4.3 Consider getting a retainer payment in advance, and advise the client of any requirements to top up the retainer. If the agreement is that you will act only if the retainer is paid in advance, you must confirm that agreement in writing and specify a payment date (<i>BC Code</i> rule 3.6-9). See cautions regarding Law Society Rule 3-58.1 regarding appropriate use of trust accounts and rules regarding lawyers accepting cash in the LAW SOCIETY NOTABLE UPDATES LIST (A-3).</p> <p>4.4 Send a letter to the client confirming your retainer, the instructions from the client, and your instructions to the client. Ask the client to sign and return to you the retainer letter or agreement.</p> <p>4.5 If your retainer will be limited in scope, note that <i>BC Code</i> rule 3.2-1.1 requires that, before undertaking a “limited scope retainer” (a defined term in <i>BC Code</i> rule 1.1-1), you must advise the client about the nature, extent, and scope of the services that you can provide and must confirm in writing as soon as practicable what services will be provided. Also be aware of the obligations in <i>BC Code</i> rules 3.1-2, 7.2-6, and 7.2-6.1. See “Limited scope retainer FAQs” in the <a href="#">Fall 2017 Benchers’ Bulletin</a> for more information.</p> <p>4.6 If you are acting for more than one party in the matter, ensure you comply with the rules on conflicts (see <i>BC Code</i> s. 3.4 and the <a href="#">Model conflicts of interest checklist</a> on the Law Society website). If you are permitted to act under a joint retainer, see <i>BC Code</i> rules 3.4-5 to 3.4-9 and consider using the precedent <a href="#">joint retainer agreement</a> on the Law Society website.</p> <p>4.7 If you will be providing legal services under a contingency fee agreement (“CFA”), note the requirements in the <i>Legal Profession Act</i> (ss. 64 to 68), Law Society Rules 8-1 to 8-4, and <i>BC Code</i> rule 3.6-2 specifically regarding CFAs. See <i>BC Code</i> rule 3.6-2, commentary [2], which states that “a lawyer cannot withdraw from representation for reasons other than those set out in rule 3.7-7 (obligatory withdrawal) unless the written contingency contract specifically states that the lawyer has a right to do so and sets out the circumstances under which this may occur.” See the August 13, 2020 Discipline Advisory <a href="#">Withdrawal under a contingency fee agreement</a>.</p> <p>4.8 If the client is a company, verify who has the authority to give instructions. Consider having a directors’ resolution confirm your retainer and identify one officer or director who will have the authority to instruct you.</p>	

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<p>4.9 If the opposing party is unrepresented, ensure that you review <i>BC Code</i> rule 7.2-9, and make sure to document when and how you: a) urge the unrepresented person to obtain independent legal representation; b) take care to see that the unrepresented person is not proceeding under the impression that their interests will be protected by you; and c) make it clear to the unrepresented person that you are acting exclusively in the interests of your client.</p>	
<p><b>5. OPENING THE FILE</b></p> <p>5.1 Place this checklist, the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist, and the practice area-specific checklists in the file, and make all appropriate entries in diary and bring forward systems, including noting relevant limitation periods.</p> <p>5.2 Implement initial instructions, and continue preparation of case by consulting relevant legislation and checklists.</p>	
<p><b>6. CLOSING THE FILE</b></p> <p>6.1 Be sure to review <i>BC Code</i> rules 3.7-8, 3.7-9, and 3.7-9.1 regarding the steps to take when a lawyer is discharged or withdraws, including the manner of withdrawal, necessary notifications, and confidentiality obligations.</p> <p>6.2 As soon as possible after completing the matter, bill the client for your services rendered. Once again, outline in your final reporting letter how you determined the fee, and confirm that your engagement is complete. Advise the client of any relevant limitation periods. Take reasonable steps to pay out funds held in trust as soon as practicable on completion of the legal services to which the funds relate (Law Society Rule 3-58.1). If you received cash, determine whether any refund must be made in cash or by cheque (Law Society Rule 3-59).</p> <p>6.3 Close the file, and return original documents to the client, if required. Subject to any right of lien, promptly return a client’s “property”, including money (see <i>BC Code</i> s. 3.5, rule 3.5-2, commentary [3], and rule 3.6-10, as well as Law Society Rules 3-65 and 3-78). Ask for acknowledgment of receipt. Advise the client to keep the original documents safe. For guidance, see <a href="#">Closed Files—Retention and Disposition</a>, August 2017, Appendix B on the Law Society website for a suggested minimum retention and disposition schedule for specific documents and files. Also see <a href="#">Solicitors’ Liens and Charging Orders – Your Fees and Your Clients</a>, July 2013, on the Law Society website.</p>	

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<p><b>Questions</b></p> <p>You are welcome to contact a practice advisor at <a href="mailto:practiceadvice@lsbc.org">practiceadvice@lsbc.org</a> or 604.443.5797 if you have questions about this checklist.</p>	