



**The Law Society
of Manitoba**

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ABSENCES AND CONTINGENCY PLANNING

Practice Management Fundamentals

March 20, 2020

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A. INTRODUCTION

This module reviews how to plan for absences and emergencies – the ones you expect to happen and those you do not – and what you, as the lawyer in charge can do to minimize disruption and continue to give professional service to your clients.

Your contingency plans must protect your clients' interests, your clients' confidentiality, the safety of you and your staff, and your financial security. You must specifically address the security of your information technology system. For some risks, purchasing insurance to protect you from the consequences is the best plan.

Your goals for any contingency plan are that it is:

- Easily accessed, even in an emergency,
- Easy to implement,
- Well-known by the staff and other lawyers or members of your family who might be involved in it; and
- Adaptable so it can be used in different situations.

Although we aim to present a comprehensive module, this module is not exhaustive. This module is not a substitute for exercising professional judgment and does not constitute legal advice.

This module was last updated in March 2020.

As you read through this module on Absences and Contingency Planning, if you find any information that is unclear, inaccurate or outdated, please send an email with details to

cpd.lawsociety.mb.ca.

B. OBJECTIVES



After reading this module you will be able to:

- 1. Create a basic manual for office procedures using the checklist provided.**
- 2. Create a basic plan to prevent harm to and to protect your client's and your own interests during emergencies or other unplanned absences from the law firm.**
- 3. Create a basic plan for dealing with your practice on your retirement or during a planned leave from the practice of law.**
- 4. Identify the planning issues sole practitioners must consider to be prepared for being unexpectedly unavailable or absent from their practice.**
- 5. Locate online resources to assist you in contingency planning.**

C. MODULE IN A NUTSHELL



Planning for Absences & Contingencies - In a Nutshell

1. It is your professional obligation to ensure that your clients are appropriately served and their interests protected even if you can't be in the office or directly accessible to them.
2. If you are a Trust Account Supervisor your extended absence may require that another Trust Account Supervisor be put in place to meet the trust accounting rules.
3. You need 3 kinds of plans in place to serve clients continuously when you are not present in your law office:
 - i. A plan for **when you know** you will be personally absent – e.g. short and long term vacations or planned leaves;
 - ii. A plan for **when you are unexpectedly** personally absent as a result of an unexpected event – e.g. sudden illness or injury or other disability or death, or a family emergency;
 - iii. A plan for conducting business **if you lose access** to your office space or law firm data – e.g. during an office move, break-in or vandalism, fire, flood, theft, cyber-attack, computer system failure, or state of emergency.
4. If you are a sole practitioner, consider developing a relationship with another lawyer who is willing to service your legal practice in the event of your unexpected or long term absence. Review the section on Solo Practice Considerations. Remember that if you want another lawyer to be able to sign trust cheques in your absence, you must get authorization in advance from the Law Society Audit department.
5. You should alert your clients to the fact and the dates of your planned absences in advance where your absence will prevent you from personally providing legal services. In the case of long-term absences, you should tell your client who your replacement lawyer will be and you must obtain your client's specific consent to continue with that replacement lawyer during your absence.
6. Make it a habit to do daily back-ups and regular full back-ups of your computer data. Make it mandatory that a designated person regularly test the back-ups to ensure they are working. Store the back-ups off-site in case you can't access your premises.

- 7.** Create an office Standard Procedures and Policies Manual and keep it easily accessible and up-to-date for use by staff and any replacement lawyer in your absence.
- 8.** Don't be the only source of information about your clients and the operation of your practice. Ensure others in your office, such as your assistants and/or other colleagues know where to find and how to use these suggested items:
 - i. Back-ups of your client data;
 - ii. A up-to-date master list of open client files with full client contact information;
 - iii. A central record of all pending limitation dates and deadlines for all files;
 - iv. Checklists for emergency procedures to follow;
 - v. An office Standard Procedure Manual for the operation of the law firm;
 - vi. The list of designated individuals to which you have given emergency access to a list of passwords for all systems in use at your office (voicemail, email, laptops, banking), and keys to the office, desks and cabinets and safety deposit boxes or fireproof safe for client property;
 - vii. A master list of contact numbers for all lawyers, staff, suppliers;
 - viii. A current list of accounts payable each month to keep the office running;
 - ix. A master list of closed files, location and date of destruction and how to access if necessary.
- 9.** You need several types of insurance when you are carrying on the practice of law – insurance related to the business and premises and extra cyber liability insurance is also recommended. See the section on Insurance.
- 10.** Regularly review and update your contingency plans. Keep a copy of your plans off-site in a secure location where they will remain intact and accessible. Make sure that more than one other person in the office knows where they are kept and how to access them.

D. WHY YOU **MUST** HAVE A PLAN: THE RULES

Having a contingency plan for planned and unexpected absences and emergencies is not just good business practice. Your professional responsibilities as a lawyer make addressing certain issues mandatory.

You are responsible for the safekeeping, preservation of and accounting for your client's property as set out in the [Code of Professional Conduct](#) (the Code of Conduct), [The Legal Profession Act](#) (the Act) and the [Law Society Rules](#) (the Rules). See relevant excerpts in the Resource section at the end of this module. Remember that your client's property includes the client's money, documents, and personal property, as well as the client's information and personal data.

You are responsible for the safety and oversight of your staff as an employer. You are responsible for the operation of your practice, which includes a professional responsibility to meet all financial obligations.

1. Trust Accounting and Absences

Law Society Rules - Handling of trust money

5-44(1) *A member or law firm must . . .*

(d) ensure that all cheques drawn on a trust bank account are signed only by the member or another practising lawyer in the law firm or by those persons in conjunction with other employees of the law firm, unless otherwise authorized by the chief executive officer; . . .

Definitions explained

Trust Account Supervisors (TAS) are practising lawyers who have been approved by the Law Society of Manitoba (LSM) to operate a trust account. Every law firm must designate a TAS to open and operate any trust account. The TAS is responsible for overseeing the operation of the trust accounts in the law firm. The TAS may have the authority to sign trust cheques in the firm but a lawyer does not have to be a TAS to sign trust cheques.

A Designated Trust Account Supervisor (D-TAS) is a term used to refer to a practising lawyer who is a TAS and has agreed and been approved to be the D-TAS of the trust accounts of another law firm. The D-TAS is responsible for overseeing the operation of that other firm's trust accounts. A D-TAS does not automatically have the authority to sign that other firm's trust cheques.

See Part 5 [Rule 5-45.1\(1\)](#) and [Trust Accounting Fundamentals](#) module on the Law Society website for details about the duties and obligations of a TAS.

Generally, a TAS does not need to have a replacement trust account supervisor in place if the TAS is briefly absent from the office, but if the TAS will be absent for an extended period a replacement TAS may be needed. When in doubt, please contact a member of the Audit Department of the Law Society at audit@lawsociety.mb.ca.

2. Safety and Preservation of Client Property Rules

[Chapter 3 of the Code of Professional Conduct](#) (the Code of Conduct) requires that you preserve and care for your client's property including original documents (such as wills, title deeds, etc.) and other papers such as correspondence, files, and invoices, as well as personal property.

This obligation extends to records whether in hard copy or electronic format.

The Code of Conduct - Preservation of Clients' Property

3.5-1 *In this rule, "property" includes a client's money, securities as defined in The Securities Act, C.C.S.M. c. S50, original documents such as wills, title deeds, minute books, licenses, certificates and the like, and all other papers such as client's correspondence, files, reports, invoices and other such documents as well as personal property including precious and semi-precious metals, jewellery and the like.*

3.5-2 *A lawyer must:*

(a) care for a client's property as a careful and prudent owner would when dealing with like property; and

(b) observe all relevant rules and law about the preservation of a client's property entrusted to a lawyer.

The Code of Conduct Commentary to these sections states that the duties concerning safekeeping, preserving and accounting for clients' monies and other property are closely related to the duties you have regarding keeping your client's information confidential:

The Code of Conduct- Commentary to 3.5-1 and 3.5-2

[1] *The duties concerning safekeeping, preserving, and accounting for clients' monies and other property are set out in The Legal Profession Act and the Law Society Rules.*

[2] *These duties are closely related to those regarding confidential information. A lawyer is responsible for maintaining the safety and confidentiality of the files of the client in the possession of the lawyer and should take all reasonable steps to ensure the privacy and safekeeping of a client's confidential information. A lawyer should keep the client's papers and other property out of sight as well as out of reach of those not entitled to see them.*

In the [Law Society Rules](#) (the Rules) Part 5 Protection of the Public, Division 4 – Financial Accountability deals with the requirements for safekeeping and preservation of your client's property.

In Division 4 of the Rules, [Rule 5-43](#) deals with Trust Records and subsection (4) requires that you maintain a record of all valuable property held for a client.

Law Society Rules - Record of valuable property

5-43(4) *A member or law firm must maintain a record of all valuable property held in trust.*

According to Division 4 of the [Rules](#), your law firm's financial records and all supporting documents must also be safeguarded both on and off-site. You must maintain financial records for the most recent three-year period at your chief place of practice in Manitoba.

Law Society Rules - Location of records

5-54(2) *A member or law firm must keep the books, records and accounts for all trust bank accounts and all general accounts referred to in this division pertaining to the **most recent three-year period at the member's or the law firm's chief place of practice in Manitoba**, unless otherwise authorized by the chief executive officer.*

In addition to the most recent three years of financial records stored on-site, a backup copy of **all** electronic trust records, updated monthly, must also be stored in a universally readable format safely and securely **in an off-site location**.

Law Society Rules - Electronic trust records

5-43(5) *Where a member or law firm maintains electronic records the member or law firm must:*

... (c) maintain a backup copy of the electronic records, which must be updated at least monthly, and stored in a secure manner in an off-site location; ...

Division 4, [Rule 5-54\(1\)](#) also requires your law firm to retain its financial records and supporting documentation. Those must be kept for **at least ten years** and an individual client trust ledger must be kept with the closed file, whether that is paper or electronic.

Law Society Rules - Retention of records

5-54(1) *A member must:*

(a) keep the books, records and accounts referred to in this division for at least ten years; and

(b) on the completion and closing of a client's file, maintain an electronic copy in a universally readable format on the electronic file or place on the file a copy of the individual client trust ledger.

E. WHY YOU SHOULD HAVE A PLAN: THE RISKS

As a lawyer, you are trained to analyze a set of facts and identify the legal issues and the benefits and the risks to the client's interest in any course of action. Use those skills for yourself. Consider the various possible scenarios that might incapacitate you, or force you to close your office. Devise a plan to either protect against or mitigate that risk.

When you have a law firm, the work must go on even if you are not personally present in the office to direct it. Or so you, your staff and your clients are entitled to expect. And yet, staff cannot provide legal services without you. Illness, vacation, family emergencies can make it impossible for you to be in the office or directing the work, so planning for continuing the day-to-day work of a law firm during those times is essential.

What would happen to your clients, their legal matters, your staff, or your family if you headed off to a CPD and got hit by a bus right in front of the Law Society building as you were crossing the street? Assume the collision left you severely injured and unconscious. Assume that at the hospital, the doctors determined that putting you into an induced coma would give you the best chance of healing from those injuries. Assume that you were in the induced coma for a week, and when you awoke, you had casts on your full body and you learned that you would be in the hospital for another two weeks at least. When you tried to talk, you learned that the emergency intubation damaged your vocal cords so you could not speak and were not expected to be able to speak for another week or so.

Now that you have that scenario in mind, think about what would happen at your law firm and to your clients when your reception desk was called and told that you were severely injured and in an induced coma for an uncertain amount of time. Would your staff know what to do about the clients you were supposed to be meeting the next day, the next week, the next month? What about that guilty plea and sentencing that was scheduled for the week after the collision? And what about that closing on a sale and purchase of a shopping mall?

Unexpected events like power outages or public states of emergency, pandemics or destructive acts of nature (floods, lightning strikes, tornadoes, wildfires) or destructive acts of humans (vandalism, robbery, theft, cyberattacks) can turn a practice upside down or shut down your law office without warning.

Planning for coverage during absences and/or contingency planning for disasters is the kind of planning that can be pushed to the bottom of a busy lawyer's to-do list, but you must take the time to address these issues now before you are forced to deal with them under the time pressure of an emergency.



Caution:

Lawyers must ensure that their files are overseen by a lawyer at all times. Clients are entitled to expect their legal matters will receive a totality of coverage. Staff can do administrative tasks in your absence, but a lawyer is needed if legal services are to be provided and trust cheques must always have at least one lawyer's signature and cannot be signed in blank.

If something urgent occurs in your client's legal matter that requires immediate legal action, your client's interests need to be preserved in a timely and accurate manner even in your absence or an unforeseen disaster that affects your office.

Absences and emergencies disrupt the usual order of practice, but by having a plan in place to deal with all the different responsibilities and as many contingencies as possible you can minimize many potentially serious consequences. As well, when you make advance plans, it makes it much easier for your family, staff, and clients to deal with those situations.

Ask yourself:

Do your staff know what to do and where to find all of the information that you store in your head in every one of the following situations if you are or become unavailable?

i) Vacation

- (1) 2 weeks
- (2) 2 months (what if you get injured while away & can't return on time?)

ii) Physical or Mental Illness

- (1) Stroke
- (2) Heart attack
- (3) "burn-out"
- (4) drug or alcohol addiction
- (5) PTSD

iii) Surgery/Medical treatments

- (1) For you
- (2) For key staff

iv) Family Emergencies

- (1) Children
- (2) Parents

v) Leaves

- (1) Parental
- (2) Study
- (3) Travel

vi) Leaving private practice

vii) Suspension or disbarment

viii) Bankruptcy

ix) Sudden Death

Plan to address contingencies that might cause unexpected interruptions in your business operations, as well, such as:

- i) power outages
- ii) computer system failures
- iii) floods, lightning strikes, tornadoes, wildfires
- iv) public health risks*,
- v) vandalism, robbery, theft,
- vi) fraud, or
- vii) cyber-attacks on data.

*In February 2020, the coronavirus Covid-19 is spreading across countries, prompting quarantines and public messages about taking precautions to protect your health and the health of those around you. It brings home the message that being prepared for a public health event should be part of your planning for disaster.

For this specific public health risk, the early message was to take proactive measures in your office to limit opportunities for the virus to be spread. Examples include cleaning and sanitizing all commonly used surfaces daily (door handles, desk phones), offering sanitizing wipes or gel to clients and making those easily accessible to staff as well (in meeting rooms, at reception, in the staff room) increasing signage in restrooms to encourage everyone to wash their hands frequently and effectively, and encouraging lawyers, staff or clients who are feeling unwell and exhibiting symptoms of fever, cough and/or shortness of breath to stay home and seek medical assistance. Use technology to limit in-person meetings, and forego the usual handshake greeting with a brief, professional explanation.

Now that self-isolation and the end to gatherings over 50 people have become necessary, the importance of having plans in place for lawyers and staff to work remotely is real. You must ensure that access to your system is secure and confidential to protect client data. Consider setting up a reliable VPN for remote access. With an active VPN, a person's computer can communicate with only authorized computers, and it does so securely and privately. The VPN acts as a tunnel for communications and other online activities and prevents interception by unauthorized persons. Of course, you must also ensure that your office and any hard copies of client information are secured as well.

And, as with any disaster plan, it is prudent to have a test run before it becomes necessary to use it.

See the list of online resources at the end of this module for more information about planning for disasters.

... [If you had to] step away, there may be hundreds of communications needed with clients, opposing counsel and courts. Your staff will be worried about their next pay cheques. You need to take steps now to reassure and retain them ...

Your bank, the Law Society, landlord and accountant will have to be contacted. Your files will have to be reviewed immediately for closing dates and limitation deadlines.

Excerpt from Law Society of Alberta's

[***When Bad Things Happen to Good Lawyers: A Contingency Planning Handbook***](#)

Winding up a Practice: Retiring or Withdrawing from Practice?

What plans do you have in place to deal with the situation where your practice has to be wound up? The winding-up may be a choice, like a retirement, or your withdrawal from practice may be forced upon you due to circumstances you do not control. – e.g. illness, disaster or death. Do you have someone in mind to take over the operation of the practice, or will it have to be wound up?

The time and cost to arrange to bill out and transfer your open files to new lawyers, deal with your closed files, dispose of your office equipment (including the destruction of hard drives), pay suppliers and staff, close out the general and trust accounts, and complete all necessary reports to the Law Society to withdraw and wind up your practice can be substantial.

You are in the best position to know what would be the best way to handle the wind up of your practice, so draw up a plan and put it in place now, before it is needed. Make others, including your family, executors, partners, and key staff aware that there are succession arrangements, and ensure they know where to find the succession plan in case you are unavailable or incapacitated.

For more detail on creating a succession plan for retirement, see the Law Society of Manitoba's [*Retirement: Winding Up a Practice*](#) in the Education Centre of the Law Society website. There are also other resources about planning for retirement or winding up a practice listed at the end of this module.

F. SOLO PRACTICE – SPECIAL CONSIDERATIONS

If you are a sole practitioner, you must plan well ahead to take any planned absence from the law firm whether you are your own Trust Account Supervisor (TAS) or not.

To be absent from the law firm longer than a few days, you must consider and make plans relating to:

- The interests of clients who might need legal services during your absence;
- A replacement lawyer in case of your unexpected death or disability;
- The oversight of the firm's trust account – see TAS Law Society Rules ;
- The signing of trust cheques – See Law Society [Rule 5-44\(1\)\(d\)](#); and
- The day to day operation of the law firm and supervision of staff.

Clients who may need legal services during a planned absence

Because law firm employees must work under the supervision of a practising lawyer, if you plan to be absent for a longer period (e.g. a vacation), you must have a practising lawyer monitoring the practice. Even if you will be absent when the activity of the practice is relatively slow, one or more of your clients may need some legal services during your absence.

Therefore, before leaving for the absence, you must:

- Ask another practicing lawyer to agree to monitor your files during the absence. You do not need Law Society approval provided the lawyer will not be signing trust cheques.
- If the lawyer might need to sign a trust cheque, – the lawyer does not need to be a TAS to sign a trust cheque, but get Audit department approval in advance and advise your financial institution of the arrangement.
- Ensure that there are no conflicts for that other lawyer with the client matters that you expect the lawyer will have to deal with. Have a back-up plan in case there is a conflict for the other lawyer.
- Get prior written informed consent from any clients if you expect they will need that lawyer's services. Those clients should be told about your absence and the plan and they must give consent to that other lawyer acting for them on the file.

- Send a general email to clients to inform them of your pending absence and the plan and inform them that if their matter needs attention during your absence, the other lawyer is available and will act if they consent. Tell them there is a form to sign giving consent and instruct your staff to send the form to the client if requested.
- The written consent of the client must be kept on the file.
- It is also recommended that you and the other practicing lawyer enter into a written agreement regarding compensation for the lawyer's services to your clients.

Select Replacement Lawyer on AMR for unexpected Death or Disability

In the Annual Member Report (AMR), if you are a sole practitioner, you are asked to advise the Law Society of the name and contact information of another member(s) (or up to two members) who you would prefer the Society consider as the person to take custody and control of your practice (including open and closed client files and accounting records) in the event of your unexpected death or disability.

If you are a sole practitioner, it is particularly important to have contingency arrangements in place for another lawyer to step in and ensure that clients are not prejudiced and that your staff and family are not placed in an overwhelming position should you suddenly become unable to practice.

See this excerpt from [Practice Direction 89-04 Death or Disability of Sole Practitioners](#):

The purpose of this practice direction is to urge sole practitioners to have arrangements in place to have another lawyer assume conduct of their law practice in the event of their death or disability. While the choice of new counsel is ultimately that of the clients to make, an arrangement to have a designated lawyer identified in advance allows emergencies to be dealt with quickly and on short notice...

When a member does not make this type of arrangement in advance, the Law Society must apply to the court for an Order under [s. 57\(1\) of The Legal Profession Act](#), to assume custody of the lawyer's practice.

Sole practitioners who make arrangements for the conduct of their practice in the event of death or disability should write to advise the Chief Executive Officer of the name of the lawyer prepared to act in this capacity. They should also make sure that their personal representative and immediate family are aware of this arrangement.

Ask a lawyer who understands your practice so that, if necessary, the lawyer can step in to maintain your practice for your return, or wind it up keeping both your and your clients' interests in mind. You may want to enter into a reciprocal arrangement with another sole practitioner. You may prefer an arrangement with a larger firm that could more easily handle the sudden influx of your current client matters. Of course, conflict checks must be completed before any outside lawyer can work directly on any client's file and clients must be informed and given the option to consent to the new representation or take their legal matter elsewhere.

Essential information relating to client matters and the ongoing obligations of the practice must be able to be interpreted by a lawyer who steps in to help you in that situation regardless of whether that lawyer is a partner, associate, friend or formal custodian.

It is much easier for that lawyer to do a good job for you if you build and maintain a plan and you keep it updated as part of your regular practice habits.



Practice Tip:

Create an effective coverage plan and maintain an organized practice so the person stepping into your shoes can deal with matters in a timely and accurate manner.

Think about developing a relationship with another lawyer with expertise in the area of law you practise to provide coverage for each other when needed, so that you can return to practice if possible.

If the Law Society has to apply for an order for a custodian, the custodian's obligation is to protect the clients' interests, and not to pursue outstanding accounts or maintain your practice for your return. The custodian's obligation may require referring all of your matters to other lawyers in other firms.

Trust Account Supervisor duties

Most sole practitioners will be their own Trust Account supervisor – see [Trust Accounting Fundamentals](#) for more details. If you are in that situation and you will be unable to meet one or more of your Trust Account Supervisor responsibilities (like the monthly reconciliation of your trust accounts) because of an extended absence or other reason, you must make arrangements to designate a Trust Account Supervisor in your place and to get the approval of the Law Society, through the Audit Department, for that arrangement.

[Law Society Rules - Trust Account Supervisor](#)

5-42(1) *Effective April 1, 2019, a member or a law firm shall, before opening a pooled trust account obtain, and at all times thereafter maintain, the approval of the chief executive officer to: (a) operate a trust bank account; and (b) designate a member as the trust account supervisor.*

[Law Society Rules - Trust Account Supervisor Responsibility](#)

5-42.1(1) *The trust account supervisor is responsible for: (a) The controls in relation to the operation of all law firm trust bank accounts and general accounts; (b) The accuracy of the law firm's reporting requirements; (c) The timeliness and accuracy of the law firm's record keeping requirements; (d) Any of subrule (a), (b) or (c) that has been delegated to another person.*

Withdrawing from the Practice of Law in Manitoba

If you intend to withdraw from the practice of law in Manitoba but you are not a member of a law firm that will continue in existence and will continue to have possession and power over client documents, property, and trust accounts and money, you must comply with the notice requirements **and three-month time limit** as set out in the [Rules Part 2 – Rule 2-74\(1\) – 2-74\(5\)](#).

[Law Society Rules - Withdrawal from practice](#)

2-74(1) *Subject to subsection (4), a member who intends to withdraw from the practice of law in Manitoba and become a non-practising or inactive member must, before withdrawing, advise the chief executive officer in writing and obtain his or her approval of the member's intended disposition of all:*

(a) open and closed files,

(b) wills,

(c) titles and other important documents and records,

(d) other valuables, and

(e) trust accounts and trust money,

which relate to the member's practice and are within the member's possession or power.

Law Society Rules - Notice to Society

2-74(2) Subject to subsection (4), a member who has withdrawn from practice under subsection (1) must, **within three months after the withdrawal occurs**, confirm to the chief executive officer in writing that:

(a) the documents and property referred to in clauses (a) through (d) of subsection (1) have been disposed of, and any way in which the disposition differs from that reported under subsection (1); and

(b) all trust accounts referred to in clause (e) of subsection (1) have been closed and that:

(i) all the balances have been remitted to the clients or other persons on whose behalf they were held or, with the consent of the client, transferred to another practising member with written instructions concerning the conditions attaching to them, and

(ii) any net interest earned on a pooled trust account has been remitted to the Manitoba Law Foundation in accordance with the provisions of the Act.

Law Society Rules - Extension of time

2-74(3) The chief executive officer may, upon application in writing by a member, extend the time limit referred to in subsection (2).

Law Society Rules - Non-application of rule

2-74(4) This rule does not apply to a member who is practising as a member of a law firm that will continue in existence and will continue to have possession and power over the documents, property, and accounts described in subsection (1).

Law Society Rules - Power to recover expenses

2-74(5) Where a member fails to comply with the requirements of this rule, the society may require the member to pay any expenses incurred by the society in the course of winding up the member's practice, including expenses for the storage and disposition of files, documents and other property relating to the member's practice.

G. DEVELOPING A PLAN

The goal of any contingency plan for a law office is that if another lawyer had to suddenly step in and provide legal services to your clients, the lawyer and your law office staff could take over and continue your practice without your presence or input if the plan were followed.

When you are creating your plan for coverage during absences, whether planned or unplanned, assume that you might be unconscious and/or unable to tell the staff where to find things, or what the passwords are, or who to contact.

Some Basic Principles for Planning

- Identify critical information and keep all critical information in a secure but accessible place in your absence; make sure at least two people know where it is:
- Keep back up information safe and secure both on and off-site
- Have standard procedures and checklists that staff follow
- Have standard organization for files that everyone follows
- Keep client files current; all filing up to date
- Keep standard checklists in each file up to date.
- Ensure any designated lawyer is capable and agrees to oversee the practice
- Keep a master list of your files where any obligations or trust conditions exist that are binding on the firm
- Regularly update the status of all files in a master list – include closed files on the list

The scope of your planning will be different depending on whether you are creating a plan for the situation where you have a broken leg and arm from skiing that immobilizes you at home for a week or two or creating a plan for the situation where your office is flooded or burned, and all of your on-site files and records are destroyed.

The plan has to be tailored to your practice and be adaptable to the specific situation, but if the basic plan considers and addresses how to deal with issues both with and without you, and you review and update it regularly with those affected, you and your staff and your family will be better able to handle the unexpected.



Practice Tip:

Create a critical information document stored electronically in the cloud so you can access it from anywhere with internet access. Also keep a hard copy backup of the document stored securely off-site in case you cannot access the internet. Make sure at least two persons on staff know where and how to access it.

Assessing risks

To assess the risk your firm might face, list the possible emergencies you can think of and then rate the likelihood of each occurring. Here's an example chart you might create -

Ransomware attack on a trust account	<i>Highly likely - local law firms under attack</i>
Inability to be present at the office	<i>Possible because of my current health</i>
Break-in and theft of all equipment	<i>Less likely because of monitored alarm system and new security doors</i>

Then create a plan of action and a list of critical information needed and steps you should take to reduce or respond to each of the risks you identified.



Some risks might be so remote that the only practical way of dealing with them is to purchase insurance against the risk. Other risks might be more common, but their impact on the practice might be negligible, so an assessment should be made as to the amount of effort needed to protect against the risk. Other risks fall into the "no-brainer" category, such as installing and updating virus protection software on your computers.

LSBC Module 9 Coverage During Absences

The [Lawyers' Professional Indemnity Company \(LAWPRO\)](#) is the professional liability insurer for Ontario lawyers and is wholly owned by the Law Society of Ontario. The practicePRO program is LAWPRO's claims prevention initiative and it has many useful resources, precedents and checklists available online. All are intended to help Ontario lawyers, but Manitoba lawyers can benefit from reviewing the materials and adapting them to Manitoba practice.

For example, practicePRO has developed a Firm Vulnerability Evaluation Chart to help firms assess their vulnerabilities. You can access that blank chart [here](#) as a PDF or in Microsoft Excel format. A sample chart with information on several common emergencies is included as well as the instructions for using the chart.

You may also be interested in downloading the free practicePRO online booklet, [Managing Practice Interruptions](#) from their website.

Here are some more suggestions to get you thinking about how to assess your risks and create solutions to manage the risks. This chart is adapted from the [Prairie Law Societies Law Firm Practice Management Assessment Tool](#).

Some Questions	✓ Possible Solutions (Examples)
Are your clients' interests protected in the event of a major change to the composition of the firm?	<ul style="list-style-type: none"> ✓ Partnership agreement contemplates and provides for the dissolution of the firm. ✓ The firm has a wind-down plan. ✓ The firm has business continuity and succession plans, as appropriate.
Does your firm have insurance that is adequate for all risks?	<ul style="list-style-type: none"> ✓ Cyber liability insurance ✓ Disability insurance ✓ Business interruption insurance
Will clients be prejudiced in the handling of their legal matters upon the absence or death of the lawyer who has the conduct of a file/practice?	<ul style="list-style-type: none"> ✓ Plans for replacement lawyers for absences and/or retirement succession plans are made.
Can closed files be located and accessed easily?	<ul style="list-style-type: none"> ✓ Closed files are stored in an organized manner ✓ A master closed file list exists with details of location and date of the planned destruction
Is the firm prepared to carry on its business in the event of disasters like fires or floods?	<ul style="list-style-type: none"> ✓ Contingency plans exist and are stored offsite and accessible to key staff. ✓ The firm has fire prevention, disaster recovery and business continuity policies. ✓ Emergency documents are kept offsite in a secure location.

Some Questions	✓ Possible Solutions (Examples)
Are steps taken to preserve the integrity of the firm's IT system?	<ul style="list-style-type: none"> ✓ Personnel have received cybersecurity training. ✓ The firm has and enforces a policy on personal use of firm computers or other electronic devices.
Is your equipment containing client data secure from theft or malfunction?	<ul style="list-style-type: none"> ✓ Record serial numbers, ✓ Make daily backups stored onsite and offsite, ✓ Have instructions for restoring data from backup accessible to all staff, ✓ Have laptop locks, ✓ Have service personnel available 24/7
Do you regularly review your plans for emergencies and absences and update the information or adapt it to your changing practice circumstances?	Establish a practice of reviewing office procedures and emergency plans at least once a year and designate a staff member to book the time for this to be done (maybe tied to the filing of the Annual Member Report or to an annual slow time in your practice)

H. A SUGGESTED BASIC PLAN

Everyone should create and keep a current basic plan for dealing with unexpected absences and business interruptions. Review it regularly to be sure the plan is current and still relevant; perhaps you could tie the review of your plan to the same time once a year when you file your Annual Member Report.

Elements of a Basic Plan for Emergencies and Coverage for Absences:

- a) Office standard procedures manual;
- b) Regular backup and secure storage of data;
- c) Checklists for planned absences and emergencies;
- d) Replacement lawyer on standby; and
- e) Insurance.

1. Office Standard Procedures Manual

Creating and maintaining an office Standard Procedures Manual is suggested for all law offices.

All staff should be asked to read the manual and be expected to follow the procedures in the manual. All staff should be advised when the manual has been updated so that they can make themselves familiar with new procedures. An up-to-date office Standard Procedures Manual is valuable to any replacement lawyer who steps in to oversee and maintain or even to wind-up your practice.

Below are suggestions for the type of information you may want to include in the manual. They are based on suggestions found in The Law Society of Ontario's [The Contingency Planning Guide for Lawyers October 2014](#).

Some information to include in your office's Standard Procedures Manual:

- a. Filing system & procedures for**
 - i. Opening, maintaining & closing files
 - ii. Retaining & destroying files
 - iii. Maintaining current client lists
 - iv. Maintaining current status of file lists

- v. Organizing the content of files
- vi. Locating & using forms & precedents
- vii. Follow-up and reminder systems
- viii. Recording and meeting limitation dates and important deadlines

b. Rules for all staff and lawyers re:

- i. Checking for and dealing with Conflicts
- ii. Client ID and verification
- iii. Anti-money laundering

c. Security, storage, confidentiality measures for client data

- i. Data backup rules & procedures
 - 1. How to and when to backup data
 - 2. How to restore data from backup
 - 3. How to and when to test backup systems
- ii. Onsite and offsite storage and rules
 - 1. What is to be stored
 - 2. Location of data storage – how to choose where
 - 3. Format of storage required
- iii. Confidentiality rules & procedures
 - 1. Handling & storage of paper and electronic files & documents
 - 2. Handling of requests for information

d. Client property care & location & security measures

- i. Location of safety deposit box key and box
- ii. Location of fireproof safe and its combination
- iii. What property should be accepted
- iv. Recordkeeping rules for storing property and returning property

e. Administrative rules re operation of office and use of technology

- i. Employee info and job descriptions
- ii. Personal computer use in office rules
- iii. Passwords, precautions, back-ups
- iv. Office lockup procedure

- v. Rules regarding access after hours
- vi. Safety and emergency plans

f. Financial records, rules, locations, and contact info

- i. Identity of Trust Account Supervisor (or designated TAS)
- ii. List of those authorized to sign trust cheques
- iii. Handling of trust money
- iv. Handling of Cash; anti-money laundering precautions
- v. Trust cheque location and rules for use
- vi. Accounts payable list and rules for records & remittances
- vii. Accounts Receivable rules

g. Timekeeping and billing rules

h. Office equipment list/inventory

- i. Info about leases, service, warranties

i. Service Providers contact list

- i. Premises management
- ii. Cleaning
- iii. Suppliers

j. Responsible Lawyer for Law Society communications

k. Procedure for reporting errors or omissions

2. Regular Backup and Secure Storage of Client and Financial Data

Consider the volume of the client and financial data you create and manage each day and imagine having to reconstruct that if a hard drive fails or is stolen or damaged.

The Law Society of Manitoba does not have specific rules, regulations or practice directions on computer technology. However, the Code of Conduct applies to e-mails, text messages, data stored "in the cloud" and Facebook as much as it applies to paper files and faxes, or a traditional brick and mortar law office. The principles of client confidentiality and privacy do not change. The only things that change are the mechanisms by which protected information is stored and transmitted.

Protect your investment in your computer systems – and the information stored on them – by doing the following:

- Employ or identify service people with the necessary expertise to support it;
- Use uninterruptible power supplies (UPS) and surge protectors, especially on servers and phone systems;
- Use anti-virus software, and keep virus definition files up to date;
- Implement appropriate security on your servers and networks; and
- Use firewalls at any external network access points.

The article from the Law Society of Manitoba October 2016 Communiqué 2.0, ***Protecting Your Data (and Yourself)*** by Barney Christianson, Practice Management Advisor, contains valuable advice about backing up your data and keeping it secure in the office and by having off-site storage as well. The article is reproduced below.

Protecting Your Data and Yourself)

Barney Christianson, Practice Management Advisor

(Content originally published in Communique 2016 p. 10 – used with permission)



If you have a computer in your office you **need** a solid back-up plan. It is a **need**, not a “want”. Here is why:

- 1. Hard Drive Failure.** There are only two kinds of computer hard drives. Those that have failed and those that are going to fail. When a drive fails, the data on it is likely gone forever. Even if some data can be retrieved from a failed hard drive, it is going to be expensive and time-consuming to have a specialist do that for you.
- 2. Accidents happen.** Your office may be destroyed in a fire. Your surge protector (you have one of those, right?) may fail to protect your hard drive from a power surge or a lightning strike. Your office may be flooded by a burst pipe in your premises or in your neighbour’s. Is your office located anywhere near a river or an area subject to overland flooding? Even if you think you are not at risk of flooding, consider what happened in Calgary, and much of Alberta, in 2013. Are you near a railway? Lac-Mégantic. The tornado that went through Elie in 2007 was an F5 and levelled **everything** in its path. There is no Commandment that such events must happen only to others and never to you.
- 3. Ransomware.** If you are not aware of this scourge, you should be. Ransomware infects your computer system, likely via an infected attachment or malicious website. You are then locked out of your data until you pay a ransom. (Even then, payment is not a guarantee that you get your data back; you are dealing with crooks.) Bear in mind that the growth in the number of ransomware attacks is simply astounding.

It is now to the point where this might be the most frightening of the risks to your data. Educating, and then constantly reminding, everyone in your office not to open suspicious attachments or go to unknown webpages is an on-going challenge. One of Canada's largest accounting firms uses its email system to post this notice, in red, on the top of every email that enters the system before it gets to the intended recipient:

“External Email: Please be aware of the sender, attachments and links when receiving emails from outside of (XXX).”

Even with such a warning, the fingers sometimes click before the brain thinks, especially if the sender appears to be legitimate. Ransomware attacks **always** look legitimate at a quick glance.

The only way to deal with any of these disasters is to have a solid back-up plan.

Reasonable and knowledgeable people may design different back-up plans. Every one of them, however, will have at least one level of redundancy because any one system can fail. I suggest that belts, suspenders, and some additional duct tape should be employed because of the unacceptable consequences of losing or being unable to access your data.

Here is a sketch of a three-tier system that should serve you well:

- 1.** Start with a clone back-up, aka a disk mirror or mirror drive. A clone or mirror drive provides an identical twin of your main hard drive at all times. If your main drive fails, you can “flip a switch” and be current immediately. If your IT supplier has mentioned a RAID set-up, that may be the clone or mirror recommended to you.

It might be a good idea to have the clone in a separate enclosure from the main drive, rather than in a one-box RAID. If both drives are relying on a single power cord or adapter and it gets fried, both drives will be affected.

2. A good second tier is a version back-up that is completely separate, most of the time, from the main hard drive. The clone back-up will be recording simultaneously with the main drive so, if the main drive is attacked, the clone will be too. Most malware will immediately infect any connected drives. In such a case, a separate, full version back-up is essential. Software can be configured to connect the main drive to this version one or more times each day, perform the back-up, and then disconnect. An attack on the main drive will (probably) not happen during the brief time the two are connected.

3. The third tier should be an off-site back-up. The first two tiers are going to be cinders if your building burns down. Some commentators suggest that this third level only needs to copy your Documents folder as the client data is the only part that is irreplaceable. Others will argue that you need a full copy of everything on your hard drive, data, and programs, so you can quickly access the data after a restore (you cannot open a Word document without a copy of Word). The second argument is even stronger if you are using any kind of legacy software that you may not be able to find anywhere else. Computer storage is not expensive; I would opt for “copy everything.”

For this third level, I like an external, portable hard drive. For a little over \$100 you can buy a 2TB (TB = Terabyte) drive and for less than \$200 you can have 4 or 5 TB. [You don't need the biggest one; by one estimate, a TB would hold 85,899,345 pages of Word documents.] These portables are about the size of a paperback or even smaller. Get two or even three of them. Hook one up and the back-up software will update this drive that night. Next morning, swap that drive with another one and put last night's in your briefcase, purse or pocket to take home with you. Repeat every business day.

You can buy such drives with a removable key that you can keep at home, separate from the drive, if you are concerned about losing your briefcase, purse or pants. The drive is encrypted and can only be read with the key in place. Other manufacturers may use keypad/password protection instead of a key.

Some USB flash drives have enough capacity to serve for a smaller firm. They are handier than portable drives but I would probably lose something that small.

There are lots of choices for back-up software. To get an idea of the features that are available, look at programs like SuperDuper, CarbonCopyCloner, Crash Plan or Backblaze (for small data users). Then find the one with the features you need. You might also consider something like Transporter, which has the advantage of being off-site but not in the cloud so only you possess the data. A Transporter drive goes in your house, connected to the internet. Software loaded into the office hard drive uploads your data to that device at home during off-hours. Once it has completed the first complete upload, it does an incremental back-up (only those items that have changed) each night. So long as the disaster only hits your office and not your house, you are covered.

Instead of a physical off-site back-up, you can use a cloud service such as Carbonite, SugarSync or Rackspace (and many others). However, you should carefully consider how long it would take you to do a full restore via your internet connection. Someone smarter than me calculated that it might take six days to restore 3TB of data over a typical 50 mbps connection. You also need to know if your ISP has a monthly data cap because that can hinder your data transfer.

The final but essential component in any back-up plan is regular and frequent testing. You have to know that the system is working and that you can retrieve your data in a useable format, promptly. The only way you can know that is to actually check that there is current and readable data where it is supposed to be. Make that test part of someone's weekly tasks.





Practice Notes:

For Backing up Computer Data

Have written accessible instructions on how to back-up data.

Do at least a daily back-up of data.

Ensure you do a full back-up regularly, not only partial back-ups.

Assign someone to review and maintain the back-up log.

Remember to back-up laptops and cellphone texts, not just PCs.

Have written instructions on how to restore data from a back-up.

Assign a different someone to do a regular test of the back-up to be sure it works to restore your data. Sometimes the back-ups don't back-up as they are supposed to.

3. Checklists - Planned Absences and Emergencies

a) Checklist for Planned Short Absences



CHECKLIST: Short-Term Absences

- Inform clients directly if you expect they may be affected
- Office procedure manual for everyone to follow
- Set up signing authority for trust cheques with alternate lawyer if sole practitioner – get Audit department approval in advance
- A remote secure connection so you can work remotely if necessary
- Set up email and voicemail out of office alerts

b) Checklist for a Vacation:

CHECKLIST: Vacation –

- follow short-term absences checklist and:
- Inform all clients
- give your staff your contact info by phone, email in emergency
- get a lawyer in your firm to review your email and regular mail, and be available for questions from clients and other lawyers and the Law Society
- Update your voicemail and program an email auto-reply to advise who to contact if the matter is urgent; when you plan to return; and whether you will be checking and responding to messages while away (TIP: don't say you will be checking your emails if you won't; just say you won't check your email so the person doesn't expect a reply before your return to the office.).
- (sole practitioners)** give staff the contact info for another lawyer from the outside firm who has agreed to be available to handle client or staff questions and oversee files as necessary
- put a memo on the files and/or meet with your temporary lawyer in advance to alert the lawyer to potential problems and your plan



c) Checklist for a Planned Leave from Practice:

i. Preparing for Parental Leave

Excerpts from the [Law Society of Alberta Parental Leave wellness resource](#):

“Clearly outlined procedures for both the firm and the leave-taking lawyer will help minimize miscommunication, promote a clear understanding of expectations from both sides, and ensure the ongoing professional obligations of the lawyer and the firm are met during the leave period.”

“Ideally, the firm will have a clear policy in place in terms of who is eligible and when, the leave period, procedures for client and file management, compensation issues, for example.”

“The following are some considerations that deal with planning a parental leave, staying connected during the leave, and transitioning back into practice, but will obviously have much broader application.

Both the firm and the lawyer should plan for the leave period. Depending on the firm, measures may have to be taken to accommodate the lawyer’s absence. In large firms, there may be a redistribution of files among the firm’s existing lawyers. In smaller firms, consideration may be given to hiring a part-time or term contract lawyer during the leave period.

As the end of your scheduled leave approaches, try to gradually prepare yourself and your family for your return to work. If possible, you may want to begin your child-care arrangements a few weeks before your return to give you time to prepare to return to work, even if just part-time, and to give yourself and your child an opportunity to adjust to the new routine. You may want to reconnect with some colleagues to remind yourself what you liked about your work and remind them of your pending return and to ask them to keep you in mind for upcoming work. Figure out the best way for you to keep in touch and maintain your schedule, such as using a smartphone, or using remote access technology to connect with the office network system.”

Also, refer to the [Parental Leave Checklist](#) - Law Society of Alberta

Make yourself aware of parental leave rights/obligations under [The Employment Standards Code C.C.S.M. c. E110](#) for salaried lawyers and [The Fairness for the Self-Employed Act S.C. 2009, c. 33](#) (for example, note that once you register for EI, you must participate indefinitely) for commissioned associates. Partners may have their rights set out in the partnership agreement.

Many lawyers request a reduced work schedule in advance of the birth of a child because of the physical impact of pregnancy. Many lawyers negotiate a reduced work schedule on their return to work after parental leave to transition to the role of a working parent. Each firm should develop a parental leave policy and ensure that it is circulated to all members of the firm. Check with the Equity Officer and on the Law Society website for information about parental leave policies, a model policy and confidential assistance for parental support.

ii. Your member status during a leave from practice

What is your status?

Member of the Law Society of Manitoba: Once you are registered on the rolls of the Law Society, you are a member of the Law Society of Manitoba until your death or until, as a result of disciplinary proceedings, you are disbarred or permitted to resign.

The status of a member of the Law Society of Manitoba is either practising or non-practising or inactive. You may elect your status by application to the Law Society depending upon your circumstances. Many lawyers who take extended leaves, such as parental leave, choose to elect a different status during the leave.

For example, assume you are a member in good standing but you don't want to maintain your practising status during your parental leave, perhaps because of the expense of the annual practice and insurance fees. You may elect to become a non-practising or inactive member by applying to the Admissions and Membership Department of the Law Society.

Consider the differences between the three types of member status before electing a particular status for yourself to ensure that the chosen status best suits your needs and circumstances.

1. Practising member status: You are considered a practising member when you hold a valid practising certificate issued by the society. You must pay your annual fees and professional liability insurance and reimbursement fund assessments, you must earn your annual mandatory continuing professional development credits, and you must not be suspended or disbarred, although you can have practising member status with conditions. As a practising member, you will receive all Law Society publications. You can pay to get a Fast Track photo ID membership card that gives you preferred access to the Law Courts. You have full access to the services and

resources of the [Law Library of Manitoba](#). **You must maintain your practising member status at all times that you are carrying on the practice of law.**

2. Non-practising member status: You are considered a non-practising member when you apply to the Law Society to withdraw from practice and elect to be a non-practising member. You must give your undertaking not to practise law in Manitoba. As a non-practising member, you must pay an annual non-practising member fee (currently \$105 a year which includes the \$5 GST payment). You will receive all Law Society publications. You can get a non-practising membership card that gives you access to the [Law Library of Manitoba](#). **You are not permitted to carry on the practice of law if you are a non-practising member.**

3. Inactive member status: You are considered an inactive member when you apply to the Law Society to withdraw from practice and elect to be an inactive member. You must give your undertaking not to practise law in Manitoba according to [Part 2 of the Law Society Rules - 2-73](#). An inactive member pays no fees or assessments and receives no services from the Law Society. Fully retired lawyers often elect inactive member status. **You are not permitted to carry on the practice of law if you are an inactive member.**

The [non-practising and the inactive member applications to withdraw from practice](#) include an undertaking from the member to the Society not to practise law in Manitoba. The original document must, therefore, be submitted. Refunds of any practising fees or assessments are issued based on the date the application to withdraw is received at the Law Society office.

Changing your status

If you are a practising member, you may change your status at any time by application to the Law Society to elect either non-practising or inactive member status.

If you are an inactive member, you may change your status to a non-practising member by informing the Law Society that you elect to be a non-practising member and paying the required non-practising fee.

If you are a non-practising member, you may change your status to inactive by informing the Law Society that you elect to be an inactive member and ceasing to pay the non-practising fee.

If you are a non-practising member or an inactive member who wants to return to practising member status, you must apply ([with the necessary forms and fees](#)), get the application approved by the Law Society, and pay all practising and insurance fees before your member status will be updated to practising member. You are not permitted to carry on the practice of law until you have your practising member status.

Approval to return to a practicing member may be conditional or unconditional depending upon your particular circumstances.

You should note the four requirements you must meet when you apply to resume active practice as set out in the [Rules, Part 5 - Rule 5-28.2](#).

Resuming active practice

5-28.2 *A member who is non-practising, inactive or who has completed a period of suspension, must apply to resume active practice in Manitoba and the chief executive officer may issue a practising certificate to a member, with or without conditions or restrictions, provided the member:*

- (a) provides proof that he or she is of good moral character and a fit and proper person to practise;*
- (b) passes such assessments or examinations and fulfills such requirements as may be prescribed by the chief executive officer;*
- (c) pays the annual practising fee and required contributions; and*
- (d) pays to the society all money owing by the member to the society.*

The [Guidelines for Good Character](#) form can be found on the Law Society Website as part of the Forms and Resources for the Application and Admission Process to Become a Lawyer.

The [Application to Resume Active Practice](#) form can be found on The Law Society website as one of the forms under Membership Services for Lawyers.

If you are inactive or non-practising: What is considered “carrying on the practice of law”?

If you engage in any activities that fall within [s.20\(3\) of the Legal Profession Act of Manitoba \(the Act\)](#) you will be deemed to be carrying on the practice of law. For example, if you do legal research and provide a legal opinion during a leave from practice when you are an inactive or non-practising member, you will be deemed to be carrying on the practice of law and the Law Society requires that you have practising member status to do that.

The Act - Activities deemed to be carrying on the practice of law

20(3) *A person who does any of the following, directly or indirectly, for or in the expectation of a fee or reward is deemed to be carrying on the practice of law:*

(a) draws, revises or settles any of the following documents:

(i) a document relating to real or personal property,

(ii) a document for use in a proceeding, whether judicial or extra-judicial,

(iii) a document relating to the incorporation, administration, organization, reorganization, dissolution or winding-up of a corporation,

(iv) a will, deed, settlement, trust deed or power of attorney, or any document relating to the guardianship or estate of a person,

(v) a document relating to proceedings under any statute of Canada or of Manitoba;

(b) negotiates or solicits the right to negotiate for the settlement of, or settles, a claim for loss or damage founded in tort;

(c) agrees to provide the services of a practising lawyer to any person, unless the agreement is part of, or is made under

(i) a prepaid legal services plan,

(ii) a liability insurance policy, or

(iii) a collective agreement or collective bargaining relationship;

(d) gives legal advice.

Even if you have non-practising or inactive status, you continue to be a lawyer. However, you are not considered to be carrying on the practice of law or appearing as a lawyer before the court if you fit into one of the six exceptions in [s. 20\(4\) of the Act](#). For example, the exceptions would permit you, as a non-practising or inactive

member, to act on your own behalf in an action or proceeding, or prepare a document for your own use or to which you are a party without breaching the provisions in s. 20(2) prohibiting the unauthorized practice of law.

The Act - Unauthorized practice of law

20(2) *Except as permitted by or under this Act or another Act, no person shall*

- (a) carry on the practice of law;*
- (b) appear as a lawyer before any court or before a justice of the peace;*
- (c) sue out any writ or process or solicit, commence, carry on or defend any action or proceeding before a court; or*
- (d) attempt to do any of the things mentioned in clauses (a) to (c).*

The Act - Exceptions

20(4) *Subsection (2) does not apply to the following:*

- (a) a public officer acting within the scope of his or her authority as a public officer;*
- (b) a notary public exercising his or her powers as a notary public;*
- (b.1) a district registrar or deputy district registrar under The Real Property Act acting within the scope of the duties of a district registrar;*
- (c) a person preparing a document for his or her own use or to which he or she is a party;*
- (d) a person acting on his or her own behalf in an action or a proceeding;*
- (e) an officer or employee of an incorporated or unincorporated organization preparing a document for the use of the organization or to which it is a party.*

Notary Public Powers

Even if you are an inactive or non-practising member, **you can still be a Notary Public.** Exercising your powers as a Notary Public is not considered carrying on the practice of law under the specific exception noted in [section 20\(4\)\(b\)](#) of the *Legal Profession Act of Manitoba*.

Part III of *The Manitoba Evidence Act* governs the appointment and powers of Notaries (see [section 80 of The Manitoba Evidence Act C.C.S.M. c. E150](#)).

d) Checklist for an Unplanned Leave from Practice:

CHECKLIST: In case of Short-Term Unexpected Absences or Emergencies

- Assign, in advance, one staff person as the main contact and another as the backup assuming you, as lawyer, are unavailable
- Have an easily accessible emergency folder (electronic and paper) for person in charge to use which contains:
 - List of all staff and lawyers' contact information for emergencies
 - Secure list of all passwords for everyone in office (to voicemail, to computer, to email accounts, to alarm systems, to safety deposit, to online data/banking/Teranet, to cellphone etc.)
 - Checklist of persons to be advised of situation, including the Law Society of Manitoba
 - Name of designated Trust Account Supervisor if you are the Trust Account Supervisor and are not available
 - Replacement lawyer contact information
 - Where to find the list of all open client files and current status
 - Where to find the list of all closed files and their location
 - Where to find the off-site back-up of the law firm data



e) Checklist for Long-Term Unexpected Absences

CHECKLIST: In Case of Long-Term Unexpected Absences

1. Have a replacement lawyer on standby to step in

- Have an up-to-date and complete office Standard Procedures Manual for the standby lawyer
 - have one staff person as a main contact and another as a backup
 - Have an easily accessible emergency folder (electronic and paper) containing:
 - List of all staff and lawyers' contact information for emergencies
 - Secure list of all passwords for everyone in office (to voicemail, to computer, to email accounts, to alarm systems, to safety deposit, to online data/banking/Teranet, to cellphone etc.)
 - Checklist of persons to be advised of situation, including the Law Society of Manitoba
 - Name of designated Trust Account Supervisor if you are the Trust Account Supervisor
 - Replacement lawyer contact information
 - Where to find the list of all open client files and current status
 - Where to find the list of all closed files and their location
 - Where to find the off-site back-up of the law firm data



4. Replacement Lawyer on Standby

For shorter or planned absences, you can often time your planned absence to coincide with a slower time in your practice, but it is wise to always have a lawyer undertake to supervise your practice and sign trust cheques as necessary while you are away.

A replacement lawyer who has agreed to be the lawyer on standby for your practice in case of long absence, disability or death is ideal to ensure continuity of service for your clients when you cannot.

In a practice where there are several practising lawyers, finding a replacement lawyer for any absence should not be too difficult.

It is not as easy for a sole practitioner to find a replacement lawyer, whether the absence will be short or long-term. You have to find a practicing lawyer from somewhere else and that takes a bit more planning, especially because you must anticipate and avoid conflicts.

Think about these matters when choosing a replacement lawyer:

- it is up to you to assess who the best person is for the situation. A lawyer who shares space with you may be a convenient choice; a lawyer whose practice is similar to yours may be a better choice if the lawyer might have to provide legal services to your clients but remember the issues of conflict of interest; check that the replacement lawyer is not subject to any practice restrictions that could impede the ability to manage things in your absence;
- Remember to consider that **conflicts** could arise concerning your replacement lawyer so have a back-up plan if that lawyer cannot cover particular files;
- If appropriate in the circumstance of your absence, ensure that the replacement lawyer can contact you as needed;
- Ensure that your clients' confidences are protected and inform and confirm that the client consents to the replacement lawyer working on the file in your absence;
- Consider if you want to include a notice in your standard retainer letter that a replacement lawyer may have to work on the client's file in the event of your extended absence or if you become unable to practice so that your client is aware of the possibility upfront;
- Keep your files organized and every file's checklist current so anyone viewing it will know any deadlines or limitations or outstanding trust conditions and can

easily determine from the file what has been done, what must be done, what is urgent, and what is not.

5. Insurance

There are several types of insurance to consider beyond the mandatory practice insurance.

- i. **Disability insurance** – to continue your income should you become unable to continue to practice law – (e.g. disabling stroke or illness)
- ii. **Life Insurance** - to help pay for the winding-up or sale of your practice on your death.
- iii. **Occupier's liability insurance** (e.g. slip and fall on your steps)
- iv. **Business interruption insurance**
- v. **Insurance for the contents** of your premises in case of vandalism, robbery or theft. Detailed inventory lists with serial numbers and/or photos of your equipment help when trying to replace the equipment.
- vi. **Cyber liability Insurance** – all Manitoba insured lawyers have coverage under CLIA's Cyber Liability policy, but this provides first response coverage only. You should consider buying additional cyber liability coverage as part of your excess insurance or your general office insurance.

The conditions for coverage under the CLIA cyber liability policy require you to:

- (1) implement a properly configured firewall;
- (2) install and maintain updated antivirus software;
- (3) make regular backups (at least weekly) of your data.

You must do what you can do to prevent cyberattacks.

The Law Society recommends that you consult with a computer security expert about firewalls, encryption, anti-virus software, secure passwords, intrusion detection system and other ways to protect your equipment and your client's information.

CLIA Cyber Liability Program

By Tana Christianson,
Director of Insurance, Law Society of Manitoba

[This article is also available to all members behind the member's portal]

Unfortunately, law firms can fall victim to cybercriminals who target the firm to extort ransom or steal information for malicious use or resale. The mandatory Professional Liability Insurance Policy excludes claims arising out of cybercrime. However, CLIA's cyber coverage provides some protection for lawyers and their clients to fill that gap. This cyber policy changed July 1, 2019, with amendments to the deductible which is now \$2,500 regardless of the size of the firm or the nature of the claim. This policy applies to all lawyers required to be insured under the mandatory Professional Liability Insurance Policy.

The CLIA cyber policy provides initial/first response coverage geared to law firms experiencing a cyberattack. There are some conditions of coverage that you should ensure your firm has in place. Your firm must have:

1. A firewall between the firm's systems and the internet;
2. Up-to-date antivirus and malware endpoint protection on computers and laptops; and
3. Weekly data back-ups.

Firms should also consider purchasing more comprehensive cyber business interruption insurance from their tenant and business insurance broker or as an add-on to their CLIA excess insurance.

Damage from Disclosure of Client information

Although some cybercriminals are just vandals, the point of most attacks is to obtain confidential information which might have some value to the cybercriminals whether they steal that information for their own fraudulent endeavors, sell it on the dark web or maliciously leak it over the internet. If your clients' information is stolen from you, your clients may have a claim for damages against the firm. One aspect of the cyber policy provides coverage for damage claims resulting from the disclosure of client confidential information arising out of a cyberattack. The following chart sets out the amount of coverage and the deductible, based on the number of lawyers in the firm:

Firm size at the date of discovery Coverage Limit Deductible

1 lawyer	\$50,000	\$2,500
2 – 10 lawyers	\$50,000	\$2,500
11 – 25 lawyers	\$100,000	\$2,500
26+ lawyers	\$200,000	\$2,500

Privacy Breach Notifications

Under [PIPEDA amendments effective November 1, 2018](#), law firms now have a legal obligation to notify the Privacy Commissioner of Canada, clients and third parties of a breach of security safeguards involving personal information under the firm's control if it is 'reasonable to believe the breach creates a real risk of significant harm to any individual'. This can be a time consuming and unfamiliar process. The cyber policy covers firms for reasonable expenses to contain, investigate and mitigate a privacy breach and to notify the Privacy Commissioner, the affected clients and third parties. \$25,000 of coverage is available with a \$2,500 deductible regardless of firm size. Policy period and occurrence aggregate limits also apply.

The website of the [Office of the Privacy Commissioner of Canada](#) provides an overview of your new obligations.

For more detailed consideration of reporting requirements, [Privacy Please: New Mandatory Breach Reporting Requirements under PIPEDA](#), a webinar presentation featuring Andrew Buck recorded March 20, 2019 is now available on [CPD online](#) under Miscellaneous.

System and Data Rectification Costs

A cyberattack can result in your firm losing or misplacing data that you need to get your clients' work done. This coverage applies to the expenses you incur to retrieve, restore and replace any of the law firm's computer programs or any other data and to repair, restore or replace any of the firm's computer systems damaged by a cyberattack so that client data is preserved and protected. \$25,000 is available for system and data rectification coverage, subject to a \$2500 deductible. Policy period and occurrence aggregate limits also apply.

Cyber Threat and Extortion Costs

In some cyberattacks, hackers hijack computer systems and deny access until you pay a ransom (usually in an online currency known as bitcoin). This program provides coverage for the costs associated with ransomware and other cyberattacks where client data in the law firm's computer system is held hostage. \$10,000 is the limit available for cyber threat and extortion coverage. Policy period, occurrence aggregate limits and a deductible also apply.

Report a Claim and Trigger Policy Coverage

If your firm discovers it has been the victim of a cybercrime, access the cyber program's improved 24-hour emergency email and toll-free response number. You will then be referred to the appropriate cyber response team so that you don't have to deal with a cyber-incident on your own, without professional assistance. If your computer is held hostage by ransomware or you experience any other cybercrime event, here's what you should do.

1. Email a description of the circumstances to cyberclaims@clia.ca;
2. Call 1-833-383-1488 (toll free);
3. Call the Law Society of Manitoba 204-942-5571 and ask to speak to someone in the insurance department; and
4. Call your IT professional and get that person or team working on the issue right away.

Your emails and calls will be responded to by a cyber-response expert retained to provide service on CLIA's behalf. Email is the best way to ensure prompt and appropriate resources are deployed for the situation. Even if you call the toll-free response number 1-833-383-1488 first, you will be asked to email so that the appropriate triage can be performed and you can be assigned to the right cyber responder.

If you purchase Voluntary Excess Insurance from CLIA, additional coverage under a Cybercrime Endorsement is also available for damages to third parties arising from the disclosure of confidential client information as the result of a cyber-incident. Contact CLIA at renewals@clia.ca.

You should also consider buying cyber coverage as part of your tenant or office insurance package. Commercial insurance can be obtained to cover your business interruption costs arising out of a cyberattack and business-related expenses.

Coverage, as always, is subject to the final terms and conditions of the policy, so please review the policy carefully.



Practice Tip:

You should review your insurance coverage at regular intervals as well as review your absence or emergency contingency plans for your practice.

Tying your reviews of your contingency plans and your insurance coverage to some mandatory annual event, like the annual requirement to file your Annual Member Report with the Law Society, will help you to remember to do those reviews at least once a year!

I. SPECIFIC EMERGENCY SITUATIONS

1. Fraud on Trust Account

There are a variety of ways that your trust account may be at risk of fraud.

Because the scams and associated risks are constantly evolving, in addition to educating yourself and your staff about red flags and recent scams, it is important to be constantly alert to the risks when handling trust money and sensitive to situations or circumstances that just don't feel right. Question the unusual, and ensure that you **resolve** the issue(s) before releasing funds.

If you're not sure and want to discuss a situation further before proceeding, you can always contact the Law Society audit department.

Are you covered by your professional liability insurance for frauds and scams?

"The Professional Liability Claims Fund does cover some claims that arise as a result of frauds and scams with cyber elements. The policy sometimes responds to the classic debt collection fraud scams where a lawyer is contacted, generally by email, but sometimes by phone or fax, to collect on a commercial debt. The lawyer is retained because the debtor supposedly lives in the lawyer's jurisdiction. Other versions of this scam involve real estate, where the fraudster pretends to be interested in a property in your jurisdiction and sends funds to close. Under collaborative law divorce settlement frauds, the lawyers receive large NSF cheques which are allegedly maintenance arrears. In all of these cases, the lawyer ends up with a cheque, which is, of course, fraudulent, which he or she is supposed to deposit into the firm trust account and then immediately wire a payment, minus a generous fee to the lawyer, to an overseas account. The cheque is always fraudulent and the lawyer then has a shortfall in the firm's trust account.

Where a law firm experiences a trust shortage because a lawyer pays out on a certified cheque, bank draft, official cheque, money order or solicitor's trust cheque that ultimately proves to be counterfeit, forged or materially altered, the policy will respond. Releasing funds to a fraudster before the fraudster's cheque has cleared resulting in a shortfall in the trust account is an error that gives rise to an Occurrence under the Policy of Insurance. The other clients whose funds are in the lawyer's pooled trust account, whose monies were used by the financial institution to cover the funds sent to the fraudster, are the ones who suffer the damage and are the claimants in this case. The Claims Fund pays out to cover these client's claims. The policy will provide coverage to protect against shortages of client's funds, but not overdrafts that arise as a result of this scam.

However, if there are no client trust funds or there are not enough client trust funds in the lawyer's pooled trust account to cover the shortfall that arises as a result of the wire to the fraudster, the claim would not be paid. This is because the Policy of Insurance excludes claims made against an insured by the insured's law firm or by the insured himself. If the lawyer's negligence in releasing the funds before the cheque is cleared causes a loss to the firm, rather than the loss to clients, the Professional Liability Claims Fund would not pay the claim."

Tana Christianson, *What's Your Coverage?* April 2017

2. Death While Still in Active Practice

It is also a good idea to create a plan for dealing with your practice if you die while you are still actively providing legal services. When creating such a plan, please consider:

- i. Creating a document containing all the passwords for your computers, email accounts, cellphones, bank, registry accounts, etc. Keep the document current and be sure to tell trusted key staff and/or the intended custodian of your practice where to find the document;
- ii. Buying term life insurance to be used to pay out surviving partner(s) or cover custodial costs to wind up the practice;
- iii. Inserting appropriate clauses into your partnership agreement to address the issue of what happens to a partner's practice on death if you have partners in your practice;
- iv. If you are practising law as an LLP, consider if you must create a separate Will to deal with what happens with the law practice;
- v. Especially if you are a sole practitioner or your practice is unlikely to continue should you die, speaking to and get the agreement of another lawyer [and an alternate if possible] who is willing to take control of and wind up your practice, including the jobs of billing for your work in progress and collecting your accounts receivable in the case of your permanent disability or death. Tell the Law Society the name of the lawyer. It is best to have a written agreement with the lawyer in place.



Caution:

If you have not made advance arrangements with another lawyer to take custody of your practice on your death, and the Law Society is required to get an order appointing a custodian of your practice, the Society may take steps to recover custodial costs from your estate. But note that the Law Society is not bound by your recommendation or request.

[Section 57 of the Legal Profession Act](#) permits the Law Society of Manitoba to apply to the court for an order to appoint a custodian to manage or wind up your practice. The custodian must protect the clients' interests (those interests are not necessarily the same as your interests might be) and wind up the practice.

See [The Legal Profession Act C.C.S.M. c. L107](#),

Part 6 Protection of the Public

Division 6

Custodianship

Court order appointing custodian

57(1) *A judge of the court may, upon application by the society, make an order appointing a person to*

- (a) take custody of a member's property; and*
- (b) manage the member's practice or wind it up.*

Criteria for making the order

57(2) *The order may be made if the judge is satisfied there are reasonable grounds to believe that*

- (a) the member is no longer authorized or able to practise law;*
- (b) a corporation through which the member is or has been practising is no longer authorized to practise law;*
- (c) the member has absconded or is otherwise improperly absent from a location at which he or she ordinarily practises;*
- (d) the member's practice has been neglected for an undue period of time;*
- (e) the member, or a corporation through which the member is or has been practising, has insufficient trust money to meet the member's or the corporation's trust liabilities; or*
- (f) other sufficient grounds exist for making the order.*

[Section 62 of the Legal Profession Act](#) provides that the Society has the right to recover from a member or the member's estate, any expenses incurred by it in carrying out a custodial order, including the fees and disbursements paid to the custodian. If you have a replacement lawyer that you have chosen, you and the lawyer can agree in advance about fees and how the lawyer will be paid, but if a custodian is appointed by the court, you do not maintain control of any of the practice.

Court costs

61 A judge of the court may award costs against a member, his or her estate or any other person in respect of proceedings under this Division, but no costs shall be awarded against a custodian, the society, its officers or the benchers, or a person acting on behalf of any of them, in respect of a proceeding taken in good faith under this Division.

Recovery of expenses by society

62 Unless the court orders otherwise, the society is entitled to recover from a member who is the subject of an order under this Division, or the member's estate, any expense incurred by the society in carrying out the order, including any fee or disbursement paid to the custodian.

MODULE TAKE AWAYS

As a responsible professional you should create a written plan in advance to ensure your law practice can continue to provide legal services securely and competently to your clients in the event of an emergency or your absence, whether your absence is planned or unplanned, short or long-term.

Plan ahead on how to deal with your practice when you retire.

Ensure that you keep any plan current and that your staff and any replacement lawyer are aware of the plan and have ready access to it if needed.

Have insurance in place and get extra insurance coverage as protection against cyberattacks.

J. RESOURCES

Law Society of Manitoba

[“CLIA Cyber Liability Program” by Tana Christianson \(available behind the Member’s Portal\)](#)

*[*FAQ re Covid-19 and practice management issues](#)*

Education Centre Resources

- [Retirement: Winding up Practice – written resource](#)
- [Privacy Please: New Mandatory Breach Reporting Requirements under PIPEDA – March 20, 2019 – CPD online Miscellaneous Category](#)
- [Sound Cybersecurity Practices for your Law firm – Spring 2017 – CPD online](#)

Lawyer Regulation

- [Practice Direction 89-04: Death or Disability of Sole Practitioners](#)

Membership Services

- [Application to Withdraw from Practice](#)
- [Application to Resume Active Practice](#)

Law Society of Alberta

Disaster Planning and Recovery Resource

- [Guide to Safeguarding your Practice](#)
- [Disaster Recovery Action Plan](#)
- [When Bad Things Happen to Good Lawyers: A Contingency Planning Guide](#)

[Preparing for Parental Leave \(includes checklist\)](#)

Law Society of Saskatchewan

Law Office Management Resources

- [Succession Planning](#)
- [Succession Planning Agreement](#)
- [Checklist and Approval of Law Practice Succession Agreement by Bank](#)

Lawyers’ Insurance Association of Nova Scotia

[Practice Management - Succession Planning](#)

Law Society of Ontario

Beware Ontario comments on Professional Liability Insurance – *The insurance in Ontario is not the same as in Manitoba for professional liability. In Manitoba, as long as the negligent error or omission happened when the lawyer was covered by practice insurance, the coverage continues even if the discovery of the negligent error or omission happens when the lawyer is no longer practising.*

[*The Contingency Planning Guide for Lawyers \(PDF\)*](#)
[*Selecting a Conflict Checking System*](#)

Federation of Law Societies

[*Resources, Reports and Publications*](#)

- [*Crossing the Border with Electronic Devices: What You Should Know*](#)

Canadian Bar Association

You must be a member of the CBA/MBA to access their resources

[*How to Deal with Practice Disruptions - Practice Link Resources for Solo and Small Firms - Personal Safety Handbook – Manitoba 2015- Minimizing Risks to Personal Safety for You, Your Family, Friends and Colleagues;*](#)

PracticePRO Free online resources

[*Cybersecurity Risks during COVID-19 and working from home March 2020*](#)

[*Cybercrime and Law Firms – LawPRO Magazine, December 2013*](#)

[*Firm Vulnerability Evaluation Chart*](#)

[*Managing Practice Interruptions*](#)

[*Preparing Your Practice for the Unpredictable, LawPRO, Vol. 1, Issue 2, July 2002*](#)

[*Managing Practice Interruptions. LawPRO booklet 2002*](#)

Lawyers Mutual

Lawyers Mutual provides financial protection from professional liability to more than 7500 North Carolina lawyers, including programs of claims prevention education. It has many [Risk Management Practice Guides](#) available for free on its website which contain useful information and ideas even for lawyers who do not practice in the US.

Some examples of the guides available include:

- [Data Security Policy](#)
- [Extended Leave of Absence Policy](#)
- [Social Media and Crisis Communications Policy](#)
- [Buying or Selling a Law Practice](#)
- [Office Equipment Disposal Policy](#)
- [Data Breach Incident Response Plan Toolkit](#)
- [Disaster Planning and Recovery](#)
- [Plan Ahead for Closing a Law Practice: Procedures for Retirement, Moving to a new firm, or your death or disability](#)

Remember, always rely on your professional judgment when considering these materials. This resource is not intended to provide legal advice.