



**The Law Society  
of Manitoba**

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# RETIREMENT: WINDING UP A PRACTICE

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Practice Management Fundamentals

January 20, 2020

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# A. THINGS TO DO AND THINGS TO THINK ABOUT

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## 1. Introduction

Eventually, everybody leaves the practice of law. Some retire. Still others practice for a number of years, decide that the practice of law is not for them and leave. Some lawyers get themselves suspended or disbarred or they are allowed to resign in the face of discipline. Some die while they are still actively practicing law. Whatever your fate, you should be planning ahead and developing an exit strategy that will meet your obligations to your clients and your family and comply with the Law Society's requirements.

This material was developed for a program called "Planning Guide for Winding up a Practice" in November 2015 and has been updated to January, 2020 to help you plan ahead if you are thinking of leaving the practice of law. Some things to be considered are relevant no matter what type of practice you are leaving while other things are of greater relevance to lawyers in solo or small firm practice.

## 2. Personal Change

Changing what you do for a living is a big deal for anybody. Changing your practising status as a lawyer may be an even bigger deal. Many of us define ourselves by our occupation. If someone at a cocktail party asks you to tell them about yourself, you are likely to describe yourself as "a lawyer" before you list off spouse, parent, singer or tiddlywinks champion. Being "a lawyer" still has a certain cachet plus it's an easy one-word description; everyone has watched or heard of enough "lawyer shows" that they think they understand what you do. Once you have stopped practising, you may have to redefine yourself.

Retiring or changing your career mid-life can give rise to significant psychological issues. Some people who retire or change careers may suffer an identity crisis, marital concerns or even depression. Practising law not only provides income, but a lifestyle, self-image, a purpose, and social interaction with staff and clients. If you are thinking about retiring from the practice of law or changing careers, do not underestimate the psychological effects that this change may have on you.

## B. PEOPLE TO TALK TO

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### 1. Your Spouse and Family

This may be stating the obvious, but before you make a decision to retire or change paths, it is a good idea to discuss this with your spouse and family. Your change in occupational circumstance will change the hours you keep, your income, your lifestyle and possibly your personality. If you have been thinking about making a change quietly to yourself, your decision may come as a complete shock to your spouse or family. It's a good idea to involve them in the planning stages and not spring your retirement on them as *a fait accompli*.

### 2. Your Staff

Good staff are hard to find. Good staff are also observant and perceptive. They may notice that you are thinking of winding down or closing your practice. This may make them feel insecure. They may even start looking for a new job, leaving you with potentially having to train new staff in the last year or so of your practice. If you are seriously thinking about retirement or you have made a decision to retire in six months' time, or in two years, etc. do your staff the courtesy of letting them know. Let them help you plan the wind down and you in turn can help them to explore employment opportunities that will be available to them after you retire. If you are thinking of selling your practice or enticing another lawyer into taking it over, having good staff stay with the practice adds to its appeal.

### 3. Lawyers' Health & Wellness Program

Consultation with a trained counselor during a period of transition is always a good idea. Lawyers' Health & Wellness Program is a free and confidential assistance program available to members of the Law Society of Manitoba. It offers a maximum of twelve sessions per family per year to practising lawyers in Manitoba. Manitoba Blue Cross Employee Assistance Centre provides this free and confidential service through a contract with the Law Society of Manitoba. Your identity and the nature of the personal matters discussed with counselors are confidential. Blue Cross will not disclose any information to the Law Society of Manitoba, other than blind statistical usage reporting. Blue Cross will schedule appointments to avoid encounters with other lawyers.

The service is available to all practising lawyers and you will remain enrolled in the Lawyers Health & Wellness Program for a period of six months after changing from practising to non-practising or inactive status. The service is free to eligible members and their families. The Blue Cross counselor can help you while you decide whether it is time to leave practice and assist you during the transition.

For more information contact Employee Assistance Centre, a Division of Blue Cross at 599 Empress Street, Winnipeg, R3G 3P3, phone line 204-786-8880, or toll-free phone line 1- 800-590-5553 (within Manitoba) or Hearing Impaired Line 204-775-0586.

## **4. Other Professional Advice**

If you were acting for a business person who was thinking of retiring, you would urge that person to seek the advice of other professionals, including an accountant, a financial advisor, a business valuator, etc. You should take your own advice and consult with these other professionals. There are various financial considerations to consider, not the least of which is advice on the tax consequences you might face on retirement. Getting advice is important whether you are a solo practitioner, sharing space, working for your own law corporation or retiring from a partnership.

If you are retiring from a partnership, really read over your partnership agreement before you give notice. You should consider retaining outside counsel to interpret what it really says, (not just what you thought it said). If leaving a partnership, you will need to consult with a competent accountant as the tax and financial ramifications may be complicated, depending on your partnership agreement and your personal situation.

What do you do with law corporations and limited liability partnerships and holding corporations? If this is not an area of law in which you practised, you may not want to experiment on yourself. You should seek information and advice from your accountant and from a lawyer who has some expertise on terminating law corporations and winding down LLPs.

This material will not deal expressly with the sale of a practice. If you are thinking about selling your practice, it makes sense to have an impartial professional review this idea with you. Your own perception of the value of your practice is too subjective.

In recent years, a number of lawyers have tried to sell their practices without success. You should not count on being able to sell your practice as a going concern or on selling it for enough money to retire on the proceeds. You should speak to an accountant to consider valuation, taxation and other accounting issues.

## **5. Practice Management Advisor**

Barney Christianson has been retained by the Law Society of Manitoba to be its Practice Management Advisor. Practice advisory services are free of charge and cover a broad range of practice management areas. Barney, a past Law Society president, is currently practicing law and has decades of experience running a law practice. He is frequently consulted by

lawyers who are thinking of retiring, winding-up their practice or changing the direction of their work life. Barney has amassed much useful practice management information, has real life experience in practice and is available to you as an advisor or a sounding board if you are thinking of retiring or winding down your practice. Barney can be reached by phone in Portage la Prairie at 1-204-857-7851 or by e-mail at [barney.christianson@gmail.com](mailto:barney.christianson@gmail.com) .

## C. ADVISE THE LAW SOCIETY OF YOUR PLANS

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### 1. Your Membership Status

Once you are registered on the rolls of the Law Society, you remain a member of the Law Society of Manitoba until your death or until you are disbarred or permitted to resign as a result of disciplinary proceedings. At any time, your status as a member of the Law Society of Manitoba is either practising, or non-practising, or inactive.

If you are a practising member when you retire, you must apply to change your member status to non-practising or inactive or you continue to be liable to pay the annual practising fees, the contribution to the Reimbursement Fund and the annual insurance fees. See the [Application to Withdraw from Practice forms on the Law Society's website](#).

If you want to continue to get the Law Society's publications and have access to the Members Portal, and/or you want to continue to have access to the Law Library, you should choose to change your status to non-practising and pay an annual fee (at this writing it is \$105).

If you do not want or need those benefits, you should choose to change your status to inactive.

You remain a member of the Law Society of Manitoba even when you are non-practicing or inactive, but you do not have the right to practice law. Therefore, when you apply to the Law Society to change your status of membership to non-practising or inactive, you must sign a written undertaking not to practice law. (See Rule 2-73) You will find the form of undertaking on the *Application to Withdraw from Practice* forms on the Society's website. You must print, sign and return the original form to the Law Society because of the written undertaking.

If you are also a Notary Public, you retain your position as a Notary even after you retire from active practice but be sure to notify Consumer and Corporate affairs of any change in your address in case someone needs to verify your signature as a Notary.

Depending upon the date you apply to withdraw from practice, you may be entitled to a pro-rated refund of your practising fee and your contribution to the professional liability claims fund.

## 2. If You are a Sole Practitioner

As a sole practitioner, you should give the Law Society the name of another lawyer who has agreed to assume conduct of your practice should you become disabled or die long before you even consider retirement.

### a) Name a Lawyer to Take Control of Your Practice

The Annual Member Report which you will find in the [Member Portal](#) has a section that asks you, as a sole practitioner, to:

*Please advise of the name and contact information of another member(s) 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. Note that completing this section may save you or your estate costs.*

The section in the report gives you space to name a first and second option.

While your request is not binding on the Society and, of course, the right to choose new counsel rests ultimately with each client, the Society will at least have your wishes available in the event you are suddenly incapacitated. Having another lawyer immediately available to discuss short-term arrangements instead of leaving these issues for your family to sort out eases their burden as well.

[Practice Direction 89-04: Death or Disability of Sole Practitioners](#) urges you to have arrangements in place to have another lawyer assume conduct of your law practice in the event of your death or disability. This allows emergencies to be dealt with quickly and on short notice and benefits both your clients and your family. Otherwise, there will be delay and there is an expense in appointing a lawyer to wind down your practice that will be charged to you or your estate in all but the most exceptional circumstances.

If you haven't made arrangements with another lawyer to assume conduct of your practice, the Law Society must apply to court for an order to assume custody of your practice and to appoint a lawyer to act as the custodian to wind up your practice. If the Society is required to obtain a custodial order and appoint a custodian to wind down your practice, the cost can be considerable. As a result of increasing custodial costs, the Society, pursuant to s. 62 of *The Legal Profession Act*, will charge the cost of the custodianship to your estate (unless the charge will create serious hardship). You are therefore strongly encouraged to arrange for someone to care for your practice.

## **b) File the Application to Withdraw from Practice (Sole Practitioner)**

The Law Society has to ensure that your clients' interests are protected when you decide to withdraw from the practice of law. Therefore, under Rule 2-74, when you want to retire, you must inform and get the Law Society's approval of your intended disposition of all your files, original client documents, other valuables and your trust accounts and trust money. You do that by printing, completing, signing, and filing the **original** form [Application to Withdraw from Practice \(Sole Practitioner\)](#)" with the Law Society. You can find the form on the Law Society website.

The **Application to Withdraw from Practice (Sole Practitioner)** form asks you to give:

- Reasons for withdrawing from practice;
- Your new contact information;
- Confirmation that you have dealt with all client matters related to your law practice;
- Confirmation that your trust accounts are closed or will be closed within 90 days of the application to withdraw. The audit department may need further information from you depending upon your circumstances and you must undertake to cooperate with them;
- Confirmation that you have reported any potential or actual claims against you for negligence;
- Confirmation that you understand you must complete the final Annual Member Report for the calendar year in which you last practiced.

If you have paid your practising fees for the year, when you retire, you may be eligible to receive a prorated refund. You can indicate on the form to whom any refund may be payable.

Because the [Application to Withdraw from Practice \(Sole Practitioner\)](#) includes your written undertaking not to practice law in Manitoba once you become a non-practising or inactive member, you must print, complete, sign, and return the **original** application to the Law Society. Please note: any refunds of pro-rated fees are issued based on the date the Application to Withdraw is received at the Law Society's offices.

### 3. If You are Not a Sole Practitioner

#### a) File the Application to Withdraw from Practice

If you are a lawyer in a large or small firm, in-house counsel or employed by a government agency, you must notify the Law Society and complete and file an [Application to Withdraw from Practice \(Leaving a Firm/Employment\)](#). You can find this form with the other forms on the Law Society website. Because the **Application to Withdraw from Practice (Leaving a Firm/Employment)** form includes your written undertaking not to practice law in Manitoba once you become a non-practising or inactive member, you must print, complete, sign, and return the **original** application to the Law Society. Please note: any refunds of pro-rated fees are issued based on the date the Application to Withdraw is received at the Law Society's offices.

You must provide the Law Society with your new contact information, such as the physical address, telephone number and email address where you can be reached once you withdraw or retire from practice. This information is needed by the Law Society for a variety of reasons, but is most commonly used to reach you when the Law Society is contacted and asked to assist your former clients or their new lawyers to discuss or obtain a file.

#### b) Do You Practice Through a Limited Liability Partnership?

If you have been practising law through a Manitoba limited liability partnership and you are a partner in the LLP or own voting shares in a law corporation that is or has been a partner of the LLP, you must advise the Law Society in writing of the change (see **Rule 3-57**).

##### ***Change in particulars***

**3-57** A LLP must immediately inform the chief executive officer in writing of:

(a) any change in the particulars set out in the applications filed under rules 3-47 and 3-50;

(b) any cancellation or expiration of its registration or any failure to renew its registration; and

(c) the dissolution or winding up of the partnership.

## c) Do You Practice Through a Corporation?

You must consider what happens to your law corporation when you retire.

Section 32(1) of *The Legal Professions Act* says that the voting shares of the law corporation must be legally and beneficially owned by a practising lawyer or a law corporation. Once you are no longer a practising lawyer, the corporation's permit can be suspended or revoked.

If you remain a director or an officer of the corporation for more than 14 days after you cease to be a practising lawyer or if you remain as a voting shareholder of the corporation for more than 90 days after you have ceased to be a practising lawyer (or for any longer period as may be allowed by the CEO of the Law Society), the law corporation's permit will be revoked.

If you have been practising through a law corporation, when you are planning to withdraw from practice, you should review Part 4 of the Law Society Rules which deals with Law Corporations.

### ***Application for permit***

**4-3** *A corporation applying for a permit under subsection 32(1) of the Act must deliver to the chief executive officer: (a) a completed permit application; (b) a copy of all articles of incorporation and amendments thereto; (c) a current certificate of status for the corporation; and (d) the required permit fee.*

### ***Change in particulars***

**4-4** *A law corporation must inform the chief executive officer of any changes in the particulars set out in the application filed under rule 4-3 by providing the chief executive officer with a statement of particulars within 15 days of the change.*

You must contact the Law Society with any change in the particulars of the law corporation (Rule 4 -4) by filing a [Notice of Law Corporation Changes form](#), found on the website, within 15 days of the change. For more information about law corporation procedure and the Law Society, please contact Debbie Rossol at the Law Society offices, 200-260 St. Mary Avenue, Winnipeg, MB, R3C 0M6 by email at [drossol@lawsociety.mb.ca](mailto:drossol@lawsociety.mb.ca). You should do this well in advance of your retirement.

Because the circumstances of every retiring lawyer and every law corporation will differ, you should seek professional advice on the transition of your law corporation and how it will affect your personal tax situation. Once your corporation loses its

status as a law corporation, there will be financial and tax ramifications which you should review with your accountant. If there is excess income in your law corporation, you need to seek professional advice on how your former law corporation can operate in your retirement.

## D. WHAT TO DO ABOUT YOUR TRUST ACCOUNTS

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If you are withdrawing from the practice of law, whether you are retiring or simply taking an extended leave, you must inform the Law Society in advance, apply to change your practicing status and give a written undertaking not to practice law in Manitoba while you are not a practising member. If you have a trust bank account, you must take steps to deal with it as well.

If you are a trust account supervisor of a sole practice or of a firm that is disbanding, [Law Society Rules 5-50\(2\) and 2-74\(2\)\(b\)](#) require that within 3 months after withdrawal from or winding up of a practice the member or law firm must close out the trust account(s) and confirm to the Law Society (Audit Department) that:

- all balances in trust have been remitted to the clients; **or**
- with the consent of the client, trust money has been transferred to another lawyer; **and**
- any net interest on the pooled trust account(s) has been remitted to the Manitoba Law Foundation.

Your final requirements for dealing with your trust accounts will be determined by the audit department, based on your audit history.



### Practice Tip:

If you are a sole practitioner who is withdrawing from practice or a member who is withdrawing from practice and your firm is disbanding or is unwilling to undertake to assume responsibility for your files and trust accounts, then you must also

- submit to and get approval from the Law Society of your plans for dealing with all client files and property in your possession, **(Rule 2-74(1)); and**
- within 3 months after withdrawing from practice, confirm the disposition of all files and other property in your possession in accord with the plans you submitted or detail the changes and the reasons; **(Rule 2-74(2)(a)) and**
- file a final report in a prescribed form on the termination of your practice no later than 4 months after all your trust accounts are closed, **(Rule 5-50(1)(a)); and**
- if you were acting in a representative capacity, provide written notice of your withdrawal from practice to those persons in accordance with **Rule 5-50(1)(b).**



**Note:** If you do not comply with Rule 2-74, it may cost you. Rule 2-74(5) provides that the Law Society may require you to pay expenses incurred to wind up your practice (which could include the appointment of a custodian) and expenses for storing and disposing of the files, documents and other property relating to your practice.

## E. WHAT TO DO WITH YOUR OPEN FILES

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Well in advance of your date to withdraw from practice, you should decide when you will stop taking on new clients so that you can deal with the requirements of winding down your practice. Although it is always hard to turn down work or to disappoint loyal clients, leaving practice halfway through an open and active file is unfair to the client, who must then pay to bring a new lawyer up to speed. It will take a substantial amount of time for you to wind down your practice if you are a busy practitioner, and many retired lawyers say that the process of winding down the practice took much more time than was expected. Some lawyers who are planning to retire do it over a year or two by gradually reducing their client load and their work week.

### 1. If You are Selling Your Practice to Another Lawyer

- Write to your current clients well in advance to notify them that you will be retiring;
- If you have made arrangements with another lawyer to purchase your practice, you may advise your clients of this, but you must also advise your clients that they have the right to retain new counsel of their choice;
- Make sure you discuss possible conflicts between your clients and the clients of the lawyer taking over your files prior to transfer. A sample letter to the client is included in these materials;
- Bill any outstanding work in progress;
- Make arrangements about whether the new lawyer will collect and remit your accounts receivable or you will attend to that yourself; and
- After you have retired and no longer maintain a practising certificate, you may still prepare and forward statements of account and collect fees from clients for work you did during the time you were practising.

### 2. If You are Leaving a Firm that will Continue to Exist

- Speak to the managing partner about whether the firm will assume responsibility for your client matters and related trust monies. If the answer is yes, then write to your clients to notify them you will be leaving practice and tell them that the firm will be happy to continue to represent them unless they would prefer to take their legal matter to a different law firm. Ensure clients understand that it is their choice of counsel that will govern – and explain that only conflicts of interest may prevent a new lawyer from accepting the file;

- If the client chooses to leave the firm, ensure they know that you will forward their file to any lawyer they choose provided they either send in a written authorization for you to send the file and any trust balance to the new lawyer, or they can pick up their file and trust money and take it anywhere – warn them if there are any deadlines or limitation dates that they must meet;
- Make arrangements with your firm about collecting your outstanding accounts and remitting any money owed to you;
- After you have retired and no longer maintain a practising certificate, you may still prepare and forward statements of account and collect fees from clients for work you did while you were practising; and
- If a client wants to take the file to a new lawyer and there is an account receivable, review the rules about your obligations to the client's interests – think about it before you insist on a solicitor's lien – it may be more trouble than it is worth to collect on small amounts before releasing the file – it may be better to work out a payment plan with the client's new lawyer.

### **3. If You are Leaving a Law Firm that is Disbanding or is Not Willing to Take Over Conduct of Your Client's Matter**

- Write to your current clients well in advance to notify them that you will be closing your practice. Tell them they will need to get a new lawyer. Ask for their written authorization to transfer their file and any monies held in trust to their new lawyer; and
- Work with your Trust Account Supervisor to review and update your accounting records:
  - a) Make sure that all trust transactions have been entered in the accounting records for the client and place a copy of the client's trust ledger on their file (electronic or paper)– a copy of the client's trust ledger ((electronic or paper) must be included on files that are closed AND on files that are being transferred to new counsel; and
  - b) Make sure that all general transactions have been entered in the accounting records (ie. to properly reflect the accounts receivable).

## 4. Bill Work in Progress

- Review all your time records and files to bill them to date;
- Prepare and send out your final statement of accounts for work in progress and outstanding disbursements to the date you stop work on the files. This should be straightforward for files that are billed on an hourly basis;
- If the billing is on a contingency fee basis, refer to the provisions of the contingency contract relating to the amount to be paid if you withdraw before the matter is completed. If the contingency contract does not provide for this, you should try to reach agreement on fees with your client and the client's new lawyer. Otherwise, *quantum meruit* arguments will have to be made and you may need to pursue a claim in court;
- Collect your accounts receivable;
- If necessary, you may assert a solicitor's lien over a file, but since this will defeat your intention of disposing of your practice, it is generally wiser for you to make payment arrangements with the client or the client's new lawyer and release the file once the payment agreement is reached;
- After you have retired and no longer maintain a practising certificate, you may still prepare and forward statements of account and collect fees from clients for work done while you were practising to the date of your retirement; and
- On Legal Aid files obtain your client's instructions as to any choice of new counsel then send back the Legal Aid Certificate with your bill and ask Legal Aid to appoint a new lawyer.

## 5. Memo Active Files

- It is helpful to prepare a file memorandum for each file being transferred to new counsel, setting out the nature of the file, work remaining to be done, and noting any important deadlines, such as limitation dates, examinations for discovery, and hearing dates. New counsel will appreciate your help and the memo will make it less likely that an error will arise in the transition to new counsel, thus avoiding insurance claims and complaints to discipline. A sample memo from the Law Society of Upper Canada (now Law Society of Ontario) is included at the end of this document;
- If there are imminent dates, you should discuss how to proceed with your client and the client's new lawyer. If necessary, notify your client and opposing counsel, and seek instructions to obtain adjournments or extensions of time;
- If you have any concerns that a file might result in a complaint or professional liability claim against you, then you should make a copy of the file (at your own cost)

prior to returning it to the client or transferring it to a new lawyer. You cannot assume that it will be surrendered to you for your review at some future date or that it will remain in the same state it was when you turned it over to the client or new lawyer, so making your own copy before you transfer it is considered the best idea;

- make a copy of any file where there is potential for a negligence claim and arrange for storage of it, all at your own expense;
- notify the [Law Society insurer](#) of any potential claims;
- If you are counsel of record on a civil litigation file, make arrangements to get off the record, after consulting with your client (See the Queen's Bench Rules);
- For criminal cases contact the Crown and have your application to withdraw added to a docket, again, after consulting with your client;
- You should seek instructions from your corporate clients for new addresses for their corporations and notify the Companies Office of these address changes by filing a [Notice of Change of Registered Office Address form](#) which you can currently do online. You will continue to be responsible for any corporate records where instructions are not received to change the address, and you will have to continue to allow access to those records;
- If your practice is named as the place for service in any builders' liens, you should report a change of address to the Land Titles Office by filing a [Request/Transmission form](#).
- If you wish to advise the public and any clients that you have been unable to contact that you are retiring, post a prominent notice on your website that states that you will retire from practice as of a specific date and name a person who should be contacted after that date about files. You may also place an ad in a local newspaper if your clientele are more likely to see that than to browse your website.
- In the event that you are unable to return any original Wills to the client, then the Wills may be deposited with another lawyer for safekeeping. The Law Society must be advised as to the location of any original Wills that have not been returned to the client when you submit your [Application to Withdraw from Practice](#) (form available on the Law Society website).

## F. WHAT TO DO WITH CLOSED FILES

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Even after you have ceased to practice, you need to look out for those closed files.

When deciding what to do with closed files, first review [Practice Direction 91-01](#) **Destruction of Closed Client Files**. Then go through your closed files to determine whether they should be stored, destroyed, returned to the client or transferred to a lawyer who will be assuming ongoing files.

[Law Society Rule 2-74](#) requires that you notify the Law Society of Manitoba in writing and obtain approval of your intended disposition of all open and closed files, Wills, titles and valuable documents, and all records and other valuables which relate to your practice and are within your possession or control.

Lawyers often call the Law Society to ask how long they are required to keep a closed client file before destroying it. Although there is no statutory requirement for how long you must retain a closed file, **ten years from its date of closing is a common guideline**.

[Law Society Rule 5-54\(1\)\(a\)](#) requires that trust account books and records be retained for at least ten years. The Professional Liability Claims Fund files are kept for a minimum of ten years from the date the files are closed, after which they are again reviewed and a decision made on whether or not they can then be destroyed.

**These are minimum suggestions only.** You must exercise your own judgement based on your knowledge of the file.

When deciding whether to destroy a file you should consider criteria such as statutory requirements (ie. *Canada Income Tax Act*, *Canada Evidence Act*, *The Limitation of Actions Act*), the likelihood of professional negligence claims, and client needs. Canada Revenue Agency imposes minimum requirements for maintaining trust account records as well.

Remember that a professional liability claim can be brought against a lawyer up to six years from the date the error was made or, on application to the Court, the limitation date can be extended.

### ***The Limitations of Actions Act***

#### ***Extension of time in certain cases***

[14\(1\)](#) *Notwithstanding any provision of this Act or of any other Act of the Legislature limiting the time for beginning an action, the court, on application, may grant leave to the applicant to begin or continue an action if it is satisfied on evidence adduced by or on behalf of the applicant that not more than 12 months have elapsed between*

*(a) the date on which the applicant first knew, or, in all the circumstances of the case, ought to have known, of all material facts of a decisive character upon which the action is based; and*

*(b) the date on which the application was made to the court for leave.*

(See also *Rarie v. Maxwell*, [1998 CanLII 17675](#) (MB CA))

Of course, a claim can always be brought – whether it has merit or not - long after the file giving rise to the claim has actually been closed. It's always the insurer's preference to have your original file (or an accurately scanned version of it) to defend you against allegations of professional negligence, so consider that too when deciding whether and when to destroy a file.

Whether or not a file should be destroyed - after ten years or longer – may depend on the type of legal matter and your own judgment as to the likelihood of an eventual complaint about the quality of services provided. As an example, in criminal matters, there have been successful actions alleging wrongful conviction. So, if you have acted on a criminal file, you may want to assess the likelihood of a wrongful conviction proceeding being commenced at some future point before you set a destruction date for that file. On such "risky" files, you might consider maintaining the file indefinitely.

Ultimately, you have to use your own discretion and professional judgment when determining whether it's appropriate to destroy a closed file.

## G. PROPER PROCEDURE FOR DESTRUCTION OF FILES

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[Practice Direction 91-01](#) (first created in March of 1991 and then amended in 2004 and available on the Law Society website) recommends that, when you decide that it is appropriate to destroy a closed file, the following procedures should be adopted:

- Every file to be destroyed should be reviewed briefly by a lawyer or an articling student. It is not appropriate to delegate this task to a paralegal or secretary.
- The file should be checked for valuable documents such as original Wills or Certificates of Title that may have been inadvertently retained on a closed file. You should return client property held in safekeeping to the owner. If you retain any original wills on file and are unable to locate the Testator/Testatrix, you should be aware that the Wills Registry at the Court of Queen's Bench office was discontinued in August, 2000. While the Queen's Bench office retains the wills that they accepted prior to August 2000, they will not accept any new documents. This is something you should consider in deciding whether to retain original wills in the first place.
- Any other original documents or papers which are properly the property of the client should be removed and returned to the client. Ideally, this procedure will have been performed at the time the file was closed, but if it was not, it should be done before the time of destruction. See *Bank of Nova Scotia v. Imperial Developments* [1987 CanLII 5358 \(MBCA\)](#).

*[9] In Manitoba, once a file has been closed and a reporting letter sent out, the file that is retained by the solicitors has always been regarded as belonging to the solicitors. Any client's documents, such as a will, held by the solicitor is always kept separate from the closed file; the documents remain available to the client on call at any time. I question the propriety of closing a file which contains documents mixed together, some the solicitor's property and some the client's property. It is common practice in this province for solicitors to destroy their files after an appropriate period of time has elapsed. No solicitor dreams of asking his former clients for permission to destroy the closed files. This is because the clients have no proprietary interest in the solicitors' files once they are properly closed.*

- Files should be shredded or similarly destroyed before discarding, so as to protect confidential information. If you entrust the task to a professional shredding service outside the law firm, you should exercise an appropriate degree of care, control and supervision when transferring custody of the files to the service.



### Remember:

**Practice Direction 91-01** states that original documents or papers which are the property of the client should be removed and returned to the client – ideally, and to avoid future complications, this should be done at the time the file is closed, but if you are retiring and have not done this, you must do it before you retire.

## H. UNDERTAKINGS AND OTHER CONTINUING OBLIGATIONS

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### 1. Trust Conditions

You should consider whether you have any ongoing obligations, such as undertakings on any of your open files, and you must make arrangements to be relieved of them or to have them transferred to another lawyer.

### 2. Wills Where You are Executor or Trustee

Wills should also be reviewed to determine whether you have agreed to act as Executor or Trustee. If so, you may still wish to act in that capacity. If not, consider asking the Testator/trix to revise the Will or add a Codicil to appoint someone else. If you are acting as Executor or Trustee after you retire, remember you will not have the benefit of professional liability insurance coverage for your services.

### 3. Trust Account Records

You must retain your trust and general account records for no less than 10 years. (See [Law Society Rule 5-54\(1\)](#)).

### 4. Corporate Records

Corporate records must be kept for 6 years after dissolution of the corporation under *The Corporations Act* section 218(1), or a court may order a shorter period of retention under section 216(5).

#### **Custody of records**

218(1) A person who is granted custody of the documents and records of a dissolved corporation remains liable to produce the documents and records for six years following the date of its dissolution or until the expiry of such other shorter period as may be ordered under subsection 216(5).

# I. WHAT TO DO ABOUT FINANCES

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You should review your trust accounts. After billing clients and deducting fees where appropriate, either return trust money to your clients or, on your client's direction, transfer these funds to the lawyer who will be assuming the client's ongoing file, together with a copy of the client trust ledger for the matter. Remember to deal with any specific trust investment account(s) as well as the pooled trust account(s).

If trust monies are being held pursuant to agreements with or undertakings to third parties, the consent of those parties will be needed before the monies can be transferred.

If you have been holding any unclaimed trust money for more than three years, you may pay the funds to the Law Society pursuant to section 51 of *The Legal Profession Act*:

## **Unclaimed trust money**

51(1) A member who has held money in trust for more than three years may pay it to the society if

- (a) the money is not attributed to any person in the member's or corporation's records; or
- (b) where the money is attributed to one or more persons in those records, but all reasonable efforts to locate the persons have failed.

When all the trust monies have been disbursed, inform your financial institution that the trust account(s) can be closed. Obtain written confirmation from the financial institution that the account is closed and ensure the confirmation includes both the account number, and date of closure. You must provide this written confirmation from the financial institution to the Law Society Audit Department.

If you maintain your trust bank account at a **credit union**, there may be the issue of **surplus shares** to be resolved. Credit unions typically issue patronage dividends annually in the form of shares, which are credited to the member's account. Depending on the individual credit union, a percentage of the surplus share account may be paid in cash annually and the remainder stays in the surplus share account until the account is closed. These funds are similar to the interest contemplated by s. 50(2) of *The Legal Profession Act*.

## **Interest to foundation**

50(2) Interest earned on the pooled trust account belongs to The Manitoba Law Foundation. The member responsible for the account must direct the financial institution where the account is kept to remit the interest, less accrued service or other charges pertaining to the operation of the account, to the foundation.

Therefore, when closing your trust bank account, the funds accumulated in any surplus share accounts should be remitted to the Manitoba Law Foundation.

You should review your accounts receivable and follow-up on balances which may still be collectable. Also investigate any credit balances in accounts receivable as this may suggest the client is owed a refund.

Pay any outstanding firm liabilities including payroll, G.S.T., etc. Determine whether it will be necessary for you to leave open a general account with a reserve to satisfy any outstanding obligations or for receipt of any accounts receivable after the closure of your practice.

## J. WHAT TO DO ABOUT YOUR STAFF

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Give your staff sufficient notice of termination or compensation in lieu of notice. Verify the statutory notice requirements of the *Employment Standards Act*.

Make arrangements to cancel or otherwise deal with any benefit plans for your employees.

Direct an accountant or bookkeeper to prepare Records of Employment, calculate all necessary vacation pay or other benefits accrued, prepare T4 slips and make all necessary remittances to Revenue Canada.

If you have an articling student, make sure that you have given the student enough advance notice to find a new principal and to have the new principal approved by the Law Society. You must also complete a Certificate of Completion of Articles form for the period of time you served as the student's principal.

## K. WHAT TO DO ABOUT YOUR PREMISES AND OFFICE EQUIPMENT

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Contact your landlord at the earliest possible date and, if necessary, make arrangements to sublet rented premises or to assign the lease.

Because it is unlikely you will find a purchaser, you may want to contact the Faculty of Law, community colleges and school libraries to see if anyone would be prepared to accept any of your books as a donation.

Dispose of your office furniture and equipment. Consider placing an advertisement in *Headnotes & Footnotes*.

Make sure all hard drives on computers, photocopiers and fax machines on both leased and owned office equipment have been scrubbed so that you do not inadvertently breach client confidentiality. Don't just delete files from your computer. Use data destruction software to be sure all data is wiped from the hard drive.

Where equipment has been leased, contact leasing companies to terminate leases and maintenance agreements or to arrange assignments. When neither cancellation nor assignment is possible, you will need a pool of funds sufficient to continue the payment on the leases or to pay them out.

Cancel your subscriptions to reports and journals both online and in print.

Send written notification to all suppliers advising them that the practice will be closing and give them contact information for any future correspondence or interactions.

Notify public utilities, give final readings on your building and give your future contact information.

Contact your insurance broker to discuss terminating your property and general liability insurance, and obtaining insurance coverage for your stored files and records.

Arrange to have your telephone calls and mail forwarded or monitored by any replacement lawyer. Have an auto-reply set up on your email and phone line that states that you have retired, the date you retired and gives contact information for any further questions.

## L. WHAT TO DO ABOUT PROFESSIONAL LIABILITY INSURANCE

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Coverage under your professional liability insurance program will continue, free of charge, for future claims covered by the program arising from professional services rendered while you were insured, subject to the terms, conditions and limits in place at the time the claim is reported. Claims might come out of the woodwork after you retire. You continue to be responsible for the legal services you provided for others prior to retirement. Manitoba's Professional Liability Insurance Policy provides \$1 Million in automatic tail coverage for work you did as a lawyer provided you were insured at the time you did the work.

If a claim is brought forward after you retire from practice but arising out of work you did while you were a practising insured member of the Law Society of Manitoba, you are still provided protection under the Law Society's mandatory insurance program, even if that claim does not come to light until many years after you have retired. If you learn of such a claim after you retire, contact the Law Society immediately.

Retired lawyers also have an option to purchase excess insurance of more than \$1 million on an individual basis, to address any unforeseen circumstances that may develop after retirement. If at the time you retire, you are purchasing excess insurance from CLIA's Voluntary Excess Program, either as a sole practitioner or a member of a firm, you now have the option to purchase a special excess package which continues to cover retired members for claims in excess of \$1 million. If you have excess insurance through CLIA, you should contact the Law Society to inquire about "tail coverage" for claims over \$1 million.

## M. WHAT TO DO IF YOU WANT TO RESUME ACTIVE PRACTICE

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If your plans change and you wish to resume practice, then you must apply to do so by completing and filing an [Application to Resume Active Practice](#) together with the applicable fees and supporting documentation. (See **Law Society 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 practicing 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.

## N. WHAT TO DO IF YOU STILL HAVE QUESTIONS

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If you have any questions about retirement and winding up your practice, contact the Law Society for assistance.

<https://lawsociety.mb.ca/about/contact/>



### Mailing Address

200 – 260 St. Mary Ave.  
Winnipeg, Manitoba  
R3C 0M6

[MAP](#)

Telephone: 204-942-5571

Toll-free: 1-855-942-5571

Facsimile: 204-956-0624

Email: [admin@lawsociety.mb.ca](mailto:admin@lawsociety.mb.ca)

### Office Hours

Monday to Friday  
8:30 a.m. – 5:00 p.m.

## O. TRANSFER MEMO TO FILE OR NEW LAWYER

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*(Sample from LSO – Modify as Appropriate)*

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MEMO TO:

NAME OF FILE:

FILE NUMBER:

DATE:

NOTE: *(limitation periods, appearance dates, and outstanding obligations)*

I was retained by client (X on date) with respect to the following:

*(List all items and include the retainer letter)*

A summary of the history of this matter is as follows:

*(Summarize the relevant facts and the history of the case to present. Include details of litigation, negotiations, etc.)*

The client's position on each issue is:

The opposing side's position on each issue is:

Any other relevant information:

In accordance with the client's instructions, I have transferred the file to you.

or

I have not been able to reach the client and have sent the file to you.

## P. LETTER TO CLIENT: YOU ARE WITHDRAWING FROM PRACTICE/CLOSING OFFICE

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*(Sample – Modify as Appropriate)*

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Dear (Name of Client)

Re: *(Name(s) and number(s) of client file(s))*

As of **(date)**, I will retire from law practice/ close my law firm due to *(provide reason, if possible)*. I will no longer practice law after that date, so I will be unable to continue to represent you on your legal matter(s).

I recommend that you hire another lawyer now to handle your case for you. You can select any lawyer you wish. If you want, I can give you a list of lawyers who practice in the area of law relevant to your legal needs. Or, you may choose to contact the Law Phone-In & Lawyer Referral Program, by phone at 204-943-2305 or toll free 1-800-262-8800 (from outside Winnipeg only) to get a referral to a new lawyer.

It is very important that you hire a new lawyer as soon as possible so that your legal interests are protected without interruption. *(Insert appropriate language regarding time limitations or other critical time lines your client must meet.)*

Once you have chosen your new lawyer, please send me your written authority to transfer your file. If you prefer, contact me and make arrangements to come to our office to pick up your file and deliver it to your new lawyer yourself. You must either pick up your file, or give me the name of your new lawyer by *(insert date)*. I will no longer practice law after that date.

Within the next (fill in number) weeks I will provide you with a final accounting of your funds in my trust account and any fees you may owe me or a cheque for the balance to be refunded to you. Please contact me if you have any questions or concerns.

You will be able to reach me at the email address and phone number listed on this letter until (date). After that time, you or your new lawyer can contact the Law Society of Manitoba at 204-942- 5571 for my contact information.

Sincerely,

(Lawyer) (Firm) (Contact information)