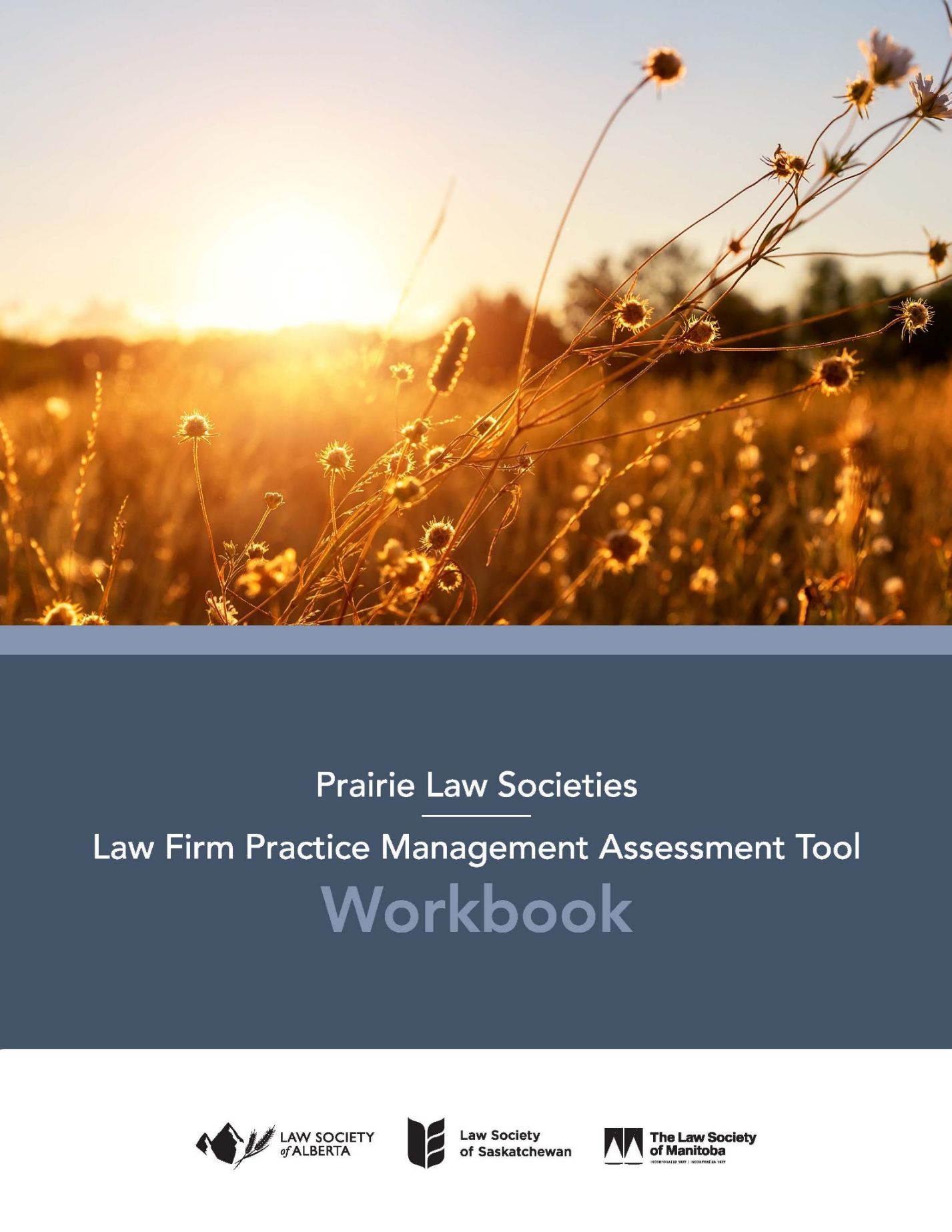


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| Prairie Law Societies  Practice Management Assessment Tool  Workbook for Multi-Lawyer Firms |



**Last Updated:** May-16-2023

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# Practice Management Assessment Tool and Workbook

**For Multi-Lawyer Firms**

This is the Law Society of Manitoba’s version of the Prairie Law Societies Practice Management Assessment Tool Workbook, developed in conjunction with the Law Societies of Alberta and Saskatchewan. The Assessment Tool and Workbook are intended to help law firm’s identify gaps in policies and procedures to manage risk and improve practice management, where necessary.

Firms are encouraged to contact the Law Society with any questions regarding the content and use of the Assessment Tool, the Workbook, or any of the referenced resources. We are here to provide support for firms.

**Principles and Objectives**

Seven Practice Management “Principles” that represent key aspects of professional, ethical firm practice are the cornerstones of the Assessment Tool and workbook.

Each Principle groups together a set of related “Objectives” which reflect the outcomes that firms should strive to achieve.

While many Objectives relate to individual duties of lawyers under the *Code of Professional Conduct* (Code), keep in mind that the aim of this tool is assisting the law firm to improve practice management and develop a firm culture that promotes adherence to the *Code* generally. Nothing in the Assessment Tool and workbook abrogates the individual responsibilities of lawyers under the *Code*.

**Practices**

Each Objective includes a detailed list of example “Practices” that highlight regulatory requirements and provide guidance on the types of policies, procedures, processes, methods, steps, and systems that a prudent law firm might employ to satisfy each Principle.

When considering the firm’s performance with respect to the Objectives under each Principle, you should reflect on the related Practices that are provided as guidance for measures that could be put in place to improve performance. The Practices the firm ultimately decides to use will be dependent on type and size of the firm’s practice.

**Assessment and Rating**

The Assessment Tool and Workbook invite you to assess the firm's implementation of each of the Practices grouped within an Objective on a scale of 1 (resources/support needed) to 5 (no support needed).

An average of those ratings can then be used to apply an overall rating for that Objective, and an average of a group of Objective ratings to apply an overall rating for that Principle.

**Resources**

An up-to-date list of relevant linked resources follows each Objective to help support you in addressing any identified gaps in policies and procedures, to manage risk, or to improve practice management, where necessary.

# Terminology

The following table lists terms used throughout the workbook along with their definitions:

|  |  |
| --- | --- |
| Term | Defined as |
| ***Act*** | *The Legal Profession Act* |
| **ABA** | American Bar Association |
| **CBA** | Canadian Bar Association |
| ***Code*** | *Code* *of Professional Conduct* |
| **CPD** | Continuing Professional Development |
| **DR** | Sole practitioner or lawyer appointed as Designated Representative in accordance with the *Rules*. |
| **FLSC** | Federation of Law Societies of Canada |
| **LSA** | Law Society of Alberta |
| **LSBC** | Law Society of British Columbia |
| **LSM** | Law Society of Manitoba |
| **LSO** | Law Society of Ontario |
| **LSS** | Law Society of Saskatchewan |
| ***Rules*** | *The Law Society of Manitoba Rules* |
| **lawyer** | A member of The Law Society of Manitoba. |
| **MBA** | Manitoba Bar Association |
| **MCPD** | Mandatory Continuing Professional Development |
| **policies** | Documentation of the approach the firm employs to address a particular practice issue or area. Policies may include guidelines, protocols or procedures. Policies should be in writing, where possible. |
| **processes** | Includes a wide scope of unwritten practices, systems, methods, steps, principles, and other measures formulated or adopted by the firm that are intended to influence and determine the decisions and actions of the firm. |
| **staff** | Includes any individuals working in the law firm that are not lawyers, including legal assistants, administrative support staff, independent contractors, articling students, and law students. |

# Principle 1: Competence and Capacity

The overall goal of the Competence and Capacity Management Principle is to develop and continuously maintain a competent and ethical practice.

As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client’s behalf.

The following results-based objectives have been identified to support the goal for firms to develop and continuously maintain a competent and ethical practice.

|  |  |
| --- | --- |
| **Objective 1** | Lawyers have appropriate and current knowledge of both substantive and procedural law applicable to their practice areas. |
| **Objective 2** | Lawyers stay current on ethical obligations and issues. |
| **Objective 3** | The firm attends to the well-being of its lawyers. |
| **Objective 4** | Lawyers have a manageable caseload that allows for all clients to receive the expected quality of service. |
| **Objective 5** | Staff and independent contractors have current knowledge and skills sufficient to accomplish their work effectively and efficiently. |
| **Objective 6** | The firm attends to the well-being of its staff. |

## Objective 1: Current Knowledge

|  |
| --- |
| Lawyers have appropriate and current knowledge of both substantive and procedural law applicable to their practice areas. |

Issues relating to competence present risks for law firms – some insurance claims result from the failure to know or apply the law – but an individual’s capacity to deliver competent legal services can be impacted by several other factors, including continuing education, mentorship, appropriate supervision, and overall well-being.

The culture and infrastructure of the law firm where the lawyer practices can make a big difference when it comes to competence.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Lawyers subscribe to and read professional publications relevant to their practices, including:  * Reading case law and/or case summaries. * Subscribing to and reviewing electronic newsletters relating to practice areas. * Reviewing court notices. |  |
| 1. Lawyers attend in-person or online continuing professional development (CPD), events including:  * Bar association Section meetings/conferences. * National conferences. |  |
| 1. Lawyers fulfil yearly MCPD requirements, with a focus on prioritized areas of need. |  |
| 1. Lawyers have access to appropriate resources for legal research. |  |
| 1. The firm uses process-specific checklists for different types of legal matters to address issues and procedural requirements, where appropriate. |  |

Rating Objective 1: Lawyers have appropriate and current knowledge of both substantive and procedural law applicable to their practice areas.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.1 Competence (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=16)  [LSM: Mandatory Continuing Professional Development – Guidelines](https://lawsociety.mb.ca/regulation/education/mandatory-continuing-professional-development-cpd/)  [*Rules*: Part 2, Division 8.1 – Professional Development](https://lawsociety.mb.ca/wp-content/uploads/2020/01/LSM-Rules-Part-2-The-Law-Society.pdf#page=19) |
| Primary  [LSM: Lawyer Resources](https://lawsociety.mb.ca/for-lawyers/lawyer-resources/)   * [Education Centre CPD (live programs, recordings, and written resources)](https://educationcentre.lawsociety.mb.ca/) * [Manitoba Law Library](https://lawlibrary.ca/)   [LSM: Practice Area Fundamentals](https://educationcentre.lawsociety.mb.ca/practice-resources/practice-area-fundamentals/) |
| Additional  [LSM: News & Publications (Communique, eLex)](https://lawsociety.mb.ca/about/news-publications/) |

## Objective 2: Ethical Obligations

|  |
| --- |
| Lawyers stay current on ethical obligations and issues. |

Competence is founded upon both ethical and legal principles. Competence involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied.

Ethics are those value judgments and areas of understanding that differentiate right from wrong in the delivery of legal services and the day-to-day decisions required to practice in a way that reflects high moral standing and good character and sets an example for the public and other lawyers.

Ethical behaviour is characterized by appropriate decision-making that aligns with accepted morals and codes of conduct. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Lawyers attend ethics-focused programs and events. |  |
| 1. Lawyers read ethics notices and articles published by their regulator. |  |

Rating Objective 2: Lawyers stay current on ethical obligations and issues.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.1 Competence (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=16) |
| Primary  [LSM: Ethics & Professional Responsibility (webinars)](https://cpdonline.lawsociety.mb.ca/course/index.php?categoryid=2)  [LSM: Professional Responsibilities Practice Resources](https://educationcentre.lawsociety.mb.ca/practice-resources/professional-responsibilities/)   * [Trust Accounting](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/01/Trust-Accounting-Fundamentals.pdf) * [Anti-Money Laundering](https://lawsociety.mb.ca/for-lawyers/lawyer-resources/anti-money-laundering/) * [Equity](https://educationcentre.lawsociety.mb.ca/practice-resources/professional-responsibilities/equity/) * [Act, Rules & Code](https://lawsociety.mb.ca/regulation/act-rules-code-practice-directions/) * [The Legal Profession](https://educationcentre.lawsociety.mb.ca/practice-resources/professional-responsibilities/the-legal-profession/) * [MCPD Requirements](https://lawsociety.mb.ca/regulation/education/mandatory-continuing-professional-development-cpd/) |

## Objective 3: Lawyer Well-Being

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| --- |
| The firm attends to the well-being of its lawyers. |

The ability to deliver competent legal services can be affected by a person’s well-being. Addictions, mental and physical health issues and stress are often ignored in the legal profession. If left untreated, they may impact capacity to perform at work.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Lawyers are encouraged to avoid excessive overtime hours, and take weekends and holidays off work to rest. |  |
| 1. Lawyers are encouraged to allocate time for physical exercise, hobbies, family and friends. |  |
| 1. Lawyers are made aware of, and are encouraged to access, well-being resources available to the legal profession such as confidential counselling and peer support. |  |
| 1. The firm ensures the workplace meets health and safety regulations and guidelines and any deficiencies or concerns are addressed in a timely and effective manner. |  |
| 1. The firm encourages openness relating to addiction/health issues and proactively addresses them to reduce stigmatization and to ensure clients are not prejudiced in the handling of their legal matters. |  |
| 1. The firm assists in managing a lawyer’s practice in the face of issues of addictions/health issues. |  |

Rating Objective 3: The firm attends to the well-being of its lawyers.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.1 Competence (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=16)  [*Code*: Rule 3.2 Quality of Service (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=22)  Primary  [LSM: Health and Wellness](https://lawsociety.mb.ca/for-lawyers/supports-for-lawyers/health-wellness/)  [LSM: Well-Being (webinars)](https://cpdonline.lawsociety.mb.ca/course/index.php?categoryid=41)  [Manitoba Blue Cross Employee Assistance & Wellness Solutions](https://www2.mb.bluecross.ca/wellness/counselling-services)  [Law(yer) Strong](https://lawyerstrong-mb.ca/)  [LSO: Practice Management Guidelines – Personal Management](https://lso.ca/lawyers/practice-supports-and-resources/practice-management-guidelines/personal-management)  Additional  [MBA/CBA: Assistance for Lawyers](https://www.cba-mb.ca/Publications-Resources/Assistance-for-Lawyers) |

## Objective 4: Quality of Service

|  |
| --- |
| Lawyers have a manageable caseload that allows for all clients to receive the expected quality of service. |

The lawyer owes the client a duty to be competent to perform any legal services undertaken on the client’s behalf. A lawyer must provide courteous, thorough and prompt service. The quality of service required of a lawyer is service that is timely, conscientious, diligent, efficient and civil. The client is entitled to assume that the lawyer has the ability and capacity to deal adequately with any legal matters undertaken on the client’s behalf.

The requirement of conscientious, diligent and efficient service means that a lawyer should make every effort to provide timely service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

The lawyer should refrain from conduct that may interfere with or compromise their capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Open client lists and associated obligations are regularly reviewed by the firm’s lawyers to assess whether there is capacity to maintain or increase their caseloads or whether the lawyer/firm should cease accepting new client matters for a period of time. |  |
| 1. The firm regularly identifies the various roles required of the practices within the firm and assesses the need to hire staff as may be appropriate to do the work required. |  |
| 1. Adequate due diligence is performed to validate skills and qualifications when hiring or contracting others to fulfil roles or services required of the practices associated with the firm’s lawyers. |  |
| 1. Time-management principles and tools are used to work efficiently. |  |
| 1. The firm has implemented office systems to assist with caseload management. |  |

Rating Objective 4: Lawyers have a manageable caseload that allows for all clients to receive the expected quality of service.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.2-1 Quality of Service (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=22)  Primary  [LSM: Practice Management (webinars)](https://cpdonline.lawsociety.mb.ca/course/index.php?categoryid=3)  [LSM: Practice Management Advisor](https://lawsociety.mb.ca/for-lawyers/supports-for-lawyers/practice-management-advisor/)  Additional  [CBA: Hiring and Working with Support Staff: A Guide for Solo and Small Firm Lawyers](https://www.cba.org/Publications-Resources/CBA-Practice-Link/Young-Lawyers/2014/Hiring-and-Working-with-Support-Staff-A-Guide-for)  [LSA: Mastering Client Files (podcast)](https://www.lawsociety.ab.ca/resource-centre/key-resources/practice-management/mastering-client-files/)  [LSA: Top 10 Things to Include in Your Law Office Manual (podcast)](https://www.lawsociety.ab.ca/resource-centre/key-resources/practice-management/top-10-things-to-include-in-your-law-office-manual/) |

## Objective 5: Effective Staff

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| --- |
| Staff and independent contractors have current knowledge and skills sufficient to accomplish their work effectively and efficiently. |

The delivery of competent legal services includes the appropriate delegation to and supervision of any staff involved in the provision of legal services.

Knowing when and what to delegate is an important element of knowing how to delegate. Responsible delegation means that staff are advised of the scope of their responsibilities and any limitations on time and resources. The lawyer is responsible for educating any staff concerning the duties assigned to them. Law firms can assist lawyers in making these determinations by providing education and creating consistent policies and procedures. If staff have received specialized training or education and are competent to do independent work under the general supervision of a lawyer, a lawyer may delegate certain duties to them as appropriate. In accordance with the *Code*,the burden rests on the lawyer to determine which duties may be delegated to staff and the extent of supervision necessary.

Lawyers are professionally responsible for all business entrusted to them and must directly supervise staff, students, assistants, and contractors to whom the lawyer delegates particular tasks and functions.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Lawyers provide sufficient background information and clear instructions when assigning work to staff. |  |
| 1. Work is assigned only to staff or independent contractors with the required skills and qualifications or those who can become competent to complete the work once given instructions. |  |
| 1. Staff and independent contractors are advised of developments in practice areas that may affect their work (and the provision of legal services by the firm). The firm advises staff of the importance of “staying current” and states related expectations clearly. |  |
| 1. Mentorship and feedback are regularly provided to staff related to their work, as well as opportunities for staff to hone required skills. |  |
| 1. The firm promotes an “open-door” policy with staff to discuss ethical obligations, issues, or concerns. |  |
| 1. Lawyers review work delegated to staff at sufficiently frequent intervals to ensure its proper and timely completion. |  |
| 1. Staff are educated about work or legal services that can only be completed by a lawyer (e.g., determining fees; signing correspondence containing a legal opinion). |  |

Rating Objective 5: Staff and independent contractors have current knowledge and skills sufficient to accomplish their work effectively and efficiently.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 6.1 Supervision (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=107)  *[Code](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf" \l "page=112)*[: Rule 6.2 Students (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf" \l "page=112)  Primary  [LSM: Articling Handbook – Limits of Practice as an Articling Student](https://lawsociety.mb.ca/wp-content/uploads/2020/05/Articling-Handbook.pdf#page=20)  [LAWPRO Avoid a Claim: Delegating Responsibly and Effectively](http://avoidaclaim.com/2016/lawpr-magazine-archives-delegating-responsibly-and-effectively/)  [LAWPRO Avoid a Claim: Supervision of Employees: The Buck Stops With You](https://avoidaclaim.com/2016/supervision-of-employees-the-buck-stops-with-you/) |

## Objective 6: Staff Well-Being

|  |
| --- |
| The firm attends to the well-being of its staff. |

The well-being of your staff can impact their capacity to perform at work, in turn affecting the firm’s ability to deliver competent legal services.

Does the firm support its staff by creating a safe environment to disclose and address issues of addictions, mental and physical health concerns, or stress, and encourage staff to maintain a balanced life?

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm promotes well-being resources and programs available to staff. |  |
| 1. The firm ensures all workplace safety and health requirements are met, and addresses any deficiencies or concerns in a timely and effective manner. |  |
| 1. The firm encourages staff to use earned vacation days. |  |
| 1. The firm provides staff benefits for physical and mental well-being. For example, gym memberships or personal counselling. |  |
| 1. Staff receive supportive supervision. For example, attention is paid to the interactions within the firm and any concerns are acted upon. |  |
| 1. The firm has implemented and disseminated a respectful workplace policy. |  |
| 1. There is a repercussion-free environment for staff identifying or raising issues or concerns related to the work environment, addictions/illnesses, or other staff, and address issues raised. |  |
| 1. The firm has implemented an internal dispute resolution process. |  |
| 1. The firm encourages openness relating to addictions/illnesses to reduce stigma. |  |

Rating Objective 6: The firm attends to the well-being of its staff.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Primary  [ABA: Well-Being Toolkit for Lawyers and Legal Employers](https://lawyerwellbeing.net/wp-content/uploads/2020/02/Toolkit-Full_Final_July-30-2018.pdf)  [practicePRO: Protecting the Team – A Firm's Most Valuable Asset: Tips to Keep the Team Healthy and Sane-ish](https://www.practicepro.ca/wp-content/uploads/2017/06/2015-09-team-firms-most-valuable-asset.pdf)  Additional  [LSM: Equity Resources for Lawyers and Firms](https://educationcentre.lawsociety.mb.ca/practice-resources/professional-responsibilities/equity/)  [LSM: Health & Wellness Resource Library](https://lawsociety.mb.ca/for-lawyers/supports-for-lawyers/health-wellness/resource-library/)  [Mental Health Commission of Canada: Being a Mindful Employee: An Orientation to Psychological Health and Safety in the Workplace](https://www.mentalhealthcommission.ca/English/online-training-psychological-health-and-safety) |

## Overall Rating Principle 1: Competence and Capacity

|  |
| --- |
| (Average of ratings assigned to the Objectives for this Principle) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

|  |
| --- |
| Use this space to list priority areas for improvement and related action plans. |
|  |

|  |
| --- |
| Use this space to list areas of particular success and related plans for ongoing success. |
|  |

# Principle 2: Client Management

Managing client relationships is vital to a successful and competent practice. Many complaints received by the Law Society relate to client relationship management issues such as lawyers who don’t return phone calls, clients who don’t know the status of their files and clients who don’t understand the services they are receiving. With some work to manage the relationship up front, these issues tend not to arise.

A great way to manage expectations is for lawyers to identify, early on, how they respond to ongoing client communications and learn how to develop a proactive system. This can include an explanation for clients of the cost of phone calls and emails; setting aside certain times of the day or week to provide responses; and when clients can get answers from an assistant on certain topics. Courses and seminars on interpersonal communication or having difficult conversations can also be a great help to improving relationship management.

The following results-based objectives have been identified to support the goal for clients to have a positive experience throughout their engagement that delivers the highest possible quality of service.

|  |  |
| --- | --- |
| **Objective 7** | The firm avoids actual and perceived conflicts of interest with clients and others. |
| **Objective 8** | All necessary steps are taken before accepting retainers with identified conflicts. |
| **Objective 9** | Lawyers comply with ethical obligations under the *Code* when taking on joint retainers. |
| **Objective 10** | Clients understand the scope of their retainers and the terms of engagement. |
| **Objective 11** | Communications between the firm and clients are courteous, clear, and regular. |
| **Objective 12** | Provision of legal services is thorough, efficient, and timely. |
| **Objective 13** | The interests of vulnerable clients or clients with diminished capacity are protected and support is provided as required. |
| **Objective 14** | Clients are provided regular opportunities to comment on their satisfaction. |
| **Objective 15** | The firm charges only fees or disbursements that are fair and reasonable and disclosed in a timely fashion. |

## Objective 7: Actual and Perceived Conflicts of Interest

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| The firm avoids actual and perceived conflicts of interest with clients and others. |

Issues relating to conflicts have become more important over the years as lawyers have become more mobile, law firms have become more complex, and courts have provided guidance. The consequences of acting in a conflict situation may be serious and costly and can include:

* disqualification from representation of one or more clients,
* forfeiture of fees charged and the inability to charge for time invested,
* damages claim, and
* reputational risk and cost (in time and money) of defending a negligence claim or responding to an investigation.

In addition to evaluating potential or actual conflicts between clients, lawyers must guard against conflicts between lawyers’ personal interests and client interests.

When a lawyer is in doubt about whether they may act or whether they are in a conflict, lawyers are encouraged to contact the Law Society for guidance or check with a senior member of the Bar.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm maintains a database that contains all relevant information with respect to each client matter to facilitate comprehensive and timely conflicts searches. |  |
| 1. The firm has policies and procedures to evaluate the potential for conflicts or potential conflicts at critical points of engagement, including:  * before receiving confidential information; * before accepting a new retainer; * when a new party becomes involved in a matter; * when new individuals are hired; * when acting for multiple parties and the interests of the parties diverge; * when considering accepting a position as a director or engaging in a business venture with a client; * when a personal relationship (such as marriage) or personal interests create possible conflicts; * when acting as a director for public or private companies, not-for-profit corporations or other entities. |  |
| 1. Each file contains confirmation that a conflicts check has been completed. |  |

Rating Objective 7: The firm avoids actual and perceived conflicts of interest with clients and others.

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| (Average of ratings assigned to Practices above) |

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| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

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| --- | --- |
| Resources/support needed | No support needed |

| Resources |
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| Regulatory  [*Code*: Rule 3.4 Conflicts (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=42)  Primary  [LSM: Practice Resource – The Legal Profession, Conflicts of Interest](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/THE-LEGAL-PROFESSION-2020-10-29.pdf#page=83)  [LSM: To Act or Not to Act – A Conflicts Primer and Review of the New Conflict Rules (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=112)  Additional  [CBA: Conflicts of Interest Toolkit](https://www.cba.org/Publications-Resources/Practice-Tools/Conflicts-of-Interest-Toolkit)  [LSA: Conflicts Essentials (webinar)](https://www.lawsociety.ab.ca/resource-centre/key-resources/webinars/conflicts-essentials/) |

## Objective 8: Identified Conflicts

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| All necessary steps are taken before accepting retainers with identified conflicts. |

Disclosure is an essential requirement to obtaining a client’s consent and arises from the duty of candour owed to the client. The lawyer therefore should inform the client of the relevant circumstances and the reasonably foreseeable ways that the conflict of interest could adversely affect the client’s interests. This would include the lawyer’s relations to the parties and any interest in or connection with the matter.

Where it is not possible to provide the client with adequate disclosure because of the confidentiality of the information of another client, the lawyer must decline to act.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. When lawyers must decline a retainer (or cease acting upon identifying a conflict), they advise the client without revealing any details that would represent a breach of their duty of confidentiality. |  |
| 1. The firm ensures that its representation of a client does not create a substantial risk that the firm’s representation of that client would be materially and adversely affected by a lawyer’s own interests, or by the firm’s duties to another current client, a former client, or a third person. |  |
| 1. Express or implied consent is obtained from all affected parties before representing a client with an identified conflict. |  |
| 1. Lawyers are encouraged to contact the Law Society for guidance or check with a senior member of the Bar when in doubt about whether they may act or whether they are in a conflict. |  |
| 1. The firm has processes to identify and respond to potential business conflicts. For example, consideration is given to whether the legal interests of one client are directly adverse to the immediate legal interests of another client, even if the matters are unrelated. |  |
| 1. Lawyers are encouraged to regularly review case law and professional rules regarding conflicts. |  |
| 1. Firm precedent letters are available as templates to assist in addressing certain requirements relating to conflicts of interest. |  |
| 1. Where appropriate, a senior lawyer or committee at the firm is responsible for evaluating and addressing conflict questions or situations. |  |

Rating Objective 8: All necessary steps are taken before accepting retainers with identified conflicts.

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| (Average of ratings assigned to Practices above) |

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| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

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| --- | --- |
| Resources/support needed | No support needed |

| Resources |
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| Regulatory  [Code: Rule 3.4 Conflicts (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=42)  Primary  [LSM: Practice Resource – The Legal Profession, Conflicts of Interest](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/THE-LEGAL-PROFESSION-2020-10-29.pdf#page=83)  [LSM: To Act or Not to Act – A Conflicts Primer and Review of the New Conflict Rules (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=112)  Additional  [CBA: Conflicts of Interest Toolkit](https://www.cba.org/Publications-Resources/Practice-Tools/Conflicts-of-Interest-Toolkit)  [LSA: Conflicts Essentials (webinar)](https://www.lawsociety.ab.ca/resource-centre/key-resources/webinars/conflicts-essentials/) |

## Objective 9: Joint Retainer Obligations

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| Lawyers comply with ethical obligations under the *Code* when taking on joint retainers. |

Objective 9 addresses additional considerations that lawyers need to consider when documenting the retainer, specifically when entering into a joint retainer.

If the requesting clients' legal interests are not adverse and both parties understand the specific differences to a typical lawyer-client relationship that are inherent with joint retainers and still consent to the joint retainer, the lawyer may enter into a joint retainer agreement. However, there are many instances where a lawyer cannot or should not act for more than one party because the duty and loyalty owed to one party is, or is likely to become, adverse to the duty and loyalty owed to the other party.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. When more than one party asks the firm to act on a joint retainer, they are advised that the firm has been asked to act for both or all of them and that no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned. |  |
| 1. When more than one party asks the firm to act on a joint retainer, they are further advised that, if a conflict develops that cannot be resolved, the firm cannot continue to act for both or all of them and may have to withdraw completely. |  |
| 1. If the firm has a continuing relationship with one client in a joint retainer, for whom it acts regularly, the other party is advised and independent legal advice about the joint retainer is recommended. |  |
| 1. The firm obtains the consent of the parties to a joint retainer in writing. |  |
| 1. Even if all parties to a joint retainer consent, the firm avoids acting for more than one client when it is likely that a contentious issue will arise between them or their interests, rights or obligations will diverge as the matter progresses. |  |

Rating Objective 9: Lawyers comply with ethical obligations under the *Code* when taking on joint retainers.

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| (Average of ratings assigned to Practices above) |

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| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

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| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.4-5 Joint Retainers (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=50)  Primary  [LSM: Practice Resource – Retainers: Joint Retainer Agreements](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/01/RETAINERS-2020-01-22-SECURED.pdf#page=25) |

## Objective 10: Shared Understanding of Retainer

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| Clients understand the scope of their retainers and the terms of engagement. |

A retainer agreement, including a financial retainer, serves several valuable purposes:

* It turns the client's mind to the issue of fees and, specifically, to the fact that the services lawyers perform are professional services that require payment. To establish a positive client relationship at the outset, it is essential to discuss fees with clients.
* It gives the lawyer some assurance that at least some payment will be received for the services performed.
* It sets out what services the lawyer will and will not perform.
* It confirms the lawyer’s authority to act on the client's behalf.
* It outlines how services are to be billed, including frequency of billing, disbursements, applicable taxes, etc.
* It confirms crucial information the lawyer discussed with the client at the first meeting.
* It lets the client know that they are not being represented until the retainer agreement is executed and returned to firm.
* It provides a mechanism for replenishing a financial retainer and alerts the client to the methods by which the lawyer-client relationship may or will be terminated.
* If there is a dispute about matters such as the scope of services, a retainer letter or agreement provides valuable evidence about the intended terms of the relationship.

It is important to remember that in the absence of a written agreement, uncertainty as to the scope of the retainer will be construed by the Courts in the client's favour.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm uses retainer letters/engagement letters and termination letters for each client matter. |  |
| 1. Retainer agreements set out the scope of the retainer, including the steps that the firm will take and when, including anticipated time-frames to accomplish specific tasks. |  |
| 1. Retainer agreements include an estimate of anticipated fees and disbursements, and explain how and when the client will be invoiced. Estimates for fees and disbursements are updated in writing as required, and the firm sets out its expectations relating to the retainer and payment of invoices including:  * refreshing retainer amounts as may be needed, and * payment timelines for invoices for services rendered including the ability to charge interest on overdue accounts. |  |
| 1. Retainer letters explain what the client can expect in terms of communication, including expectations regarding the use of electronic communications such as text messages and social media. |  |
| 1. Retainer agreements outline ethical duties respecting confidentiality and solicitor-client privilege. |  |

Rating Objective 10: Clients understand the scope of their retainers and the terms of engagement.

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| (Average of ratings assigned to Practices above) |

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| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

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| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.6 Fees and Disbursements (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=70)  Primary  [LSM: Practice Resource – Retainers (includes sample agreements)](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/RETAINERS-2020-10-28.pdf)  [LSM: Limited Scope Retainers: Tips and Traps (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=55)  Additional  [LSA: Client Communication Toolkit: Legal Fees](https://documents.lawsociety.ab.ca/wp-content/uploads/2018/05/Client-Communication-Toolkit-Legal-Fees.pdf) |

## Objective 11: Client Communication

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| Communications between the firm and clients are courteous, clear, and regular. |

The majority of complaints against lawyers relate to ineffective communication. Managing client expectations goes a long way to avoid misunderstandings and concerns about professional conduct. Additionally, it is important to ensure communications between the office and clients are courteous, clear and regular so that clients understand their position and options throughout a retainer and are in a position to make informed decisions about their legal matters.

An organization can provide an “ethical infrastructure” by setting out expectations that will promote effective communications with clients and assist in protecting the organization’s reputation and, ultimately, improving its bottom line.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Client phone calls are returned on a timely basis. |  |
| 1. Written communications requiring a response (such as reasonable requests for information) are replied to on a timely basis. |  |
| 1. Regular progress reports are provided to clients about the status of their legal matters. |  |
| 1. Clients are copied on important correspondence sent and received. |  |
| 1. Clients are regularly asked if they understand their position and options throughout a retainer and are in a position to make informed decisions about their legal matters. |  |
| 1. Client instructions are routinely confirmed in writing. |  |
| 1. Reporting letters are sent promptly. |  |
| 1. The firm keeps accurate and up-to-date materials on its website, social media and other marketing properties. |  |

Rating Objective 11: Communications between the firm and clients are courteous, clear, and regular.

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| (Average of ratings assigned to Practices above) |

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| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

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| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.2-1 Quality of Service (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=22)  [*Code*: Rule 4.2 Marketing of Professional Services (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=85)  [*Rules*: Part 5, Division 10 – Law Firm Name, Letterhead and Marketing of Professional Services](https://lawsociety.mb.ca/wp-content/uploads/2020/01/LSM-Rules-Complete-Document-English.pdf#page=131)  Primary  [LSM: Plain Language Communication (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=120)  [LSA: Client Communication Toolkit: Client Service](https://documents.lawsociety.ab.ca/wp-content/uploads/2018/05/Client-Communication-Toolkit-Client-Service.pdf) |

## Objective 12: Provision of Legal Services

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| Provision of legal services is thorough, efficient, and timely. |

A lawyer has a duty to provide a quality of service at least equal to that which lawyers generally expect of a competent lawyer in a like situation. An ordinarily or otherwise competent lawyer may still occasionally fail to provide an adequate quality of service. A lawyer should ensure that matters are attended to within a reasonable time frame. If the lawyer can reasonably foresee undue delay in providing advice or services, the lawyer has a duty to so inform the client, so that the client can make an informed choice about his or her options, such as whether to retain new counsel.

A lawyer should meet deadlines, unless the lawyer is able to offer a reasonable explanation and ensure that no prejudice to the client will result. Whether or not a specific deadline applies, a lawyer should be prompt in handling a matter, responding to communications and reporting developments to the client. In the absence of developments, contact with the client should be maintained to the extent the client reasonably expects.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm supports lawyers in the management of their practices with resources such as office systems and guidelines/templates for effective practice management. |  |
| 1. The firm has sufficient staff to assist its lawyers in managing their caseloads efficiently. |  |
| 1. Open files are reviewed by lawyers regularly and next steps diarized to ensure legal work is completed on a timely basis. |  |
| 1. Appearances/court attendances are diarized and obligations kept. |  |
| 1. Tickler systems are used to remind of important deadlines (e.g., limitation dates, response to pleadings, etc.). |  |

Rating Objective 12: Provision of legal services is thorough, efficient, and timely.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

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| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.2-1 Quality of Service (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=22)  Primary  [LSM: Files Gone Wild: Top Ten Pitfalls to Avoid (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=128)  [LSM: The New *Limitations Act* (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=271)  Additional  [LSA: Mastering Client Files (podcast)](https://www.lawsociety.ab.ca/resource-centre/key-resources/practice-management/mastering-client-files/)  [LSA: Practice Management 101: Life Cycle of a File (webinar)](https://www.lawsociety.ab.ca/resource-centre/key-resources/webinars/practice-management-101-life-cycle-of-a-file/) |

## Objective 13: Vulnerable Clients

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| The interests of vulnerable clients or clients with diminished capacity are protected and support is provided as required. |

Mental capacity issues, language barriers or other vulnerabilities must be taken into consideration and assessed during the course of a client's legal matter.

A person who is vulnerable or who has suffered a traumatic experience and has not recovered may need the professional assistance of a lawyer. A lawyer and client relationship presupposes that the client has the requisite mental ability to make decisions about their legal affairs and to give the lawyer instructions. A client’s ability to make decisions may change and depends on such factors as age, intelligence, experience and mental and physical health and on the advice, guidance and support of others. The key is whether the client has the ability to understand the information relative to the decision that has to be made and is able to appreciate the reasonably foreseeable consequences of the decision or lack of decision. Accordingly, when a client is, or comes to be, under a disability that impairs his or her ability to make decisions, the lawyer will have to assess whether the impairment is minor or whether it prevents the client from giving instructions or entering into binding legal relationships.

If a client’s incapacity is discovered or arises after the solicitor-client relationship is established, the lawyer may need to take steps to have a lawfully authorized representative, such as a litigation guardian, appointed or to obtain the assistance of the Public Guardian and Trustee to protect the interests of the client. Whether that should be done depends on all relevant circumstances, including the importance and urgency of any matter requiring instruction. In any event, the lawyer has an ethical obligation to ensure that the client’s interests are not abandoned. Until the appointment of a legal representative occurs, the lawyer should act to preserve and protect the client’s interests.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Mental capacity issues, language barriers or other vulnerabilities, such as domestic violence, are assessed and taken into consideration in the provision of legal services. |  |
| 1. Appropriate referrals are made where necessary. |  |
| 1. Where appropriate, the authorities are contacted, without revealing more confidential client information than is necessary, to advise of concerns regarding situations of threatened suicide or other self-harm. |  |
| 1. When a client’s ability to make decisions is impaired (e.g., minority or mental disability) lawyers maintain a normal lawyer-client relationship as is reasonably possible. |  |
| 1. Lawyers take action, if necessary, on behalf of a person lacking capacity, but only to the extent necessary to provide protection until a legal representative can be appointed. |  |
| 1. If necessary, misconduct of a legal representative (e.g., acting in bad faith and not in the best interests of the client) is reported to the Public Guardian and Trustee or another appropriate person/agency. |  |

Rating Objective 13: The interests of vulnerable clients or clients with diminished capacity are protected and support is provided as required.

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| (Average of ratings assigned to Practices above) |

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| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

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| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.2-9 Clients with Diminished Capacity (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=32)  [*Code*: Rule 3.3-3 Mandatory Disclosure (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=36)  [*Code*: Rule 5.1 The Lawyer as Advocate (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=89)  Primary  [LSM: Capacity Considerations (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=171)  Additional  [LSS: Working with Victims of Sexual Violence (webinar)](https://vimeo.com/348867722/7d27ed79d0)  [The Trauma-Informed Lawyer Podcast – hosted by Myrna McCallum](https://thetraumainformedlawyer.simplecast.com/)  [Ontario Bar Association: Capacity Considerations and Your Client](https://www.oba.org/JUST/Archives_List/2015/Fall_2015/Capacity-Considerations-and-Your-Client) |

## Objective 14: Client Feedback

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| Clients are provided regular opportunities to comment on their satisfaction. |

Lawyers are encouraged to seek feedback from clients (e.g., survey) so that practice standards may be enhanced as necessary and any concerns may be addressed on a timely basis.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Clients are asked if they have any concerns or questions while progressing through their matter. |  |
| 1. Clients are surveyed using anonymous tools to encourage direct and honest feedback about aspects of the firm’s practice and their level of satisfaction with their matter. |  |

Rating Objective 14: Clients are provided regular opportunities to comment on their satisfaction.

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| (Average of ratings assigned to Practices above) |

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| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

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| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.2 Quality of Service (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=22)  Primary  [Slaw: Obtaining and Acting on Client Feedback](http://www.slaw.ca/2014/07/29/obtaining-and-acting-on-client-feedback/)  [LSBC: Model Client Survey](https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/ClientSurvey.pdf) |

## Objective 15: Fair Fees

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| The firm charges only fees or disbursements that are fair and reasonable and disclosed in a timely fashion. |

Complaints about lawyers often relate to dissatisfaction with fees. Clear communication at the beginning of a retainer and throughout helps clients make informed decisions and avoids frustration that can occur over unexpected fees or bills.

In addition, Contingency Fee Agreements are subject to unique statutory requirements and *Rules* that lawyers must strictly adhere to.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Clients are provided detailed information about the work completed by the firm and the fees and disbursements charged on invoices. |  |
| 1. Time records are accurate, timely, and complete. |  |
| 1. Lawyers keep track of their time and effort, even if time is not the basis for billing. |  |
| 1. The firm implements processes for payment and accurate recording of disbursements when incurred. |  |
| 1. Clients are billed on a regular, interim basis, unless the matter has been taken on under a contingency fee agreement or the matter is of short duration that contemplates only one final bill. |  |
| 1. Bills are approved by the lawyer in charge of the file before they are sent to a client. |  |
| 1. Law firm managers periodically conduct random audits of bills. |  |
| 1. Clients are notified promptly and with explanation when an estimate changes, and instructions are sought. |  |
| 1. Clients are advised to bring any concerns about fees or billing practices to the lawyer who has conduct of their matter or to the firm’s attention as soon as possible (e.g., managing partner). |  |

Rating Objective 15: The firm charges only fees or disbursements that are fair and reasonable and disclosed in a timely fashion.

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| --- |
| (Average of ratings assigned to Practices above) |

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| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.6 Fees and Disbursements (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=70)  [*Code*: Rule 3.6.2 Contingent Fees and Contingent Fee Agreements (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=71)  [Practice Direction 89-03: Appropriate Billing Practices](https://lawsociety.mb.ca/regulation/act-rules-code-practice-directions/practice-directions/89-03-appropriate-billing-practices/)  [Practice Direction 94-05: Statements of Account for Legal Services](https://lawsociety.mb.ca/regulation/act-rules-code-practice-directions/practice-directions/94-05-statements-of-account-for-legal-services/)  [The *Act*: Division 5 – Lawyers’ Fees](https://web2.gov.mb.ca/laws/statutes/ccsm/_pdf.php?cap=l107#page=52)  Primary  [LSM: Practice Resource – Retainers](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/RETAINERS-2020-10-28.pdf)  Additional  [LSM: Limited Scope Retainers: Tips and Traps (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=55)  [LSA: Client Communication Toolkit: Legal Fees](https://documents.lawsociety.ab.ca/wp-content/uploads/2018/05/Client-Communication-Toolkit-Legal-Fees.pdf) |

## Overall Rating Principle 2: Client Management

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| --- |
| (Average of ratings assigned to the Objectives for this Principle) |

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| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

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| --- | --- |
| Resources/support needed | No support needed |

|  |
| --- |
| Use this space to list priority areas for improvement and related action plans. |
|  |

|  |
| --- |
| Use this space to list areas of particular success and related plans for ongoing success. |
|  |

# Principle 3: File Management and Record Keeping

Effective file management provides the basis or infrastructure for timely, effective client service and appropriate management of client matters. The firm’s file management system should include essential features to manage client matters to ensure compliance with regulatory requirements.

It is important that lawyers have and employ systems to:

* Store and easily retrieve key information regarding all firm clients and opposing parties.
* Maintain and protect client confidential information.
* Open and maintain active client files.
* Check for conflicts.
* Check for limitation periods.
* Close, retain, and dispose of closed files.
* Review and if necessary, change management systems to ensure they meet changing standards, techniques, or practices.
* Identify clients’ property and place in safekeeping.
* Comply with record and bookkeeping requirements.

Additional considerations are also applicable if the firm is in a space-sharing arrangement. This type of arrangement requires tailored procedures to be employed to protect confidentiality and privacy, including:

* Processes should be in place to clearly distinguish the other entities or professionals with whom space is shared to prevent confusion by clients (e.g., signage, letterhead).
* Trust accounts and banking arrangements cannot be shared.
* If staff and office equipment are shared, adequate steps must be taken to protect client confidentiality.
* The nature of the space-sharing arrangement and any foreseeable limits of the lawyer’s ability to maintain confidentiality should be disclosed to their clients.

The following results-based objectives have been identified to support the goal that client confidentiality is maintained and information related to the practice is readily available at all times.

|  |  |
| --- | --- |
| **Objective 16** | The firm maintains client confidentiality with respect to documents and communications except as disclosure may be permitted or mandatory under the *Code*. |
| **Objective 17** | The firm maintains systems to support secure collection, use, storage, and disposal of physical confidential information. |
| **Objective 18** | The firm maintains systems to support secure collection, use, storage, and disposal of electronic confidential information. |
| **Objective 19** | The firm uses appropriate file and records management systems. |
| **Objective 20** | Lawyers comply with Law Society Anti-Money Laundering (AML) and Know Your Client (KYC) requirements. |
| **Objective 21** | The firm ensures that relevant information and the status of client matters and open files are readily available, organized, and maintained. |
| **Objective 22** | Client property is safeguarded in accordance with the *Act*, *Code*, and *Rules*. |

## Objective 16: Confidential Communications

|  |
| --- |
| The firm maintains client confidentiality with respect to documents and communications except as disclosure may be permitted or mandatory under the *Code*. |

Confidentiality of client communications and documents is a cornerstone of legal practice. Lawyers must ensure client confidentiality is maintained and information related to the practice, protected and readily available at all times. In order to render effective professional services, there must be unreserved communications between lawyers and clients.

Clients need to know that matters discussed with their lawyers will be held in strict confidence except as permitted under the *Code*. Potential breaches of confidentiality policies or procedures may also occur when communicating in public areas or the firm, such as in the reception area.

As such, lawyers should also ensure that visitors to a firm cannot inadvertently overhear confidential conversations, and staff working in reception areas protect confidentiality of client names and matters when talking with others in person or on the telephone.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm has a confidentiality policy in place. |  |
| 1. Lawyers and staff are trained about their duties relating to confidentiality and provide written or verbal confirmation of their awareness. |  |
| 1. If contractors are retained, they are made aware of, and comply with, confidentiality obligations. |  |
| 1. Confidential oral communications in the office and elsewhere are protected by ensuring:  * visitors to the office do not overhear confidential names or conversations by lawyers or support staff (e.g., receptionist), and * confidential phone calls in public places are not overheard by others. |  |
| 1. Where disclosure of confidential information is either permissible or mandated in accordance with professional obligations under the *Code*, lawyers:  * have procedures in place for dealing with exceptions to the duties of confidentiality, and * disclose only the information necessary and without divulging more confidential client/retainer information than is required. |  |
| 1. Lawyers and staff stay familiar with and comply with the requirements of applicable federal and provincial privacy legislation. |  |
| 1. The firm maintains a privacy policy addressing the latest legislative requirements and makes it publicly available, such as by publish it on the firm’s website. |  |

Rating Objective 16: The firm maintains client confidentiality with respect to documents and communications except as disclosure may be permitted or mandatory under the *Code*.

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| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.3 Confidentiality (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=34)  Primary  [LSM: Confidentiality & Privilege: An Estate Litigation Perspective (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=15)  [LSM: Privacy Please: New Mandatory Breach Reporting Requirements under PIPEDA (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=158)  [FLSC: Crossing the Border with Electronic Devices: What Canadian Legal Professionals Should Know](https://documents.lawsociety.ab.ca/wp-content/uploads/2018/06/Crossing-the-Border-with-Electronic-Devices.pdf)  Additional  [LSA: Solicitor-Client Privilege and Demands for Disclosure](https://www.lawsociety.ab.ca/resource-centre/key-resources/ethics-and-professionalism/solicitor-client-privilege-and-demands-for-disclosure/)  [LSBC: Cloud Computing Checklist](https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/checklist-cloud.pdf)  [CBA: FAQ – Privilege and Confidentiality for Lawyers in Private Practice](https://www.cba.org/Publications-Resources/Practice-Tools/Ethics-and-Professional-Responsibility-(1)/Solicitor-Client-Privilege/FAQs) |

## Objective 17: Protection of Physical Information

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| --- |
| The firm maintains systems to support secure collection, use, storage, and disposal of physical confidential information. |

The *Rules* include mandatory provisions regarding storage, retention, production and security of records. There are requirements related to fiduciary property, general funds, trust funds, valuables, cash transactions, complaint investigations, forensic audits, client identification and verification, leaving a firm, storage providers and the security of records.

Lawyers should familiarize themselves with the rules and pay close attention to rule changes. The length of time that a lawyer should keep a record depends on the type of record. Is it a trust accounting record, a client verification record, a legal opinion written to the client or something else?

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Physical files are secured in lockable file cabinets or rooms when not being worked on. |  |
| 1. The firm has standard procedures to track the physical location and removal of files or certain documents from files. |  |
| 1. The firm only outsources services to providers ensuring adequate confidentiality and security measures. |  |
| 1. The firm ensures the confidentiality of client information and property by storing files/client binders so that others, including the firm’s own clients, cannot ascertain the names of other firm clients. |  |
| 1. The firm has policies relating to the organization of communications (e.g., all hard copy communications are kept together on a separate peg in the file). |  |

Rating Objective 17: The firm maintains systems to support secure collection, use, storage, and disposal of physical confidential information.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.3 Confidentiality (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=34)  Primary  [LSM: Practice Resource – File Closing, Retention, Storage & Destruction](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/12/File-Closing-Retention-Storage-Destruction.pdf)  Additional  [LSA: Practice Management 101: Life Cycle of a File (webinar)](https://www.lawsociety.ab.ca/resource-centre/key-resources/webinars/practice-management-101-life-cycle-of-a-file/)  [CBA: FAQ – Privilege and Confidentiality for Lawyers in Private Practice](https://www.cba.org/Publications-Resources/Practice-Tools/Ethics-and-Professional-Responsibility-(1)/Solicitor-Client-Privilege/FAQs) |

## Objective 18: Protection of Electronic Information

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| --- |
| The firm maintains systems to support secure collection, use, storage, and disposal of electronic confidential information. |

File storage and retention is of concern to practicing lawyers, particularly due to the cost of storing original file materials and the attractive alternatives offered by technology. The cost of storing paper files often seems to outweigh the utility of doing so.

Many lawyers are attempting to reduce the amount of paper used in their law practices by moving to an electronic/digital file system. The requirements set out by the *Rules* and/or *Code* apply equally to paper and electronic files. The objective is to establish practices for firms who wish to have a complete and readily accessible electronic record of a client matter. The goal of such practices is to ensure that:

* the files are securely and reliably stored,
* are retained in electronic formats that are well supported and will be compatible with others if the files are exchanged,
* the files will be readily accessible to another lawyer if the need arises, and
* there is a procedure for closing digital files (e.g., moving digital client files to a location on the system other than the location for current files).

While most lawyers should not attempt to be their own IT department, they do need to educate themselves to the point that they can properly instruct and screen their IT support. This involves understanding their equipment, how it can be secured physically, how it connects to the outside world, and what steps need to be taken to manage that interaction.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm has procedures to protect confidential client information when third parties require access to computers (such as for maintenance and technical support). |  |
| 1. The firm has multi-layered access permissions and account policies for social media accounts and cloud services. |  |
| 1. The firm has procedures to protect the integrity of information or documents stored on mobile devices, thumb drives, and laptops using strong and regularly changed passwords. For example, appropriate virus protection and procedures relating to passwords are in place. |  |
| 1. Online accounts such as email and cloud storage or communication services are protected with strong, regularly changed passwords, using password managers and two-factor authentication where possible. |  |
| 1. The firm uses electronic data storage and communication services that provide encryption of data, while in transit or at rest. |  |
| 1. The firm has policies relating to organization of email communications. For example, emails are kept in a separate, electronic folder to be accessed or printed off for each file or stored within an electronic client file. |  |
| 1. The firm has retained an information technology (IT) professional to assist with the aspects of secure electronic storage and backup of data. |  |
| 1. The firm regularly performs IT system updates and technology audits. |  |

Rating Objective 18: The firm maintains systems to support secure collection, use, storage, and disposal of electronic confidential information.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [Code: Rule 3.1-2 Competence, Commentaries [4A] and [4B]](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=18)  Primary  [LSM: Avoiding Cyber Dangers (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=111)  [LSM: Cyber Security Resource Library](https://educationcentre.lawsociety.mb.ca/practice-resources/practice-management/cyber-security/)  [LSM: Practice Resource – File Closing, Retention, Storage & Destruction – Storage of Closed Files](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/12/File-Closing-Retention-Storage-Destruction.pdf#page=24)  [LSM: Sound Cybersecurity Practices for Your Law Firm (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=129)  [LSBC: Cloud Computing Checklist](https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/checklist-cloud.pdf)  Additional  [LSA: Protecting Client Confidentiality and Data Security While Working Remotely](https://www.lawsociety.ab.ca/resource-centre/key-resources/practice-management/protecting-client-confidentiality-and-data-security-while-working-remotely/)  [LSA: Top 10 Ways to Secure Your Online World](https://www.lawsociety.ab.ca/resource-centre/key-resources/practice-management/top-10-ways-to-secure-your-online-world/)  [Clio: Going Paperless: How to Transition to a Paperless Law Office](https://www.clio.com/blog/going-paperless-law-firm/) |

## Objective 19: File Management

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| --- |
| The firm uses appropriate file and records management systems. |

Without appropriate file and records management systems in place, errors (that can lead to insurance claims) and breaches of ethical obligations (that can lead to complaints and discipline sanctions) are more likely to occur.

When lawyers in law firms make mistakes that lead to loss and insurance claims or when lawyers breach ethical obligations that can lead to disciplinary sanctions, these are risks that can affect the reputation of the firm and reduce profits. Law firms can take active steps to mitigate those risks.

In the normal life of a file, a lawyer will handle it from start to finish, and will retain and store the majority of the file materials. Throughout the file, the client will likely have been provided with copies of significant documents and correspondence. When the file is concluded, the lawyer should ensure the client has originals or copies of all other documents of importance or interest. Keep a record of the documents the client has received, perhaps by keeping a copy of the final letter to the client in which the documents were listed.

The client should also be advised when the file is scheduled for destruction and of any file retrieval fees which may be applicable, should the client wish to obtain a copy of any file materials in the future. Even if this has already been contemplated in the original retainer, it is a good idea to remind clients of the potential cost associated with retrieval of closed files so that they can request additional copies of any file materials before they are stored off-site.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm has standard file opening and file closing procedures and maintains lists of open and closed files. |  |
| 1. Closed files are removed from the open filing system. |  |
| 1. The firm maintains a separate numerical index of all files opened and closed. |  |
| 1. The firm has appropriate procedures for transferring an open file (and any associated trust funds) to the client or new counsel. When asked to transfer an open file, lawyers:  * review and comply with their professional obligations; * document the request to transfer the file; * transfer all information such as correspondence, pleadings, written legal memoranda, medical and other expert reports in original format or in a legible electronic format; * do not charge the client for any costs associated with photocopying or scanning if they want to make a copy for their own use in the event of a complaint/claim; * do not attempt to assert a solicitor’s lien against property of a client who is unable to pay the account if the result would materially prejudice a client’s position in any uncompleted matter. |  |
| 1. The firm has appropriate procedures for closing files, including policies on storing and destroying closed file material. When closing files, lawyers:  * maintain or destroy them in a manner consistent with their ethical obligations; * cull them to ensure that original client documents (e.g., share certificates, wills) are returned to the client; * address offsite storage requirements; * have a physical and electronic file retention policy setting out the length of time each type of file should be kept before being destroyed; * destroy files in a confidential manner after considering the age of closed files and other exceptional factors (e.g., preservation of wrongful conviction files). |  |

Rating Objective 19: The firm uses appropriate file and records management systems.

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| (Average of ratings assigned to Practices above) |

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| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.7-8 and 3.7-9 Manner of Withdrawal (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=79)  [*Code*: Rule 3.6-13 Solicitor’s Lien (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=74)  [Practice Direction 88-02: Enforcement of Solicitors’ Liens](https://lawsociety.mb.ca/regulation/act-rules-code-practice-directions/practice-directions/88-02-enforcement-of-solicitors-liens/)  Primary  [LSM: Practice Resource – File Closing, Retention, Storage & Destruction](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/12/File-Closing-Retention-Storage-Destruction.pdf)  [LSM: Practice Resource – Withdrawal of Legal Services](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/12/Withdrawal-of-Legal-Services.pdf)  [LSM: Practice Resource – Retirement: Winding Up a Practice](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/REITREMENT-Winding-up-a-Practice-2020-10-28.pdf)  Additional  [LSA: Practice Management 101: Life Cycle of a File (webinar)](https://www.lawsociety.ab.ca/resource-centre/key-resources/webinars/practice-management-101-life-cycle-of-a-file/) |

## Objective 20: Anti-Money Laundering and Know Your Client

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| Lawyers comply with Law Society Anti-Money Laundering (AML) and Know Your Client (KYC) requirements. |

Legal professionals are perceived as “gatekeepers” within money laundering and terrorist financing systems because of our unique role in facilitating financial transactions. Specifically, legal professionals may be used to:

* give an appearance of legitimacy to a criminal transaction;
* facilitate money laundering through the creation of a company or trust, and/or the purchase and sale of property; and
* eliminate the trail of funds back to a criminal through the use of a professional trust account.

Because of the role they play in facilitating transactions, and the fact that communications for the purpose of obtaining legal advice are protected by solicitor-client privilege, legal professionals may be targeted by criminals. Legal professionals should thus be able to determine the potential money laundering or terrorist financing risks posed by a client, as well as the risks presented by the context of their services. Without such risk-based awareness, legal professionals may find themselves participating in criminal activity, whether knowingly, recklessly, or unintentionally.

It is important to understand that the duties and responsibilities contained in the AML Rules reflect the unique position of legal professionals in helping the public with their legal needs and in ensuring compliance with the law. By adhering to these fundamental principles, the legal profession helps to prevent crime, and to maintain public trust in the justice system. Similarly, the *Rules* protect the right of citizens to independent legal counsel, and ensure that counsel can continue to protect the client’s privilege.

Avoiding participation in money laundering and terrorist financing is rooted in knowing your clients: their identity, their financial dealings in relation to your retainer, and any risks arising from your professional business relationship with them. When working with corporate clients, knowing your client means taking additional steps to ascertain ownership and control of the corporation, and routinely assessing the accuracy of your knowledge about them. Not facilitating money laundering and terrorist financing also means refusing to accept, except in limited circumstances, more than $7,500 in cash from clients or prospective clients. Finally, the fight against money laundering and terrorist financing requires lawyers to be vigilant and exercise judgment about the use of your trust accounts, pursuant to established parameters.

When suspicions or doubts arise about whether the activities of a legal professional might be assisting in crime or fraud, the obligation is to make reasonable inquiries to obtain information about the subject matter and objectives of the retainer and record it, and to consider whether withdrawal is required. By complying with these requirements, lawyers will provide the appropriate services to clients, managing both their expectations and the lawyer’s own duties, in a responsible and professional way.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Client identification and, if applicable, verification requirements are met through compliance with adequate firm policies and procedures, including:  * “Next step” file checklists including: type and method of identification used, exempt from identification requirements, verification requirement determination, and type and method of verification used, exempt from verification requirement; * Identification Checklists for identifying clients as an individual, financial institution/public authority, or organization, identification record keeping and retention checklist; * Verification Checklists for verifying clients as an individual, an organization registered in government, an organization not registered in government, a trust, third party and beneficial ownership information for organizations, verification where the client is not physically present and sample agent agreement, client verification record keeping and retention checklist; and * Source of funds record keeping and retention checklist. |  |
| 1. The firm has procedures in place to monitor business relationships with clients that involve the receipt, transfer or payment of funds, including:  * Occasionally checking in with clients with whom the firm has a long term established relationship to assess whether the client’s information in respect of their activities and the source of their funds are consistent with the purpose of the retainer; * Follow up if circumstances have changed, including:   + Obtaining additional information about the client (e.g., occupation, assets, information available through public databases, internet, etc.);   + Obtaining information on the source of funds or the source of wealth of the client;   + Obtaining information on the reasons for intended or conducted transactions;   + Gathering additional documents, data or information, or taking additional steps to verify the documents obtained;   + Flagging certain activities that appear to deviate from expectations; and   + Reviewing transactions against the usual processes and procedures for such transactions relevant to the legal work for which the firm was retained. * Make a note to file regarding firm inquiries and keep copies of documents that arise from those inquiries. |  |
| 1. Receipt of cash (“No cash Rule”) requirements are met through compliance with adequate firm policies and procedures, including:  * Inform staff about the rule and what to do if a client unexpectedly shows up at the office with cash; * Ensure that file opening procedures include a requirement to comply with the rule, in particular by requiring that you or your colleagues confirm each cash deposit in the trust accounts; * Ensure that trust accounting procedures require confirmation of rule compliance before paying money out of trust; * Ensure that staff keep up to date with any rule changes; * Record any exemption from the “No Cash” rule; * Provide information about the rule to new and existing clients in retainer letters, on the firm website, and in mail inserts. * Record keeping and retention checklist for cash transactions. |  |
| 1. Use of trust accounts is restricted to funds relating only to the provision of legal services.  * Only money that is directly related to legal services that the firm is providing may be deposited into a trust account; * Any money remaining in trust following the completion of a transaction or matter must be paid out as soon as practical; * It is ideal to review client trust ledger accounts at least monthly; * Every effort should be made to pay funds due to the client and to third parties within one month of all trust conditions being satisfied, and similarly, to swiftly transfer funds to the firm’s chequing account upon billing for legal fees, disbursements or expenses. |  |
| 1. The firm is alert to red flags that may require withdrawal from representation. The lawyer must withdraw from representation of a client if, in the course of verifying that client’s identity, or monitoring the professional business relationship, the lawyer knows or ought to know that they are, or would be, assisting a client in fraud or illegal conduct. |  |

Rating Objective 20: Lawyers comply with Law Society Anti-Money Laundering (AML) and Know Your Client (KYC) requirements.

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| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Rules*: Part 5, Division 12 – Client Identification and Verification](https://lawsociety.mb.ca/wp-content/uploads/2020/01/LSM-Rules-Complete-Document-English.pdf#page=133)  [*Code*: c-3.2.7 Dishonesty, Fraud by Client or Others](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=29)  Primary  [LSM: Anti-Money Laundering](https://lawsociety.mb.ca/for-lawyers/lawyer-resources/anti-money-laundering/)  [LSM: New Anti-Money Laundering Rules (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=168) |

## Objective 21: Matter Status

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| The firm ensures that relevant information and the status of client matters and open files are readily available, organized, and maintained. |

All too often, ineffective file and practice management systems hinder a lawyer’s provision of quality legal services. Often, practice advisors see lawyers that do not have a good grasp on the total number of active files or know the status of each file. This results in a reduction in client service and an increase in complaints to the Law Society.

Opening and maintaining active client files requires the lawyer to:

* follow appropriate file opening procedures.
* organize file contents.
* properly store files.

To enable efficient retrieval of file documents or information, lawyers should organize the file with subfolders according to the class or type of documents.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm has practice management software or a reasonable alternative system. |  |
| 1. Lawyers and staff use consistent file management systems. For example, pleadings are kept together, correspondence is kept in chronological order, and original documents are flagged. |  |
| 1. Paper and electronic file contents are maintained as required. |  |
| 1. Email and text communications plus associated documents/materials are easily accessible. |  |

Rating Objective 21: The firm ensures that relevant information and the status of client matters and open files are readily available, organized, and maintained.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule3.2 Quality of Service (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=22)  Primary  [LSM: Files Gone Wild: Top Ten Pitfalls to Avoid (webinar](https://cpdonline.lawsociety.mb.ca/course/search.php?search=gone+wild))  [LSM: Practice Resource – File Closing, Retention, Storage & Destruction](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/12/File-Closing-Retention-Storage-Destruction.pdf)  Additional  [LSA: Mastering Client Files (podcast)](https://www.lawsociety.ab.ca/resource-centre/key-resources/practice-management/mastering-client-files/)  [LSA: Practice Management 101: Life Cycle of a File (webinar)](https://www.lawsociety.ab.ca/resource-centre/key-resources/webinars/practice-management-101-life-cycle-of-a-file/) |

## Objective 22: Client Property

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| --- |
| Client property is safeguarded in accordance with the *Act*, *Code*, and *Rules*. |

Clients expect that when they give property to their lawyers, that property will be looked after in a prudent manner, taking potential risks into consideration.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Client property is identified upon receipt, appropriately labeled, and recorded accurately. |  |
| 1. Property on-site or off-site is stored in such a way as to avoid damage in the event of fire or other disaster. |  |
| 1. Privilege is claimed on client’s behalf if property is seized or attempted to be seized by an external authority or in relation to third-party claims made against the property. |  |

Rating Objective 22: Client property is safeguarded in accordance with the *Act*, *Code*, and *Rules*.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.5 Preservation of Clients’ Property (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=68)  Primary  [LSM: Practice Resource – File Closing, Retention, Storage & Destruction](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/12/File-Closing-Retention-Storage-Destruction.pdf)  [LSA: Solicitor-Client Privilege and Demands for Disclosure](https://www.lawsociety.ab.ca/resource-centre/key-resources/ethics-and-professionalism/solicitor-client-privilege-and-demands-for-disclosure/)  Additional  [CBA: FAQ – Privilege and Confidentiality for Lawyers in Private Practice](https://www.cba.org/Publications-Resources/Practice-Tools/Ethics-and-Professional-Responsibility-(1)/Solicitor-Client-Privilege/FAQs) |

## Overall Rating Principle 3: File Management and Record Keeping

|  |
| --- |
| (Average of ratings assigned to the Objectives for this Principle) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

|  |
| --- |
| Use this space to list priority areas for improvement and related action plans. |
|  |

|  |
| --- |
| Use this space to list areas of particular success and related plans for ongoing success. |
|  |

# Principle 4: Financial Management and Business Continuity

The practice of law, while concerned primarily with the delivery of professional services, has a significant business component. As law firms grow larger and society more complex, the business aspects of practice assume increasing importance.

Fraud is an evolving business risk that affects every practicing and insured lawyer. There are always new ways for fraudsters to steal from firms – especially in light of the speed and frequency of business change. Fraudsters take advantage of weakened controls, new processes, and failure to exercise appropriate oversight. Lawyers should assume that anyone can and will commit fraud under the right circumstances. Talk to colleagues and staff about fraud. The more comfortable everyone is with the concept, the more likely they will be able to quickly identify unusual circumstances. And remember, fraud’s direct impact extends beyond just financial losses. When lawyers and firms become victims of fraud or theft, it affects the reputation of the legal profession and may cause the public to lose confidence in lawyers which in turn, may impact the ability to attract and retain clients.

In many cases, the time and cost involved in determining the extent of the fraud and the corrective action required was significantly greater than the fraud itself, so having early detection controls in place is crucial. Control features that should be implemented depend on a number of factors, the most important of which are the size of the firm and the number of individuals that may be involved in the firm’s financial processes; the larger the firm, the greater the possibilities of dividing duties to ensure one person does not have complete control of an entire transaction.

The following results-based objectives have been identified to support the goal that trust funds are safeguarded and all risks associated with the financial management and operations of the practice have been minimized.

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| **Objective 23** | Client funds are safeguarded. |
| **Objective 24** | The firm minimizes the risk to practice funds. |
| **Objective 25** | The firm has adequate insurance coverage to protect against all risks. |
| **Objective 26** | Clients will not be prejudiced in the handling of their legal matters upon their lawyer’s absence or death, and client interests are protected in the event of a major change to the composition of the firm. |
| **Objective 27** | The firm is prepared to maintain standard business operations in the event of a disaster. |
| **Objective 28** | Lawyers and staff avoid unsafe computer and online practices. |
| **Objective 29** | Billing and invoicing processes are fair, transparent, and completed in a timely manner. |
| **Objective 30** | Financial risk to the practices of lawyers in the firm has been minimized. |
| **Objective 31** | Financial matters are handled by qualified personnel. |

## Objective 23: Client Funds

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| Client funds are safeguarded. |

Firms must implement appropriate file and records management systems in relation to the treatment of client money received in trust.

Internal control features should be put in place to provide some assurance that functions relating to financial operations are being performed properly and on a timely basis and to safeguard assets, particularly trust assets. In addition, control procedures can be put in place to assist in preventing fraud or to facilitate early detection. Fraudulent activity (both internal and external) is an area of risk for law firms.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Review and approval of bank statements and reconciliations are done monthly by a Trust Account Supervisor. |  |
| 1. The firm’s monthly trust reconciliations are prepared using available templates and/or checklists, such as:  * templates for pooled trust account or restricted trust account (book of original entry/trust journal, client trust listing, client trust ledger, bank statement and monthly trust reconciliation); * templates for separate interest-bearing account (book of original entry/trust journal, client trust listing, client trust ledger, monthly trust reconciliation; * record of other valuable property; and * reconciliation review checklists for pooled trust account and separate interest-bearing account (e.g., bank errors, stale dated cheques). |  |
| 1. Inactive trust balances are attended to on a timely basis. |  |

Rating Objective 23: Client funds are safeguarded.

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| (Average of ratings assigned to Practices above) |

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| 1 | 2 | 3 | 4 | 5 |

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| Resources/support needed | No support needed |

| Resources |
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| Regulatory  [*Rules*: Part 5, Division 4 – Financial Accountability](https://lawsociety.mb.ca/wp-content/uploads/2020/01/LSM-Rules-Complete-Document-English.pdf#page=93)  [Practice Direction 96-02: Use of a Financial Intermediary When Investing Client Trust Funds](https://lawsociety.mb.ca/regulation/act-rules-code-practice-directions/practice-directions/96-02-use-of-a-financial-intermediary-when-investing-client-trust-funds/)  [Practice Direction 03-02: Wire Transfers](https://lawsociety.mb.ca/regulation/act-rules-code-practice-directions/practice-directions/03-02-wire-transfers/)  Primary  [LSM: Trust Accounting Fundamentals (online education program)](https://educationcentre.lawsociety.mb.ca/trust-accounting-fundamentals/)  [LSM: Trust Safety (guidelines, templates, and frequently asked questions)](https://lawsociety.mb.ca/for-lawyers/lawyer-resources/trust-safety-accordion/) |

## Objective 24: Practice Funds

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| The firm minimizes the risk to practice funds |

The practice of law exposes members of the legal profession to unique risks and vulnerabilities. Criminals may target lawyers to lend legitimacy to their illicit operations or make use of trust accounts to launder proceeds of criminal activity. Lawyers are also necessary to complete real estate transactions and set up trusts, both common vehicles for cleaning dirty money.

Knowing how to recognize the risks and vulnerabilities are essential to protecting the firm and its lawyers, the legal profession, and the public.

Many lawyers rely heavily on their bookkeepers and other staff to handle their firm accounting. Lawyers often feel they lack time to personally handle account reconciliations, and many have no accounting background. Delegating bookkeeping responsibilities to trained staff is ideal but doing so without proper oversight can lead to major problems.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
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| 1. Internal controls are in place to minimize the risk of fraud, such as:  * procedures with respect to cash transactions; * client acceptance and know your client policies; * engagement assessment policies; * understanding of commercial or personal rationale for the work; * knowledge of and attention to red flag indicators; * action plans created based on risk-assessment; * appropriate identification and verification documentation is collected and retained. |  |
| 1. Internal controls are in place to maintain visibility over financial transactions, for example:  * Reconciliations for all bank accounts (including general accounts) are prepared on a monthly basis, and use templates for general account (book of original entry/general journal, bank statement, monthly general reconciliation) and reconciliation review checklist for general account. * Cancelled cheques are examined for potential concerns such as tampered cheques, forged signatures, or unusual vendors. * Cheques are never pre-signed for use. * All client ledgers are reviewed and approved on a monthly basis. Discrepancies and unusual transactions are resolved in a timely manner. * Returned/NSF cheques are watched out for. |  |
| 1. When clients pay for legal services in cash, the firm issues a receipt signed by both a member of the firm and the payor and keeps a copy of the receipt. |  |

Rating Objective 24: The firm minimizes the risk to practice funds.

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| (Average of ratings assigned to Practices above) |

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| Resources/support needed | No support needed |

| Resources |
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| Regulatory  [*Rules*: Part 5, Division 4 – Financial Accountability](https://lawsociety.mb.ca/wp-content/uploads/2020/01/LSM-Rules-Complete-Document-English.pdf#page=93)  Primary  [LSM: Anti-Money Laundering](https://lawsociety.mb.ca/for-lawyers/lawyer-resources/anti-money-laundering/)  [LSM: Practice Resource – Trust Accounting Fundamentals](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/01/Trust-Accounting-Fundamentals.pdf)  [LSM: Trust Safety (includes forms and checklists)](https://lawsociety.mb.ca/for-lawyers/lawyer-resources/trust-safety-accordion/)  Additional  [Avoid a Claim: Fraud Fact Sheet – Cybercrime and Bad Cheque Scams](https://avoidaclaim.com/wp-content/uploads/2018/05/Cybercrime-and-Bad-Cheques-2018.pdf) |

## Objective 25: Insurance Coverage

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| The firm has adequate insurance coverage to protect against all risks. |

Having adequate insurance in place is one of the best things a firm can do to prepare for a disaster. Consider all types of insurance, including: property insurance (if the firm owns its own building); contents insurance, including extra riders for computers or other equipment of significant value; commercial general liability for third-party bodily injury or property damage; business interruption insurance; crimes coverage; cyber insurance; and disability, life, or other appropriate personal coverage.

Lawyers and law firms are potential targets for hackers, ransomware, and cyber criminals. The Canadian Lawyers Insurance Association (CLIA) has a program for all lawyers required to be insured under the mandatory Professional Liability policy, which provides cyber coverage protection for lawyers and their clients. This program provides initial/first response coverage in the event of a cyberattack. The amount of coverage and the deductible varies depending on the nature of the claim, and the coverage is conditional on the firm taking certain steps to protect itself from cyberattack.

Ensuring the firm is properly insured is an ongoing process. The firm should regularly review its circumstances and the adequacy of coverage, ideally annually. Be conservative in making estimates, and consult with a broker. Some firms tie a coverage review into the renewal process as a way to ensure this task takes place annually. Review the coverage if the firm makes any significant purchases or if there are any changes of circumstance that warrant coverage changes.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm has sufficient professional liability insurance (e.g., excess coverage). |  |
| 1. The firm has sufficient business interruption insurance. |  |
| 1. The firm has sufficient natural disaster insurance. |  |
| 1. The firm protects against employee theft or dishonesty by purchasing coverage or fidelity bond coverage against theft of funds by staff. |  |
| 1. The firm has sufficient cyber insurance coverage. |  |

Rating Objective 25: The firm has adequate insurance coverage to protect against all risks.

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| (Average of ratings assigned to Practices above) |

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| Resources/support needed | No support needed |

| Resources |
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| Primary  [LSM: Insurance](https://lawsociety.mb.ca/for-lawyers/membership-services/insurance/)  [LSM: Cyber Security Resource Library](https://educationcentre.lawsociety.mb.ca/practice-resources/practice-management/cyber-security/)  [LSM: Practice Resource – Absences and Contingency Planning](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/ABSENCES-CONTINGENCY-PLANNING-2020-10-28.pdf) |

## Objective 26: No Prejudice to Clients

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| Clients will not be prejudiced in the handling of their legal matters upon their lawyer’s absence or death, and client interests are protected in the event of a major change to the composition of the firm. |

Lawyers should plan for the wind-up of their practice, whether in the event of illness, death, or retirement. It is very important to ensure an appropriate succession plan is in place and to make others (i.e., family, executors, partners, colleagues, staff, etc.) aware of succession arrangements on at least a *“need to know”* basis. A business continuity and succession plan, and a Power of Attorney should be in place addressing both management of business operations and finances.

Plans should include not only who the lawyer would like to step in to arrange for the transfer of open client files to new counsel, but also plans for the ongoing maintenance/storage of closed files not ready for destruction. Without a succession plan, the time and costs required to address requirements of active files and to wind up the practice, including trust accounts, can be very substantial, particularly if the Law Society is required to appoint a custodian/trustee.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm makes contingency plans as appropriate. |  |
| 1. The firm has business continuity and succession plans as appropriate. |  |
| 1. The firm’s partnership agreement contemplates and provides for dissolution of the firm. |  |
| 1. The firm has a wind-down plan. |  |

Rating Objective 26: Clients will not be prejudiced in the handling of their legal matters upon their lawyer’s absence or death, and client interests are protected in the event of a major change to the composition of the firm.

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| (Average of ratings assigned to Practices above) |

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| Resources/support needed | No support needed |

| Resources |
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| Regulatory  [*Rules*: 2-74(1) Withdrawal from Practice](https://lawsociety.mb.ca/wp-content/uploads/2020/01/LSM-Rules-Complete-Document-English.pdf#page=37)  *[Rules](https://lawsociety.mb.ca/wp-content/uploads/2020/01/LSM-Rules-Complete-Document-English.pdf" \l "page=106)*[: 5-50(1) Report on Termination of Practice](https://lawsociety.mb.ca/wp-content/uploads/2020/01/LSM-Rules-Complete-Document-English.pdf" \l "page=106)  [The *Act*: Division 6 – Custodianship](https://web2.gov.mb.ca/laws/statutes/ccsm/_pdf.php?cap=l107#page=55)  [Practice Direction 89-04: Death or Disability of Sole Practitioners](https://lawsociety.mb.ca/regulation/act-rules-code-practice-directions/practice-directions/89-04-death-or-disability-of-sole-practitioners/)  Primary  [LSM: Practice Resource – Absences and Contingency Planning](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/ABSENCES-CONTINGENCY-PLANNING-2020-10-28.pdf)  [LSM: Practice Resource – Retirement: Winding Up a Practice](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/REITREMENT-Winding-up-a-Practice-2020-10-28.pdf)  Additional  [LSA: Law Firm Closure Milestones](https://documents.lawsociety.ab.ca/wp-content/uploads/2017/01/Law-Firm-Closure-Milestones.pdf)  [LSA: When Bad Things Happen to Good Lawyers – A Contingency Planning Handbook](https://dvbat5idxh7ib.cloudfront.net/wp-content/uploads/2017/01/22203930/When-Bad-Things-Happen-to-Good-Lawyers.pdf)  [LSS: Succession Planning Agreement](https://www.lawsociety.sk.ca/wp-content/uploads/2020/04/successionplanningagreementmar09.pdf) |

## Objective 27: Disaster Recovery

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| The firm is prepared to maintain standard business operations in the event of a disaster. |

Disasters can and do occur, everywhere. Whether natural or man-made, there can be little advance warning. From wildfires, floods, train derailments, to bomb threats closing down the court house, computer hackers compromising internet security, or the sudden heart attack of a sole practitioner, the potential disruptions to a law practice can add up. While many of these catastrophes are beyond our control, advanced planning can give firms an edge in overcoming the long-term effects of these unexpected or unimaginable events. Firms should have controls in place to mitigate against all forms of business disruption.

It is particularly important, in small firms, to have contingency arrangements in place for another lawyer or law firm to step in if needed. Essential information relating to client matters and the ongoing obligations of the practice must be able to be interpreted by an assisting lawyer regardless of whether that is a partner, associate, friend or formal custodian. It is much easier to build this into a practice structure at the outset.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
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| 1. The firm maintains duplicate backup copies of electronic data securely in cloud storage or off-site physical hard drives/flash drives, and automates the backup process where possible. |  |
| 1. The firm has digitized duplicate backup copies of physical files, and/or stores physical files in fire and flood protected cabinets. |  |
| 1. The firm keeps copies of emergency documents (insurance policies, powers of attorney, blank cheques, software licenses, emergency contact information, etc.) offsite in a secure location. |  |
| 1. The firm has a disaster recovery plan to restore and activate all backup data and information systems and restore critical business operations within 24 hours. |  |
| 1. Lawyers and staff are able to work remotely (e.g., they have electronic access to their desktops and can retrieve emails and client documents). |  |

Rating Objective 27: The firm is prepared to maintain standard business operations in the event of a disaster.

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| (Average of ratings assigned to Practices above) |

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| Resources/support needed | No support needed |

| Resources |
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| Regulatory  *[Code](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf" \l "page=18)*[: Rule 3.1-2 Competence, Commentaries [4A] and [4B]](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf" \l "page=18)  Primary  [LSM: COVID-19 FAQ & Resources for Lawyers](https://lawsociety.mb.ca/covid-19-updates/faq/?hilite=confidentiality)  [LSM: Remote Witnessing Checklist](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2021/12/Remote-Witnessing-Checklist.pdf)  [LSM: Remote Witnessing of Documents: Processes under the Permanent Regulations (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=257)  Additional  [LSA: Protecting Client Confidentiality and Data Security While Working Remotely](https://www.lawsociety.ab.ca/resource-centre/key-resources/practice-management/protecting-client-confidentiality-and-data-security-while-working-remotely/)  [LSS: Beware of Cybersecurity Risks During COVID-19 and Working from Home](https://www.lawsociety.sk.ca/useful-resources/beware-of-cybersecurity-risks-during-covid-19-and-working-from-home/) |

## Objective 28: Online Safety

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| Lawyers and staff avoid unsafe computer and online practices. |

Security in the law office context is more than just a locked door and secure file cabinet. Computers and the internet are now an essential component of most, if not all law practices today. Advances with respect to technology have dramatically transformed the way that lawyers handle their clients’ confidential information and conduct the practice of law. These developments have created tremendous opportunities to deliver legal services in new and innovative ways, as well as creating additional challenges and risks for lawyers as they strive to fulfill their ethical and legal duties to protect their clients’ information.

As legal practices become more reliant on technology and virtual forms of practice, firms must take appropriate steps to ensure data security and protect client confidentiality. The practice examples in the Assessment Tool and workbook highlight needed measures, including:

* Data security measures (e.g., encryption software and passwords) must be in place to protect confidential information on all computers, laptops, tablets, smartphones, thumb drives and other technological devices.
* Systems must also be in place to protect electronic data from being compromised by viruses, including ransomware.
* Processes are in place to safeguard against the security risks arising from downloading to phones, flash drives and other portable devices.
* Processes are in place to protect confidentiality when using cloud-based technologies, including email.
* Processes are in place to protect confidentiality when using social media.
* Electronic data is regularly backed up and stored at a secure off-site location.
* Processes are in place to ensure that third parties with access to computers for maintenance and technical support protect the confidentiality of client information.
* Processes are in place to safeguard electronic data and maintain solicitor-client privilege as pertaining to electronic files when crossing borders (e.g., United States)

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
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| 1. Lawyers and staff have received cybersecurity training. |  |
| 1. Lawyers and staff confirm authenticity of emails before responding or clicking onto embedded links. |  |
| 1. Lawyers and staff avoid using public Wi-Fi networks. |  |
| 1. Basic website security precautions are in place to protect against hacking attempts. |  |
| 1. Lawyers and staff are aware of international border controls and methods to protect information on devices. |  |

Rating Objective 28: Lawyers and staff avoid unsafe computer and online practices.

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| (Average of ratings assigned to Practices above) |

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| Resources/support needed | No support needed |

| Resources |
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| Regulatory  *[Code](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf" \l "page=18)*[: Rule 3.1-2 Competence, Commentaries [4A] and [4B]](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf" \l "page=18)  Primary  [CBA: Legal Ethics in a Digital Context](https://www.cba.org/getattachment/Sections/Ethics-and-Professional-Responsibility-Committee/Resources/Resources/Legal-Ethics-in-a-Digital-Context/LegalEthicsInaDigitalContext.pdf)  [FLSC: Crossing the Border with Electronic Devices: What Legal Professionals Should Know](https://flsc-s3-storage-pub.s3.ca-central-1.amazonaws.com/Crossing-the-Border-with-Electronic-Devices-What-Canadian-Legal-Profes....pdf?_rt=MXwxfGNyb3NzaW5nIHRoZSBib3JkZXJ8MTY2NzM5NjYyOA&_rt_nonce=73f88dcce5&_ga=2.255239180.564613774.1667336208-1536937447.1667336208&_gl=1*zg2w2l*_ga*MTUzNjkzNzQ0Ny4xNjY3MzM2MjA4*_ga_309C23W6H0*MTY2NzM5NTU0NC4yLjEuMTY2NzM5NjYzNy4wLjAuMA..)  [LSBC: Cloud Computing Checklist](https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/checklist-cloud.pdf)  Additional  [LSS: Technology Webinars](https://www.lawsociety.sk.ca/covid-19-updates/technology-webinars/) |

## Objective 29: Billing and Invoicing

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| Billing and invoicing processes are fair, transparent, and completed in a timely manner. |

In order to continue to serve their clients, law firms must manage operating costs and accounts receivable. In addition to billable time, the time restraints of practice often require that lawyers incur financial obligations to others on behalf of clients. Such obligations include charges for medical reports; disbursements payable to government registries; fees charged by expert witnesses, court clerks, registrars, court reporters and public officials; and the accounts of agents retained in other jurisdictions.

A firm, as well as each member of that firm, is responsible for an obligation incurred by the firm to a third party unless the third party is advised otherwise in advance. Firms and lawyers who are inconsistent about billing practices often end up with problems caused by excessive unbillable time, high accounts receivable and significant write-offs.

Make bills client-friendly as the bill is an important part of client communications. Statements of account should indicate how the fee was calculated in a way that is easy for the client to understand.

While consistent billing practices benefit clients directly, they also benefit the overall financial health of a firm, by ensuring that accounts receivable are kept to a minimum so that the firm can continue to operate at full capacity.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
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| 1. Ethical billing practice guidelines are provided to anyone participating in client billing, and the guidelines are reviewed regularly. |  |
| 1. Clients are billed on a regular, interim basis unless other arrangements have been agreed upon or the firm has been retained on a contingency fee basis. |  |
| 1. Any interest charges are indicated on past due accounts clearly in retainer agreements and on the statement of account. |  |
| 1. Invoices are adjusted as may be appropriate. |  |
| 1. Invoices are delivered to the client only after specified services have been rendered and disbursements incurred, and prior to the transfer of fees from the trust account. |  |
| 1. Final invoices are delivered to clients within 30 days of termination of the retainer. |  |

Rating Objective 29: Billing and invoicing processes are fair, transparent, and completed in a timely manner.

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| (Average of ratings assigned to Practices above) |

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| Resources/support needed | No support needed |

| Resources |
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| Regulatory  [*Code*: Rule 3.6 Fees and Disbursements (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=70)  [The *Act*: Division 5 – Lawyers’ Fees](https://web2.gov.mb.ca/laws/statutes/ccsm/_pdf.php?cap=l107#page=52)  [Practice Direction 89-03: Appropriate Billing Practices](https://lawsociety.mb.ca/regulation/act-rules-code-practice-directions/practice-directions/89-03-appropriate-billing-practices/)  [Practice Direction 94-05: Statements of Account for Legal Services](https://lawsociety.mb.ca/regulation/act-rules-code-practice-directions/practice-directions/94-05-statements-of-account-for-legal-services/) |

## Objective 30: Financial Risk

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| Financial risk to the practices of lawyers in the firm has been minimized. |

Spend enough time at the beginning of the relationship to find out if the client is able and willing to pay a reasonable fee for the legal work they want done. If they aren't, don’t accept the retainer. Effectively discuss fees and evaluate the creditworthiness of the client at the initial interview.

Clients should be screened by applying sound, objective business judgment to the question of a client's willingness and ability to pay, including:

* Obtain credit information such as name and address of employer and bank, and amount and status of other debt.
* In certain circumstances, you may even wish to obtain consent to perform a credit check.
* Establish a billing schedule with the client and reference these in the retainer agreement.
* Clearly set out to the client and in the retainer the consequences of non-payment of fees and disbursements incurred.
* Manage accounts so as to avoid suing for fees.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
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| 1. During client intake procedures, lawyers discuss the expected cost of representation and determine the client’s ability to pay for resource-intensive matters. |  |
| 1. Monetary retainers are requested before commencing work on a file. |  |
| 1. The risk of opening a file on a contingency fee basis is assessed before agreeing to be retained by:  * the likelihood of success on the legal matter; * whether the client will be in a position to cover the costs of anticipated disbursements; * the length of time it may take to settle the matter or take it to trial; and, * the firm’s cash flow needs. |  |
| 1. Monetary retainers are replenished upon the issuance of interim accounts. |  |
| 1. The firm complies with any applicable statutory requirements when retained on a contingency fee basis. |  |
| 1. The firm's trust list is reviewed regularly for inactive client trust ledger account balances, which are addressed appropriately. |  |
| 1. The firm uses a bring forward/diary system to track account receivables and address overdue payments, and send out timely, regular reminder letters regarding overdue payments. |  |
| 1. The firm checks for outstanding accounts and addresses them with clients before investing additional billable time on a matter. For example, the lawyer determines why the account is outstanding; and if necessary, and permissible, advises the client that they will be unable to continue work on the file until satisfactory arrangements are made for payment. |  |
| 1. The firm has procedures in place for collection of outstanding payments or accounts that include consideration of potential limitation periods and the use of collection agencies. |  |

Rating Objective 30: Financial risk to the practices of lawyers in the firm has been minimized.

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| (Average of ratings assigned to Practices above) |

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| 1 | 2 | 3 | 4 | 5 |

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| Resources/support needed | No support needed |

| Resources |
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| Regulatory  [*Code*: Rule 3.6-2 Contingent Fees and Contingent Fee Agreements (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=71)  [The *Act*: Division 5 s.55](https://web2.gov.mb.ca/laws/statutes/ccsm/_pdf.php?cap=l107#page=53)  Primary  [LSM: Practice Resource – Retainers](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/RETAINERS-2020-10-28.pdf) |

## Objective 31: Financial Matter Handling

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| Financial matters are handled by qualified personnel. |

The business side of the practice of law can present many challenges for lawyers. How to run a business does not form part of the formal training for lawyers. Financial matters as they relate to the practice of law are multifaceted and include:

* bookkeeping, which involves posting transactions to journals and ledgers, and is the foundation for the other levels of financial management;
* accounting, which involves sorting the posted entries into several common reports that are generally accepted by accountants as summarizing the basic financial performance of the business, including in particular the Profit and Loss Statement and the Balance Sheet;
* management information reporting, which involves sorting the posted information into a variety of reports that can be used in the management of the business, including such reports as:
  + aged work in progress;
  + aged accounts receivable;
  + summary of fees and disbursements billed and collected, by month, by lawyer or by area of practice;
  + accounts receivable trends;
  + budget variances.

Having a qualified bookkeeper or accountant on the team allows lawyers to focus more on the practice of law and alleviates some of the work on the business side of the practice of law. Alternatively, taking appropriate financial training will support lawyers in their business and assist in proactively managing risk.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm uses a qualified bookkeeper or accountant. with experience in legal accounting, and communicates with them as often as is necessary to review and address any financial concerns. |  |
| 1. The Trust Account Supervisor has taken basic training in bookkeeping/business accounting. |  |

Rating Objective 31: Financial matters are handled by qualified personnel.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

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| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Primary  [LSM: Trust Safety](https://lawsociety.mb.ca/for-lawyers/lawyer-resources/trust-safety-accordion/) |

## Overall Rating Principle 4: Financial Management and Business Continuity

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| --- |
| (Average of ratings assigned to the Objectives for this Principle) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

|  |
| --- |
| Use this space to list priority areas for improvement and related action plans. |
|  |

|  |
| --- |
| Use this space to list areas of particular success and related plans for ongoing success. |
|  |

# Principle 5: Relationships with Third Parties and the Administration of Justice

Lawyers have a duty to support the overarching legal system and the reputation of the legal profession, while conducting themselves with the highest level of professionalism. This includes demonstrating respect for the Law Society and the courts.

Judicial institutions require the respect of the public to function effectively, and lawyers play a large role in maintaining that respect. Likewise, lawyers are required to cooperate with their regulating body, including being responsive to communications from the Law Society and cooperating in Law Society investigations. Failure to do so may result in a complaints history or more formal disciplinary action that also damages the reputation of the profession.

Professionalism is, in part, the practice of applying legal ethics in the delivery of legal services. It includes not only how lawyers interact with clients but the decisions that are made regarding their legal issues, and interactions with the Court, other lawyers, staff and colleagues, as well as how legal services are delivered, how the law firm is managed and how lawyers interact with the regulator. Professionalism refers to the quality of practice and can include a lawyer’s comportment, time management, respect for themselves and others, and their overall practice style.

Not only are there regulatory consequences for lawyers who fail to uphold the high standards required of them in these matters, law firms stand to have their reputations damaged when their members do not comply with their ethical obligations. Therefore, firms should encourage lawyers to support the administration of justice in all activities by setting high standards and outlining a consistent approach for dealing with legal institutions that demonstrates the respect required.

The following results-based objectives have been identified to support the goal that the firm acts at all times with utmost good faith to the court, the client, other lawyers, the regulator and to members of the public and encourage respect for the administration of justice.

|  |  |
| --- | --- |
| **Objective 32** | Opposing counsel and self-represented parties are dealt with civilly. |
| **Objective 33** | Lawyers comply with their professional obligations relating to:   1. giving and performing undertakings; and 2. imposing and accepting trust conditions. |
| **Objective 34** | The firm respects and fosters the rule of law and the proper administration of justice. |
| **Objective 35** | The firm and its lawyers comply with professional responsibilities owed to the regulator. |
| **Objective 36** | Any known or potential errors or omissions are dealt with according to contractual and ethical obligations to the client and insurer. |
| **Objective 37** | The firm implements any necessary changes to firm policies and procedures when a complaint is made to the Law Society or a claim is reported to the Insurer. |
| **Objective 38** | Members of the firm demonstrate respect for all adjudicative bodies, including the judiciary and court staff. |
| **Objective 39** | Members of the firm maintain an air of professionalism in all external communications, both in their professional and personal capacities. |

## Objective 32: Civil Engagement

|  |
| --- |
| Opposing counsel and self-represented parties are dealt with civilly. |

Civility in all dealings and communications, both internally and externally, should be fostered within a firm. The *Code* requires that lawyers be courteous and civil and act in good faith with all persons with whom they have dealings in the course of their practice.

However, despite clear *Code* obligations and a relatively small professional community, the Law Society receives many complaints relating to a lack of civility and prompt responses to opposing counsel. The *Code* extends civility requirements for lawyers acting opposite self-represented parties.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Communications with self-represented parties and the legal community occur in a timely, respectful, and courteous manner. |  |
| 1. The firm promotes civil communication and relationships with the profession and with self-represented parties amongst staff and any others supporting the practices of the firm’s lawyers. |  |
| 1. The firm’s precedents promote civil communication. |  |

Rating Objective 32: Opposing counsel and self-represented parties are dealt with civilly.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 7.2 Courtesy and Good Faith (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=123)  Primary  [LSM: Ethical & Respectful Advocacy (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=212)  [LSM: Grace Under Pressure: Taking the “I” out of Family Law (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=56)  [LSM: Practice Management – The Legal Profession, Relations Within the Profession](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/THE-LEGAL-PROFESSION-2020-10-29.pdf#page=46)  Additional  [Supreme Advocacy LLP: Civility as a Strategy in Litigation](https://supremeadvocacy.ca/wp-content/uploads/2017/08/Civility-as-a-Strategy-in-Litigation.pdf)  [The Advocates’ Society: Practices for Civility and Professionalism](https://www.advocates.ca/Upload/Files/PDF/Advocacy/InstituteforCivilityandProfessionalism/Principles_of_Civility_and_Professionalism_for_AdvocatesFeb28.pdf) |

## Objective 33: Undertakings and Trust Conditions

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| --- |
| Lawyers comply with their professional obligations relating to:   1. giving and performing undertakings, and 2. imposing and accepting trust conditions. |

Any trust condition that is accepted is binding upon a lawyer, whether imposed by another lawyer or by a lay person. A lawyer may seek to impose trust conditions upon a non-lawyer, whether an individual or a corporation or other organization, but great caution should be exercised in doing so since such conditions would be enforceable only through the courts as a matter of contract law and not by reason of the ethical obligations that exist between lawyers.

Lawyers should not give undertakings that they cannot personally fulfil. (e.g., do not undertake to do something “on behalf of a client” when the client or a third party has actual control over whether or when the undertaking may be fulfilled). When an undertaking is provided, the lawyer accepts that it is their personal responsibility and that they are liable to fulfil the undertaking even if the retainer ends before the undertaking is fulfilled.

The implications of giving and performing undertakings and imposing and accepting trust conditions warrant special attention. Lawyers and staff should understand the seriousness of those implications.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Lawyers do not give undertakings that they cannot personally fulfil. |  |
| 1. Undertakings and trust conditions are in writing and any variations confirmed in writing. |  |
| 1. Lawyers do not attempt to impose or accept trust conditions that are vague, capable of more than one meaning, or otherwise improper. |  |
| 1. Lawyers do not try to impose trust conditions on self-represented parties. |  |
| 1. Lawyers do not attempt to impose or accept cross trust conditions. |  |
| 1. Lawyers do not accept a trust condition if their ability to comply with the condition is contingent on actions that must be taken by their client or third parties. |  |
| 1. Lawyers do not make use of funds or documents sent in trust unless and until they have fulfilled all the trust conditions that were imposed and accepted when the funds/documents were sent. |  |
| 1. When lawyers perform an undertaking or comply with a trust condition, they update the client file to that effect. |  |
| 1. Where appropriate, lawyers seek verification that an undertaking or trust condition has been properly fulfilled. |  |
| 1. Lawyers review trust condition letters drafted by any staff before signing them. |  |

Rating Objective 33: Lawyers comply with their professional obligations relating to:

1. giving and performing undertakings, and
2. imposing and accepting trust conditions.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

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| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 7.2-11 Undertakings and Trust Conditions (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=127)  [*Code*: Rule 5.1-6 Undertakings (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=95)  [*Code*: Rule 6.1-3 (c) Delegation, and Commentary [1]](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=108)  Primary  [LSM: Practice Management – The Legal Profession, Trust Conditions and Undertakings](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/THE-LEGAL-PROFESSION-2020-10-29.pdf#page=63)  [LSM: Practice Area Fundamentals - Real Estate, To Comply with Trust Conditions and Undertakings](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2021/09/Real-Estate-Ch-1-FINAL.pdf#page=16) |

## Objective 34: Rule of Law

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| The firm respects and fosters the rule of law and the proper administration of justice. |

The obligation outlined in this objective is not restricted to the lawyer’s professional activities but is a general responsibility resulting from the lawyer’s position in the community. A lawyer’s responsibilities are greater than those of a private citizen.

A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements. Yet, for the same reason, a lawyer should not hesitate to speak out against an injustice.

Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer’s irresponsible conduct. Accordingly, a lawyer’s conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety. Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm encourages public respect for, and takes steps to improve, the administration of justice. |  |
| 1. The firm discourages criticism that is petty, intemperate or unsupported by a bona fide belief in its real merit in relation to proceedings and decisions of courts and tribunals. |  |
| 1. When a tribunal is the object of unjust criticism, the firm supports the tribunal to contribute to greater public understanding of, and respect for, the legal system. |  |
| 1. The firm seeks improvements to the legal system but any criticisms and proposals are bona fide and reasoned. |  |

Rating Objective 34: The firm respects and fosters the rule of law and the proper administration of justice.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 5.6-1 Encouraging Respect for the Administration of Justice (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=103)  Primary  [The Advocates’ Society: Practices for Civility and Professionalism (pages 9 to 15)](https://www.advocates.ca/Upload/Files/PDF/Advocacy/InstituteforCivilityandProfessionalism/Principles_of_Civility_and_Professionalism_for_AdvocatesFeb28.pdf#page=9) |

## Objective 35: Compliance with Professional Responsibilities

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| The firm and its lawyers comply with professional responsibilities owed to the regulator. |

Responding promptly to the Law Society is at the heart of professional regulation and a cornerstone of the right to self-govern. When members fail to respond to the Law Society, or otherwise fail to meet their regulatory obligations, the Law Society’s ability to carry out its legislated mandate is jeopardized.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. All firm and member and annual reporting requirements are submitted before the deadline for submission. |  |
| 1. Lawyers track continuing professional development activities and meet any associated regulatory requirements regarding those activities. |  |
| 1. The firm or applicable lawyer responds promptly and thoroughly to communications from the Law Society that require a response and within any deadlines imposed (or an appropriate extension is sought if required). |  |

Rating Objective 35: The firm and its lawyers comply with professional responsibilities owed to the regulator.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 7.1 Responsibility to the Society and the Profession Generally (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=120)  [*Rules*: 2-81 Answer Within 14 Days](https://lawsociety.mb.ca/wp-content/uploads/2020/01/LSM-Rules-Complete-Document-English.pdf#page=41)  Primary  [LSM: Practice Resource – The Legal Profession, Rules Regarding General Professional Obligations](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/THE-LEGAL-PROFESSION-2020-10-29.pdf#page=29)  [LSM: Professional Responsibilities](https://educationcentre.lawsociety.mb.ca/practice-resources/professional-responsibilities/)  Additional  [LSM: Practice Resource – The Legal Profession, Rules Regarding General Professional Obligations, Avoiding and Dealing with Complaints](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/THE-LEGAL-PROFESSION-2020-10-29.pdf#page=95) |

## Objective 36: Errors and Omissions

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| --- |
| Any known or potential errors or omissions are dealt with according to contractual and ethical obligations to the client and insurer. |

An error or omission, can occur for any number of reasons including; oversights, legal issue failures, engagement management failures, and communication failures. Even though an error or omission might be actionable for damages in negligence or contract, it will not necessarily constitute a failure to maintain the requisite standard of professional competence.

Under the lawyer’s compulsory professional liability insurance policy, a lawyer is contractually required to give written notice to the insurer immediately after the lawyer becomes aware of any actual or alleged error or any circumstances that could give rise to a claim.

The duty to report is also an ethical duty which is imposed on the lawyer to protect clients. The duty to report arises whether or not the lawyer considers the claim to have merit.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm or applicable lawyer gives prompt notice of any circumstance that may give rise to a claim to an insurer (or other indemnitor) so that the client’s protection from that source will not be prejudiced. |  |
| 1. When discovering a possible error or omission that is or may be damaging to the client, the firm or applicable lawyer:  * promptly informs the client of the error/omission without admitting legal liability, so as to avoid prejudicing the Insurer; and * advises the client to obtain independent legal advice and that the firm may no longer be able to act on their behalf. |  |

Rating Objective 36: Any known or potential errors or omissions are dealt with according to contractual and ethical obligations to the client and insurer.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 7.8 Errors and Omissions (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=135)  Primary  [LSM: Insurance](https://lawsociety.mb.ca/for-lawyers/membership-services/insurance/?hilite=insurance)  [LSM: Practice Resource – The Legal Profession, Errors and Omissions Insurance – Professional Liability Claims Fund](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/THE-LEGAL-PROFESSION-2020-10-29.pdf#page=18)  Additional  [LSM: Everything You’ve Ever Wanted to Know About the Professional Liability Insurance Claim Process, But Were Afraid to Ask (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=13)  [LSM: Procrastination and Professional Liability Insurance Claims (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=157) |

## Objective 37: Complaints and Claims

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| The firm implements any necessary changes to firm policies and procedures when a complaint is made to the Law Society or a claim is reported to the Insurer. |

Oftentimes it is not until a complaint or claim is made against a lawyer that gaps in firm policies or procedures can be identified. While no lawyer wants to be complained about to the Law Society, or have to report a potential negligence or error claim to the insurer, it is those circumstances that can create opportunities for improvement to processes and procedures.

Ultimately, once positive changes are implemented, it will create more satisfied clients and lawyers alike, resulting in fewer complaints and claims against firm members.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm amends conflicts check processes and reinforces policies where necessary if a complaint about conflict of interest is made against the firm. |  |
| 1. If complaints of delay are not uncommon, the firm considers how it may support the lawyer with any caseload or case management issues and takes steps to improve the quality of service delivery to firm clients, for example:  * make a decision that the lawyer will not take on more client matters unless and they are able to serve clients effectively; * invest in case management software or a document management system. |  |
| 1. The firm identifies the root causes of any missed court filing deadlines, appearances or other time-sensitive obligations to identify and improve systems as needed. |  |

Rating Objective 37: The firm implements any necessary changes to firm policies and procedures when a complaint is made to the Law Society or a claim is reported to the Insurer.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.1 Competence (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=16)  [*Code*: Rule 3.2 Quality of Service (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=22)  Primary  [LSM: Procrastination and Professional Liability Insurance Claims (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=157)  [practicePRO: Common Claims and How to Avoid Them (webinar)](https://www.practicepro.ca/2020/12/common-claims-tips-and-how-to-avoid-them/) |

## Objective 38: Respect for Adjudicative Bodies

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| --- |
| Members of the firm demonstrate respect for all adjudicative bodies, including the judiciary and court staff. |

Lawyers have a very privileged role when it comes to dealing with the Court and other adjudicative bodies. With that privilege comes the responsibility to ensure that communications with the Court and adjudicative bodies are only initiated as appropriate, all communications are respectful and follow any prescribed guidelines, and court directions or court-imposed deadlines are respected.

Any deviation from the high standard expected of lawyers threatens the protection of the public and the perception of the profession.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Communications with adjudicative bodies, including the judiciary, are carried out in a timely, respectful and courteous manner and only when appropriate. |  |
| 1. Guidelines relating to appropriate communications with adjudicative bodies, including the judiciary, are disseminated to staff. |  |
| 1. Members of the firm do not participate in conversations or provide personal opinions that disparage the legal system to members of the public or demonstrate disrespect for the administration of justice. |  |
| 1. Members of the firm understand and follow appropriate “court etiquette,” for example*:*  * lawyers ensure that cell phones are turned off while in court; * dress codes and other practice directives issued by the courts are observed. |  |
| 1. Directions from the court are respected and followed and lawyers comply with court-imposed deadlines. |  |
| 1. Guidance about the importance of complying with court orders and directions (and rulings from other adjudicative bodies) is provided to staff. |  |

Rating Objective 38: Members of the firm demonstrate respect for all adjudicative bodies, including the judiciary and court staff.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 5.1 The Lawyer as Advocate (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=89)  [*Code*: Rule 5.6-1 Encouraging Respect for the Administration of Justice (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=103)  Primary  [LSM: Ethical & Respectful Advocacy (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=212)  [LSM: Virtual Courtrooms, Remote Advocacy (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=208)  Additional  [The Advocates’ Society: Practices for Civility and Professionalism (pages 9 to 15)](https://www.advocates.ca/Upload/Files/PDF/Advocacy/InstituteforCivilityandProfessionalism/Principles_of_Civility_and_Professionalism_for_AdvocatesFeb28.pdf#page=9) |

## Objective 39: Professionalism

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| --- |
| Members of the firm maintain an air of professionalism in all external communications, both in their professional and personal capacities. |

Lawyers in their public appearances and public statements should conduct themselves in the same manner as they do with their clients, their fellow practitioners, the courts, and tribunals. Dealings with the media are simply an extension of the lawyer’s conduct in a professional capacity. The mere fact that a lawyer’s appearance is outside of a courtroom, a tribunal or the lawyer’s office does not excuse conduct that would otherwise be considered improper.

Lawyers should, where possible, encourage public respect for and try to improve the administration of justice. In particular, lawyers should treat fellow practitioners, the courts and tribunals with respect, integrity and courtesy. Lawyers are subject to a separate and higher standard of conduct than that which might incur the sanction of the court.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. The firm’s advertisements and marketing materials – including websites and social media accounts – are accurate, up-to-date, and comply with the obligations under the *Code*. |  |
| 1. Lawyers refrain from saying anything that might bring the profession or the administration of justice into disrepute when speaking to the media in their professional capacity. |  |
| 1. Personal social media accounts do not contain any content which might bring the profession or the administration of justice into disrepute. |  |

Rating Objective 39: Members of the firm maintain an air of professionalism in all external communications, both in their professional and personal capacities.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 4 Marketing of Legal Services (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=82)  [*Code*: Rule 7.5 Public Appearances and Public Statements (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=131)  Primary  [CBA: Legal Ethics in a Digital Context](https://www.cba.org/getattachment/Sections/Ethics-and-Professional-Responsibility-Committee/Resources/Resources/Legal-Ethics-in-a-Digital-Context/LegalEthicsInaDigitalContext.pdf#page=41)  [The Advocates’ Society: Practices for Civility and Professionalism (pages 9 to 15)](https://www.advocates.ca/Upload/Files/PDF/Advocacy/InstituteforCivilityandProfessionalism/Principles_of_Civility_and_Professionalism_for_AdvocatesFeb28.pdf#page=9) |

## Overall Rating Principle 5: Relationships with Third Parties and the Administration of Justice

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| --- |
| (Average of ratings assigned to the Objectives for this Principle) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

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| --- |
| Use this space to list priority areas for improvement and related action plans. |
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| Use this space to list areas of particular success and related plans for ongoing success. |
|  |

# Principle 6: Equity, Diversity, and Inclusion

Although there has undoubtedly been progress in improving equity, diversity and inclusion in recent times, the legal profession still needs to take further steps to ensure it becomes more representative of the diversity in Canadian society. Not only is it contrary to the public interest to have a homogeneous bar, but it is also inconsistent with good business practices to have a homogeneous organization – the more diverse the firm is, the more diverse its prospective clientele will be. Law firms will also be better able to attract clients from all segments of society and provide better legal services if their lawyers have the skills and understanding necessary to represent clients from marginalized and minority groups of society.

A recent survey conducted by the Prairie Law Societies revealed that approximately one-third of articling students experience some form of discrimination or harassment during their articling year or during the recruitment process. Sole practitioners and law firms should be aware of their obligations with respect to discrimination and harassment and promote a safe and respectful firm culture, for both staff and clients.

The following results-based objectives have been identified to support the goal that the firm embodies the principles of equity, diversity, and inclusion.

|  |  |
| --- | --- |
| **Objective 40** | The firm ensures that clients from equity-seeking groups receive competent legal services through awareness of and responsiveness to their particular circumstances. |
| **Objective 41** | The firm fulfills all legal obligations with respect to human resources and promotes equity, diversity, and inclusion in recruitment, retention, and advancement of lawyers and staff. |
| **Objective 42** | The firm ensures that clients with disabilities receive competent legal services through awareness of and responsiveness to their particular circumstances. |
| **Objective 43** | The firm fosters a workplace and practice of law that is free of discrimination and harassment. |
| **Objective 44** | Members of the firm have read or taken training related to The Truth and Reconciliation Commission’s Calls to Action. |
| **Objective 45** | Members of the firm have studied, taken training, or attended continuing professional development or other information sessions that increase their understanding of other cultures, inequality, and human rights. |

## Objective 40: Clients from Equity-Seeking Groups

|  |
| --- |
| The firm ensures that clients from equity-seeking groups receive competent legal services through awareness of and responsiveness to their particular circumstances. |

Lawyers must be mindful of legislative requirements relating to accessible workplaces and take all steps necessary to ensure their firms are in compliance. The *Code* also requires that lawyers provide competent legal services to their clients.

As case law develops, lawyers need to stay current on what may be required of them in order to provide the appropriate quality of service for their clients in light of their particular circumstances.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Lawyers and staff receive education and training relating to the provision of services that address the client’s specific needs, which may include how to develop strategy and advise clients in light of the client’s circumstances. |  |
| 1. The firm promotes an inclusive environment that welcomes all lawyers, staff, and clients. |  |

Rating Objective 40: The firm ensures that clients from equity-seeking groups receive competent legal services through awareness of and responsiveness to their particular circumstances.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

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| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.2-2A and 3.2-2B Language Rights (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=25)  [*Code*: Rule 3.2-9 Clients with Diminished Capacity (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=32)  [The Accessibility for Manitobans Act](https://accessibilitymb.ca/)  Primary  [CBA: Truth and Reconciliation Toolkit for Firms](https://www.cba.org/Truth-and-Reconciliation/Reconciliation-Toolkit-for-Firms)  [The Advocates’ Society: Guide for Lawyers Working with Indigenous Peoples](https://www.advocates.ca/TAS/Publications/Best_Practices_Publications/TAS/Publications_Resources/Best_Practices_Publications.aspx) |

## Objective 41: Recruitment, Retention, and Advancement

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| --- |
| The firm fulfills all legal obligations with respect to human resources and promotes equity, diversity, and inclusion in recruitment, retention, and advancement of lawyers and staff. |

Lawyers must be aware of and comply with all legal requirements relating to human resources matters. Also, although lawyers may believe that they treat persons equitably, they should educate themselves about how certain practices may actually amount to discrimination and review policies and procedures to eliminate the risk of engaging in such practices, even unintentionally.

On a practical level, offering things such as flexible work schedules can be a win-win situation as content staff means less turn-over and less disruption to the firm and its delivery of services to clients.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| **Practices** | **Rating** |
| --- | --- |
| 1. Hiring policies or practices are reviewed for potential bias or discrimination. For example:  * The firm uses appropriate interview questions in recruitment processes to avoid intentional or unintentional discrimination (e.g., avoid asking whether a young woman is married or is planning to have children). * The firm avoids judging equally qualified candidates based on who would make a “better fit” with the firm (e.g., unconscious preference for those who play certain sports). |  |
| 1. Articling students are compensated for services provided. |  |
| 1. Accommodation policies are in place for lawyers & staff, addressing things such as:  * Ability * Flexible work schedules * Parental leave * Religious holidays and practices |  |

Rating Objective 41: The firm fulfills all legal obligations with respect to human resources and promotes equity, diversity, and inclusion in recruitment, retention, and advancement of lawyers and staff.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 6.3 Harassment and Discrimination (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=113)  [Province of Manitoba: The Human Rights Code](https://web2.gov.mb.ca/laws/statutes/ccsm/h175e.php)  Primary  [LSM: Equity – Resources for Lawyers and Firms](https://educationcentre.lawsociety.mb.ca/practice-resources/professional-responsibilities/equity/)  [LSM: Equity Officer](https://lawsociety.mb.ca/for-lawyers/supports-for-lawyers/equity-officer/?hilite=equity)  [Manitoba Human Rights Commission: Reasonable Accommodation in the Workplace](http://www.manitobahumanrights.ca/v1/education-resources/resources/reasonable-accommodation.html)  [Canadian Equality Consulting: Invisible Disabilities in the Workplace](https://canadianequality.ca/invisible-disabilities-in-the-workplace/)  [Pride at Work Canada: Beyond Diversity: An LGBT Best Practice Guide for Employers](https://prideatwork.ca/wp-content/uploads/2017/09/Beyond-Diversity-LGBT-Guide.pdf) |

## Objective 42: Clients with Disabilities and Accessibility Needs

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| --- |
| The firm ensures that clients with disabilities receive competent legal services through awareness of and responsiveness to their particular circumstances. |

As the delivery of legal services changes, lawyers need to think beyond the traditional delivery of legal services and become competent using technological means to provide quality legal services in a different way both to ensure compliance with any legislative requirements and to remain competitive in relation to ever-changing market demands.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| **Practices** | **Rating** |
| --- | --- |
| 1. Lawyers and staff receive education and training relating to the provision of service to persons with disabilities, which may include how to develop strategy and advise clients in light of the client’s circumstances. |  |
| 1. The firm has a policy relating to accessibility that meets current legal requirements. |  |
| 1. The firm accommodates accessibility needs of the client, including meeting clients in alternative settings if necessary. |  |
| 1. The firm employs website technologies to assist clients with hearing and/or sight impairments. |  |

Rating Objective 42: The firm ensures that clients with disabilities receive competent legal services through awareness of and responsiveness to their particular circumstances.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  *[Code](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf" \l "page=32)*[: Rule 3.2-9 Clients with Diminished Capacity (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf" \l "page=32)  [[The Accessibility for Manitobans Act](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf" \l "page=32)](https://accessibilitymb.ca/)  Primary  [Accessibility for Manitobans Act Online Training](https://accessibilitymb.ca/online-training.html)  [ARCH Disability Law Centre: Guide – Tips for Lawyers and Paralegals on Providing Accessible Legal Services to Persons with Disabilities](https://archdisabilitylaw.ca/resource/guide-tips-for-lawyers-and-paralegals-on-providing-accessible-legal-services-to-persons-with-disabilities-in-ontario/)  [CBA: Guide to Accessibility Planning for Law Firms](https://www.cba.org/Publications-Resources/CBA-Practice-Link/solo/2014/Guide-to-Accessibility-Planning-for-Law-Firms) |

## Objective 43: Discrimination and Harassment

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| The firm fosters a workplace and practice of law that is free of discrimination and harassment. |

Lawyers have special responsibilities to respect and honour the requirements of human rights laws in force in Canada, its provinces and its territories.

Because of those special obligations, lawyers must ensure they understand legal and professional ethical obligations relating to harassment and discrimination including an understanding of what harassment means and what constitutes discrimination. For example, intent to discriminate is not a prerequisite to a finding of discrimination. Ignorance of these legal and ethical obligations will not amount to a defence against allegations of inappropriate conduct.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Members of the firm are aware of discrimination and harassment laws. |  |
| 1. Lawyers are aware of their unique legal obligations under the *Code* with respect to discrimination and harassment. |  |
| 1. The firm discourages and does not tolerate sexual and all other forms of harassment. |  |
| 1. The firm discourages and does not tolerate discrimination against any person. |  |

Rating Objective 43: The firm fosters a workplace and practice of law that is free of discrimination and harassment.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 6.3 Harassment and Discrimination (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=113)  Primary  [LSM: Equity – Resources for Lawyers and Firms](https://educationcentre.lawsociety.mb.ca/practice-resources/professional-responsibilities/equity/)  [LSM: Equity Officer](https://lawsociety.mb.ca/for-lawyers/supports-for-lawyers/equity-officer/?hilite=equity)  [LSM: Sexual Harassment in the Workplace in the #MeToo Era: What You Need to Know (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=167) |

## Objective 44: Truth and Reconciliation

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| --- |
| Members of the firm have read or taken training related to The Truth and Reconciliation Commission’s Calls to Action. |

The FLSC has committed to assisting the Law Societies in their efforts to respond to the Truth and Reconciliation Commission’s Calls to Action, particularly Calls 27 and 28.

Call to Action 27 highlights the need for all legal professionals to raise their awareness and competence as it relates to Indigenous peoples. With law schools adding to their curriculum, many recent graduates may be entering the profession with a greater understanding of Indigenous peoples, the existence of Indigenous legal orders and the history of colonization. However, not all lawyers have had the same depth of educational opportunities, particularly those who began the practice of law prior to the release of the TRC Report.

There are diverse approaches to reconciliation that law societies across Canada are developing and implementing. Many law societies have advisory committees that are already actively working on reconciliation initiatives, including providing guidance on educational activities for both the profession at large and law society staff and leaders. Diverse approaches recognize the importance of each law society’s response reflecting the historical, social, geographical and legal realities of the Indigenous peoples within their borders.

When considering the ethical obligation to be “competent” in the delivery of legal services to clients, all lawyers should have baseline knowledge of the issues, including the existence of Indigenous legal orders to enhance competence. But some lawyers, for example those working in the criminal justice system or on child welfare matters, require expanded knowledge and understanding. There is no one size fits all approach. Lawyers must address an approach to improve indigenous intercultural awareness and competence and determine where they fall on the continuum of knowledge required to comply with their ethical obligations to be competent in the delivery of legal services. Lawyers must take the necessary steps to ensure that their clients are provided with the appropriate quality of service.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Members of the firm attend/participate in CPD or other activities on Indigenous history and law and the effects of colonization in Canada. |  |
| 1. Members of the firm attend/participate in CPD or other activities on trauma-informed lawyering. |  |
| 1. Members of the firm attend/participate in CPD or other activities on the United Nations Declaration on the Rights of Indigenous Peoples. |  |

Rating Objective 44: Members of the firm have read or taken training related to The Truth and Reconciliation Commission’s Calls to Action.

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| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Primary  [LSM: Equity – Resources for Lawyers and Firms](https://educationcentre.lawsociety.mb.ca/practice-resources/professional-responsibilities/equity/)  [LSM: Indigenous Law (webinars)](https://cpdonline.lawsociety.mb.ca/course/index.php?categoryid=18)  Additional  [LSM: Child Protection System and the Legacy of Residential Schools (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=137)  [LSM: *Gladue* Principles in the Child Protection Context (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=256)  [CBA: The Trauma-Informed Lawyer podcast](https://www.cba.org/Truth-and-Reconciliation/Events/The-Trauma-Informed-Lawyer)  [CBA: Truth and Reconciliation Toolkit for Firms](https://www.cba.org/Truth-and-Reconciliation/Reconciliation-Toolkit-for-Firms)  [LSA: Indigenous Cultural Competency Resources](https://www.lawsociety.ab.ca/about-us/key-initiatives/indigenous-initiatives/indigenous-cultural-competency-resources/)  [LSS: Truth and Reconciliation – Additional Resources](https://www.lawsociety.sk.ca/initiatives/truth-and-reconciliation/additional-resources/)  [TAS/IBA/LSO: Guide for Lawyers Working with Indigenous Peoples (original)](https://www.advocates.ca/Upload/Files/PDF/Advocacy/BestPracticesPublications/IndigenousPeoples/Guide_for_Lawyers_Working_with_Indigenous_Peoples_2022_Link_Update_FINAL_AODA.pdf)  [TAS/IBA/LSO: First Supplement to the Guide for Lawyers Working with Indigenous Peoples](https://www.advocates.ca/Upload/Files/PDF/Advocacy/BestPracticesPublications/IndigenousPeoples/First_Supplement_to_the_Guide_for_Lawyers_Working_with_Indigenous_Peoples_Final_English_AODA.pdf) |

## Objective 45: Other Cultures, Inequality, and Human Rights

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| --- |
| Members of the firm have studied, taken training, or attended continuing professional development or other information sessions that increase their understanding of other cultures, inequality, and human rights. |

In a similar fashion, lawyers must consider what education they may require in order to be competent in the delivery of legal services to a diverse population and diverse clients.

Becoming competent in the delivery of legal services to diverse clientele requires an understanding of the lived experiences of clients including being discriminated against and being subjected to racist behavior.

You don’t know what you don’t know. Lawyers should commit to gaining a better understanding of intercultural experiences as this knowledge can only assist in the competent delivery of legal services to clients.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Members of the firm attend/participate in CPD or other activities on intercultural competency. |  |
| 1. Members of the firm attend/participate in CPD or other activities on unconscious bias. |  |
| 1. Members of the firm attend/participate in CPD or other activities on conflict resolution. |  |
| 1. Members of the firm attend/participate in CPD or other activities on human rights and discrimination. |  |
| 1. Members of the firm attend/participate in CPD or other activities on anti-racism. |  |

Rating Objective 45: Members of the firm have studied, taken training, or attended continuing professional development or other information sessions that increase their understanding of other cultures, inequality, and human rights.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Primary  [LSM: Critical Conversations: Black Lives Matter: Canadian Perspectives (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=206)  [LSM: Equity – Resources for Lawyers and Firms](https://educationcentre.lawsociety.mb.ca/practice-resources/professional-responsibilities/equity/)  [Alberta Civil Liberties Research Centre: Calgary Anti-Racism Education (self-learning program)](https://www.aclrc.com/cared)  [The 519: Creating Authentic Spaces: A Gender Identity and Gender Expression Toolkit](https://www.the519.org/education-training/training-resources/our-resources/creating-authentic-spaces)  Additional  [Catalyst: 11 Types of Harmful Types of Unconscious Bias and How to Interrupt Them](https://www.catalyst.org/2020/01/02/interrupt-unconscious-bias/)  [Government of Canada: The History of People of African Descent in Canada (podcast)](https://www.csps-efpc.gc.ca/podcasts/people-african-decent-eng.aspx) |

## Overall Rating Principle 6: Equity Diversity, and Inclusion

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| --- |
| (Average of ratings assigned to the Objectives for this Principle) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

|  |
| --- |
| Use this space to list priority areas for improvement and related action plans. |
|  |

|  |
| --- |
| Use this space to list areas of particular success and related plans for ongoing success. |
|  |

# Principle 7: Access to Legal Services

The lack of affordable legal services for low-income individuals is a persistent and growing issue. It is in the public interest that access to justice and legal services is improved. As set out in the *Code*, lawyers must make legal services available to the public efficiently and conveniently.

As a matter of access to justice, it is in keeping with the best interests of the legal profession to provide services pro bono and to reduce or waive a fee when there is hardship or poverty or the client or prospective client would otherwise be deprived of adequate legal advice or representation. The Law Society encourages lawyers to provide public interest legal services and to support organizations that provide services to persons of limited means.

The following results-based objectives have been identified to support the legal profession’s goal to improve access to justice and legal service.

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| --- | --- |
| **Objective 46** | The firm facilitates access to justice and access to legal services. |
| **Objective 47** | The firm encourages lawyers to provide volunteer legal services in the community. |
| **Objective 48** | The firm encourages innovation in the delivery of legal services. |
| **Objective 49** | The firm offers a variety of unbundled legal services. |

## Objective 46: Access to Justice

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| The firm facilitates access to justice and access to legal services. |

A lawyer may assist in making legal services available by participating in the Legal Aid Plan and lawyer referral services and by engaging in programs of public information, education or advice concerning legal matters.

As a matter of access to justice, it is in keeping with the best traditions of the legal profession to provide services pro bono and to reduce or waive a fee when there is hardship or poverty or the client or prospective client would otherwise be deprived of adequate legal advice or representation.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Fees are reduced or waived on files where there is hardship or poverty, or the prospective client would otherwise be deprived of adequate representation. |  |
| 1. Legal services are provided pursuant to certificates issued by Legal Aid. |  |
| 1. Alternate billing arrangements are offered where appropriate, such as payment plans or flat fees. |  |
| 1. Legal services are provided in rural communities and in underserviced areas. |  |

Rating Objective 46: The firm facilitates access to justice and access to legal services.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 4.1-1 Making Legal Services Available (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=83)  Primary  [CBA: Innovations that Could Improve Access to Justice](https://www.cba.org/CBA-Equal-Justice/About/Innovations-that-could-improve-access-to-justice)  [LSM: Access to Justice: Indigenous Perspectives (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=250)  [CBA: Promoting Preventive Legal Health – A Tool Kit for Lawyers](https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Equal%20Justice/Preventive-Health-Toolkit-eng.pdf)  [CBA: The ABCs of Creating a Pro Bono Policy for Your Law Firm](https://www.cba.org/Publications-Resources/CBA-Practice-Link/2015/2009/The-ABCs-of-Creating-a-Pro-Bono-Policy-for-Your-La) |

## Objective 47: Volunteer Services

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| The firm encourages lawyers to provide volunteer legal services in the community. |

The Law Society encourages lawyers to provide public interest legal services and support organizations that provide services to persons of limited means.

Without a sufficiently sized pool of lawyers available to provide required supervision, law students have fewer opportunities to be mentored and to gain “hands on” experience in dealing with members of the public on their legal matters. It is also valuable for students to appreciate that “giving back” to society and providing pro bono services should be a career-long endeavour.

Lawyers are encouraged to explore other opportunities to assist legal clinics with their important work by becoming involved as Board members or volunteering to serve as various committee members.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Lawyers provide services on a volunteer basis through “public interest” law centres, for example:  * providing pro bono “short-term summary legal services” to the public; or * supervising law students providing pro bono services to the public. |  |
| 1. Lawyers provide in-kind services by sitting as a board or committee member for a non-profit organization that works to improve access to justice. |  |
| 1. Lawyers provide information to the public on legal matters by participating in educational sessions organized by justice system stakeholders or other community social services providers (e.g., Community Legal Education Association). |  |

Rating Objective 47: The firm encourages lawyers to provide volunteer legal services in the community.

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| --- |
| (Average of ratings assigned to Practices above) |

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| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.4-2A through D Short-Term Summary Legal Services (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=48)  Primary  [CBA: The ABCs of Creating a Pro Bono Policy for Your Law Firm](https://www.cba.org/Publications-Resources/CBA-Practice-Link/2015/2009/The-ABCs-of-Creating-a-Pro-Bono-Policy-for-Your-La)  [LSA: Navigating Not-for-Profits](https://www.lawsociety.ab.ca/resource-centre/key-resources/ethics-and-professionalism/navigating-not-for-profits/) |

## Objective 48: Innovation

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| The firm encourages innovation in the delivery of legal services. |

Driven in part by new technologies, new business models, and access to justice concerns, the delivery of legal services is evolving around the world. In an ever-changing world, it is more important than ever to consider how using new technology may result in increased efficiencies, improved quality of service and reduced costs to clients.

As lawyers become more confident and incorporate artificial intelligence into their service delivery models, clients will begin to realize the benefits resulting in expectations that all lawyers will embrace the use of new technologies in service delivery. In other words, once something becomes “the norm” in a certain practice area (such as the use of e-discovery in litigation), lawyers who do not utilize similar technologies in their own practices may be viewed as less competent and as lawyers who do not provide a comparable quality of service.

The pandemic caused lawyers to dramatically alter the way they practice law and many clients will no longer want to return to in-person service delivery. Being able to “pivot” has become essential.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Processes are used to enable better case management of files to increase efficiencies. |  |
| 1. Lawyers and staff are invited to suggest measures to increase the firm’s efficiency and effectiveness. |  |
| 1. Alternatives to litigation, such as alternative dispute resolution, are offered to firm clients and appropriate referrals are made. |  |
| 1. The firm considers and explores technology solutions to improve and enhance service delivery. |  |

Rating Objective 48: The firm encourages innovation in the delivery of legal services.

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| --- |
| (Average of ratings assigned to Practices above) |

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| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

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| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Primary  [CBA: Innovations that Could Improve Access to Justice](https://www.cba.org/CBA-Equal-Justice/About/Innovations-that-could-improve-access-to-justice)  Additional  [Clio: AI in Law: Transforming Legal Practice](https://www.clio.com/blog/lawyer-ai/)  [Emerj: AI in Law and Legal Practice – A Comprehensive View of 35 Current Applications](https://emerj.com/ai-sector-overviews/ai-in-law-legal-practice-current-applications/) |

## Objective 49: Unbundled Services

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| The firm offers a variety of unbundled legal services. |

Many lawyers offering unbundled legal see it as a benefit to themselves as well as their clients. In fact, new research suggests that unbundling is in demand by clients and when unbundled legal services are offered, the results are positive for clients and lawyers. For example, a recent study surveyed lawyers and clients on their experience offering and receiving unbundled legal services (ULS) and found that 76.6% of participants were satisfied with hiring a lawyer on a limited scope basis and would not have wanted full representation; further, nearly all respondents would consider ULS in the future (96.6%).

Some of the reported benefits include:

* **Reduced Receivables**: Because service is limited, it is typically for a fixed price or for a very specific number of hours. This can often be paid for in advance (through full payment or a smaller retainer), removing the stress, expense, and hassle of receivable issues.
* **Business Promotion**: Particularly for younger lawyers willing to promote broad availability of unbundled legal services, they may expand their market share by engaging in a service less often offered by more senior counsel, who typically run a traditional retainer practice.
* **Larger Potential Market Share**: The number of persons in the middle and even upper middle class able to afford a traditional retainer is a very small proportion of those people. Unbundled legal services provide access to a market which may be largely untapped in the current full retainer model.
* **Less Stress**: When providing unbundled legal services, the lawyer's job is complete once their task is completed. As a result, fewer files "follow the lawyer home" after they leave the office.
* **Life Style Control**: This type of work is well suited to lawyers who wish to work part-time, particularly for lawyers coming off of parental leave or transitioning into retirement.
* **Increased Efficiency**: The current full-service retainer practice means that lawyers are working on a billable hour system, which can lead to inefficiency. Files taken on the full-service retainer can also take long periods of time to resolve. Taking on cases on an unbundled basis means that lawyers can efficiently and quickly open, work on, and close files because they are only taking on parts of, rather than the full file.
* **Potential Risk Reduction**: Anecdotal evidence suggests lawyers are less likely to be subject to complaints or negligence suits where their clients do not see them as "being responsible" for the legal matter as a whole. For example, lawsuits relating to lawyers providing mediation or collaborative law are extremely uncommon.
* **Contribution to Access to Justice (While Still Getting Paid)**: Lawyers expanding the scope of their services, by offering unbundled legal services are allowing many more people to access some legal services where they might not otherwise be able to. As reported by Dr. Julie Macfarlane, 86% of self-represented parties still wish to have legal assistance – they simply can't afford it under the current model of "lawyer does all." Unbundled legal services offer a viable source of assistance for the ever-expanding number of self-represented parties.
* **Expanded Empowerment of Clients**: Unbundled legal services offer clients the ability to obtain a form of legal service, where they pay for only what they want, and then assume responsibility for those matters they choose to do on their own. This increases clients’ legal literacy and empowers clients to take an active role in resolving their legal matters. This results in more power to the client and less responsibility for the lawyer.

The following example practices can help you assess the firm’s performance with respect to this Objective and consider ways to proactively manage risk.

| Practices | Rating |
| --- | --- |
| 1. Lawyers offer to provide legal services through limited scope retainers where appropriate. |  |
| 1. Lawyers offer legal coaching as may be appropriate. |  |

Rating Objective 49: The firm offers a variety of unbundled legal services.

|  |
| --- |
| (Average of ratings assigned to Practices above) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

| Resources |
| --- |
| Regulatory  [*Code*: Rule 3.2-1A Limited Scope Retainers (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=24)  [*Code*: Rule 3.1-2 Competence, Commentary [7A]](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=19)  [*Code*: Rule 7.2-6A Communications (and Commentary)](https://lawsociety.mb.ca/wp-content/uploads/2019/12/LSM-Code-Complete-Document-English.pdf#page=124)  Primary  [LSM: Practice Resource – Retainers, Limited Scope Retainers](https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2020/10/RETAINERS-2020-10-28.pdf#page=33)  [LSM: Limited Scope Retainers: Tips and Traps (webinar)](https://cpdonline.lawsociety.mb.ca/course/info.php?id=55) |

## Overall Rating Principle 7: Access to Legal Services

|  |
| --- |
| (Average of ratings assigned to the Objectives for this Principle) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | 2 | 3 | 4 | 5 |

|  |  |
| --- | --- |
| Resources/support needed | No support needed |

|  |
| --- |
| Use this space to list priority areas for improvement and related action plans. |
|  |

|  |
| --- |
| Use this space to list areas of particular success and related plans for ongoing success. |
|  |