



**The Law Society  
of Manitoba**

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# ABSENCES, CONTINGENCY and SUCCESSION PLANNING

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Practice Management

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## A. INTRODUCTION

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This module reviews how to plan for absences and emergencies – the ones you expect and those you do not – and what you can do to minimize disruption and continue to provide professional service to your clients.

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

A contingency plan should be:

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

This module also addresses succession planning, necessary to ensure that your practice can continue to function and that your clients' needs can continue to be met, after you have left the building.

\* This module is not intended to cover basic safety planning for such things as an alarm system, fire suppression system, evacuation in case of fire, first aid, CPR or AED equipment and training, or active threat, shooter or hostage situations, all of which should be addressed.

## B. YOU MUST HAVE A PLAN: THE RULES

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

You are responsible for the safekeeping, preservation of and accounting for your client's property as set out in the [Code of Professional Conduct](#) (the Code) including Code Rule 3.5-2, *The Legal Profession Act* (the Act) and the [Law Society Rules](#) (the Rules). Your client's property includes the client's money, documents, and personal property, as well as the client's information and personal data.

You are responsible for the safety and oversight of your staff as an employer. You are responsible for the operation of your practice, which includes a professional responsibility to meet all financial obligations (see Code Rule 7.1-2).

### 1. Trust Accounting Rules

Every law firm must designate a practising lawyer, approved by the Law Society, to be their **Trust Account Supervisor (TAS)**. The TAS is responsible for opening and overseeing the operation of the firm's trust accounts. The TAS may have the authority to sign trust cheques in the firm but a lawyer does not have to be a TAS to sign trust cheques.

A **Designated Trust Account Supervisor (D-TAS)** is a TAS who has agreed, and been approved by the Law Society, to be the D-TAS of another law firm. A D-TAS does not automatically have the authority to sign that other firm's trust cheques.

See Part 5 Rule 5-42.1(1) and [Trust Accounting Fundamentals](#) module on the Law Society website for details about the duties and obligations of a TAS.

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

### 2. Preservation of Client Property Rules

Chapter 3 of the Code requires that you preserve and care for your client's property including original documents (such as wills, title deeds, etc.) and other papers such as correspondence, files, and invoices, as well as personal property. These obligations are closely related to the duties you have regarding keeping your client's information confidential. (See Code Rules 3.5-1 and 3.5-2 and Commentaries [1] and [2]).

These obligations extend to records **whether in hard copy or electronic format**.

The requirements for safekeeping and preservation of your client's property are set out in Part 5 of the Law Society Rules - Protection of the Public, Division 4 – Financial Accountability.

You must maintain a record of all valuable property held for a client (see Rule 5-43 (4)).

The firm must retain its financial records and supporting documentation for **at least ten years**, and an individual client trust ledger must be kept with each closed file, whether paper or electronic (see Rule 5-54(1)).

The financial records for the most recent three-year period must be kept at your chief place of practice in Manitoba (see Rule 5-54(2)) and, if electronic, a backup copy of **all** trust records, updated monthly, must also be stored in a universally readable format safely and securely **in an off-site location** (see Rule 5-43(5)).

Your law firm's financial records and all supporting documents must be safeguarded both on and off-site.

## C. YOU SHOULD HAVE A PLAN: THE RISKS

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### 1. The Risks

What would happen to your clients, their legal matters, your staff, or your family if you suddenly died? Lesser unexpected events like power outages, watermain breaks, fires, or states of emergency, pandemics or destructive acts of nature (floods, blizzards, lightning strikes, tornadoes, wildfires), destructive acts of humans (vandalism, theft, cyberattacks), anti-social activities (by opposing parties, former clients, former employees, computer hackers, scammers) or personal problems for you or your staff (health or family issues) can turn a practice upside down or shut down your office without warning.

Assess your vulnerabilities. Consider the various possible scenarios that might incapacitate you, or force you to close your office. Devise a plan to deal with all the different responsibilities and as many contingencies as possible to protect against or minimize many potentially serious consequences.

### 2. The Work Must Go On

Planning for coverage during absences, contingency planning for disasters, and succession planning in case of permanent absence should be addressed now before they become an emergency.

Client files must be overseen by a lawyer at all times. Staff can do administrative tasks in your absence, but cannot provide legal services. Trust cheques must always have at least one lawyer's signature and cannot be signed in blank.

If something in your client's legal matter requires immediate action, their interests need to be preserved in a timely and accurate manner even if you are absent or an unforeseen disaster affects your office. Advance plans will make it easier for your family, staff, and clients to deal with those situations.

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

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

From When Bad Things Happen to Good Lawyers: A Contingency Planning Handbook (Law Society of Alberta).

**Do your staff know what to do and where to find all of the information that you store in your head? Do you know where to find all of the information that your key staff store in their heads?**

You or your key staff may be unavailable due to vacation or retirement, or an unanticipated family emergency, medical issue or incapacitation, addiction, suspension or disbarment, bankruptcy, or even death.

The suggestions for making sure your knowledge is accessible in your absence apply equally to absences of key staff. Be sure you maintain contact information for all staff, and lists of passwords for voicemail, computer programs, Teranet and other products used by them, without which you may find running your office challenging.

The use of technology to limit in-person meetings and to permit lawyers and staff to work remotely, previously rare, is now commonplace. Remote access to your system must be secure and confidential, for example through a reliable VPN. With an active VPN, a person's computer can communicate only with authorized computers. The VPN acts as a tunnel for communications and other online activities and prevents interception by unauthorized persons. Of course, your office and any hard copies of client information must be secured as well.

It is prudent to have a test run of the elements of any disaster plan before it becomes necessary to use it. Having a disaster recovery plan will help you spring into action efficiently. For more information, see [Disaster Recovery: Action Plan](#) (The Law Society of Alberta).

### **3. Winding up a Practice: Succession Planning**

You may choose to leave your law practice to retire, upon Judicial appointment or for other opportunities. The closure of your practice may be forced upon you due to circumstances beyond your control such as illness, disaster or death. You may have someone in mind to take over the operation of the practice in such a case, or it may need to be wound up.

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

You are in the optimal position to know the best way to handle the wind up of your practice, so draw up a plan now, before it is needed. Make others, including your family, executors, partners, and key staff aware that there are succession arrangements, and where to find the succession plan in case you are unavailable or incapacitated. If you plan to retire, make sure all of your files are up to date, and review all files with the successor lawyer to help ensure a smooth transition.

## D. CONTINGENCY PLANNING

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The goal of any contingency plan is to permit another lawyer and your staff to take over and continue your practice without your presence or input if suddenly necessary.

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

### 1. Basic Planning Principles

- Identify critical information and keep it in a secure and accessible place (for example, stored electronically in the cloud so that you can access it from anywhere with internet access); make sure at least two people know where it is.
- Keep backup information, including a hard copy, secure both on and off-site.
- Ensure a designated and capable lawyer agrees to oversee the practice.
- Have and follow standard procedures and checklists.
- Keep client files current; all filing should be up to date.
- Keep a master list of files where any obligations or trust conditions exist.
- Regularly update the status of all files in a master list – and keep a list of closed files.

The plan must be tailored to your practice and be adaptable to the specific situation. The scope of your planning will be different depending on whether you are creating a plan for a short planned absence, a longer or permanent unexpected absence, or a disaster situation where all of your on-site files and records are destroyed.

### 2. Assessing Risks

To assess the risk your firm might face, list the possible emergencies you can think of and rate the likelihood of each occurring. Create a plan of action, a list of critical information needed and steps you should take to reduce or respond to each of the identified risks.

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

*LSBC Module 9 Coverage During Absences*

Some Questions	Possible Solutions
Are your clients' interests protected in the event of a major change to the composition of the firm?	<ul style="list-style-type: none"> <li>✓ Partnership agreement contemplates and provides for the dissolution of the firm.</li> <li>✓ The firm has a wind-down plan.</li> <li>✓ The firm has business continuity and succession plans, as appropriate.</li> </ul>
Does your firm have insurance that is adequate for all risks?	<ul style="list-style-type: none"> <li>✓ Cyber liability insurance.</li> <li>✓ Disability insurance.</li> <li>✓ Business interruption insurance.</li> </ul>
Will clients be prejudiced in the handling of their legal matters upon the absence or death of the lawyer who has the conduct of a file/practice?	<ul style="list-style-type: none"> <li>✓ Plans for replacement lawyers for absences and/or retirement succession plans are in place.</li> </ul>
Can closed files be located and accessed easily?	<ul style="list-style-type: none"> <li>✓ Closed files are stored in an organized manner.</li> <li>✓ A master closed file list exists with details of location and date of the planned destruction.</li> </ul>
Is the firm prepared to carry on its business in the event of disasters like fires or floods?	<ul style="list-style-type: none"> <li>✓ Contingency plans exist and are stored offsite and accessible to key staff.</li> <li>✓ The firm has fire prevention, disaster recovery and business continuity policies.</li> <li>✓ Emergency documents are kept offsite in a secure location.</li> </ul>
Are steps taken to preserve the integrity of the firm's IT system?	<ul style="list-style-type: none"> <li>✓ Personnel have received cybersecurity training.</li> <li>✓ The firm has and enforces a policy on personal use of firm computers or other electronic devices.</li> </ul>
Is your equipment containing client data secure from theft or malfunction?	<ul style="list-style-type: none"> <li>✓ Serial numbers are recorded.</li> <li>✓ Daily backups are made and stored onsite and offsite.</li> <li>✓ Instructions for restoring data from backup are accessible to all staff.</li> <li>✓ Laptops can be locked.</li> <li>✓ Service personnel are available 24/7.</li> </ul>
Do you regularly review your plans for emergencies and absences and update the information or adapt it to your changing practice circumstances?	<ul style="list-style-type: none"> <li>✓ There is a practice of reviewing office procedures and emergency plans at least once a year. A designated staff member has booked the time for this to be done.</li> </ul>

For more information, including a review of the steps you can take, see the PracticePRO booklet, [Managing Practice Interruptions](#), which also contains a chart to help firms assess their vulnerabilities.

## E. A SUGGESTED BASIC PLAN

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

### **Elements of a Basic Plan for Emergencies and Absences:**

1. Office standard procedures manual;
2. Regular backup and secure storage of client and financial data;
3. Protocols for planned absences and emergencies;
4. Replacement lawyer on standby; and
5. Insurance.

### **1. Office Standard Procedures Manual**

All law offices should have an office Standard Procedures Manual.

All staff should read the manual and follow its procedures. Advise all staff when the manual is updated so that they can familiarize themselves with new procedures. An up-to-date office Standard Procedures Manual is valuable to any lawyer who steps in to oversee and maintain or even wind up your practice.

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

#### **a. Filing system and procedures**

- 1) Opening, maintaining and closing files
- 2) Retaining and destroying files
- 3) Maintaining current client lists including contact information
- 4) Maintaining current status of file lists
- 5) Organizing the content of files
- 6) Locating and using forms and precedents
- 7) Follow-up and reminder systems
- 8) Recording and meeting limitation dates and important deadlines

**b. Rules for all staff and lawyers re clients**

- 1) Checking for and dealing with conflicts
- 2) Client ID and verification
- 3) Anti-money laundering

**c. Security, storage, confidentiality of client data**

- 1) Data backup rules and procedures
  - How and when to backup data
  - How to restore data from backup
  - How and when to test backup systems
- 2) Onsite and offsite storage and rules
  - What is to be stored
  - Choice and location for data storage
  - Format of storage required
- 3) Confidentiality rules and procedures
  - Handling and storage of paper and electronic files and documents
  - Handling requests for information

**d. Client property - care, location and security**

- 1) Location of safety deposit box and key
- 2) Location of fireproof safe and its combination
- 3) What property should be accepted
- 4) Recordkeeping rules for storing and returning property

**e. Administrative rules for office operation and technology**

- 1) Employee info and job descriptions
- 2) Personal use of computers in office
- 3) Passwords, precautions, backups
- 4) Office lockup procedure
- 5) After hours access
- 6) Safety and emergency plans
- 7) Remote work, including technology

**f. Financial records**

- 1) Identity of Trust Account Supervisor (and Designated TAS)
- 2) List of those authorized to sign trust cheques
- 3) Handling of trust money

- 4) Handling of cash; anti-money laundering precautions
- 5) Accounts payable list and rules for records and remittances
- 6) Accounts receivable rules

**g. Timekeeping and billing rules**

**h. Office equipment inventory**

- 1) Info about leases, service, warranties

**i. Service providers contact list**

- 1) Landlord, Premises management
- 2) Cleaning
- 3) Suppliers

**j. Other important contacts list**

- 1) Bank
- 2) Accountant
- 3) Payroll company
- 4) Insurance company

**k. Responsible lawyer for Law Society communications**

**l. Procedure for reporting errors or omissions**

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

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

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

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

- identify and employ service people with the necessary expertise to support it;
- use uninterruptible power supplies (UPS) and surge protectors, especially on servers and phone systems;

- use anti-virus software, and keep virus definition files up to date;
- implement appropriate security on your servers and networks;
- mandate and enforce cybersecurity protocols; and
- use firewalls at any external network access points.

For more information, see *Protecting Your Data (and Yourself)* in the Appendix.

### **Backing up Computer Data**

- Have written accessible instructions on how to backup data.
- Do at least a daily back-up of data.
- Ensure you do a full (not only partial) back up regularly.
- Assign someone to review and maintain the back up log.
- Remember to back up laptops and cellphone texts, not just PCs.
- Have written instructions on how to restore data from a back up.
- Assign a different someone to do a regular test of the back up to be sure it works to restore your data. Sometimes the backups don't back up as they should.

## **3. Protocols for Planned Absences and Emergencies**

### **a) Preparing for Planned Short Absences**

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

### **b) Preparing for a Longer Absence**

In addition to the above:

- Inform all clients.

- Give your staff your phone and email contact information for emergencies.
- Arrange for a lawyer in your firm to review your email and regular mail, and be available for questions from clients, other lawyers and the Law Society.
- Update your voicemail and set an email auto-reply to advise when you plan to return; whether you will be checking and responding to messages while away; and who to contact if the matter is urgent. You may wish to say you will not be checking for messages so senders won't expect a reply before you return.
- Put a memo on the files and/or meet with your temporary lawyer in advance to alert them to potential problems and your plan.

### **c) Solo Practice**

If you are a sole practitioner, be sure to plan well ahead for any anticipated or unanticipated absences.

## **4. Replacement Lawyer on Standby**

### **a) Serving Clients During Absences**

If you plan to be absent for a period such as a vacation, you must have a practising lawyer monitoring your practice. Even if your absence is during a relatively slow time in your practice, some of your clients may need some legal services while you are away.

- Ask another practicing lawyer to agree to monitor your files during your absence. You do not need Law Society approval provided the lawyer will not be signing trust cheques. It is recommended that you enter into a written agreement regarding compensation for such services to your clients.
- Ensure that there are no conflicts for that other lawyer with the matters that you expect they may have to deal with. Have a backup plan in case there is a conflict.
- Give your staff contact information for your replacement lawyer.
- Get prior written informed consent from any clients if you anticipate they will need that lawyer's services. Those clients should be told about your absence and the plan, and they must give consent to that other lawyer acting for them on their file.
- Send a general email to clients to inform them of your pending absence to advise that the other lawyer will be available to act if necessary. Tell them your staff will send a consent form for their signature should that arise. Their consent must be kept on the file.

## b) Trust Accounts

### i. Signing Trust Cheques

If the replacement lawyer might need to sign a trust cheque, the lawyer does not need to be a Trust Account Supervisor (TAS), but you should get Audit department approval in advance and advise your financial institution of the arrangement.

### ii. Trust Account Supervisor Duties

Most sole practitioners are their own Trust Account Supervisor. If you will be unable to meet one or more of your TAS responsibilities (such as the monthly reconciliation of your trust accounts) because of an extended absence, you must make arrangements to designate a TAS in your place and obtain approval from the Law Society Audit Department. See Rule 5-42.1(1) and [Trust Accounting Fundamentals](#) for more details.

## 5. Insurance

You should review your insurance coverage at regular intervals. There are several types of insurance to consider beyond the mandatory practice insurance.

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

Note that there are several conditions for coverage under the CLIA cyber liability policy which can be found on the [Cyber Liability](#) page through the Member portal. For more information, see the [Cyber Security](#) resource library in the Education Centre.

You must do what you can do to prevent cyberattacks. The Law Society recommends that you consult with a computer security expert about firewalls, encryption, anti-virus software, secure passwords, intrusion detection system and other ways to protect your equipment and your clients' information.

## F. PREPARING FOR PLANNED EXTENDED LEAVE

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### 1. Parental Leave/Other Leave

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

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

...

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

Excerpted from Preparing for a Leave (formerly from the Law Society of Alberta).

For more information see "[A guide to prepare you for a pregnancy or parental leave](#)" and the included Parental Leave Checklist (Law Society of Ontario).

Make yourself aware of parental leave rights and obligations under [The Employment Standards Code](#) for salaried lawyers and [The Employment Insurance Act](#) for the self-employed or commissioned associates. For example, note that once a self-employed individual registers for EI, participation is indefinite (Part VII.1, s.152.02).

See also the Province of Manitoba Employment Standards [Parental Leave Fact Sheet](#).

Partners may have their rights set out in the partnership agreement.

Many lawyers request a reduced work schedule in advance of the leave and/or negotiate a reduced work schedule to transition back to work. Each firm should develop a leave policy and ensure that it is circulated to all members of the firm. Check with the [Equity Advisor](#) and on the Law Society website for information about parental leave policies, a model policy and confidential assistance for parental support.

A parental leave policy can be adapted for extended leaves for other reasons.

## 2. Member Status during a Leave from Practice

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

The status of a member of the Law Society is either practising or non-practising.

Many lawyers who take an extended leave choose to elect a non-practising status during the leave. Ensure that the chosen status best suits your needs and circumstances.

**Practising member status:** You are considered a practising member when you hold a valid practising certificate issued by the Law Society. You must pay your annual fees and professional liability insurance and reimbursement fund assessments, you must earn your annual mandatory continuing professional development credits, and you must not be suspended or disbarred. As a practising member, you will receive all Law Society publications. You can pay to get a Fast Track photo ID membership card that gives you preferred access to the Law Courts. You have full access to the services and resources of the [Manitoba Law Library](#). **You must maintain your practising member status at all times that you are carrying on the practice of law.**

**Non-practising member status:** As a non-practising member, you have withdrawn from practice. You must give your undertaking not to practise law in Manitoba according to [Law Society Rule 2-72](#). You will receive all Law Society publications for a period of three years. **You are not permitted to carry on the practice of law if you are a non-practising member.**

If you do not wish to retain practising status while on leave, you must apply to change your member status to non-practising. See the [Application to Withdraw from Practice](#) form.

## 3. Resuming Active Practice

**If you are a non-practising member and want to return to practising member status,** you must apply to resume active practice (with the necessary forms and fees), receive Law Society approval, provide proof of good character, and pay all practising and insurance fees before your member status will be changed to practising member. See [Law Society Rule 5-28.2](#). Approval to return to a practicing member status may be conditional or unconditional depending upon your particular circumstances.

You are not permitted to carry on the practice of law until your practising member status has resumed.

The [Application to Resume Active Practice](#) form is found on the Law Society website under Membership Services for Lawyers. The [Guidelines for Good Character](#) form is included in the Forms and Resources for the Application and Admission Process to Become a Lawyer.

See the Membership section on the Law Society website for more information about changing your status.

## 4. What is “Carrying on the Practice of Law”?

If you engage in any activities that fall within section 20(3) of *The Legal Profession Act* you will be deemed to be carrying on the practice of law. You must have practising member status for such activities. For example, if you do legal research and provide a legal opinion during a time when you are a non-practising member, you will be deemed to be carrying on the practice of law. Section 20(3) contains a detailed list of prohibited activities.

You are not considered to be carrying on the practice of law or appearing as a lawyer before the court if you fit into one of the six exceptions in section 20(4) of *The Legal Profession Act*. For example, the exceptions would permit you, as a non-practising member, to act on your own behalf in an action or proceeding, or prepare a document for your own use or to which you are a party without breaching the provisions in section 20(2) prohibiting the unauthorized practice of law.

## 5. Notary Public Powers

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

Part III of *The Manitoba Evidence Act* governs the appointment and powers of Notaries.

## G. PLANNING FOR UNEXPECTED EXTENDED OR PERMANENT ABSENCES

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Succession planning is essential to ensure continuity of service for your clients in case of extended absence, disability or death.

Have a replacement lawyer who has agreed to be the lawyer on standby for your practice.

Have an up-to-date and complete office Standard Procedures Manual for the standby lawyer.

Assign, in advance, one staff person as the main contact and another as the backup when you are unavailable.

Have an easily accessible emergency folder (electronic and paper) for the person in charge which contains:

- Replacement lawyer/secondary replacement lawyer contact information.
- List of all staff and lawyers' contact information for emergencies.
- Secure list of all passwords for everyone in office (for voicemail, computer, email accounts, alarm systems, safety deposit, online data/banking/Teranet, cellphone etc.).
- Checklist of persons to be advised of the situation, including the Law Society.
- Name of Designated Trust Account Supervisor if you are the Trust Account Supervisor.
- Where to find the list of all open client files and their current status.
- Where to find the list of all closed files and their location.
- How to access and use the off-site backup of the law firm data.

# 1. Choose a Replacement Lawyer

In a practice where there are several practising lawyers, finding a replacement lawyer for any temporary or permanent absence may not be too difficult. It is not as easy for a sole practitioner to find a replacement lawyer. Networking (including with young lawyers) may be helpful.

- Assess who the best person is for the situation.
- If appropriate, ensure that the replacement lawyer can contact you as needed.
- Consider including a notice in your standard retainer letter that a replacement lawyer may have to work on the client's file in the event of your extended absence or if you become unable to practice so that your clients are aware of the possibility.
- Keep your files organized and every file's checklist current so anyone viewing it will know any deadlines, limitations or outstanding trust conditions and can easily determine what has been done, what must be done, and what is urgent.

If you are a **sole practitioner**, also consider:

- A lawyer who shares space with you may be a convenient choice; a lawyer whose practice is similar to yours may be an appropriate choice if the lawyer might have to provide legal services to your clients.
- Consider that **conflicts** could arise for your replacement lawyer so have a backup plan if that lawyer cannot cover particular files.
- Ensure that clients' confidentiality is protected; inform the client and obtain their consent to the replacement lawyer working on their file in your absence.

## H. SUCCESSION PLANNING

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### 1. Death While in Active Practice

It is essential to have a plan for dealing with your practice if you die while you are still in active practice.

If you have a law partner(s) or associates, consider buying term life insurance to be used to pay out surviving partner(s) or cover custodial costs to wind up the practice. It is wise to include appropriate clauses in your partnership or associate agreement to address what happens to your practice on death.

### 2. Sole Practitioners

It is particularly important for sole practitioners to have succession arrangements for another lawyer to step in and ensure that clients are not prejudiced and that the staff and family are not placed in an overwhelming position should the sole practitioner suddenly be unable to practice.

The Annual Member Report (AMR) asks sole practitioners to advise the Law Society of the name and contact information of another member (or two) who they would prefer the Society consider to take custody and control of their practice in the event of their unexpected death or disability. This includes open and closed client files and accounting records.

Obtain the agreement of another lawyer (and an alternate if possible) who is willing to take control of and wind up your practice, including the tasks of billing for your work in progress and collecting your accounts receivable. It is best to have a written agreement in place with that lawyer.

Choose a lawyer who understands your practice so that, if necessary, they can step in to maintain your practice for your return, or wind it up, keeping both your and your clients' interests in mind. You may want to enter into a reciprocal arrangement with another sole practitioner. A younger lawyer may be happy to take on your clients. You may prefer an arrangement with a larger firm that could more easily handle a sudden influx of your current client matters.

Of course, conflict checks must be completed before any outside lawyer can work directly on any client's file and clients must be informed and given the option to consent to the new representation or take their legal matter elsewhere.

The Law Society is not bound by your recommendation. Section 57 of *The Legal Profession Act* permits the Law Society to apply to the court for an order to appoint a custodian to manage or wind up a practice. A custodian's obligation is to protect the clients' interests, and not to pursue outstanding accounts or maintain your practice for your future return. The

custodian's obligation may require referring all of your matters to other lawyers in other firms.

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

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

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

### 3. Withdrawing from Practice

If you intend to withdraw from the practice of law and you are not a member of a law firm that will continue to maintain your client files, you must notify the chief executive officer and obtain approval for your intended disposition of your open and closed files, client property and trust funds.

**Within three months** of your withdrawal, you must confirm those dispositions have been completed. Should you fail to comply, you may be required to pay the costs incurred by the Law Society to wind up your practice, including the costs for the disposition and storage of your files (see Law Society Rules 2-74(1) – 2-74(5)).

For more information, see *Retirement: Winding Up a Practice* under [Practice Management](#) in the Education Centre.

# I. SUMMARY

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1. It is your professional obligation to ensure that your clients are appropriately served and their interests protected even if you can't be in the office or directly accessible.
2. As a responsible professional you should create a written plan in advance to ensure your law practice can continue to provide legal services securely and competently to your clients in the event of an emergency or your absence.
3. If you are a Trust Account Supervisor, your extended absence will require that another Trust Account Supervisor be put in place to meet the trust accounting rules.
4. a. You need contingency plans in place to serve clients continuously when you are not available:
  - i. A plan for when you expect to be personally absent – e.g. short and long term planned leaves;
  - ii. A plan for unexpected personal absences as a result of an unanticipated event – e.g. sudden illness, injury or other disability, or a family emergency;
  - iii. A plan for conducting business if you lose access to your office or law firm data – e.g. during an office move, break-in or vandalism, fire, flood, theft, cyber-attack, computer system failure, or state of emergency.
- b. You need a succession plan in place to take effect when you are permanently unable to practice law, whether due to planned retirement, judicial appointment, or sudden incapacitating illness or death.
5. If you are a sole practitioner, consider developing a relationship with another lawyer who is willing to service your legal practice in the event of your unexpected or long term absence. If another lawyer must be able to sign trust cheques in your absence, you must get authorization in advance from the Law Society Audit department.
6. Alert your clients in advance to the fact and the dates of your planned absences. In the case of long-term absences, tell your clients who your replacement lawyer will be and obtain each client's specific consent to work with them during your absence.
7. Make it a habit to back up your computer data daily. Require that a designated person regularly test the backups to ensure they are working. Store the backups off-site in case you can't access your premises.
8. Create a Standard Procedure Manual for your office and keep it easily accessible and up-to-date for use by staff and any replacement lawyer.

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

## J. RESOURCES

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**\* Beware of differences between Manitoba and other locales, including Law Society Rules and statutes.**

### LAW SOCIETY OF MANITOBA

#### *Education Centre Resources*

- *Life Beyond Law* and *Winding up a Practice*

#### *CPD on Demand*

- *Intro to Cyber Security Awareness* - February 2, 2023

*CLIA Cyber Liability Program* (available behind the Member's Portal under the Insurance heading)

#### *Lawyer Regulation*

- *Practice Direction 89-04: Death or Disability of Sole Practitioners*

#### *Membership Services*

- *Application to Withdraw from Practice*
- *Application to Resume Active Practice*

### LAW SOCIETY OF ALBERTA

#### *Disaster Planning and Recovery Resource*

- *Disaster Recovery Safeguarding your Practice*
- *Disaster Recovery: Action Plan*

*When Bad Things Happen to Good Lawyers – A Contingency Planning Handbook*

*Business Continuity and Succession Plan Guide and Checklist*

*Office Procedure Manual*

### LAW SOCIETY OF SASKATCHEWAN

#### *Law Office Management Resources*

- *Succession Planning*
- *Succession Planning Agreement*

*Process Management*

## LAWYERS' INSURANCE ASSOCIATION OF NOVA SCOTIA

*Practice Management - Succession Planning*

### **Nova Scotia Barristers' Society**

- *Succession Planning Guide*
- *Legal Services Support Checklist - Succession Planning Considerations*
- *Succession Planning & Preparing to Exit Practice*

## LAW SOCIETY OF ONTARIO

*Succession Planning* (includes a list of other resources)

*Client Contingency Planning* (includes Ontario checklists and templates)

Consultation: Mandatory Succession Planning - *Succession Planning: An Opportunity to Protect Your Clients and Your Loved Ones*

## CANADIAN BAR ASSOCIATION – for CBA/MBA members

*How to Deal with Practice Disruptions*

Personal Safety Handbook – Manitoba 2015 – *Minimizing Risks to Personal Safety for You, Your Family, Friends and Colleagues*

## PRACTICEPRO

*Managing Practice Interruptions*

- *Managing Practice Interruptions*

Succession Planning for your Legal Practice (2024) (on YouTube)

*When lightning strikes ... are you prepared?* - LawPRO, Vol. 1, Issue 2, July 2002

*Cybersecurity Risks during COVID-19 and Working from Home* - March 20, 2020

*Cybercrime and Law Firms* - LawPRO Magazine, December 2013

*Firm Vulnerability Evaluation Chart*

## LAWYERS MUTUAL

Lawyers Mutual provides financial protection from professional liability to North Carolina lawyers, including programs of claims prevention education. Its website has many Risk Management Practice Guides which contain useful information and ideas even for lawyers who do not practice there.

The guides available include:

- [\*Extended Leave of Absence Policy\*](#)
- [\*Social Media and Crisis Communications Policy\*](#)
- [\*Buying or Selling a Law Practice\*](#)
- [\*Office Equipment Disposal Policy\*](#)
- [\*Data Breach Incident Response Plan Toolkit\*](#)
- [\*Disaster Planning and Recovery\*](#)
- [\*Plan Ahead for Closing a Law Practice: Procedures for Retirement, Moving to a New Firm, or Your Death or Disability\*](#)

## AMERICAN BAR ASSOCIATION

[\*Surviving A Disaster: A Lawyer's Guide to Disaster Planning\*](#)

## ATTORNEY AT WORK

[\*Why Lawyers Procrastinate on Succession Planning\*](#), Roy S. Ginsburg

[\*Got a Process for Your Processes? Create Law Firm SOPs in 5 Easy Steps\*](#), David and Karen Skinner

[\*Succession Planning Without Panic: 5 Tips to Open the Conversation\*](#), Camille Stell

***Remember, always rely on your professional judgment when considering these materials.***

## K. APPENDIX

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### 1. Protecting Your Data (and Yourself)

#### Protecting Your Data (and Yourself)

Barney Christianson, Practice Management Advisor

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



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

**1. Hard Drive Failure.** There are only two kinds of computer hard drives. Those that have failed and those that are going to fail. When a drive fails, the data on it is likely gone forever. Even if some data can be retrieved from a failed hard drive, it is going to be expensive and time-consuming to have a specialist do that for you.

**2. Accidents Happen.** Your office may be destroyed in a fire. Your surge protector (you have one of those, right?) may fail to protect your hard drive from a power surge or a lightning strike. Your office may be flooded by a burst pipe in your premises or in your neighbour’s. Is your office located anywhere near a river or an area subject to overland flooding? Even if you think you are not at risk of flooding, consider what happened in Calgary, and much of Alberta, in 2013. Are you near a railway? Lac-Mégantic. The tornado that went through Elie in 2007 was an F5 and levelled **everything** in its path. There is no Commandment that such events must happen only to others and never to you.

**3. Ransomware.** If you are not aware of this scourge, you should be. Ransomware infects your computer system, likely via an infected attachment or malicious website. You are then locked out of your data until you pay a ransom. (Even then, payment is not a guarantee that you get your data back; you are dealing with crooks.) Bear in mind that the growth in the number of ransomware attacks is simply astounding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

