

# STARTING A NEW PRACTICE? CHANGING PRACTICES?

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## Business Structures for Law Practices

A “law firm” is defined to include one member or two or more members practising together, and may include a sole proprietorship, a law corporation or limited liability partnership, a partnership or association of members or law corporations or a combination of both, or any other joint arrangement or legal entity that provides legal services (Law Society Rule (“Rule”) 1-2).

You must apply to the Law Society when starting a law firm or commencing a practice. The *Application to Commence Active Practice* is found on the Law Society website, under Membership Services. Similarly, if you change your form of practice or obtain new employment, you must complete the *Practice Update Form* which asks for information about your previous and new practices.

Each form requires you to identify your practicing arrangement, and lists various options, including:

- sole practitioner;
- sole practitioner sharing space and expenses;
- sole owner with associate(s);
- associate;
- partner.

You must also advise if you will be employed by Legal Aid, by government, as in-house counsel or as an academic. If you have a secondary practice, it must be identified separately.

The Application to Commence Active Practice and the Practice Update Form also ask you to include **trust account information**. If you will be handling trust money in your practice, a trust account will be required for the deposit of clients’ retainers, and funds you will receive from, for, and on behalf of clients related to legal services you will provide for their various matters, procedures and transactions.

If you are joining an existing firm, there may already be a trust account which all members of the firm can use. Otherwise, when starting a new firm which will handle trust money, a member of your firm will be required to apply to the Law Society for approval to be a trust account supervisor and successfully complete the related exam prior to opening a trust account (Rule 5-42(1)). If you work only for government, are in-house counsel, an academic or practice in an area which will never require handling of trust money, you are unlikely to need a trust account.

## Identifying a Practice Arrangement

A **sole practitioner** works independently and has full responsibility for all professional and business obligations. A sole practitioner may employ staff, but is the only practicing lawyer. A sole practitioner who will handle any trust money must have a trust account supervisor and maintain a trust account.

**Sole practitioners sharing space** each maintain their own individual sole practices and their own individual trust accounts, which must each have a trust account supervisor (Rule 5-42(3)). The expenses of the office space, overhead and supplies may be shared. Such a group of sole practitioners may operate under a common name, provided it is clear that it is not a single firm. Serious consideration must be given to conflicts issues, which will almost certainly preclude the sharing of computer systems and legal assistants.

A **sole owner with associates** is a single owner who has full responsibility for all professional and financial obligations of the practice, and who employs other practicing lawyers as associates. The firm has a trust account supervisor and trust account(s), used by all.

An **associate** practices as an employee or independent contractor at a law firm in which they are neither an owner nor a partner. They use the trust account(s) overseen by a trust account supervisor and maintained by the firm in which they work.

In a **partnership**, two or more lawyers (or law corporations, discussed below) carry on practice together. They share expenses, liabilities and profits. A partnership agreement sets out their rights and responsibilities (although a partnership might be found even where there is no formal agreement). The firm has a trust account supervisor and maintains a trust account(s), used by all.

A partnership may be a **general partnership**, where all partners share the liabilities equally, or a **limited liability partnership** (LLP). An LLP protects the personal assets of an "innocent" partner from professional liability claims arising from the negligence or misconduct of another partner or employee in whose work the innocent partner was not involved.

The Law Society must approve the registration of an LLP. *Division 5* of the Rules outlines the procedure to register as a limited liability partnership. *Forms* are found on the Law Society website under Membership Services.

## Law Corporations

Any of the business structures outlined above may be a **law corporation, subject to the issuance of a permit by the Law Society**. *The Legal Profession Act* sections 31 and 32(1) set out the criteria which must be met.

*Part 4* of the Law Society Rules sets out the rules for permits, including proposing a name and the application process. See *Law Corporations* and the necessary *forms* on the Law Society website, under Membership Services.

Practicing in a professional corporation does not protect you from liability for negligence and requires incorporation, maintenance of the corporation and its accounting, filing its tax returns, etc.

## **Secondary Practices**

A lawyer who practices mainly in one firm or is mainly an academic, may have a secondary or part-time practice under a different business name. The secondary practice is subject to all of the requirements of any other practice and, if handling trust money, must have a trust account supervisor and maintain its own trust account(s). A secondary practice must be declared separately on the *Application to Commence Active Practice*.

## **Law Society Requirements**

Whatever the business structure, you must advise the Law Society of the **name** under which you will practice, and the address of your place of business (Rule 2-75(1)). The *Code of Professional Conduct*, in Rule 4.2-2A and the Commentary, addresses the selection of a firm name.

Your practice will also need to be **registered** with the Law Society **when it is started or when changes are made** to its structure (Rule 2-77(1)). The registration form must list all practicing lawyers who are associated with the firm. Except for sole practitioners, every firm must designate two lawyers in the firm to receive and respond to communications from the Law Society, including complaints and disciplinary matters. The form also identifies firms with branch offices, and any common name under which law firms sharing space may operate. The *Registration Form* is available on the Law Society website, under Membership Services.

A corporate lawyer may assist in the completion of the necessary forms, including registration with the Law Society, if they are preparing incorporation documents.

## **A Few Notes About Trust Accounts**

The rules respecting trust accounts are found in Rules 5-41 to 5-56 of Part 5 Protection of the Public, Division 4 Financial Accountability.

**Trust money** is all money received by a member or law firm in connection with the legal practice that belongs in whole or in part to a client; or is received on a client's behalf or to the direction or order of a client, or money received by a member or law firm on account of

professional fees for services not yet rendered or on account of disbursements or expenses not yet paid, or for which a statement of account has not been rendered (Rule 5-41).

Trust money must be deposited into a **trust account**. A trust account may be a pooled trust account or a specific trust investment account. A **pooled trust account** is an interest-bearing chequing account opened at a savings institution by a member for the benefit of a number of clients. The member must direct the savings institution to remit all interest on pooled trust accounts to the Manitoba Law Foundation by letter of direction when the account is opened (*The Legal Profession Act* s. 50(2)).

A **specific trust investment account** is a separate interest-bearing account opened by a member or law firm in trust for a specific client at a savings institution. It is limited to a daily interest savings account, a term deposit or a guaranteed investment certificate. The interest earned belongs to the client.

A **restricted trust account** is a pooled trust account used only for the purpose of transferring funds electronically to Teranet Manitoba LP on account of land transfer tax and registration fees on real property transactions.

A firm must obtain **approval** from the Law Society CEO or the Audit Department as the CEO's designate, and must designate a trust account supervisor prior to opening a trust account. The Trust account supervisor must complete an application, as well as successfully complete the *Trust Accounting Fundamentals* education program. More information is available under *Trust Safety*. The responsibilities of the trust account supervisor are set out in Rule 5-42.1.

Funds belonging to the firm must not be deposited in a trust account and should be deposited in a separate **operating or general account**. Operating expenses may not be paid from a trust account.

Funds may not be withdrawn from trust to pay fees and disbursements unless a statement of account has been rendered and delivered to the client (Rule 5-44(1)(c) and see *Practice Direction 89-03*). Only then may the funds be withdrawn from trust and deposited to the firm's operating or general account.

For more information on trust accounts, see *Trust Safety* and *Trust Accounting Fundamentals* (the on-line course for those applying to be a trust account supervisor), both in the Education Center under Practice Management.

For more information on dealing with remaining trust funds when your client can not be located, see the forthcoming article *Can't Find Your Client, But Still Have Their Money?*

Be **fraud aware**. You have a professional obligation under **Code Rule 3.2-7** to be on guard against being used to assist any dishonest or illegal conduct by anyone, and to be aware of the risks of being duped into assisting a fraudulent transaction or being an unwitting assistant to money-laundering activity.

Unscrupulous clients may try to use your trust account to launder money. It is your obligation to ensure you only pay into and withdraw from a trust account only trust money that is directly related to legal services that you or a member of your firm is providing (Rule 5-44(1)(a)), to identify and verify the client properly and record the source of the funds you receive (Rule 5-120(a)). You cannot accept more than \$7500 in cash in the aggregate for any one client matter, subject to limited exceptions (Rule 5-45).

Fraudsters may try to have you transfer trust funds to them. Always follow the client verification and identification rules and be wary of last minute or unusual changes in payment instructions which may come to you by email, telephone or from someone who may seem like your client but may be a deepfake. For more information see the [\*Anti-Money Laundering\*](#) library in the Education Center under Professional Responsibilities and the [\*Fraud Awareness\*](#) section of the Trust Accounting Fundamentals.