



**The Law Society
of Manitoba**

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WINDING UP A PRACTICE

Practice Management

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Thank you to all the Reviewers

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TABLE OF CONTENTS

TABLE OF CONTENTS	1
A. INTRODUCTION.....	3
B. YOU AND THE LAW SOCIETY	4
1. Your Membership Status.....	4
C. APPLICATION TO WITHDRAW FROM PRACTICE	6
1. Application Process.....	6
D. LIMITED LIABILITY PARTNERSHIPS	8
E. LAW CORPORATIONS	9
F. TRUST ACCOUNTS	10
1. Review Your Trust Accounts.....	10
2. Client Funds in Trust.....	10
3. Money Held Pursuant to Agreements or Undertakings	10
4. Unclaimed Trust Money	10
5. Sole Practitioner/Firm Disbanding.....	11
G. WINDING DOWN	13
1. Stop Accepting New Files.....	13
2. Selling Your Practice	13
3. Leaving a Firm That Will Continue to Exist.....	14
4. Leaving a Firm That Will Not Look After Your Clients' Matters.....	15
H. BILLING AND COLLECTING	16
1. Billing.....	16
2. Accounts Receivable	16
I. OPEN FILES	17
1. Memos	17
2. Deadlines	17
3. Trust Conditions and Undertakings	17
4. Possible Complaints.....	17

J. NOTIFICATIONS.....	18
1. Counsel of Record.....	18
2. Corporate Clients	18
3. Notice to the Public and to Clients You Cannot Reach	18
4. Original Wills.....	18
K. CLOSED FILES.....	19
1. Disposition of Closed Client Files.....	19
2. Trust Account Books and Records.....	19
3. Time Limitations for File Destruction	20
4. Destruction of Files	22
L. CONTINUING OBLIGATIONS.....	24
1. Wills Where You are Executor or Trustee	24
2. Trust Account Records.....	24
3. Corporate Records.....	24
M. YOUR STAFF	25
1. Termination	25
2. Benefit Plans.....	25
3. Records of Employment	25
4. Articling Students	25
N. OFFICE AND PREMISES CHECKLIST	26
O. PROFESSIONAL LIABILITY INSURANCE	29
P. RESUMING ACTIVE PRACTICE.....	30
Q. STILL HAVE QUESTIONS?	31
R. APPENDIX	32
1. Transfer Memo to File or New Lawyer	32
2. Letter to Client: Withdrawing from Practice/Closing Office.....	33
3. Letter to Client Advising of Practice Closure or Transfer	34
4. Clause in Letter Re: Client Funds, Documents or Property in Trust	36
5. Resource List	38

A. INTRODUCTION

This chapter will provide guidance in the practical steps necessary to close your practice when you are ready to do so. Some considerations are relevant no matter what type of practice you are leaving while others are of greater relevance to lawyers in solo or small firm practices.

Even if your retirement is far in the future, you should be planning ahead and developing a strategy that will meet your obligations to your family and your clients and comply with the Law Society's requirements.

B. YOU AND THE LAW SOCIETY

1. Your Membership Status

a) You are a Member of The Law Society of Manitoba

Once you are registered on the rolls of the Law Society, you remain a member of The Law Society of Manitoba until your death or until you are disbarred or permitted to resign as a result of disciplinary proceedings. Effective April 1, 2024, your status at any time as a member of The Law Society of Manitoba is either practising or non-practising. See [Changes to Non-Practising Status Effective April 1, 2024](#).

If you retain practising status when you retire, you will continue to be liable to pay the annual practising fees, the contribution to the Reimbursement Fund and the annual insurance fees. If you do not wish to do so, you must **apply to change your member status to non-practising**. See the [Application to Withdraw from Practice](#) form on the Law Society's website.

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

As a non-practising member, you may continue to have access to the Members Portal and the Law Library for three years. There is no annual fee.

b) Written Undertaking

You remain a member of The Law Society of Manitoba even when you are non-practising or inactive, but you do not have the right to practice law.

Therefore, when you apply to the Law Society to change your status of membership to non-practising or inactive, you must sign a written undertaking not to practice law (see [Rules 2-72 and 2-73](#)). You will find the form of undertaking on the Application to Withdraw from Practice form. You must print, sign and return the original form to the Law Society because of the written undertaking.

c) Notary Public

If you are also a Notary Public, you retain your position as a Notary even after you retire from active practice (unless you are disbarred). Be sure to notify Consumer and Corporate Affairs of any change in your address in case someone needs to verify your signature as a Notary.

C. APPLICATION TO WITHDRAW FROM PRACTICE

1. Application Process

Whether you are a sole practitioner or are a lawyer in a large or small firm, in-house counsel or employed by a government agency, the Law Society must ensure that your clients' interests are protected when you withdraw from the practice of law. Therefore, when you want to retire, [Rule 2-74](#) requires you to inform and receive the Law Society's approval of your intended disposition of all your files, wills, titles and other important documents and records, other valuables and your trust accounts and trust money.

To do so, print, complete, sign, and file the original form [Application to Withdraw from Practice](#) with the Law Society.

a) The Application to Withdraw from Practice

The application form asks you to provide:

- i. Reasons for withdrawing from practice;
- ii. Your new contact information;
- iii. Information on the disposition of files, trust money and other valuable property;
 - If you are leaving a position with a law firm or an organization or government which will continue to care for your files:
 - The name and address of your firm or employer that will continue to have possession and control over open and closed files, wills, titles, documents, records, other valuables and trust money.
 - If you are a sole practitioner:
 - Details about your trust funds, including confirmation that your trust accounts are closed or will be closed within 90 days of the application to withdraw. The audit department may need further information from you depending upon your circumstances and you must undertake to cooperate with them. Trust accounts are further discussed below.

- iv. Confirmation that you will return your fast track card and court locker key, if applicable;
- v. Confirmation whether you have been practising through a law corporation and are a voting shareholder;
- vi. Confirmation that you have reported any potential or actual claims against you for negligence;
- vii. Confirmation that you understand you must complete the final Annual Member Report for the calendar year in which you last practiced; and
- viii. Your written undertaking not to practice law in Manitoba once you cease to be a practising member.

b) File the Original Application

Because your undertaking not to practice law is part of the Application to Withdraw from Practice the Law Society requires the **original** application to be filed.

c) Pro Rata Fee Refund

If you have paid your practising fees for the year, you may be eligible to receive a prorated refund when you retire. Any refund will be based on the date the Application to Withdraw is received at the Law Society's offices, and will be issued to the party who paid the fees.

D. LIMITED LIABILITY PARTNERSHIPS

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

Change in particulars

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

- (a) any change in the particulars set out in the applications filed under rules 3-47 and 3-50;*
- (b) any cancellation or expiration of its registration or any failure to renew its registration; and*
- (c) the dissolution or winding up of the partnership.*

E. LAW CORPORATIONS

If you practice through a law corporation, you must consider what happens to the corporation when you retire.

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

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

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

Application for permit

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

Change in particulars

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

You must contact the Law Society with any change in the particulars of the law corporation (Rule 4-4) by filing a [Notice of Law Corporation Changes](#) form found on the website, within 15 days of the change.

For more information about law corporation procedure and the Law Society, please see the [Law Corporations](#) page of our website, which includes contact information. You should do this well in advance of your retirement.

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

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

F. TRUST ACCOUNTS

1. Review Your Trust Accounts

Review every specific trust investment account and the pooled trust account(s).

2. Client Funds in Trust

After billing clients and deducting fees from funds in trust where appropriate, either return the remaining trust money to each of your clients or, on your client's direction, transfer these funds to the lawyer who will be assuming the client's ongoing file, together with a copy of the client trust ledger for the matter.

3. Money Held Pursuant to Agreements or Undertakings

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

4. Unclaimed Trust Money

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

Unclaimed trust money

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

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

For more information see [Can't Find Your Client, But Still Have Their Money?](#)

5. Sole Practitioner/Firm Disbanding

When you cease to be a practising member, you must take steps to deal with your trust bank account.

a) Dealing with the Trust Accounts

If you are a sole practitioner, or a member of a firm that is disbanding, then you must:

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

b) Closing the Trust Accounts

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

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

Your final requirements for dealing with your trust accounts will be determined by the audit department. The audit department may conduct a closing audit depending upon the time since the last audit and other factors in the firm's history.

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

When all the trust monies have been disbursed, inform your financial institution that the trust account(s) should be closed.

Obtain written confirmation from the financial institution that the account is closed and ensure the confirmation includes both the account number and date of closure. You must provide this written confirmation from the financial institution to the Law Society Audit Department.

c) Trust Accounts at Credit Unions

If you maintain your trust bank account at a credit union, there may be the issue of **surplus shares** to be resolved.

Credit unions typically issue patronage dividends annually in the form of shares, which are credited to the member's account.

Depending on the individual credit union, a percentage of the surplus share account may be paid in cash annually and the remainder stays in the surplus share account until the account is closed.

These funds are similar to the interest contemplated by section 50(2) of *The Legal Profession Act*.

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

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

G. WINDING DOWN

1. Stop Accepting New Files

Well in advance of your date to withdraw from practice, you should stop accepting new files so that you can begin to wind down your practice.

Although it is always hard to turn down work or to disappoint loyal clients, leaving practice halfway through an open and active file is unfair to the client, who must then pay to bring a new lawyer up to speed and develop a new trusting relationship with that lawyer.

It will take a substantial amount of time for you to wind down your practice if you are a busy practitioner, and many retired lawyers say that the process of winding down the practice took much more time than was expected.

Some lawyers who are planning to retire do so over a year or two by gradually reducing their client load and their work week.

2. Selling Your Practice

a) Potential Conflicts

If another lawyer will be taking over your practice, make sure you discuss possible conflicts between your clients prior to transfer.

b) Notify Your Clients

Write to your current clients well in advance to notify them that you will be retiring.

If another lawyer will be purchasing or taking over your practice, you may advise your clients of this, but you must also advise them that they have the right to retain new counsel of their choice.

Sample letters to the client are included in the Appendix.

c) Collections

Make arrangements with the new lawyer if they will collect and remit your accounts receivable or decide if you will attend to that yourself.

3. Leaving a Firm That Will Continue to Exist

a) The Firm May Continue to Look After Your Client Matters and Trust Funds

Speak to the managing partner about whether the firm will assume responsibility for your client matters and related trust monies.

If the firm is prepared to do so, write to your clients to notify them you will be leaving practice and advise them that the firm will be happy to continue to represent them unless they would prefer to take their legal matter to a different law firm.

Ensure clients understand that it is their choice of counsel that will govern, and explain that conflicts of interest may prevent a new lawyer from accepting the file.

b) If The Client Chooses to Leave the Firm

Advise the client that you will forward their file to their chosen lawyer, upon your receipt of their written authorization to send the file and any trust balance to the new lawyer. They may also pick up their file and any trust money themselves and deliver it wherever they wish. Should they do so, have the client sign an acknowledgement of receipt which details what they have received.

You should warn the client in writing if there are any deadlines or limitation dates that they must meet. If the matter includes a court proceeding, ensure that a Notice of Change of Lawyer or a Notice of Intention to Act in Person is filed with the Court promptly and served in accordance with the King's Bench Rules.

If you have stored a corporate client's Minute Books and Corporate Seals in your office, forward them to the new lawyer, upon receipt of written authorization, or return them to the client who should sign an acknowledgement of receipt.

c) Collections

Make arrangements with your firm about collecting your outstanding accounts and remitting any money owed to you.

If you are transferring the file to a new lawyer and there is an account receivable, review the rules about your obligations to the client's interests. It may be better to work out a payment plan with the client or their new lawyer, rather than insisting on a solicitor's lien.

4. Leaving a Firm That Will Not Look After Your Clients' Matters

The firm may be disbanding, or be unwilling to look after your client's matter.

a) Notify Your Clients

Write to your current clients well in advance to notify them that you will be closing your practice. Tell them they will need to get a new lawyer. Ask for their written authorization to transfer their file and any monies held in trust to their new lawyer. They may also pick these up personally. If they do so, have the client to sign an acknowledgement of receipt.

You should warn the client in writing if there are any deadlines or limitation dates that they must meet. If the matter includes a court proceeding, ensure that a Notice of Change of Lawyer or a Notice of Intention to Act in Person is signed and filed in Court and served as required by the King's Bench Rules.

b) Review and Update Your Accounting Records

Work with your Trust Account Supervisor. Make sure that all trust transactions have been entered in the accounting records for the client. Place a copy of the client's trust ledger on their file (electronic or paper) which must be included on files that are closed and on files that are being transferred to new counsel.

Make sure that all general transactions have been entered in the accounting records (i.e. to properly reflect the accounts receivable).

H. BILLING AND COLLECTING

1. Billing

Review all your time records and files.

Prepare and send out your final statements of account for work in progress and outstanding disbursements to the date you stop work on the files. This should be straightforward for files that are billed on an hourly basis.

Write off any fees and disbursements you do not wish to bill.

If the billing is on a contingency fee basis, refer to the provisions of the contingency agreement relating to how you will be paid if you withdraw before the matter is completed. If the contingency agreement does not provide for this, you should try to reach agreement on fees with your client and the client's new lawyer. Otherwise, quantum meruit arguments will have to be made and you may need to pursue a claim in court.

After you have retired and no longer maintain a practising certificate, you may still prepare and forward statements of account and collect fees from clients for work done while you were practising to the date of your retirement.

2. Accounts Receivable

You should review your accounts receivable and follow up on balances which may still be collectable. If necessary, you may assert a solicitor's lien over a file, and retain the file until you are paid. Since this will defeat your intention of closing your practice, it is generally wiser for you to make payment arrangements with the client or their new lawyer and release the file.

You should also investigate any credit balances in accounts receivable as this may suggest the client is owed a refund.

I. OPEN FILES

1. Memos

It is helpful to prepare a file memorandum for each file being transferred to new counsel, setting out the nature of the file, work remaining to be done, and noting any important deadlines, such as limitation dates, examinations for discovery, and hearing dates. New counsel will appreciate your help and the memo will make it less likely that an error will arise in the transition to new counsel, thus avoiding insurance claims and complaints to discipline.

A sample memo from the Law Society of Ontario is included at the end of this document.

2. Deadlines

If there are imminent dates, you should discuss how to proceed with your client and the client's new lawyer. If necessary, notify your client and opposing counsel, and seek instructions to obtain adjournments or extensions of time.

3. Trust Conditions and Undertakings

You should consider whether you have any ongoing obligations, such as undertakings on any of your open files. If so, you must make arrangements to be relieved of them or to have them transferred to another lawyer. If neither is possible, the trust property must be returned to the lawyer who imposed the condition.

4. Possible Complaints

Is there a possible complaint or liability? A potential negligence claim?

If you have any concerns that a file might result in a complaint or professional liability claim against you, then you should make a copy of the file (at your own cost) prior to returning it to the client or transferring it to a new lawyer. You cannot assume that it will be surrendered to you for your review at some future date or that it will remain in the same state it was when you turned it over to the client or new lawyer. Making your own copy before you transfer the file is the best idea.

You should also make a copy of any file where there is potential for a negligence claim and arrange for its storage, all at your own expense.

You must notify the [Law Society insurer](#) of any potential claims.

J. NOTIFICATIONS

1. Counsel of Record

If you are counsel of record on a civil litigation file, make arrangements to get off the record, after discussing with your client (see the King's Bench Rules).

For criminal cases contact the Crown and have your application to withdraw added to a docket, after discussing with your client.

For Legal Aid matters, obtain your client's instructions as to any choice of new counsel then send back the Legal Aid Certificate with your bill and ask Legal Aid to appoint the new lawyer of the client's choice if possible.

2. Corporate Clients

You should seek instructions from your corporate clients for new addresses for their corporations and notify the Companies Office of these address changes by filing a [Notice of Change of Registered Office Address](#) form which can currently be done online. You will continue to be responsible for any corporate records where instructions are not received to change the address, and you will have to continue to allow access to those records.

If your office is named as the place for service in any builders' liens, you should report a change of address to the Land Titles Office by filing a [Request/Transmission](#) form.

3. Notice to the Public and to Clients You Cannot Reach

If you wish to advise the public and any clients that you have been unable to contact that you are retiring, post a prominent notice on your website that states that you will retire from practice as of a specific date and name a person who should be contacted about files after that date. You may also place an ad in a local newspaper if your clients are more likely to see that than to browse your website. If you cannot locate a client who is involved in a court action, you will need to take steps to be removed as Lawyer of Record.

4. Original Wills

In the event that you are unable to return any original Wills to the client, then the Wills may be deposited with another lawyer for safekeeping. The Law Society must be advised as to the location of any original Wills that have not been returned to the client when you submit your [Application to Withdraw from Practice](#).

K. CLOSED FILES

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

1. Disposition of Closed Client Files

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

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

Lawyers often call the Law Society to ask **how long** they are required to keep a closed client file before destroying it. Although there is no statutory requirement for how long you must retain a closed file, **ten years from its date of closing is a common guideline**. Some files, such as those relating to wills and prenuptial or cohabitation agreements might be kept indefinitely.

The Professional Liability Claims Fund files are kept for a minimum of ten years from the date the files are closed, after which they are again reviewed and a decision made on whether or not they can then be destroyed.

2. Trust Account Books and Records

Law Society [Rule 5-54\(1\)\(a\)](#) requires that trust account books and records be retained for at least ten years.

3. Time Limitations for File Destruction

a) Exercise Your Own Judgement

You must exercise your own judgement as to when a file can be destroyed based on your knowledge of the file.

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

b) Professional Liability Claims

Remember that a professional liability claim can be brought against a lawyer within two years of the day the claim is discovered, and the limitation date can be extended.

The Limitations Act Basic limitation period — 2 years from discovery

6 *Unless this Act provides otherwise, a proceeding respecting a claim must not be commenced more than two years after the day the claim is discovered.*

When is a claim discovered?

7 *A claim is discovered under this Act on the day the claimant first knew or ought to have known all of the following:*

- (a) that injury, loss or damage has occurred;*
- (b) that the injury, loss or damage was caused by or contributed to by an act or omission;*
- (c) that the act or omission was that of a person against whom the claim is or may be made;*
- (d) that, given the nature and circumstances of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it.*

Ultimate limitation period — 15 years

10(1) *Even if the basic limitation period for a claim has not expired, a proceeding must not be commenced more than 15 years after the day the act or omission on which the claim is based took place.*

Other limitation periods may govern, based on the provision of another Act.

Relationship to other Acts

4(1) *This Act does not apply to a claim*

- (a) that is subject to a limitation provision in another Act, except in the circumstance mentioned in section 13 and subsection 14(1) (suspension of limitation periods); or*
- (b) if another enactment states that no limitation period applies to the claim.*

Conflict with another Act

4(2) *If a provision of this Act is inconsistent or in conflict with a provision of another Act, the provision of the other Act prevails.*

The limitation does not run while the party is a minor or under a disability, which may also have the effect of extending the period during which you may be at risk.

Minors

13 *A limitation period established under this or any other enactment does not run during the time the claimant is a minor, subject to section 15 (notice to proceed).*

Persons under a disability

14(1) *A limitation period established under this or any other enactment does not run during any time the claimant is a person under a disability, subject to section 15 (notice to proceed).*

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

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

As further examples, in a family matter, claims relating to a separation agreement or prenuptial agreement with respect to a pension, rights on separation or death or other matters may not be discovered until far in the future. Claims relating to a testator's competence could also be discovered years later.

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

4. Destruction of Files

a) Decision to Destroy a Closed File

Practice Direction 91-01 recommends that when you decide that it is appropriate to destroy a closed file, the following procedures be adopted:

i. Who Should Decide

Every file to be destroyed should be reviewed briefly by a lawyer or an articling student. It is not appropriate to delegate this task to a paralegal or secretary.

ii. What to Look For and Dealing with Documents

The file should be checked for valuable documents such as original wills or certificates of title that may have been inadvertently retained on a closed file.

You should return client property held in safekeeping to the owner. If you retain any original wills on file and are unable to locate the Testator, you should be aware that the Wills Registry at the Court of King's Bench office was discontinued in August, 2000. While the King's Bench office retains the wills that they accepted prior to August 2000, they will not accept any new documents. This is something you should consider in deciding whether to retain original wills in the first place.

Any other original documents or papers which are properly the property of the client should be removed and returned to them. Ideally, this procedure will have been performed at the time the file was closed, but if it was not, it should be done before you retire and certainly before the time of destruction.

See *Bank of Nova Scotia v. Imperial Developments*, 1987 CanLII 5358 (MBCA).

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

iii. Physical Destruction of the File

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

If you are storing files electronically, you may decide to do so indefinitely.

L. CONTINUING OBLIGATIONS

1. Wills Where You are Executor or Trustee

Wills should also be reviewed to determine whether you have agreed to act as Executor or Trustee. If so, you may still wish to act in that capacity. If not, consider asking the Testator to revise the will or add a codicil to appoint someone else.

If you are acting as Executor or Trustee after you retire, remember you will not have the benefit of professional liability insurance coverage for your services.

2. Trust Account Records

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

3. Corporate Records

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

Custody of records

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

M. YOUR STAFF

1. Termination

Give your staff sufficient notice of termination or compensation in lieu of notice. Verify the statutory notice requirements of the *Employment Standards Act*. Notify your filing clerk or courier service if any, and any other casual service you retain.

2. Benefit Plans

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

3. Records of Employment

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

4. Articling Students

If you have an articling student, make sure that you have given the student enough advance notice and assistance so that a new principal can be found and approved by the Law Society.

You must also complete a Certificate of Completion of Articles form for the period of time you served as the student's principal.

N. OFFICE AND PREMISES CHECKLIST

Most of the suggestions below are applicable when your firm is closing. Others are relevant even where you are leaving a firm that will continue to exist. You should not simply assume that such a firm will attend to those matters on your behalf.

☐ **General Bank Account**

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

☐ **Landlord**

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

☐ **Space Sharing**

Review your joint lease or agreement to determine, and attend to, any responsibilities.

☐ **Signage and Directory**

Have your firm and name removed from any building signage and directory.

☐ **Office Equipment**

Dispose of your office furniture and equipment by sale, charitable donation or gift. Consider placing an advertisement in *Headnotes & Footnotes*.

☐ **Data on Electronic Devices**

If you are not retaining your open and/or closed files in an electronic format, make sure all hard drives on computers, photocopiers and fax machines on both leased and owned office equipment have been scrubbed so that you do not inadvertently breach client confidentiality. Destroy data on portable memory storage devices. Don't just delete files from your computer or other devices. Use data destruction software to be sure all data is wiped from the hard drive.

If you are storing files electronically, make sure that your electronic files are complete and ensure data is removed from office equipment that is not being retained, as described above.

If you use cloud storage, contact your provider to discuss the deletion of your files at the proper time.

☐ **Equipment Leases**

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

☐ **Subscriptions**

Cancel your subscriptions to reports, journals and books, both online and in print, and any newspapers and magazines which you may provide in your reception area. Cancel any subscriptions to electronic practice software and research products such as Westlaw and ChildView.

☐ **Professional Organizations**

Cancel memberships in any organizations that you do not wish to retain. Provide your new contact information for those you will be keeping.

☐ **Suppliers**

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

☐ **Utilities**

Notify public utilities, give final readings and provide your future contact information. Cancel your internet service and any alarm monitoring services.

☐ **Credit Cards and Point of Sale Machines**

Cancel any firm credit cards and automatic payment instructions.
Speak to your bank about canceling the point of sale credit terminals you may have used to accept credit cards, once all of your client accounts have been collected.

☐ **Mail**

Provide a Change of Address to Canada Post and arrange to have your mail forwarded. Arrange to cancel your mail slot at the Courthouse.

☐ **Referral Services**

Ensure your name is removed from referral services such as the CBA's Find A Lawyer service, and that links to your website are deleted.

☐ **Website**

Put an announcement on your website that your practice is closing, and give the date. Disable links to contact you. Remove the website entirely six months after your retirement.

☐ **Phone and Electronic Communications**

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

☐ **Insurance**

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

☐ **Business License**

Once your practice is closed, cancel any local business license.

☐ **Court Locker**

If you have a locker at the Courthouse, arrange for its cancellation and return the key.

☐ **Fast Track Card**

You must return your Fast Track Card to the Law Society.

☐ **Books**

It is unlikely you will find a purchaser for your law library. You may want to gift your books to a young lawyer, or contact the Faculty of Law, community colleges and school libraries to see if anyone would like to accept a donation of any of your books.

O. PROFESSIONAL LIABILITY INSURANCE

Claims might come out of the woodwork after you retire. You continue to be responsible for the legal services you provided for clients prior to retirement.

After you retire, a claim may be brought forward arising out of work you did while you were a practising insured member of the Law Society of Manitoba. You are still provided protection under the Law Society's mandatory insurance program, even if that claim does not come to light until many years after you have retired.

Coverage under your professional liability insurance program will continue, free of charge, for future claims covered by the program arising from professional services rendered while you were insured, subject to the terms, conditions and limits in place at the time the claim is reported.

Manitoba's Professional Liability Insurance Policy provides \$1 million in automatic tail coverage for work you did as a lawyer provided you were insured at the time you did the work.

If you learn of such a claim after you retire, contact the Law Society immediately.

Retired lawyers also have an **option to purchase excess insurance** of more than \$1 million on an individual basis, to address any unforeseen circumstances that may develop after retirement.

If at the time you retire, you are purchasing excess insurance from CLIA's Voluntary Excess Program, either as a sole practitioner or a member of a firm, you now have the option to purchase a special excess package which continues to cover retired members for claims in excess of \$1 million.

If you have excess insurance through CLIA, you should contact the Law Society to inquire about tail coverage for claims over \$1 million.

P. RESUMING ACTIVE PRACTICE

If your plans change and you wish to resume practice, then you must apply to do so by completing and filing an [Application to Resume Active Practice](#) together with the applicable fees and supporting documentation (see Law Society [Rule 5-28.2](#)).

Resuming active practice

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

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

Q. STILL HAVE QUESTIONS?

Barney Christianson is The Law Society of Manitoba's Practice Management Advisor.

Barney, a past Law Society president, is a practising lawyer and has decades of experience running a law practice. He is available to provide practice advisory services which are free of charge and cover a broad range of practice management areas.

Barney can be reached by phone in Portage la Prairie at 1-204-857-7851 or by e-mail at barney.christianson@gmail.com.

If you have more questions about retirement and winding up your practice, contact the Law Society for assistance: <https://lawsociety.mb.ca/about/contact/>.



Mailing Address

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

[MAP](#)

Telephone: 204-942-5571
Toll-free: 1-855-942-5571
Facsimile: 204-956-0624

Email: admin@lawsociety.mb.ca

Office Hours

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

R. APPENDIX

1. Transfer Memo to File or New Lawyer

(Adapted from a sample from LSO – Modify as Appropriate)

MEMO TO:

NAME OF FILE:

FILE NUMBER:

DATE:

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

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

(List all items and include the retainer letter)

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

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

The client's position on each issue is:

The opposing side's position on each issue is:

Any other relevant information:

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

or

I have not been able to reach the client and have sent the file to you *(this is useful if another member in your firm will take the file)*.

2. Letter to Client: Withdrawing from Practice/Closing Office

(Sample – Modify as Appropriate)

Dear (Name of Client)

Re: (Name(s) and Number(s) of Client File(s))

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

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

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

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

(IF APPROPRIATE, ADD: At that time, I will ask you to sign a Notice of Intention to Act in Person in regard to your current court proceedings. I will serve this on the other lawyer and look after filing this document together with proof of service at the Court.)

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

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

Sincerely,
(Lawyer) (Firm) (Contact information)

3. Letter to Client Advising of Practice Closure or Transfer

(Adapted from a sample from LSO – Modify as Appropriate)

Dear (Client)

Re: (Client File, File Number)

As of [date], I will be closing my law practice due to [provide reason, if possible]. As such, I will be unable to continue representing you on your legal matter(s). You must either retain another lawyer to take over completion of your matter and accept transfer of your active file or represent yourself. Taking into consideration [insert appropriate language regarding limitation periods, upcoming appearance or other deadlines], I urge you to retain another lawyer as soon as possible to ensure that your legal rights are preserved.

You may select any lawyer you wish to continue in your matter. [Insert sentence regarding sale or transfer of your practice to another lawyer and provide name and contact information, if applicable.] If you require assistance to locate a suitable lawyer, [offer to provide list of local lawyers or referral to lawyer who practices relevant area of law, if appropriate] please feel free to contact the Law Phone-In & Lawyer Referral Service at 204-943-2305 or toll-free 1-800-262-8800 (from outside Winnipeg only).

I will need your written authorization to transfer your file to a new lawyer or you may attend our office to pick up a copy of your file for yourself or to deliver to your new lawyer. Please let me know the name of your new lawyer or make arrangements for delivery or retrieval of a copy of your file by [date]. Complete the attached Direction to Transfer Client File, Funds or Other Property or the attached Request for Client File, Funds or Other Property.

[insert additional Clause re: Client Funds, Documents or Property in Trust, if applicable]

[insert additional Clause, if applicable: At that time, I will ask you to sign a Notice of Intention to Act in Person in regard to your current court proceedings. I will serve this on the other lawyer and look after filing this document together with proof of service at the Court.]

Once your file has been transferred and any file contents that belong to you have been returned to you, I [or insert name of lawyer who will store your closed files] will continue to store my copy of your closed file for [insert retention period]. After that time, I [or insert name of other lawyer] will destroy my copy of the closed file. If you or your new lawyer later

require a copy of my closed file during this retention period, I will provide an additional copy [at a cost of \$ /page] [and a file retrieval charge of \$_____, if applicable] to you.

You may reach me at the address and phone number listed on this letter until [date]. After that time, I may be reached at [insert address] and phone number [insert phone number] or you may contact [name of lawyer purchasing or taking over practice, if applicable] regarding my practice.

I thank you for retaining me to provide legal services and have enclosed my final statement of account [if applicable]. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

[Lawyer, Law Firm]

4. Clause in Letter Re: Client Funds, Documents or Property in Trust

(Adapted from a sample from LSO – Modify as Appropriate)

Sample Clause re: client funds

Please be advised that, after payment of your outstanding account [attach statement of account, if applicable], we hold \$[client trust ledger balance] for you in trust. If you would like this balance to be forwarded to another lawyer, in trust, please indicate this in the attached Direction to Transfer Client File, Funds or Other Property. If you wish to have this balance delivered to you directly with your file, please complete the attached Request for Client File, Funds or Other Property. If we do not receive your signed authorization or request by [date], the funds will be paid by firm trust cheque sent to you at this address by registered mail. [OR If you do not provide your instructions as to the return or transfer of your funds, we will make arrangements for the continued safekeeping of your monies].

Sample Clause re: original will or power of attorney document

Please be advised that we hold an original [will, power of attorney] dated [date] for you in trust. If you would like this document to be forwarded to a third party or to another lawyer for continued safekeeping, please indicate this in the attached Direction to Transfer Client File, Funds or Other Property. If you wish to have this document delivered to you directly with your file, please complete the attached Request for Client File, Funds or Other Property. If we do not receive your signed authorization or request by [date], your original document will be returned to you at this address by registered mail. [OR If you do not provide your instructions for the return of your original document to you, we will make arrangements for its continued safekeeping.]

Sample Clause re: corporate books, seals and records

Please be advised that we hold corporate [minute book, seal records] for [name of corporation] in trust. If you would like these to be forwarded to a third party or to another lawyer for continued safekeeping, please indicate this in the attached Direction to Transfer Client File, Funds or Other Property. If you wish to have these delivered to you directly with your file, please complete the attached Request for Client File, Funds or Other Property. If we do not receive your signed authorization or request by [date], this corporate property will be returned to you at this address by registered mail. [OR If you do not provide your instructions to return this property to you, we will make arrangements for its continued safekeeping.]

Sample Clause re: other client property

Please be advised that we hold [item(s), document(s)] for you in trust. If you would like this property to be forwarded to a third party or to another lawyer for continued safekeeping, please indicate this in the attached Direction to Transfer Client File, Funds or Other Property. If you wish to have this property delivered to you directly with your file, please complete the attached Request for Client File, Funds or Other Property. If we do not receive your signed authorization or request by [date], this property will be returned to you at this address by registered mail. [OR If you do not provide your instructions to return this property to you, we will make arrangements for its continued safekeeping.]

5. Resource List

[Law Society of Alberta - Retirement Guide](#)

[Working Through the Tasks](#), a checklist from the Law Society of Alberta that includes suggested timelines

[Law Society of Ontario - Guide to Closing Your Law Practice](#)

[Law Society of Ontario - Closing Down Your Practice](#)

Absences, Contingency and Succession Planning, available in the Education Center under *[Practice Management](#)*