

ESTABLISHING THE RETAINER

PART I PRELIMINARY MATTERS AND THE INITIAL CONSULTATION

1. SCREEN THE CLIENT

Screen the client to decide whether or not you will agree to represent a potential client in a particular matter. The initial screening can be done prior to the initial consultation by having the client fill out a client information form, or by having a member of your support staff get the information over the phone prior to your initial meeting. Sometimes it is impossible to have the information form completed until the client arrives for his or her appointment. You may want to have the client come in few minutes prior to the meeting to fill out the form at your office. Alternatively, you may obtain the information in the course of the consultation.

Ideally, you should obtain as much information as possible about the person prior to agreeing to meet with the prospective client. This will enable you to conduct an initial screen. A standard form such as an Initial Client Information Form¹ (either for use by your staff or for the client to fill out) will enable you to obtain useful information at the beginning of the matter. A detailed Initial Client Information Form can serve to

- keep track of the source of your clients
- conduct a preliminary check for conflicts
- enable you to get a preliminary idea of what the client wants from you
- save time at the initial consultation to focus on the client's concerns
- give you an idea as to the nature of the matter so that you can have some sense of the scope of the work and the potential cost to the client
- enable you to prepare for the interview by doing some preliminary research or calculations so that you can provide better service to the client at the first meeting
- function as a Memorandum to File both in the event you are retained, or in the case of non-engagement to avoid subsequent conflicts or breaches of confidentiality

Apart from considerations of malpractice, you must decline employment if

- you do not feel competent to handle the matter²
- you reasonably foresee undue delay in providing the service to the client³

¹ *O'Brien's Encyclopedia of Forms* has a useful Client Information Form specifically for family law matters. You may want to draft your forms to serve your particular needs.

² Rule 2.01 and Commentary of the lawyers' *Rules of Professional Conduct* and rule 3.01 of the *Paralegal Rules of Conduct*.

³ *Ibid.*

- you are not competent to handle the matter, obtain your client's instructions to obtain assistance from other counsel or advisors⁴

In addition to the Client Information Form, a *Client Screening Checklist* will assist you in determining whether you are willing or able to take the client on.⁵

If you decide **not** to act in the matter, you must advise the prospective client immediately and should confirm in writing by way of a non-engagement letter.⁶ Common sources of claims for malpractice arise as a result of misunderstanding between solicitor and client as to whether or not the lawyer was actually retained to protect the client's interests.⁷ Paralegals should also consider this.

If you decide that you are prepared to meet the client for an initial consultation after the preliminary screening, you should continue to screen during the consultation. Sometimes the information received in the Initial Client Consultation Form is inaccurate.

2. THE INITIAL CONSULTATION

This is the time ensure you and your client are clear about the nature of the services you will provide, of your fee or the range of your fee, your billing policy and what will generally justify withdrawal of your services. The following are suggestions to assist you with your initial meeting:

- have the client execute a Written Retainer Agreement; insist that the client take the time to read the written agreement before execution
- ask for your money retainer payable now, if possible
- if the client does not pay the money retainer, subject to protecting the client's interests,⁸ do not do any work on the file until you have a money retainer and an executed retainer agreement, advise the client accordingly, and
 - confirm via letter that you are not the prospective client's lawyer until properly retained (i.e., until you receive a money retainer and an executed retainer agreement) and confirm crucial advice; advice on applicable limitation periods should **always** be confirmed in writing

⁴ Ibid.

⁵ Bell, see for example, "Checklist for Client/Case Screening" from Bell, *Managing the Lawyer/Client Relationship*, at page 17.

⁶ Bell, *Managing the Lawyer/Client Relationship*, see Checklist for Non-engagement Letter at page 25.

⁷ Bell, *Managing the Lawyer/Client Relationship*, 8.

⁸ Subrule 2.09(1) and Commentary of the lawyers' *Rules of Professional Conduct* and rule 3.08 of the *Paralegal Rules of Conduct*.

- if a limitation period is approaching, you must ensure that either you or the client take steps to preserve the client's claim; in certain circumstances (e.g., when the limitation period is only days away) you may be under a positive obligation to commence an action on behalf of the client even if the client does not retain you⁹
 - bring the matter forward for review
 - if you have not been properly retained within a reasonable time, send a letter to the prospective client advising that you are closing the file and, if necessary, remind the client of the crucial advice given and confirmed in the previous correspondence
- use a substantive law checklist to ensure that you cover all necessary matters during the initial consultation
 - prepare a Memorandum to File and ensure that all limitation, tickler and follow up dates are entered in your system
 - in each Memorandum to File record any documents received or returned, follow up matters, and a reminder to check on the status of the client's accounts or retainer with the firm
 - some lawyers send copies of the Memorandum to File to the client as a way of keeping the client informed and confirming what information and documentation the lawyer has, or is relying on, in serving the client

3. ENGAGEMENT TO ACT ON BEHALF OF CLIENT

It is incumbent upon you to make clear the nature and scope of the matter you are to undertake. An engagement letter (in addition to the retainer agreement) confirms all of the important terms governing the relationship including confirmation of the client's initial instructions and material facts as understood by the lawyer or paralegal.¹⁰

PART II THE RETAINER AGREEMENT

1. THE RETAINER

The term retainer has several meanings. "It can be the act of employing a solicitor or counsel; it can be the document by which such an employment and its terms are evident; it can be an amount given to secure the services of the solicitor or counsel and induce him or her to act, in a professional capacity, for the client."¹¹

⁹ Rule 2.09 of the lawyers' *Rules of Professional Conduct* and rule 3.08 of the *Paralegal Rules of Conduct*.

¹⁰ See Checklist for Engagement/Retainer Letter, at p. 23 of Bell, *Managing the Lawyer/Client Relationship*.

¹¹ Thomas C. H. Baldwin, "Solicitors Retainer," *Solicitor/Client Relationships*, Canadian Bar Association-Ontario, Continuing Legal Education, June 1, 1998. The suggestions regarding retainers that follows in

- Money Retainer: an amount paid on account or deposit as security for payment of the fees and disbursements of the lawyer or paralegal.
- Written Retainer: an agreement in writing with the client respecting the amount and manner of payment for services.

2. WRITTEN RETAINER AGREEMENT

The retainer agreement is a legal document, a contract between you and your client. The agreement should define the scope of your legal representation or advice, and describe the manner in which fees and expenses are to be charged and paid. Consider including terms that

- identify the client, or the clients
- describe the services you will provide and have been retained to perform
- describe what if anything is required or expected to be done or provided by the client and by other persons not associated with your firm
- identify personnel in your firm who will be involved with the case and the functions they will perform
- outline a timetable of the conduct of the matter (with appropriate milestones identified), if appropriate
- indicate the method and frequency of communications with the client, if the client is not an individual, identify from whom you are to take instructions and to whom you are to report
- address the ownership of the work product; if it is the property of the lawyer or paralegal, outline the client's right of access
- deal with transfer or termination of your retainer but note that withdrawal of your services are subject to the lawyers' *Rules of Professional Conduct* or the *Paralegal Rules of Conduct*
- indicate the basis on which fees will be set, who will pay in the first instance costs of outside services and disbursements
- provide for a clear understanding as to the frequency of billing of fees and disbursements, and time of payment, including any advance payments or deposits
- provide that interest on lawyers' accounts more than 30 days overdue will be charged in accordance with the *Solicitors Act*
- provide that the retainer does not commence until the agreement is executed and a money retainer has been paid

this part of the module are taken from Mr. Baldwin's informative article. For more complete account on the subject of retainers, please refer to the article itself.

3. LEGAL AID RETAINERS

Your obligations and duties to your client do not change simply because your services as a lawyer have been retained pursuant to a Legal Aid Certificate. The plan pays your fees, and disbursements according to tariffs. No extra billing is permitted.

4. LIMITS ON WITHDRAWAL OF SERVICES

Always keep in mind your obligation not to withdraw your services except for good cause and upon notice appropriate to the circumstances pursuant to rule 2.09 of the lawyers' *Rules of Professional Conduct* or rule 3.08 of the *Paralegal Rules of Conduct*.

5. THE CAW LEGAL SERVICES PLAN

This plan covers some or all of the costs of certain legal service provided by lawyers for participants of the benefit plan, union members and their dependants. As a cooperating lawyer in private practice, the lawyer contracts with the plan to provide legal services to participants according to the planned fee schedule. Participants are able to engage non-cooperating lawyers in private practice to provide legal services according to the planned fee schedule. Non-cooperating lawyers may extra bill participants over and above the planned fee schedule.

6. PREPAID LEGAL SERVICES

Any prepaid legal plan must allow you to

- exercise independent professional judgment on behalf of the client
- maintain client confidentiality
- avoid conflicts of interest
- practise law or provide legal services in a competent manner



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Please note that this information is not a substitute for the member's own research, analysis and judgment. The Law Society of Upper Canada does not provide substantive legal advice or opinions.

***FUNDAMENTALS OF THE 3MS: MENTORS,
MENTEES AND MENTORING***

LAW SOCIETY OF UPPER CANADA

***WOMEN LAWYERS' SYMPOSIUM -
FOSTERING AND CELEBRATING
SUCCESS IN PRIVATE PRACTICE***

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FUNDAMENTALS OF THE 3MS: MENTORS, MENTEES AND MENTORING

A successful mentor-mentee relationship is one of the most important cornerstones to a successful legal career, regardless of gender. Most law firms, and indeed the profession as a whole, appear to have recognized this and have endeavoured to encourage the development of these relationships with mixed success. Many large and mid-sized law firms tend to formalize the process, while it may be more informal in the smaller firms. At the end of the day, however, it is our view that the success or failure of a mentor/mentee relationship depends less on understanding the components of it, and more on the personalities involved in the relationship.

A. What do you want to get out of the Relationship?

1. Career Mapping/Advancement

A mentor can assist his or her mentee in a number of ways: (a) understanding the fundamentals of the practice of law - client satisfaction, client loyalty/competition, marketing obligations, conflicts, the billable hour, etc.; (b) articulating/reinforcing the firm's core values and its strategy for the future; (c) understanding the "business" of the practice of law - profitability, compensation, costs and expenses, etc.; (d) understanding what it means that you are working for a partnership (e) understanding the relationship/boundaries between assistants, students, associates, contract lawyers and partners; (f) understanding your commitment to the firm-what it should be, what it can be ; (g) the Learning Curve - identifying on an ongoing basis, where you are on the learning curve, the importance of increasing practice sophistication-so that everyone's reasonable expectations are met.

2. Professional Development

In this regard, a mentor can: (a) assist his or her mentee by introducing the mentee to other lawyers, colleagues at CLE events or social gatherings; (b) arrange for the mentee or just encourage the mentee to take on files that they may not otherwise take to provide training for the mentee; (c) introduce the mentee to management responsibilities; (d) recommend the mentee for various opportunities-speaking engagements, writing opportunities, marketing initiatives, and the like.

3. Personal Development

First and foremost, it is fundamental that the relationship be a candid one. The mentor can assist the mentee in dealing with the most fundamental of issues: (a) balance-how to deal with demanding partners, demanding clients, demanding spouses and demanding children; (b) job satisfaction – have the mentee consider where do they want to be ten years from now; (c) appreciate and discuss the historical differences between men and women in the practice, as well as the obstacles to development-internal and external and how to overcome them; and (d) learning to slow down take a step back and look at the big picture.

4. Improving the Status Quo

If the relationship between the mentor and the mentee is a candid one, the mentee can help the mentor identify organizational structures and practices, firm culture issues and other barriers to the professional and personal development of the mentee that can be overcome.

B. How to Get the Relationship Started

1. A mentor/mentee relationship does NOT need to be formal but it involves more than simply a junior lawyer working with senior counsel.
2. A mentee can have more than one mentor in a firm (i.e. one mentor for the business of law and another for the practice of law)
3. If there is a particular senior counsel in the firm that you work particularly well with as a mentee, approach them and ask if they will act as formal or informal mentor
4. It is crucial that the mentor and mentee talk on a regular basis. In the first few years this may be more frequent and it is expected that it will decrease as the mentee gets to be more experienced. It doesn't necessarily end, however as the mentee heads towards or becomes a partner in the firm.
5. A mentor does not necessarily have to be in the same firm.
6. A mentor must be a cheerleader and source of advice and guidance for his or her mentee. If not, they may not be the appropriate mentor.

C. Suggestions

1. Career Mapping – correlating work and life choices on a yearly basis
2. Assignment tracking – assuring that women receive assignments to foster competencies, leadership, and relationship skills
3. Career Review – ensuring consistent and objective evaluation
4. Identifying the Alternatives – a responsibilities change, alternatives to the traditional work model can be considered and evaluated
5. Relationships – facilitating the development of internal, external, and other relationships that will improve the quality of the mentee's practice and the mentee's relationship with the firm.
6. Self Promotion – identifying strengths and weaknesses, and determining what paths to take to achieve results.



CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS FOR LAWYERS

INTRODUCTION

The new client identification and verification requirements came into effect on December 31, 2008. Part III of By-Law 7.1 contains four main requirements:

- identifying the client and certain third parties
- verifying the identity of the client and certain third parties
- maintaining records, and
- withdrawing from representation in appropriate circumstances.

Identifying the client means obtaining certain basic information about your client and any third party directing, instructing or who has the authority to direct or instruct your client such as a name and address. You must obtain this information whenever you are retained to provide legal services to a client unless an exemption applies. Some of this information is likely information that you were obtaining prior to the implementation of the By-Law as part of your file opening process.

Verifying the identity of a client means actually looking at an original identifying document from an independent source to ensure that your clients and any third parties are who they say they are. You are only required to verify the identity of your client and such third parties if you are involved in a funds transfer activity, that is, ***you engage in or instruct with respect to the payment, receipt or transfer of funds***. You are not required to identify and/or verify the identity of your client and such third parties in all situations. The By-Law contains certain exemptions which are outlined in the Qs & As below. To determine whether you are required to verify identity or whether an exemption applies, you must look at each funds transaction separately. For example, if you are acting for a purchaser and receive closing funds from the purchaser and you later pay out the closing funds to the vendor, you must consider the receipt and payment of funds separately. Both transactions would need to be exempt in order for you not to be required to verify the identity of your client.

To determine whether you are required to comply with the client identification and verification requirements consider.

1. Are you being retained to provide legal services to a client?

If yes, you must identify your client and any third party instructing or directing your client or who has the authority to instruct or direct your client unless an exemption to the client identification requirement applies.

2. Are you engaging in or instructing with respect to the receipt, payment or transfer of funds?

If, yes, you must verify the identity of your client and any third party directing or instructing your client or who has the authority to direct or instruct your client unless an exemption applies.

3. If you are required to verify the identity of an organization, you must also verify the identity of the individual giving you instructions on behalf of the organization and you must use reasonable efforts to obtain certain identifying information about the directors of the organization and certain shareholders.

4. If you are required to verify the identity of an individual who you are not meeting face to face, you must obtain an attestation from a commissioner of oaths or guarantor or you must have an agent verify identity on your behalf.

Appendix 1 outlines the steps for identifying individuals and organizations.

Appendix 2 outlines the steps for verifying the identity of an individual.

Appendix 3 outlines the steps for verifying the identity of an organization.

Appendix 4 contains a sample attestation for situations where you are required to verify the identity of an individual **who is present in Canada** and who you are not meeting face to face.

Appendix 5 contains a sample agreement for situations where you are required to verify the identity of an individual and you retain an agent to do this on your behalf.

Appendix 6 contains sample file forms

Appendix 7 contains background information on the new requirements and information on the Federal Regulations

Appendix 8 contains steps to assist lawyers in complying with the new client identification and verification requirements

Appendix 9 – Questions and answers on the following topics:

1. Identifying the Client
2. Verifying the Identity of the Client
3. Verifying the identity of a Client – Non Face to Face Meetings
4. Practice Specific Issues
5. Recordkeeping
6. Withdrawal from Representation



The Law Society of
Upper Canada

Barreau
du Haut-Canada

IDENTIFYING INDIVIDUALS AND ORGANIZATIONS¹

(For use by lawyers to assist them to determine whether they are required to identify their client and if so, the steps that they are required to take)

1. **First, determine whether you are being retained to provide legal services to a client?**

2. **If yes, determine whether an exemption to the client identification requirement applies?**
 - **The exemptions are:**
 - ❑ you are providing legal services to your employer, for example as in-house counsel;
 - ❑ you are acting as an agent for another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada, who has already identified the client;
 - ❑ you are acting for a client who has been referred to you by another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada who has already identified the client; or
 - ❑ you are providing legal services as a duty counsel under the *Legal Aid Services Act, 1998*, as a duty counsel providing professional services through a duty counsel program operated by a not-for-profit organization or as the provider of legal aid services through the provision of summary advice under the *Legal Aid Services Act, 1998*.

¹ This document has been prepared to assist lawyers to comply with the client identification and verification requirements of By-Law 7.1. Lawyers should refer to the by-law for a more detailed outline of their obligations. Please note that some of the terminology used to delineate the lawyer's obligations is specifically defined in the By-Law.

- 3. If an exemption applies, you are not required to identify your client. If no exemption applies, you are required to identify your client and any third party instructing or who has the authority to instruct your client.**
- 4. To identify an individual you must obtain and keep a record of:**
 - the individual's full name
 - home address and telephone number,
 - occupation, and
 - business address and telephone number, if applicable.
- 5. To identify an organization (a corporation, partnership, fund, trust, association etc.) you must obtain and keep a record of :**
 - the organization's full name
 - business address and telephone number
 - for organizations other than a financial institution, public body or reporting issuer, the organization's incorporation or business identification number and place of issuance of the number if the organization has a number and the general nature of the organization's business
 - the name, position and contact information of the individual giving you instructions on behalf of the organization
- 6. Retain a record of the information that you obtain for the longer of:**
 - six years following completion of the work for which you were retained
 - the duration of the lawyer and client relationship and for as long as it is necessary for the purpose of providing service to the client



VERIFYING THE IDENTITY OF AN INDIVIDUAL²

(This document has been prepared to assist lawyers to determine whether they are required to verify the identify of an individual and if so, the steps that they are required to take)

- 1. Determine whether you are retained to provide legal services to a client?**
- 2. If yes, determine whether you will engage in or instruct with respect to the receipt, payment or transfer of funds?**
- 3. If yes, determine with respect to each funds transaction if an exemption to the requirement to verify identity applies?**

The exemptions are:

- you are providing legal services to your employer, for example as in-house counsel
- you are acting as an agent for another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada, who has already verified the identity of the client
- you are acting for a client who has been referred to you by another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada who has already verified the identity of the client
- you are providing legal services as a duty counsel under the *Legal Aid Services Act, 1998*, as a duty counsel providing professional services

² This document has been prepared to assist lawyers to comply with the client identification and verification requirements of By-Law 7.1. Lawyers should refer to the by-law for a more detailed outline of their obligations. Please note that some of the terminology used to delineate the lawyer's obligations is specifically defined in the By-Law.

through a duty counsel program operated by a not-for-profit organization or as the provider of legal aid services through the provision of summary advice under the *Legal Aid Services Act, 1998*.

- funds are being paid to or received from a financial institution, public body (government) or reporting issuer (public company)
 - funds are being received from the trust account of another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada
 - funds are being received from a peace officer, law enforcement agency or other public official acting in an official capacity
 - funds are being received or paid pursuant to a court order
 - funds are being paid to pay a fine or penalty
 - funds are being paid or received as a settlement in a proceeding before an adjudicative body
 - funds are being paid for professional fees, disbursements, expenses or bail
 - funds are being paid, received or transferred by electronic funds transfer
 - you have previously verified the identity of an individual and you recognize the individual
 - the client and/or third party is an organization and you or an employee of your firm or a lawyer or paralegal in your firm licensed by the Law Society of Upper Canada have previously identified the organization by obtaining the name and occupations of each director of the organization and the name, address and occupations of each person who owns 25% or more of the organization or of the shares of the organization and have verified the identity of that organization including the individuals authorized to give instructions on behalf of the organization with respect to the matter.
- 4. If an exemption applies, you are not required to verify the identity of your client. If no exemption applies, you must verify the identity of your client and any third party instructing or having the authority to instruct your client.**
- 5. To verify the identity of an individual, either before or when you act or give instructions regarding the receiving, paying or transferring of funds obtain and review an original government issued identification of that individual that is valid and has not expired such as a:**

- Driver's Licence
- Birth Certificate
- Passport, or
- Other similar record

6. If the individual is present in Canada and you are not meeting face to face with him or her, you must verify that individual's identity by one of the following methods:

- Obtain an attestation from a commissioner of oaths or other approved person³ who has verified the individual's identity by looking at an appropriate identity document, or
- Retain an agent to verify the identity of that individual on your behalf and prior to the agent acting on your behalf enter into a written agreement with that agent specifying the steps that he or she will be taking on your behalf to comply with the verification requirements

7. If the individual is not present in Canada and you are not meeting face to face with him or her, you must verify that person's identity by:

- Retaining an agent to verify the identity of that individual on your behalf and prior to the agent acting on your behalf entering into a written agreement with that agent specifying the steps that he or she will be taking on your behalf to comply with the verification requirements

Sample Form Attestation – Appendix 4

Sample Agreement – Appendix 5

8. Retain a record of the information that you obtain and copies of the documents you receive to verify identity for the longer of:

- six years following completion of the work for which you were retained
- the duration of the lawyer and client relationship and for as long as it is necessary for the purpose of providing service to the client

Sample File Form – Appendix 6

³ Subsection 23(9) designates the following persons as persons who may provide an attestation: a person entitled to administer oaths and affirmations in Canada, a dentist, a physician, a chiropractor, a judge, a magistrate or justice of the peace, a lawyer, a licensee (Ontario), a notary (Quebec), a notary public, an optometrist, a pharmacist, an accountant, a professional engineer, a veterinarian, a police officer, a nurse or a school principal.



For Use When Verifying the Identity of an Organization

VERIFYING THE IDENTITY OF AN ORGANIZATION⁴

(This document has been prepared to assist lawyers to determine whether they are required to verify the identity of an organization and if so, the steps that they are required to take. An “organization” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association”.)

- 1. Determine whether you are retained by an organization to provide legal services to a client?**
- 2. If yes, determine whether you will engage in or instruct with respect to the receipt, payment or transfer of funds?**
- 3. If yes, determine with respect to each funds transaction if an exemption to the requirement to verify identity applies? The exemptions are as follows:**
 - you are providing legal services to your employer, for example as in-house counsel
 - you are acting as an agent for another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada, who has already verified the identity of the client
 - you are acting for a client who has been referred to you by another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada who has already verified the identity of the client

⁴ This document has been prepared to assist lawyers to comply with the client identification and verification requirements of By-Law 7.1. Lawyers should refer to the by-law for a more detailed outline of their obligations. Please note that some of the terminology used to delineate the lawyer’s obligations is specifically defined in the By-Law.

- you are providing legal services as a duty counsel under the *Legal Aid Services Act, 1998*, as a duty counsel providing professional services through a duty counsel program operated by a not-for-profit organization or as the provider of legal aid services through the provision of summary advice under the *Legal Aid Services Act, 1998*.
 - funds are being paid to or received from a financial institution, public body (government) or reporting issuer (public company)
 - funds are received from the trust account of another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada
 - funds are being received from a peace officer, law enforcement agency or other public official acting in an official capacity
 - funds are being received or paid pursuant to a court order
 - funds are being paid to pay a fine or penalty
 - funds are being paid or received as a settlement in a proceeding before an adjudicative body
 - funds are being paid for professional fees, disbursements, expenses or bail
 - funds are being paid, received or transferred by electronic funds transfer
 - you have previously verified the identity of an individual and you recognize the individual
 - the client and/or third party is an organization and you or an employee of your firm or a lawyer or paralegal of your firm licensed by the Law Society of Upper Canada has previously identified the organization by obtaining the name and occupations of each director of the organization and the name, address and occupations of each person who owns 25% or more of the organization or of the shares of the organization and has verified the identity of that organization including the individuals authorized to give instructions on behalf of the organization with respect to the matter.
- 4. If an exemption applies, you are not required to verify the identity of your client. If no exemption applies, you must verify the identity of your client (other than financial institutions, public bodies or reporting issuers) and any third party instructing your client or who has the authority to instruct your client.**

- 5. To verify the identity of an organization either before or when you act or give instructions on behalf of the client regarding the receiving, paying or transferring of funds, you must obtain and review an original government issued identification of the individual giving instructions on behalf of the organization that is valid and has not expired such as a:**
- Driver's Licence
 - Birth Certificate
 - Passport, or
 - Other similar record
- 6. In addition if the organization is a corporation or other organization created or registered pursuant to legislative authority, no later than 60 days after you first act or give instructions regarding the receiving, paying or transferring of funds obtain and review a written confirmation from a government registry as to the existence, name and address of the organization including the names of the directors such as:**
- a certificate of corporate status issued by a public body (e.g. government)
 - a copy of a record obtained from a public body that the organization is required to file annually under applicable legislation (e.g. annual government filings), or
 - a copy of a similar record obtained from a public body that confirms the organization's existence
- 7. If the organization is a trust, partnership or other organization which is not registered in any government registry, no later than 60 days after you first act or give instructions regarding the receiving, paying or transferring of funds, review a copy of the organization's constating documents or similar record that confirms its existence as an organization such as:**
- a trust agreement
 - a partnership agreement
 - articles of association, or
 - other similar record that confirms the organization's existence as an organization

8. Make reasonable efforts to obtain:

- the name and occupation or occupations of each director of the organization unless the organization is a securities dealer
- the name, address and occupation or occupations of each person who owns 25% or more of the organization or of the shares of the organization

9. Retain a record of the information that you obtain and copies of the documents you receive to verify identity for the longer of:

- six years following completion of the work for which you were retained
- the duration of the lawyer and client relationship and for as long as it is necessary for the purpose of providing service to the client

Sample File Form – Appendix 6

SAMPLE FORM

ATTESTATION FOR VERIFICATION OF IDENTITY WHEN THE CLIENT OR THIRD PARTY IS PRESENT IN CANADA AND IS NOT INSTRUCTING THE LAWYER FACE TO FACE

The following sample form document has been prepared to assist lawyers to comply with their professional obligations when obtaining attestations from a commissioner of oaths or other guarantor where the individual whose identity is being verified is present in Canada, but is not meeting with the lawyer face to face. This sample form should be modified to suit the circumstances of the particular matter or transaction.

Instructions

The Attestor should photocopy the identity document being used to verify identity and ensure that it is legible, unexpired and shows the name of the person whose identity is being verified, the number of the document, the name of the issuing authority, the date of issue and a photograph of the person.

The Attestor will print the following attestation on this photocopy and date and sign the attestation.

I, the Attestor named below, hereby certify to [*name of lawyer receiving the attestation*] that I met with [*insert name of person*] on [*insert date*] and verified this person's identity by examining the original of this person's identity document, of which a photocopy is contained on this page. The photograph in the identity document is a true likeness of the said person and to the best of my knowledge and belief, the identity document that I examined is valid and unexpired.

Attested to by me at _____, on _____, 2008

Signature of Attestor: _____

Printed Name of Attestor: _____

Title or Profession of Attestor: _____

Address of Attestor for Service: _____

Telephone Number of Attestor: _____

SAMPLE FORM

VERIFICATION OF IDENTITY AGREEMENT WHERE THE CLIENT OR THIRD PARTY IS NOT PRESENT IN CANADA AND IS NOT INSTRUCTING THE LAWYER FACE TO FACE

This sample form agreement in letter format may be used by lawyers retaining agents to verify the identity of clients or third parties where the client or third party is not in Canada and is not instructing the lawyer face to face. In this sample form agreement, the identity of an individual is being verified by the examination of the person's driver's licence or passport. Although the by-law does not require the agent to examine more than one piece of identification, depending on the circumstances of the file, a lawyer may want an agent to examine more than one piece of identification. This sample form agreement should be modified to suit the circumstances of the matter or transaction. Furthermore, if the person is also signing other documents in the presence of the agent, such as an acknowledgment and direction authorizing the lawyer to electronically sign and submit title documents for registration, the lawyer may wish to modify this agreement to set out the additional obligations of the agent.

[Firm Letterhead]

[Delivery Method]

[Name and Address of the Agent]

Dear *[Agent]*:

Re: *[Insert the name of the client "our client"]*
[Insert the nature of the matter or transaction]

We are acting in the above-noted matter and would like to retain you to verify the identity of our client. In this regard, we will require that you meet with our client and take the following steps to verify our client's identity:

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Please note that in situations where the client is an individual present in Canada and is not instructing the lawyer face to face, the lawyer has the option of obtaining either an Attestation (Appendix 4) or a Verification of Identity Agreement (Appendix 5).

1. Examine the original, valid and unexpired passport or driver's licence (identity document) of our client
2. Make a legible photocopy of this identity document and ensure that it contains our client's name, the number of the document, the name of the issuing authority, the date of issue and our client's photograph.
3. Print and certify on this photocopy as follows:

I, the Attestor named below, hereby certify to [*name of lawyer receiving the attestation*] that I met with [*insert name of person*] on [*insert date*] and verified this person's identity by examining the original of the person's identity document, of which a photocopy is reproduced on this page, and which copy legibly shows the name of the person, the number of the identity document, the name of the issuing authority, the date of issue, and a photograph that is a true likeness of the said person. To the best of my knowledge and belief, the identity document that I examined is valid and unexpired.

Attested to by me at [*Insert Place of Signature*], on _____, 2008

Signature of Attestor: _____

Printed Name of Attestor: _____

Title or Profession of Attestor: _____

Address of Attestor for Service: _____

Telephone Number of Attestor: _____

4. Date and sign the photocopy containing the above certification in the spaces set out for the date and signature and return it to us no later than [*insert date*].

Any amendments to these instructions must be approved in writing by our firm.

If you are agreeable to verifying the identity of our client on the terms and conditions set out in this letter, please confirm your agreement by signing two copies of this letter on the signature line below and return one copy to the undersigned.

Yours truly,

Signature of Lawyer

[Insert the name of the Lawyer]

I hereby agree to verify the identity of the person referred to above on the terms and conditions set out in the above letter.

Dated at *[Insert location]* on *[Insert date]*.

Signature of the Agent

[Insert the Name of the Agent]

[LAW FIRM NAME]
BARRISTERS AND SOLICITORS

VERIFICATION OF IDENTITY

(For use where the client or the third party is an individual)

Name: _____

Address: _____

Phone No: _____

Business Address: _____

Business Phone No: _____

Occupation(s) _____

Original Document Reviewed – Copy Attached

- Driver's Licence
- Birth Certificate
- Passport
- Other (specify type) _____

Meeting Date Identity Verified: _____

Identity Verified By: _____

Date File Reviewed by Lawyer: _____

Name of Lawyer: _____

[LAW FIRM NAME]
BARRISTERS AND SOLICITORS

VERIFICATION OF IDENTITY

(For use where the client or the third party is an organization)

Name: _____

Business Address: _____

Business Phone No: _____

Incorporation or
Business Identification No: _____

Place of Issue of No: _____

Type of Business or
Activity : _____

Person Authorized to Instruct

Name: _____

Position: _____

Phone No: _____

Original Document Reviewed – Copy Attached

- Driver's Licence
- Birth Certificate
- Passport
- Other (specify type) _____

Names and Occupation(s) of Directors

Names, Addresses and Occupation(s) of Owners or Shareholders owning a 25% interest or more of the organization or shares in the organization

Original Document Reviewed – Copy Attached

- Certificate of Corporate Status
- Annual Filings of the Organization (specify type) _____
- Partnership Agreement
- Trust Agreement
- Articles of Association
- Other (specify type) _____

Meeting Date Identity Verified: _____

Identity Verified By: _____

Date File Reviewed by Lawyer: _____

Name of Lawyer: _____

COMPLYING WITH THE NEW CLIENT IDENTIFICATION AND VERIFICATION OF IDENTITY REQUIREMENTS OF BY-LAW 7.1

BACKGROUND INFORMATION ON THE NEW REQUIREMENT

Lawyers by virtue of their trust accounts are targets for those wishing to launder money. Amendments to By-Law 7.1 on client identification and verification were approved by Convocation on April 24, 2008 and come into effect on December 31, 2008. These amendments are contained in Sections 20 – 27 of the By-Law. The new requirements are based on a Model Rule developed by the Federation of Law Societies of Canada as a part of its initiative to fight fraud. Law Societies across Canada are in the process of implementing the Model Rule within their regulatory regimes to create a national, uniform standard for client identification and verification requirements.

MONEY LAUNDERING AND TERRORIST FINANCING

By way of background, as a result of growing global concern in 2000, the Government of Canada passed legislation known as the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “Act”). Under the Act, regulated persons and entities are required to report suspicious transactions and certain other financial transactions. Reporting persons are prohibited from “tipping off” their client about having made the report. Despite concerns expressed by the Federation of Law Societies, in November 2001 the federal government promulgated Regulations making the Act applicable to lawyers and requiring legal counsel to secretly report suspicious transactions to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), a federal agency. The Federation and the Law Society of British Columbia, supported by the Canadian Bar Association, initiated proceedings in the Supreme Court of British Columbia challenging the constitutionality of the legislation and seeking interlocutory relief from the application of the Regulations to legal counsel. The Federation contended that the legislation required lawyers to act as secret agents of the state, collecting information about clients against their interests and reporting to a government agency. The Supreme Court of British Columbia agreed with these concerns and granted an interim injunction such that legal counsel were not required to report “suspicious transactions” pending a full hearing on the merits of the case. The BC Court of Appeal and the Supreme Court of Canada denied the government’s application for a stay of the Order. Similar Orders were granted in other provinces and territories across Canada.

As a result of these interlocutory Orders, in May 2002 the Attorney General of Canada agreed to suspend the application of the legislation to all Canadian lawyers (including Quebec notaries), pending a final decision on the merits of the constitutional challenge to the legislation. The hearing of the challenge has now been adjourned generally, and all lawyers in Canada remain exempt from the legislation by virtue of the injunction. The federal government indicated that following consultations with the legal profession, the government intended to put in place a new regulatory regime for lawyers that more appropriately reflected their duties.

In the interim the Federation independently of the litigation, has launched its own initiatives to fight fraud.

NO- CASH RULE

In 2004, the Federation adopted a “No-Cash” Model Rule. All Law Societies across Canada have implemented rules restricting lawyers from receiving cash in amounts of \$7,500.00 or more. The adoption of the No-Cash Rule rendered unnecessary the obligation under the *Act* that the federal government sought to impose on lawyers, to report transactions involving \$10,000.00 or more in cash.

BILL C-25

In October 2006, the federal government introduced Bill C-25 that made a series of amendments to the *Act*. Bill C-25 includes provisions (sections 6 and 6.1) enhancing the client identification, recordkeeping and reporting requirements in the *Act*. In June 2007, new client identification and verification regulations under these provisions were published by the Department of Finance. The regulations purport to regulate how lawyers and others should identify and verify the identity of clients. The regulations were published in final form in December 2007 and with respect to the legal profession, come into force in December 2008. Attached is a summary of the Regulations as applicable to lawyers. However, the injunction discussed earlier states that any new regulations do not apply to the legal profession unless the Federation of Law Societies consents.

The Federation’s Model Rule on Client Identification and Verification in many respects codifies the steps that a prudent lawyer would take in the normal course to verify a client’s identity. The Model Rule respects the threshold between constitutional and unconstitutional requirements imposed on lawyers when it comes to gathering information from clients: a lawyer must obtain and keep all information needed to serve the client, but must not obtain any information which serves only to provide potential evidence against the client in a future investigation or prosecution by state authorities. Like the adoption of the No-Cash Rule, national implementation of the Model Rule on Client Identification and Verification will demonstrate that responsible self-governance by the law societies makes federal regulation of the legal profession on this subject matter unnecessary.

NEW FEDERAL REGULATIONS ON CLIENT IDENTIFICATION AND VERIFICATION AS APPLICABLE TO LAWYERS⁸

The following is a summary of the obligations of lawyers under the Federal Regulations on Client Identification and Verification published in final form in December 2007. The injunction discussed earlier states that any new regulations do not apply to the legal profession unless the Federation of Law Societies consents.

1. CLIENT IDENTIFICATION AND VERIFICATION

The new Regulations require a lawyer to identify a client whenever the lawyer receives \$3,000 or more in the course of the lawyer's business activities. Funds received from a public body or a publicly-traded company with minimum net assets of \$75 million and which is located in a country that is a member of the FATF are exempt. The new Regulations also exempt lawyers from the requirements when the funds are received by the lawyer from the trust account of another lawyer.

Individual clients must be identified by referring to a government-issued identification document (e.g. a birth certificate, driver's license, provincial health insurance card, passport or similar document). If the client is an organization, the lawyer must rely on identifying documents such as a certificate of corporate status, trust or partnership agreements and articles of association. The new Regulations require additional identification procedures where the client who is an individual is not physically present, and permit the identification to be done by an agent or mandatary. For such non-face-to-face situations, the Regulations require combinations of two methods of identification set out in Schedule 7. For example, an attestation by a commissioner of oaths in Canada about the identity of the person and reference to identifying information in a credit file on the person would suffice.

Information required to be obtained during the identification process includes:

⁸ The new regulations relevant to the legal profession include provisions from:

- the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, Registration SOR/2002-184, May 9, 2002,
- amendments to those Regulations made by *Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (2007-1) Registration SOR/2007-122 June 7, 2007 (published in Part II of the *Canada Gazette*, June 27, 2007), which generally come into force on June 23, 2008,
- amendments to those Regulations made by *Regulations Amending Certain Regulations Made Under The Proceeds Of Crime (Money Laundering) And Terrorist Financing Act* (2007-2) published in Part II of the *Canada Gazette* on December 26, 2007 as SOR/2007-293, December 13, 2007, and
- amendments to those Regulations made by *Regulations Amending Certain Regulations Made Under The Proceeds Of Crime (Money Laundering) And Terrorist Financing Act* (2008-1) published in Part II of the *Canada Gazette* on February 20, 2008 as SOR/2008-21, January 31, 2008.

- (a) For a client who is an individual, the name, address and date of birth of the person;
- (b) For a client that is a corporation, the corporate name and address and the name of its directors. “Reasonable efforts” must be made to obtain the occupation of its directors and the name, address and occupation of any person who owns or control 25% or more of the corporation;
- (c) For a client that is an entity other than a corporation, confirmation of its existence. The same reasonable efforts must be made to obtain the name, address and occupation of any person who owns or control 25% or more of the entity.

The new Regulations require the lawyer to document the inability to obtain through the “reasonable efforts” the specified information in b. and c.

When confirming the existence of a not-for-profit organization, a lawyer must determine whether it is a registered charity or solicits charitable financial donations.

For corporations or other organizations, the verification (the existence of the organization) must be confirmed within 30 days of the transaction. Individual clients’ identity must be confirmed at the time of the transaction.

Under the new Regulations, a lawyer is not required to re-identify clients unless he or she has doubts about the veracity of the previously obtained client information.

2. RECORD KEEPING

The new Regulations include very detailed record-keeping requirements. Various records, described below, must be kept for a period of five years.

A lawyer must keep a “receipt of funds record”, a defined term in the new Regulations, when he or she has received \$3000 or more, except when the funds are received from a financial institution or public body. While parts of this record may already exist within a law office, it must include the following information:

- name, address and birth date of the person providing the funds,
- if the client is a person, the nature of the person’s principal business or occupation,
- if the client is an organization, the address and nature of the organization’s principal business,
- date of the transaction,
- account number affected by the transaction,
- type of account,
- full name of the person or entity who holds the account,
- monetary currency of the transaction,
- purpose and details of the transaction,
- if cash is received, how the funds are received, and
- amount and currency of the funds received.

If the client is a corporation, a lawyer must also include with the receipt of funds record a copy of the part of the official corporate records that contains any provisions relating to the power to bind the corporation in respect of the transactions with the lawyer.

The new Regulations indicate that the receipt of funds record is to contain the information specified if the information is not readily obtainable from other records that the lawyer keeps under the Regulations.

The new Regulations exempt lawyers from this record keeping requirement when the funds are received by the lawyer from the trust account of another lawyer. In such cases the lawyer must keep a record of that fact and is not required to include in the receipt of funds record the number and type of the account affected by the transaction or the name of the person or organization who holds the account.

For identification of an individual, a lawyer must keep a record of the following information or keep the required document, as the case may be, which information relates to the methods required under the new Regulations for individual identity verification:

- for the birth certificate, driver's license, provincial health insurance card, passport or similar document, the type and reference number of the record and the place issued;
- with respect to the methods described in Schedule 7,
 - for the cleared cheque, the name of the financial entity and account number,
 - for confirmation of the deposit account, the name of the financial entity, number of the account and the date of the confirmation,
 - for the identification product, its name, the entity offering it, the search reference number and the date it was used to ascertain identity,
 - for the credit file, the name of the company and date consulted,
 - for the attestation, the attestation.

For corporate identity, where the identifying document is in electronic form, a lawyer must keep a record that sets out the corporation's registration number, the type of record referred to and the source of the electronic version of the record (a similar record is required for other organizations). Where the above information has been ascertained by referring to a paper copy of a record, a lawyer must keep the record or a copy of it.

At the time the existence of an organization is confirmed, if the lawyer has obtained the information about direct or indirect ownership and control described above, he or she must record it. As discussed earlier, where the lawyer is unable to obtain the above information, he or she must keep a record of the reasons the information could not be obtained.

Where the entity is a not-for-profit organization a lawyer must keep a record of whether it is a registered charity or solicits charitable financial donations.

The records required under the new Regulations must be kept in a form that can be provided to an authorized person within 30 days after a request is made to examine

them under section 62 of the Act. Section 62 gives FINTRAC authority to examine records of those who are subject to the Regulations.⁹

Note on Sections 62 to 65.1 of the Act

These sections effectively authorize warrantless searches of law offices for the purpose of ensuring compliance with the Regulations. The sections are based on *Criminal Code* provisions that have been struck down as unconstitutional by the Supreme Court of Canada. As such, these sections do not comply with the stringent requirements established by the Court in *Lavallee, Rackel & Heintz v. Canada*.¹⁰ Bill C-25, amending legislation in respect of the Act, which received Royal Assent in December 2006, did not include amendments to sections 62 to 65 to address this issue despite the apparent intention of the Department of Finance to do so. The following appeared in the Department's June 2005 consultation paper, referenced earlier:

6.17 Documents Protected by Solicitor-Client Privilege

Reference: PCMLTFA, sections 62 to 65

Amendment

Amend the compliance provisions that allow FINTRAC to examine documents to bring the PCMLTFA into conformity with the principles set out by the Supreme Court of Canada in its decision in the case of *Lavallee, Rackel & Heintz* in respect of solicitor-client privilege.

Explanation

⁹ Section 62 of the Act reads:

- 62.** (1) An authorized person may, from time to time, examine the records and inquire into the business and affairs of any person or entity referred to in section 5 for the purpose of ensuring compliance with Part 1, and for that purpose may
- (a) at any reasonable time, enter any premises, other than a dwelling-house, in which the authorized person believes, on reasonable grounds, that there are records relevant to ensuring compliance with Part 1;
 - (b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;
 - (c) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; and
 - (d) use or cause to be used any copying equipment in the premises to make copies of any record.

Assistance to Centre

(2) The owner or person in charge of premises referred to in subsection (1) and every person found there shall give the authorized person all reasonable assistance to enable them to carry out their responsibilities and shall furnish them with any information with respect to the administration of Part 1 or the regulations under it that they may reasonably require.

¹⁰ *Lavallee, Rackel & Heintz v. Canada (Attorney General)*; *White, Ottenheimer & Baker v. Canada (Attorney General)*; *R. v. Fink*, [2002] 3 S.C.R. 209.

In a 2002 decision in the case of *Lavallee, Rackel & Heintz*, the Supreme Court of Canada set out principles that should be followed to protect solicitor-client privilege when the police seize documents from law offices under warrants. The proposed amendments would ensure that the compliance provisions under the PCMLTFA allowing FINTRAC to examine documents are consistent with these principles.

The Federation of Law Societies of Canada, in its responding to the consultation paper in September 2005, affirmed the need to address this issue:

The Federation supports the proposal in section 6.17 of the Consultation Paper to amend sections 62 to 65 of the Act to conform with the principles established by the Supreme Court of Canada on seizure of solicitor and client privileged documents. These sections are modeled closely on those in the *Criminal Code*, which have been struck down as unconstitutional by the Supreme Court. The Court, in confirming that privilege does not come into being by an assertion of a privilege claim, but exists independently, found that by the operation of s. 488.1 of the *Criminal Code*, the “constitutionally protected right” of privilege could be violated by the mere failure of counsel to act, without instruction from or communication with the client. The Federation agrees that the Act must be amended to ensure that solicitor and client privilege is protected.

The application of sections 62 to 65.1 as currently framed in the Act to the legal profession would create serious problems for the protection of solicitor and client privilege and confidentiality.

3. COMPLIANCE

The new Regulations require lawyers or law firms to establish detailed compliance and review programs. The following is an overview of the requirements.

A lawyer or law practice must implement a program to ensure compliance with the new Regulations by:

- designating a person in the law practice – who, where the program is being implemented by a person, may be that person (e.g. a sole practitioner) – who is to be responsible for the implementation of the program;
- developing and applying written compliance policies and procedures that are approved by the law practice’s managing partner, as the case may be, and are kept up to date;
- assessing and documenting, in a manner that is appropriate for a law practice, the risk of money laundering or terrorist financing, taking into consideration
 - the clients and the business relationships of the law practice,
 - the services and service delivery methods of the law practice,
 - the geographic location of the activities of the lawyer, and

- any other relevant factor;
- if the law practice has employees, agents or other persons authorized to act on its behalf, developing and maintaining a written ongoing compliance training program for those employees, agents or persons;
- instituting and documenting a review of the policies and procedures, the risk assessment and the training program for the purpose of testing their effectiveness, which review is required to be carried out every two years by an internal or external auditor of law practice, or by the law practice itself if it does not have such an auditor.

For the purposes of the compliance program, the law practice must report the following in written form to the managing partner, as the case may be, 30 days after the assessment described above:

- the findings of the review referred to in e above;
- any updates to the policies and procedures made within the reporting period; and
- the status of the implementation of those policies and procedures and their updates.

If a law practice considers the risk of money laundering or terrorist financing in the course of its activities to be high, the lawyer or law practice must develop and apply written policies and procedures for taking reasonable measures to keep client identification information up to date and mitigating the risks.



STEPS TO ASSIST LAWYERS IN COMPLYING WITH THE NEW CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS - BY-LAW 7.1¹

By-Law 7.1 talks about identification and verification of the identity of a client. This involves identifying and verifying the identity of both the client and also certain third parties associated with the client. Identification refers to the basic information that you need to get about your client and third party to know who they are whenever you are retained, such as their name and address. Verification of identity is required only when you are acting for a client or giving instructions on behalf of a client regarding the receiving, payment or transferring of funds.

The following steps have been prepared to assist lawyers to understand their obligations under the new requirements.

STEP 1 – IDENTIFY THE CLIENT AND CERTAIN THIRD PARTIES

- When you are retained to provide legal services, you must identify your client and any third party for whom your client acts or represents unless:
 - you are providing the legal services on behalf of your employer;
 - you are acting as agent for another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified the client; or
 - you are acting for a client who has been referred to you by another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified the client, or
 - you are acting as duty counsel under the *Legal Aid Services Act, 1998* or as duty counsel providing professional services through a duty counsel program operated by a not-for-profit organization or you are providing legal services through the provision of summary advice under the *Legal Aid Services Act, 1998* [Section 22, By-Law 7.1]

¹ This document has been prepared to assist lawyers to comply with the client identification and verification requirements of By-Law 7.1. Lawyers should refer to the by-law for a more detailed outline of their obligations. Please note that some of the terminology used to delineate the lawyer's obligations is specifically defined in the By-Law.

- ❑ In order to identify the client and/or third party, you must obtain and keep a record of certain information about that client and/or third party.
- ❑ If the client and/or third party is an individual, you must obtain and keep a record of that person's:
 - full name
 - business address and phone number, if any
 - home address and home telephone number
 - occupation or occupations [Subsection 23(1), By-Law 7.1].
- ❑ If the client and/or third party is an organization² (e.g. corporation, partnership, or trust) you must obtain and keep a record of:
 - the organization's full name
 - the organization's business address and phone number, if any
 - the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if any, unless the organization is a financial institution, public body or reporting issuer (public company)³
 - the general nature of the type of business or businesses or activity or activities engaged in by the organization unless the organization is a financial institution, government body or reporting issuer,
 - the name, position and contact information of each individual who provides you with instructions with respect to the matter on behalf of the organization [Subsection 23(1), By-Law 7.1]

² The term "organization" is defined as a body corporate, partnership, fund, trust, cooperative or an unincorporated association [Section 20, By-Law 7.1].

³ The terms "financial institution", "public body" and "reporting issuer" are defined in section 20 of By -Law 7.1. A "financial institution" includes certain banks, credit unions, loan and trust companies, government entities providing certain financial services to the public, some other similar entities and certain subsidiaries of these entities. A "public body" includes a ministry, department or agent of the government of Canada or of a province or territory of Canada, a municipality and some other similar bodies. A "reporting issuer" includes a reporting issuer within the meaning of an Act of a province or territory of Canada in respect of the securities law of the province or territory, a corporation whose shares are traded on a stock exchange designated under section 262 of the *Income Tax Act* (Canada) and that operates in a country that is a member of the Financial Action Task Force on Money Laundering and certain subsidiaries of these entities.

STEP 2 – VERIFY THE IDENTITY OF THE CLIENT AND CERTAIN THIRD PARTIES

- Furthermore if you act for or give instructions on behalf of the client regarding the receiving, paying or transferring of funds⁴ you must also take reasonable steps to verify the identity of that client and any third party for whom your client acts or represents unless an exception applies.

You are not required to verify identity if one of the following exceptions applies:
[Subsection 22 (1), By-Law 7.1]

- you engage in these activities on behalf of your employer [Subsection 22 (2), By-Law 7.1]
- you are acting as agent for another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified and verified the identity of the person [Subsection 22 (2), By-Law 7.1]
- you are acting for a client referred to you by another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada who has already identified and verified the identity of the person [Subsection 22 (2), By-Law 7.1]
- the funds being received are:
 - from a financial institution
 - from a public body
 - from a reporting issuer (public company)
 - from the trust account of another lawyer authorized to practice law in a province or territory of Canada or a paralegal licensed by the Law Society of Upper Canada
 - received pursuant to a court order
 - received as a settlement in a proceeding before an adjudicative body⁵
 - from a peace officer, law enforcement agency or other public official acting in their official capacity, or
 - for professional fees, disbursements, expenses or bail [Subsection 22(3), By-Law 7.1]
- the funds being paid are being paid :
 - to a financial institution

⁴ The term “funds” includes cash, currency, securities, negotiable instruments (e.g. cheques, bank drafts, money orders and promissory notes) and any other financial instruments that indicate a person’s title or interest in such funds [Section 20 of By-Law 7.1].

⁵ An “adjudicative body” is defined in Section 1 of the *Law Society Act* as any body that, after the presentation of evidence or legal argument by one or more persons, makes a decision that affects a person’s legal interests, rights or responsibilities and, without limiting the generality of the foregoing, includes a federal or provincial court, a tribunal established under an Act of Parliament or under an Act of the Legislature of Ontario to conduct an inquiry or inquest and an arbitrator.

- to a public body
 - to a reporting issuer (public company)
 - pursuant to a court order or to pay a fine or penalty
 - as a settlement in a proceeding before an adjudicative body , or
 - for professional fees, disbursements, expenses or bail [Subsection 22(3), By-Law 7.1]
- you pay, receive or transfer funds by electronic funds transfer⁶ [Subsection 23(3)]
 - you have previously verified the identity of an individual and you recognize the individual [Subsection 23(12), By-Law 7.1], or
 - the client and/or third party is an organization and you have previously identified the organization by obtaining the name and occupations of each director of the organization and the name, address and occupations of each person who owns 25% or more of the organization or of the shares of the organization and you have verified the identity of that organization including the individuals authorized to give instructions on behalf of the organization with respect to the matter. [Subsection 23(12), By-Law 7.1].

In addition when you act for a financial institution, public body or reporting issuer (public company) you are not required to verify the identity of that client [Subsection 22(4)].

- If you are required to verify the identity of a client or third party, you must do so by looking at an original identifying document, from an independent source, that you reasonably believe to be reliable. The type of document that you will examine will differ depending on whether the person is an individual or an organization and also depending on the type of organization involved. [Subsection 23(4), By-Law 7.1].
- If the client and/or third party is an individual you must verify that individual's identity either before or when you act or give instructions on behalf of the client regarding the receiving, paying or transferring of funds . You may do this by obtaining and reviewing an original government issued identification of that person that is valid and has not expired such as a:
 - Driver's Licence
 - Birth Certificate
 - Provincial or Territorial Health Card, where permitted⁷
 - Passport, or
 - Other similar record [Subsection 23(5) and 23(7) of By-Law 7.1]

⁶ The term "electronic funds transfer" is defined in section 20 of the By-Law.

⁷ A provincial or territorial health card may only be used to verify identity if the use of the card is not prohibited by the applicable provincial or territorial law. In Ontario, subsection 34 (4) of the *Personal Health Information Protection Act, 2004* provides: "No person shall require the production of another person's health card, but a person who provides a provincially funded health resource to a person who has a health card may require the production of the health card." The term "health card" is defined in subsection 34(1) of the *Act* as "a card provided to an insured person within the meaning of the *Health Insurance Act* by the General Manager of the Ontario Health Insurance Plan".

- If the client and/or third party is a corporation or society or other organization created or registered pursuant to legislative authority you must verify its identity no later than 60 days after first engaging in the funds transfer activity. You may verify the identity of this organization by obtaining and reviewing a written confirmation from a government registry as to the existence, name and address of the organization including the names of the organization's directors such as:
 - a certificate of corporate status issued by a public body (e.g. government)
 - a copy of a record obtained from a public body that the organization is required to file annually under applicable legislation (e.g. annual government filings), or
 - a copy of a similar record obtained from a public body that confirms the organization's existence [Subsection 23(6) and 23(7) of By-Law 7.1]

- If the client and/or third party is a trust, partnership or other organization which is not registered in any government registry, you must verify its identity no later than 60 days after first engaging in the funds transfer activity. You may verify the identity of this organization by obtaining and reviewing a copy of the organization's constating documents such as:
 - a trust agreement
 - a partnership agreement
 - articles of association, or
 - other similar record that confirms the organization's existence as an organization [Subsections 23(6) and 23(7), By-Law 7.1].

- In addition, where the client or third party is an organization and you are required to verify its identity, you must take two additional steps.
 - First, you must verify the identity of the individual providing you with instructions with respect to the matter on behalf of the organization, either before or when you act or give instructions on behalf of the client regarding the receiving, paying or transferring of funds, unless you have previously identified and verified the identity of that individual [Subsection 23(5), By-Law 7.1]

 - Second, you must make reasonable efforts to obtain:
 - the name and occupation or occupations of each director of the organization unless the organization is a securities dealer
 - the name, address and occupation or occupations of each person who owns 25% or more of the organization or of the shares of the organization [Subsection 23(2), By-Law 7.1]

- In addition, if you are required to verify the identity of an individual and you are not meeting with that individual face to face, you must have another person verify the identity of that individual by using one of two methods depending on whether the individual whose identity is being verified is present in Canada:

- In this regard, if the individual is **present in Canada**, you may obtain an attestation from a person entitled to administer oaths and affirmations in Canada (a commissioner of oaths) or from another designated person⁸. This person (the attestor) will verify the identity of the individual by looking at an appropriate identity document and provide you with an attestation. The attestation consists of a legible photocopy of the independent source identity document signed by the attestor and on which the attestor has indicated:
 - his or her name, occupation and address;
 - the type and number of the document looked at by that person to verify identification [Subsections 23(8) – (10), By-Law 7.1]

Appendix 4 contains a sample form attestation.

- Alternatively if the individual whose identity is being verified is **not present in Canada** or if you choose not to obtain an attestation, you may retain an agent to verify the identity of the individual, but prior to the agent acting on your behalf you must enter into a written agreement with that agent specifying the steps that he or she will be taking on your behalf to comply with the verification requirements [Subsections 23(8)-(11), By-Law 7.1].

Appendix 5 contains a sample form verification of identity agreement.

- Obtain a copy of every document that you have used to verify the identity of an individual or organization including copies of documents used by persons acting on your behalf to verify identity [Subsection 23(13), By-Law 7.1].

Appendix 3 contains forms that you may use to assist you in identifying and verifying the identity of a client or third party.

STEP 3 – RETAIN RECORDS

- Retain a record of the information that you obtain and copies of the documents you receive to identify and verify the identity of an individual or organization including attestations and agreements with agents for the longer of:
 - six years following completion of the work for which you were retained
 - the duration of the lawyer and client relationship and for as long as it is necessary for the purpose of providing service to the client [Subsection 23(14) of By-Law 7.1]

⁸ Subsection 23(9) designates the following persons as persons who may provide an attestation: a person entitled to administer oaths and affirmations in Canada, a dentist, a physician, a chiropractor, a judge, a magistrate or justice of the peace, a lawyer, a licen see (Ontario), a notary (Quebec), a notary public, an optometrist, a pharmacist, an accountant, a professional engineer, a veterinarian, a police officer, a nurse or school principal.

STEP 4 – WITHDRAW IF APPROPRIATE

- If you know or ought to know that you would be assisting a client in fraud or other illegal conduct, you must immediately cease engaging in any activities that would assist the client in such conduct and, if you are unable to do so, you must withdraw from representing the client [Section 24, By-Law 7.1, and Rules 2.02 (5) and 2.09 of the Rules of Professional Conduct].



CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS **QUESTIONS AND ANSWERS**

The following Q&A have been prepared to assist lawyers to interpret and better understand the new requirements:

IDENTIFYING THE CLIENT

1. What does “identifying my client” mean?

Identifying your client means obtaining certain basic information about your client and any third party directing, instructing or who has the authority to direct or instruct your client such as a name and address.

2. In what circumstances am I required to identify my client?

You must identify your client whenever you are retained to provide legal services, except:

- i. when you provide legal services to your employer, for example as in-house counsel;
- ii. when you are acting as an agent for another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada, who has already identified the client;
- iii. when you are acting for a client who has been referred to you by another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada who has already identified the client; or
- iv. when you are providing legal services as a duty counsel under the *Legal Aid Services Act, 1998*, as a duty counsel providing professional services through a duty counsel program operated by a not-for-profit organization or as the provider of legal aid services through the provision of summary advice under the *Legal Aid Services Act, 1998*.

3. I was acting for a client in a matter before December 31, 2008 and the matter is continuing. Do I have to identify this client in accordance with By-Law 7.1?

If the matter is the same, you are not required to identify the client. However, if you take on a new matter for this client you must comply with the identification and verification requirements.

4. Do I have to identify anyone other than my client?

Yes, in some circumstances. You must identify any third party who is directing or instructing your client or who has the authority to direct or instruct your client. When your client or the third party is an organization, such as a company or a public body, you must also identify the person or persons giving instructions on behalf of the organization.

5. I have been retained by another lawyer to do work for her client. Do I have to identify the client?

If the other lawyer is a member of the bar in one of the provinces or territories of Canada and has identified the client in accordance with the By-Law, you do not have to do so.

6. Another lawyer has referred one of her clients to me. Do I have to identify the client?

No, you do not have to identify the client provided the other lawyer is licensed to practice law in a Canadian jurisdiction and has already identified the client in accordance with the By-Law.

7. What are my obligations in determining whether a lawyer for whom I am acting as agent or a lawyer who has referred a client to me has taken the necessary steps to identify that client?

You are expected to exercise due diligence to satisfy yourself that the other lawyer has already identified the client. This would involve asking the other lawyer to confirm that he or she has complied with the requirements of the By-Law.

8. I have been retained by a client and another lawyer in my firm has already identified that client. Am I permitted to rely on this identification?

Yes, you may rely on the identification information obtained by another lawyer in your firm provided that the information continues to be current.

9. I am providing summary legal advice to a client over the phone. Am I required to identify the client?

Yes, you are required to identify the client unless an exemption applies. For example, if you are providing legal aid services through the provision of summary advice under the *Legal Aid Services Act, 1998*, then an exemption would apply.

10. What if I am not billing the client for the summary advice, am I still required to identify my client?

Yes, unless an exemption applies.

11. I have been contacted by a prospective client and after speaking briefly to the client about her matter and without providing any legal advice, I

determine that I will not accept the retainer. Am I required to identify that prospective client?

No, as you have not been retained to provide legal services.

12. I am retained to notarize or commission a document for someone that I am not otherwise retained to represent. Am I required to verify this person's identity?

Simply notarizing or commissioning a document will not in and of itself, trigger the client identification obligations under the By-Law. If, however, you are providing legal advice or representation, you must comply with the By-Law.

13. At the request of the court, I assist an unrepresented person in court. Am I required to identify that person?

If a lawyer at the request of the court assists an unrepresented party in court, the lawyer is not required to identify the client. However, if the representation continues beyond the court's direction, the lawyer would be required to comply with the By-Law.

14. I am providing summary legal advice through a duty counsel program operated by a not-for-profit organization. Am I required to identify the client?

No, there is an exemption when you act as a duty counsel providing professional services through a duty counsel program operated by a not-for-profit organization.

15. What information must I obtain to identify an individual?

You must obtain and record:

- the individual's full name
- home address and telephone number,
- occupation, and
- business address and telephone number, if applicable.

16. What information must I obtain to identify a client or third party that isn't an individual, such as a company or a public body?

When your client is an organization (a corporation, partnership, fund, trust, co-operative or an unincorporated association) you must get and record its:

- full name
- business address and its business telephone number.

In addition, except for when your client is a financial institution (e.g. bank), public body (e.g. government) or reporting issuer (e.g. public company), you must also obtain and record:

- the organization's incorporation or business identification number and where it was issued if applicable, and
- the general nature of its business.

Finally, if you are required to identify an organization, you must record the name, position and contact information of the person or persons giving you instructions in the matter on behalf of the organization.

17. What information do I have to get from a client or third party that is a “financial institution” within the meaning of the By-Law to identify it?

You must obtain the financial institution’s full name, address and telephone number. In addition you must record the name, position and contact information of the individual(s) giving you instructions on behalf of the financial institution.

18. The definition of “reporting issuer” in the By-Law refers to a corporation whose shares are traded on a stock exchange designated under section 262 of the *Income Tax Act* (Canada) and that operates in a country that is a member of the Financial Action Task Force on Money Laundering. Where may I obtain information on these corporations?

Section 262 of the *Income Tax Act* provides that the Minister of Finance may designate a stock exchange or part of a stock exchange for the purposes of the *Act*. The Department of Finance Canada publishes a list of the [Designated Stock Exchanges](#)

[Financial Action Task Force on Money Laundering \(FATF\) members](#) that are countries.

19. I am required to obtain and record my client’s occupation. What do I do if the individual doesn’t have an occupation or doesn’t want to tell me what it is?

You are required to obtain this information. If your client doesn’t want to answer the question, you should explain that all lawyers are required to ask all clients for this information and that you need it to properly represent him or her. If the client refuses to provide this information, you must advise the client that you will be in breach of the requirements unless you obtain it and your professional obligations do not permit you to act in such circumstances. If your client is unemployed or

20. In order to identify my client, I am required to obtain the organization’s business or incorporation number. What are some examples of business or incorporation numbers that could be used to satisfy this requirement?

- Ontario Business Corporation Numbers

- Canadian Business Corporation Numbers
- GST/HST Numbers

If you wish to confirm the GST/HST number of a business, visit the

[Canada Revenue Agency website](#).

- [European Common Union Value Added Tax \(VAT\)](#)

21. If my client or third party is unable to provide some of the identification information required, for example an address or a phone number, am I obliged to withdraw?

Where a client or third party is unable to provide the information, for example where they have no address because they are homeless, or do not have a telephone number, the lawyer is not obliged to withdraw. This situation is to be distinguished from one in which the client refuses to provide the information. Where the information does not exist, the lawyer should make a record of that fact.

22. I have been retained by a law firm to provide a legal opinion on an issue arising in a matter for which they are acting for a client. Do I have to identify the law firm's client?

At the commencement of the retainer, you should determine who your clients are in the matter. If you are acting for both the law firm and its client, you must identify both. In circumstances where you act for the law firm alone, but the law firm's client is instructing the law firm with respect to the particular matter for which you are retained, you must identify the law firm as a client and the law firm's client as a third party instructing the law firm.

23. The corporation I have been retained by has authorized several people to instruct counsel. Do I have to identify all of them?

No. The By-Law requires you to identify the individual(s) actually giving you instructions. If the individual giving you instructions changes, you must identify that individual at that time

24. Do I have an obligation to look behind the assertion that an individual is authorized to instruct me on behalf of an organizational client? The By-Law does not require that you investigate such an assertion. You should always exercise prudence, however, and if you have concerns about the assertion it would be advisable to make further inquiries to satisfy yourself that the individual is indeed authorized to instruct you.

VERIFYING THE IDENTITY OF THE CLIENT

25. What does “verifying the identity of my client” mean?

Verifying the identity of a client means actually looking at an original identifying document from an independent source to ensure that your clients and any third parties are who they say they are.

26. In what circumstances do I have to verify my client’s identity?

You are only required to verify the identity of your client and any third party instructing or directing your client or who has the authority to instruct or direct your client when you are retained to provide legal services to a client and you are involved in a funds transfer activity, that is, ***when you engage in or give instructions in respect of the receipt, payment or transfer of funds.***

27. Does every financial transaction trigger the verification requirement?

No. There are a number of situations where you are not required to verify the identity of the client and third party even though you are engaged in a funds transfer activity.

These situations include the following:

- you are providing legal services to your employer, for example as in-house counsel;
- you are acting as an agent for another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada, who has already identified the client;
- you are acting for a client who has been referred to you by another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada who has already identified the client; or
- you are providing legal services as a duty counsel under the *Legal Aid Services Act, 1998*, as a duty counsel providing professional services through a duty counsel program operated by a not-for-profit organization or as the provider of legal aid services through the provision of summary advice under the *Legal Aid Services Act, 1998*.
- the funds are being paid to or are being received from a financial institution, public body (government) or reporting issuer (public company)
- the funds are being received from the trust account of another lawyer (an individual authorized to practise law anywhere in a province or territory of Canada) or a paralegal licensed by the Law Society of Upper Canada
- the funds are being received from a peace officer, law enforcement agency or other public official acting in an official capacity

- the funds are being paid or received pursuant to a court order
- the funds are being paid to pay a fine or penalty
- the funds are being paid or received as a settlement in a proceeding before an adjudicative body
- the funds are being paid for professional fees, disbursements, expenses or bail
- the funds are being paid, received or transferred by electronic funds transfer
- you have previously verified the identity of an individual and you recognize the individual
- the client and/or third party is an organization and either you or an employee of your firm or another lawyer or paralegal of your firm licensed by the Law Society of Upper Canada has previously identified the organization by obtaining the name and occupations of each director of the organization and the name, address and occupations of each person who owns 25% or more of the organization or of the shares of the organization and has verified the identity of that organization including the individual(s) giving you instructions on behalf of the organization with respect to the matter.

When your client is a financial institution, public body or reporting issuer, you are not required to verify the identity of that client and any third party instructing, directing or who has the authority to instruct or direct your client. The terms “financial institution”, “public body” and “reporting issuer” are defined terms in the By-Law.

28. If I determine that an exemption applies when I receive funds, may I rely on this same exemption when I pay out the money?

No, you are required to look at each transfer of funds transaction separately. For example if you are acting for a lender and receive mortgage funds from that lender and you later pay out the mortgage funds to a borrower, you must consider the receipt and payment of monies separately. Both transactions would need to be exempt in order for you not to be required to verify the identity of your client.

29. What does the term “funds” mean?

“Funds” means cash, currency, securities, negotiable instruments and other financial instruments that indicate a person’s title or interest in them.

30. What is caught by the exemption for funds “paid by a financial institution”?

This exemption is meant to cover a financial institution’s own funds, for example those advanced pursuant to a mortgage or loan agreement. ***Cheques, whether regular or certified, bank drafts or other forms of payment from your clients or third parties are not included in the exemption unless they are the financial institution’s own funds.*** The term “financial institution” is defined in

section 20 of the By-Law. It includes certain banks, credit unions, trust companies, certain subsidiaries of these entities and other entities.

31. The lawyer who referred the client to me identified the client, but I have now learned that the matter will involve a financial transaction. Do I have to verify the client's identity?

Unless the referring lawyer has also verified the client's identity, you must do so.

32. I have acted for an individual client in the past and have already verified the client's identity. Do I have to do it again?

As long as you recognize the individual and have previously verified the individual's identity in accordance with the By-Law, you do not have to verify the identity of an individual more than once.

33. My client is a corporation or a partnership. Do I have to verify its identity again if I have already done so?

No, you don't have to verify the identity of a client that is an organization if you have already done so. This exception also applies to verifying the identity of the person(s) instructing you on behalf of your corporate client if the person is the same person and to obtaining names of directors and owners. It is, however, recommended that you exercise due diligence in ascertaining whether there has been any change in the identity or ownership of the corporation and in determining that the instructing individual is still authorized to act in that capacity.

34. Are funds received from the trust account of a lawyer licensed to practise law in another part of Canada exempt?

Yes. There is an exemption for funds received from the trust account of a lawyer licensed in any jurisdiction in Canada. It does not, however, apply to funds from the trust account of a lawyer licensed in a foreign jurisdiction.

35. I settled a matter for my client after sending a demand letter, but before commencing a proceeding. Are the settlement monies exempt?

No. For this exemption to apply, a legal action must have been commenced before a court, statutory tribunal or arbitrator.

36. My client has come to me for tax advice in connection with some investments. Is this a situation in which I have to verify my client's identity?

The verification obligations apply when you are engaged in or give instructions in respect of a funds transfer transaction. Simply providing legal advice about a money matter does not trigger the verification obligations unless you are also giving instructions for the movement of the money.

37. How do I verify the identity of my client?

You are required to take reasonable steps to verify the identify of your client and any third party directing or instructing your client by looking at what you reasonably consider to be reliable, independent source documents, data or information. Generally speaking you will look at an identity document from an independent source to verify identity. The type of document you will look at will differ depending on whether the person is an individual or an organization and also based on the type of organization.

38. Section 23(4) of By-Law 7.1 talks about taking “reasonable steps” to verify a client’s identity. What will be considered to be “reasonable steps”?

The answer depends a lot on the context. The By-Law directs lawyers to rely on what they reasonably consider to be reliable, independent source documents, data and information and sets out a number of examples. Lawyers are expected to make a reasonable effort to obtain such documents and information.

39. How do I verify the identity of an individual?

To verify the identity of an individual, you may look at a government issued driver’s licence, passport or birth certificate that is valid and has not expired. You must also retain a copy of the document for your records.\

40. Am I required to look at photo identification in order to verify the identity of an individual?

In order to comply with the By-Law you are not required to obtain photo identification. However, if you suspect fraud, dishonesty or other illegal conduct, you are required to make reasonable inquiries to satisfy yourself that you are not assisting the client in such conduct. Such inquiries might include looking at photo identification.

41. How do I verify the identity of an organization such as a corporation or other company?

You are only required to verify the identity of a corporation if it is not a reporting issuer (public company), financial institution or public body.

If the organization is a corporation or an organization created or registered under federal or provincial law, you may obtain written confirmation of its existence from a government registry. This confirmation should also include the name and address of the organization and, where applicable, the names of its directors. In this regard, you could obtain a certificate of corporate status, a corporate profile report and/or an annual filing of the corporation.

If the organization is a trust, partnership or an association you will need to obtain some sort of formal record that confirms its existence as an organization. This could include a copy of the trust or partnership agreement or articles of association. It might also include the GST/HST registration information or information relating to the organization’s business licence.

If you are required to verify the identity of an organization, you must also take the following additional steps:

- i. verify the identity of the individuals who provide you with instructions with respect to the matter on behalf of the organization
- ii. make reasonable efforts to obtain:
 - the name and occupation or occupations of each director of the organization unless the organization is a securities dealer

- the name, address and occupation or occupations of each person who owns 25% or more of the organization or of the shares of the organization

42. If I am required to verify the identity of an individual, when must I do this?

If the person is an individual, you must verify his or her identity **before or when you engage or give instructions** in respect of the receipt, payment or transfer of funds. The same is true for verifying the identity of the individual providing you with instructions on behalf of a corporation or other organization.

43. Do I have to verify the identity of my corporate client before I can act for them where the payment, receipt or transfer of funds is involved?

You have 60 days from the time you engage in or give instructions or act on behalf of your client to receive, pay or transfer funds to verify its identity. However, you must verify the identity of the individual providing you with instructions on behalf of the corporation **before or when** you engage in the funds transfer activity.

44. What happens if I have verified the identity of the individual instructing me on behalf of the organization but after the funds have moved I am unable to verify the identity of the organization in the 60-day window?

You have an obligation to take all reasonable steps to verify your client's identity. Although you have 60 days within which to comply with the verification requirements in this situation, you should satisfy yourself as to the identity of the organization as early as possible in the retainer. If, despite having taken all reasonable steps, you are unable to do so, you will not be in breach of this requirement.

45. I did the legal work to incorporate a company prior to the implementation of the By-Law and am now acting for that company on another matter. May I rely on documents already in my possession to identify the client and verify its identity or must I rely on documents from a government registry?

As long as the documents are current, relying on documents in your possession that you obtained from an independent source is fine. The documents referred to in the By-Law are examples of independent, reliable documents, but the list is not exhaustive. Appropriate documents from non-governmental sources may also be sufficiently reliable.

46. My client is a law firm partnership that is reluctant to provide me with a copy of the partnership agreement. What should I do?

Looking at the partnership agreement is only one way to verify the client's identity. You may be able to obtain proof of the firm's identity through a government registry such as by conducting a partnership registration search or confirming the GST/HST number of the partnership.

47. I am acting for a trust. How do I verify its identity?

The documentation you will need to consult to verify the identity of a trust will vary depending on the nature of the trust. Examples of appropriate documentation might include the trust agreement or other documents establishing the trust, documents amending the trust, and documents identifying the trustees who are the instructing parties for the trust.

48. I have acted for a corporate client on a number of matters and have complied with the identification requirements. Someone new is now giving me instructions on behalf of the client. Do I have to verify that person's identity?

Yes. In every case involving the receipt, payment or transfer of funds, you must verify the identity of the person instructing you unless you have previously verified the identity of that individual.

VERIFICATION OF IDENTITY – NON FACE-TO-FACE MEETINGS

49. I am a lawyer in Ottawa and my client who is an individual is in Calgary. I will not be meeting face to face with my client. Are there any special rules for verifying her identity?

Yes, when you are required to verify the identity of an individual who is present in Canada, but you cannot meet with him or her, you may verify the individual's identity by having a commissioner of oaths or a guarantor certify that they have verified the client's identity by looking at an independent source identity document such as a drivers licence or passport that is valid and has not expired. Subsection 23(9) of By-Law 7.1 contains a list of persons (guarantors) who may provide the attestations.

50. What does providing an attestation involve?

The person looking at the document (commissioner of oaths or guarantor) will have to provide you with a legible photocopy of the document that they have signed and on which they have included their name, profession and address and have identified the type and number of the identification document provided by the client. This is called an attestation in the By-Law.

Appendix 4 contains a sample form attestation.

51. Who can provide an attestation?

An attestation may be provided by a commissioner of oaths or a guarantor authorized to provide the attestation. The list of guarantors includes such professionals as lawyers, Quebec notaries, doctors, dentists, pharmacists, professional engineers and veterinarians. It also includes nurses and school principals. You must exercise due diligence in ascertaining that the person providing the attestation is a member of one of these professions.

52. What is the other method of verifying the identity of a client who is an individual and whom I cannot meet in person?

If the individual, whose identity is being verified, **is outside of Canada** or if you choose not to use a commissioner of oaths or guarantor where the individual is in Canada, you will have to engage an agent to conduct the verification for you. If you use an agent, prior to the agent taking steps on your behalf you must have an agreement in writing with the agent outlining the steps that he or she will take on your behalf to verify identity and the agent must provide you with the information he or she obtains. The agent may provide the information in the form of an attestation.

Appendix 5 contains a sample form agreement that you may use when retaining an agent.

53. Must the agent be a lawyer or a notary?

Not necessarily. Any reliable person may act as an agent.

54. May I rely on a faxed copy of an attestation?

Yes, but it would be prudent to obtain a copy of the original for your records.

55. My client is a Canadian lawyer and the matter that I am acting for her on involves a financial transaction. I am not meeting with her in person. Do I have to verify her identity?

Yes. In such cases you will have to either use a guarantor or a commissioner of oaths to obtain an attestation to verify your client's identity or you may engage an agent to obtain the attestation unless an exemption to the verification of identity requirement in the By-Law applies.

56. I am acting for an organization located outside of Canada. Do I have to use an agent to verify the identify of the organization?

No. You will have to use an agent to verify the identity of the instructing individual(s) if he or she is not located in Canada, but you may verify the identify the organization through documents.

57. My client is acting for a third party. I will not be meeting that party in person. How do I verify the identity of the third party?

If the third party is an organization, you may rely on documents to verify its identify. To identify an individual you will have to use either the attestation method if the individual is present in Canada or arrange for an agent to take the necessary steps to verify the identity by entering into an agreement with that agent. Which method you may use, depends on where the third party is located. If the person is in Canada, you may use either the attestation method or an agent. If located outside of Canada, you will have to rely on an agent.

PRACTICE SPECIFIC ISSUES

THIRD PARTIES

58. My client is representing someone else. What are my obligations?

The By-Law obliges you to identify third parties when they are directing or instructing your client or when they have the authority to direct or instruct your client, for example as a principal instructs an agent. When your client is acting for a third party in this way, you must obtain the same information for that third party as you would if they were your client.

59. My client is acting on behalf of a minor. Do I have to identify the minor?

No. A minor does not have legal capacity and so cannot be formally directing or instructing the client.

60. I am acting for the vendor in a real estate transaction. My client has directed me to pay a portion of the proceeds of the sale to another party who is not my client. Do I have to verify the identity of that other party?

You are not required to verify the identity of a third party to which funds are paid unless the party also directs, instructs or has the authority to direct or instruct your client with respect to the transaction. In such a case, that party would be a third party pursuant to the By-Law whose identity must be verified

61. I am acting for a living trust that makes ongoing disbursements to the beneficiaries of the trust. Am I required to identify and verify the identity of the beneficiaries of the trust?

You are only required to verify the identity of your clients and any third party instructing or having the authority to instruct your client. If the beneficiaries of the trust are also your clients in the matter or if the beneficiaries are third parties directing your client or who have the authority to direct your client with respect to the matter, then you must also identify and verify their identity.

BUSINESS

62. I have been retained by a group of individuals engaged in a joint venture. I have determined that there is a financial transaction that is not exempted under the By-Law. Do I have to verify the identity of all of the parties to the joint venture?

Yes. By definition a joint venture is not an independent legal entity, but rather a collection of organizations or individuals that have joined together for some common purpose. In such a case, each of the parties to the joint venture would be a client.

63. I am acting for a client with respect to the completion of a commercial transaction. I have prepared the necessary documentation to complete the transaction, but the closing funds will not be flowing through my trust account as my client will be paying these directly to the other side in accordance with the agreement and closing documentation. Is this a situation in which I have to verify my client's identity?

Yes, unless an exemption applies. The verification obligations apply whenever you engage in or give instructions in respect of the transfer of funds. Although funds are not passing through your trust account in this transaction, you are instructing with respect to the transfer of funds when you instruct on how the funds will flow to complete the transaction, which may include the preparation of documents containing such instructions.

64. My client, a private corporation, has retained me with respect to a transaction which will involve the issuance or transfer of shares. Am I required to verify the identity of my client?

It may be common to think of the payment of funds for a transaction in terms of cash or cheque. However, the client identification and verification requirements will also be triggered when the activity involves issuing or transferring shares. "Funds" is a defined term in the By-Law and includes securities and negotiable instruments. When a lawyer prepares share certificates or share transfers

regardless of whether monies are being paid for the shares or share transfer, the lawyer is engaged in the receiving, paying or transferring of funds. In such circumstances unless an exemption applies, the lawyer is required to verify the identity of the client and any third party directing or authorized to direct the client.

CLASS ACTIONS

65. I have been retained to act in a class action. Is it sufficient if I identify the representative plaintiff or am I required to identify all of the members of the class?

For the purposes of the By-Law, it is sufficient to identify the representative plaintiff.

EMPLOYMENT

66. I am acting for a union on a grievance. Do I have to identify the grievor?

No. Except in rare cases, it is the union that has carriage of a grievance. The grievor, while clearly an interested party, is not instructing the union and as such is not a third party within the meaning of the By-Law. This would be true even in the case of a group or policy grievance where a large number of union members have a stake in the outcome of the matter. Where a grievor does have carriage of the grievance and is instructing the union as to how to proceed, the obligation to identify that person and, in appropriate cases, to verify their identity, would apply.

ESTATES AND TRUSTS

67. I have been retained by an individual to prepare her will. I have received a retainer, but am not handling any other funds. Am I required to identify and verify the identity of my client?

In these circumstances, you are obliged to identify your client, but you are not required to verify her identity. There is an exemption in the By-Law for funds received for professional fees and disbursements.

68. I have been retained by an estate trustee to administer an estate. Am I required to verify the identity of the beneficiaries of the estate when I pay out funds to the beneficiaries?

When you act for an estate trustee and you handle funds, unless an exemption applies, you are required to verify the identity of your client, the estate trustee. Generally you are not obliged to verify the identity of the beneficiaries of the estate in these circumstances as the beneficiaries are not your clients, nor are they in a position to direct your client. However, there may be situations in which the beneficiary is instructing the client, as in a case involving litigation over the settlement of an estate for example. In that case the beneficiary would have to be identified and his or her identity verified as a third party unless an exception applies. Similarly if you act for a beneficiary of an estate, then you are obliged to identify and verify the identity of the beneficiary in accordance with the By-Law.

REAL ESTATE

69. I am acting for a developer of a new condominium project and am holding in trust the monies paid as deposits by the purchasers of the condominium units. I am not acting for the purchasers. Do I have to verify the identify of the purchasers?

No, provided that the purchasers are not your clients nor are they directing or in a position to direct your client. If the purchasers are your clients or if they are directing or in a position to direct your client, then you would need to verify their identity unless an exemption applies.

70. I am acting for a lender and collecting mortgage payments from the borrower on her behalf. Do I have to identify or verify the identity of the borrower?

No. You are only obliged to verify the identity of your client and any third party who is directing or in a position to direct your client.

71. I act for a purchaser and a lender bank in a real estate transaction. I receive funds to close the transaction as follows:

- a portion of the funds by certified cheque or bank draft from the purchaser; and
- a portion of the funds (the mortgage proceeds) from the lender by bank draft.

Whose identity must I verify?

Both the Bank and the purchaser are your clients in the transaction and therefore you must verify the identity of both unless an exemption applies.

If the Bank is a “financial institution” as defined in the By-Law, you are not required to verify its identity as an exemption applies. The term “financial institution” is defined in Section 20 of the By-Law and includes a bank to which the Bank Act (Canada) applies and certain other entities.

There is no exemption relating specifically to cheques or bank drafts received from a purchaser. Therefore unless one of the other exemptions in the By-Law applies, you are required to verify the identity of the purchaser either before or when you receive the purchaser’s funds.

72. If I am acting for a purchaser in a real estate transaction, am I required to verify the identity of the purchaser when I pay out funds to close the transaction?

If you have previously verified the identity of the purchaser, for example when you received closing funds, then you are not required to verify the identify of the purchaser again. If you have not previously verified the identity of the purchaser, for example an exemption applied when you received the closing funds, then you would have to verify the identity of the purchaser when you pay out the closing funds unless an exemption applies.

73. If I am acting for a vendor in a real estate transaction, am I required to verify the identity of the vendor when I receive closing funds?

Yes, unless an exemption applies. For example, if funds are received by certified cheque from the purchaser's lawyer's trust account or by "electronic funds transfer" as defined in the By-Law, an exemption applies and you are not required to verify the identity of your vendor client with respect to this transaction.

74. If I am acting for a vendor in a real estate transaction am I required to verify the identity of the vendor when I pay out closing funds?

If you have not previously verified the identity of your vendor client, for example if an exemption applied when you received funds, you would be required to verify the vendor client's identity when you pay out funds unless an exemption applies.

75. I am acting in a real estate transaction where documents are being signed by power of attorney. Whose identity do I need to verify when I deal with funds – the donor and/or the donee?

If you are retained by the donee of a power of attorney, you are required to verify the identity of the donee. The donee acts pursuant to the power of attorney document and generally speaking in these circumstances the donor of the power of attorney would not be considered a third party instructing or having the authority to instruct your client.

However, if you are also retained by the donor in the transaction such as in a situation where you are obtaining instructions from both the donor and the donee, then you would be required to verify the identity of both clients.

Powers of attorney are sometimes used to effect fraud or illegal activity. In the event that you suspect fraud or dishonesty, you have an obligation to do further investigation and in certain circumstances you may have to withdraw completely. In addition, if the transaction involves a mortgage and you are acting for the lender in the transaction, you should review and follow the instructions of the lender client with regards to the use of powers of attorney in the transaction.

76. I act for a lender regarding a syndicated mortgage, whose identity do I verify?

A syndicated mortgage means a mortgage having more than one investor. These mortgages are sometimes held in trust by a lawyer or by one of the individual investors in trust for the remaining investors.

If you act for an investor trustee of a syndicated mortgage, you must identify and verify the identity of the trustee and the remaining investor participants if they are your clients or if they are directing or in a position to direct your client.

77. You are acting on behalf of a Condominium Corporation and you receive instructions from the property manager to collect arrears of common expenses and to register a Notice of Lien. You subsequently receive payment from the owner of the unit. You determine that no exemption to the requirement to verify identity applies. Whose identity do you need to verify in these circumstances?

You must verify the identity of your client, the Condominium Corporation and the property manager, who is the individual giving you instructions on behalf of the Condominium Corporation.

In order to verify the existence of the Condominium Corporation, you could conduct a sub-search of title to the unit within the Condominium Plan to ascertain that no Order of Termination has been registered against the unit within the Plan. In addition, you could obtain the G.S.T. number for the Condominium Corporation, if available, to verify its identity.

To verify the identity of the property manager, you may obtain, review and keep a copy of that person's driver's licence or an original identifying document from an independent source.

RECORD KEEPING REQUIREMENTS

78. Do I have to document the steps I take to verify my client's identity?

Yes. The By-Law requires that you obtain a copy of every document you rely on to verify a client's identity. You must also record the information you obtain to identify your client and any information and copies of documents you rely on to identify the directors and owners of 25 % or more of any client that is a company or other organization.

79. Do I have to keep identification and verification information in a separate file or can I keep it with my client files?

The information and documents obtained to identify your client may be kept in your client file or in a separate file if that is your preference. There is no requirement that it be maintained in a separate file.

80. Can I keep identification and verification information in electronic form?

Yes, as long as a paper copy can be readily produced.

81. How long do I have to retain client identification and verification information?

You have to keep the information for the longer of the duration of your professional relationship with the client and for as long as is necessary to provide service to the client, or six years following completion of the work the client retained you to do for them.

82. Do I have to verify the identity of clients I was already working for when this By-Law came into force?

The requirements do not apply to matters for which you were already retained when the By-Law came into effect, but it does apply to all new matters. That

means that you will have to take the necessary steps in accordance with the By-Law to identify and verify the identity of all clients for any matters for which you are retained after the By-Law comes into force even if you have acted for the client in the past or have a general retainer agreement with the client.

83. What, if anything, do I need to record when I am relying on an exemption to the identification or verification requirements?

The requirements do not oblige you to make any record when you are relying on an exemption. Bearing in mind that if asked by the Law Society, you must be able to demonstrate that you relied on a valid exemption, it would be prudent to note the reason identification or verification was not required.

WITHDRAWAL OF SERVICES

84. My client was very evasive when I tried to get the necessary information to identify her and to verify his identity. What do I do?

If you know or ought to know that your client is trying to get you to assist her in something illegal or dishonest, you have a duty to refuse to act for her in that matter. The duty applies whether your suspicions are aroused during the identification and verification process or at any time during your retainer.

85. I need advice about a specific situation that is not addressed in these questions. What should I do?

If you have any unanswered questions or concerns about compliance with the By-Law you should contact the Law Society Practice Management Helpline through the Resource Centre at 416 947-3315 or toll-free in Ontario, 1-800 668-7380 ext.3315

KEEPING CLIENTS SATISFIED – TIPS

TIMELINESS ♦ RELIABILITY ♦ EMPATHY ♦ ASSURANCE ♦ TANGIBILITY

WHAT DETERMINES CLIENT SATISFACTION?

Client satisfaction is a value to price relationship. If a client perceives that the value of the lawyer's service exceeds the fee, immediate satisfaction results. Client service that meets or addresses client needs will result in client satisfaction. In Chapter 7 of R. C. Reed, ed., *Win-Win Billing Strategies, Alternatives That Satisfy your Clients and You* (Chicago: American Bar Association Section of Law Practice Management 1992), Ontario lawyer Milton Zwicker* offers suggestions on how lawyers can increase client satisfaction by approaching client service in terms of addressing client needs for the following:

TIMELINESS – promptness in meeting clients' deadlines

RELIABILITY – consistent and dependable performance

EMPATHY – understanding of clients' particular needs

ASSURANCE – legal knowledge and skills relevant to the matter; a lawyer who is trustworthy and credible

TANGIBILITY – professionalism reflected in personal appearance, in attractive work product and physical facilities

These features are but some of the elements of professional competence and should be considered by both lawyers and paralegals. Refer to rule 2.01 of the lawyers' *Rules of Professional Conduct (Rules)* or rule 3.01 of the *Paralegal Rules of Conduct (Paralegal Rules)* as a starting point to drafting a client service policy aimed at creating client satisfaction.

TIMELINESS

KEEP CLIENTS SATISFIED BY PROVIDING TIMELY SERVICE.

Surveys consistently show that timeliness is high on clients' list of requirements from their lawyers. Lawyers and paralegals who respond to the client's expressed timetable, who meet both the client's and the lawyer's or paralegal's own deadlines demonstrate a willingness and ability to satisfy the client. Clauses 2.01(1)(d) and (e) of the lawyers' *Rules* and clauses 3.01(4)(d),(e) and (f) of the *Paralegal Rules* mandate that all services, functions and client communications be conducted in a timely fashion. These are minimum standards. To excel at client satisfaction aim higher. Set standards that meet and, if possible, exceed client expectations.

WHAT CAN YOU DO TO MEET CLIENTS' NEEDS FOR TIMELINESS?

Determine how timely your clients expect you to be. Analyse what time limits are critical to your clients' needs. Consider each area of your service and set standards for the firm. Discuss these standards with clients. If the standards do not meet client needs (and you intend to preserve the retainer) change the standards.

RELIABILITY

CLIENTS VALUE RELIABILITY. BEING RELIABLE GENERATES CLIENT SATISFACTION.

Clients value service that is dependable and accurate. Dependability and accuracy are determined in large part by work habits and by having systems in place. Managing one's practice effectively is both a requirement of professional conduct, as set out in rule 2.01 of the lawyers' *Rules* and rule 3.01 of the *Paralegal Rules*, and a necessary condition of value added service. Surveys show that clients generally rate lawyer's work habits as "poor". Clients make judgments about service based on whether the lawyer performs consistently and dependably. It makes good business sense for both lawyers and paralegals to adopt firm policies that result in consistent high quality work and service. Review LawPRO's online Coaching Centre *Law Practice Management* and *Overcoming Procrastination* modules at <http://www.practicepro.ca> to assist you in assessing and improving your practice management.

EMPATHY

EMPATHY IS A KEY INGREDIENT IN ACHIEVING AND MAINTAINING CLIENT SATISFACTION.

Devotion of individual attention to each client's situation is the hallmark of empathy. Attentiveness is a skill that involves understanding the client's legal and human needs. Lawyers and paralegals must learn to read their clients, to be sensitive to client signals to determine what messages the client is actually conveying. As outlined in rule 2.01 of the lawyers' *Rules* and rule 3.01 of the *Paralegal Rules*, professional competence requires that lawyers and paralegals ascertain client objectives. Being an excellent listener is also part of being an excellent communicator. For guidance on how to develop your listening skills see LawPRO's online Coaching Centre *Powerful Communications* module at <http://www.practicepro.ca> and N. C. Nelson, *Connecting with your Client, Success Through Improved Client Communications Techniques*, (Chicago: American Bar Association Section of Law Practice Management 1996).

ASSURANCE

CLIENTS NEED ASSURANCE THAT THEY ARE RECEIVING COMPETENT LEGAL SERVICES.

Clients need to be assured that their lawyer or paralegal is professionally credible and competent, that he or she is knowledgeable, skillful, and trustworthy, and that their lawyer or paralegal has, at minimum, what is required to be professionally competent (defined in rule 2.01 of the lawyers' *Rules* and rule 3.01 of the *Paralegal Rules*). Lawyers and paralegals should demonstrate their abilities to clients at every opportunity and at every contact with the client.

HOW CAN YOU ASSURE CLIENTS THAT THEY ARE RECEIVING EXCELLENT SERVICE?

First, lawyers and paralegals need to remind *themselves* of the special abilities they bring to bear on their client matter and then convey these abilities to their clients. Tell the client what must be done, do the work, and remind the client of the particular benefits you provided. Consider the following suggestions to assist you in assuring and reassuring your clients that they are receiving excellent service:

- At the outset of the retainer, provide each client with a checklist or standard form letter outlining the steps that must be undertaken to complete the matter. This tells the client what is involved in completing even a routine the matter.

- As each task is completed, and as a reminder to yourself, note or record how your efforts or special abilities advanced the client's interest. This will enable you to generate an itemized list of all benefits provided during the course of the matter.
- Beside each item on the list, record *how* and *when* you will advise or remind the client of how your efforts or special abilities were of benefit to client.
- Follow through: tell the client; remind the client. Assure and reassure the client that you are providing quality service.

TANGIBILITY

SATISFIED CLIENTS HAVE TANGIBLE EVIDENCE THAT THEY HAVE RECEIVED QUALITY LEGAL SERVICE.

Clients use appearances to make judgments about reality. Legal services are largely "invisible". It is difficult to distinguish between what lawyers or paralegals do legally for a client and the process used to provide the service. Clients will perceive quality as the interaction they have with their lawyers or paralegals, staff, physical tools and facilities. The very intangibility of legal service forces the client to look for additional clues to evaluate the value of legal services. Lawyers and paralegals must provide these clues. The fewer the clues, the smaller the perceived value in the client's mind. Consider each point of contact with the client. Do your facilities, work product, and staff convey quality? What messages or clues are you conveying to the client? Are the messages consistent with the client's need for evidence of quality service? *See Chapter 7: Billing, Part of the Communication Process, for Zwicker's complete discussion on his client service, communication, and billing.



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SELECTING A CONFLICT CHECKING SYSTEM

Lawyers and paralegals should use a conflict checking system to screen for conflicts. The system may be manual or computerized. For most practitioners a computerized system is the better option. A computerized system can store and manage a large amount of information about individuals and their relationships to each other.

MANUAL CONFLICT CHECKING SYSTEM

The following is a summary of some of the features of a manual system and steps that might be taken when using such a system.

1. Prepare an index card recording the name of the client at the top and all conflict names below. Conflict names include variations of the client's name, former names, and the names of related and adverse parties.
2. Prepare a separate conflict card for each conflict name recording the conflict name at the top, the relationship of that individual or entity to the client and the client name below.
3. Prepare an index card and a conflict card every time an individual or entity consults with the lawyer, whether or not the lawyer or paralegal is retained for further services.
4. Place both the index and conflict cards in a card box, filed alphabetically.
5. When a prospective client contacts the firm, office staff asks for and records the prospective client's name and all conflict names. Office staff then checks the prospective client name and all conflict names against those contained in the card system.
6. If a name is found in the card system, then the lawyer or paralegal must determine whether there is a conflict of interest. If there is no conflict of interest the lawyer or paralegal may act. If there is a conflict of interest the lawyer or paralegal must then determine whether he or she can act.

COMPUTERIZED CONFLICT CHECKING SYSTEM

A computer conflict checking system allows for fast and easy inputting and retrieval of information.

When setting up a computer conflict checking system the lawyer or paralegal should:

- ensure that system allows for easy searching and that it can hold a sufficient number of records for the practice, and
- consider setting up a database for the computerized system which includes the following fields:

- **Date Opened:** (the date that the file was opened)
- **Matter Name:** (name of the file)
- **File Number** (the number assigned to the file)
- **Client Name** (the name of the client)
- **Lawyer or Paralegal** (name of lawyer or paralegal responsible)
- **Description of matter** (brief description of the matter to allow individual searching to determine if there is a conflict without having to examine the actual file)
- **Conflict Names** (names of related and adverse parties and their relationship to the client)
- **Date Closed:** (date file was closed)
- **Closed File Number:** (number assigned to closed file)
- **Date Destroyed:** (the date when the file was destroyed)



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MOSTLY COMMON SENSE: STAYING OUT OF TROUBLE WITH THE LAW SOCIETY

By Dan Abrahams, Senior Counsel, Professional Regulation
The Law Society of Upper Canada

He's¹ been part of a small, busy, general practice for more than 25 years. It's often intellectually stimulating, and he genuinely enjoys helping people with their legal problems. He also appreciates the degree of public confidence that accompanies being a lawyer and the fact that the legal profession can be a lucrative one.

He admits that keeping up with the workload can be challenging at times, especially in today's fast-paced business environment. He is sometimes a little frustrated by the fact that he doesn't always have enough time to answer all his clients' questions right away. Occasionally, he stays awake at night wondering how he's going to get everything done while keeping all his clients happy and his files up to date.

The firm has a bookkeeper who comes in once or twice a month to do the books and help collect fees from clients. However, the bookkeeper hasn't had a lot of training in maintaining law firm accounts and the firm's lawyers need to double check their accounts to make sure deposits are made correctly. For the most part, like many firms, it's a pretty lean operation.

Equally important are the Law Society's requirements. Forms must be filled out, letters must be answered and responses must be made promptly to any complaints from unhappy clients and former clients – and sometimes from lawyers and opposing parties. He appreciates the importance of self-regulation and the Law Society's role in protecting the public. And he does his best with what he has. For the most part, his clients are satisfied with the service he provides. However, he also knows there will always be clients who will never be satisfied.

From time to time, the pressure becomes a little too much for him to handle. While he strives to remain professional and courteous, he has been known to lose his patience with clients who don't follow his advice. He might have also been a bit abrupt, on occasion, with opposing counsel. There was even one lawyer he was particularly rude to. He used inappropriate language. He wishes he hadn't, and he knows he should have apologized.

The other day, a Law Society investigator came to his office to talk to him about mishandling some client trust monies. These were part of a retainer that mistakenly wound up in his general account, before he actually did any work on the file or issued a fee invoice. He plans to reply to that accusation – when he has some free time. He isn't that concerned, because it isn't as if he's been stealing money...

Meeet a lawyer who could be on the verge of becoming part of the Law Society of Upper Canada's regulatory caseload. He is already engaged with the Society's investigation department, even though he is not taking the situation totally seriously at the moment. Soon, he may be facing formal discipline under the *Law Society Act*. He might find himself before a panel of benchers who hold his professional future in their grasp. And if he keeps going in the same, unfortunate direction, he could have reason to fear the revocation of his licence to practise – formerly called disbarment.²

The Practice of Law is also a business that happens to be regulated

A lot of people become lawyers because it is interesting work. For many, it provides a lifetime of stimulation. But the private practice of law is a business. Like almost any business, its success or failure depends on good client service. In particular, this includes a willingness to respond positively and promptly to client needs.

The lawyer in our example is aware of that, in theory. He likes helping people, after all. Still, he seems to be a little overwhelmed. He may not always return phone calls on time, or answer correspondence. This makes him more likely to be the subject of a complaint to the Law Society.

Furthermore, as a member of a regulated profession that must be governed in the public interest, the lawyer has to simultaneously satisfy a unique set of expectations. These are the ones included in the Law Society's *Rules of Professional Conduct* and By-Laws.

The lawyer in our illustration may consider some requirements to be a little arduous. He might perceive them as an undue imposition on his practice. Yet following the rules and avoiding the Law Society's regulatory scrutiny is often a matter of simply applying common sense, as well as good business judgement.

Should a good businessperson return phone calls and answer e-mails promptly? Of course. Should a good lawyer make sure he or she has reliable support staff, who are carefully trained and supervised? Naturally. After all, it's the lawyer's own reputation and professional standing that are on the line.³

Complaints to the Law Society, and How to Respond

The Law Society receives between 6,000 and 7,000 complaints a year.⁴ Many of these relate to service and practice management issues. Others involve allegations of incivility in dealings with clients, opposing counsel and judges. Relatively few involve deliberate attempts to steal or misappropriate client monies from trust. There are, however, a

number of “mishandling” cases in which serious consequences may flow from a lawyer’s failure to handle trust monies in accordance with the By-Laws.

In many cases, a lawyer’s troubles are amplified significantly by his or her failure to acknowledge or respond to the Law Society in a timely way. In fact, the lawyer has a positive obligation to co-operate with the regulator.⁵ This means providing representations and submissions **promptly**. It means facilitating access to client files, as the *Law Society Act* permits.⁶ It also means agreeing and permitting one’s staff to be interviewed by an investigator, when circumstances warrant.⁷

Those who fail to co-operate when a complaint is made against them accomplish two things, neither of them constructive.

First, they make it harder for the Law Society to address the complaint. The complaint will not go away just because the lawyer doesn’t take it seriously. As the relationship between lawyer and client deteriorates, what starts out as a relatively minor service complaint capable of quick resolution can escalate into a much more serious matter, with enhanced prospects for ending up in formal proceedings against the lawyer.

Secondly, a failure to respond to the Law Society, even on what the lawyer considers a minor matter, can itself amount to a basis for discipline. In the last couple of years, the Law Society has created a summary process to deal with lawyers who, after repeated attempts, refuse to engage with their regulator.⁸ The result for the lawyer could well be an indefinite suspension of his or her right to practise, until the complaint is addressed, perhaps followed by a fixed term suspension.

When *does* a complaint have merit? In simple terms, a complaint has merit if it raises one or more *bona fide* regulatory issues. Once a regulatory issue comes to the Society’s attention, typically by way of a complaint from a client or other interested party, the focus is on whether the lawyer’s conduct – his or her alleged departure from the rules and By-Laws – runs contrary to the public interest.

The *Rules of Professional Conduct* and the By-Laws exist to ensure that the public interest is protected. The Law Society’s requirements also help maintain public trust in the legal profession. Breaking a rule or failing to follow a By-Law places that trust at risk.

Avoiding complaints: some tips

It is unlikely that most lawyers who find themselves in trouble with the Law Society deliberately set out to break the rules or imperil public trust in the profession to which they belong. Misconduct happens most often as a result of poor organizational skills or a

lapse (or series of lapses) in judgment. In many cases, lawyers simply fail to practise defensively by dealing assertively with client concerns before they escalate into serious problems.

Fortunately, there are strategies that lawyers can follow to minimize the risk that they will become the subject of a regulatory investigation, let alone actual discipline. Here are a few.

1. **Always remember, trust money isn't your money.**

Frankly, few lawyers – even the ones who get into serious trouble with the Law Society – would bother to deny this. Money held in trust clearly belongs to the client or other person for whom it is held. It can only be used by the lawyer when the circumstances are such that a trust relationship no longer applies.

The Law Society's By-Laws contain comprehensive rules for how trust monies are to be disbursed, as well as what types of records should be kept.⁹ The failure to keep records is itself a possible basis for discipline. Lawyers are expected to know what the rules require of them. For instance:

- They must render an account **before** taking money from trust to cover fees and disbursements.
- They cannot transfer a retainer from trust to general before work is performed.
- They should also know that trust accounts **must be reconciled by month-end**, and any shortages must be replenished from the lawyer's own funds, regardless of how the shortage originated.
- They should be depositing trust money in a proper account, in their name, at a designated financial institution, such as a bank or trust company. The trust account must, however, be kept **entirely separate** from the lawyer's own money.

It is a little surprising, therefore, when lawyers who should know better manage to confuse their trust accounts with their general accounts. Actually, this can happen insidiously: the lawyer knows she has performed the work, but fails to render an account to the client before he or she transfers a retainer from trust to general, to help pay the operating expenses of the practice. Or, money that should be in trust never makes it there. Instead, it's deposited into the general account, and the "error" is never addressed, as in our example.

Then of course there are the major cases of misappropriation, in which the lawyer takes large sums of money, including proceeds from large real estate transactions. These situations can be catastrophic, both for the client and for the Compensation Fund, which is funded by the profession to compensate clients for lawyer dishonesty.

As we stated, though, large-scale misappropriation is relatively rare. Far more common are the “accidental” trust shortages, where the lawyer simply fails to ensure there are adequate funds in trust to cover obligations to all of the lawyer’s clients.

From the Law Society’s standpoint, as protector of the public interest, any difference between sloppiness and malfeasance in the management of a trust account is one of degree, not of kind. Using or applying or taking money that belongs to someone else is **wrong**, and money held in trust belongs to someone else, by definition.

The lawyer in our example, above, isn’t a thief. But unless he appreciates the severity of the problem and takes steps to rectify it, the Law Society will take a dim view of his behaviour.

2. Practise good client relations, and be wary of real and potential conflicts of interest.

Some of these things have already been mentioned, and most of them are common sense, but they always bear repeating. Return phone calls and answer correspondence – including e-mail correspondence – **promptly**. Keep clients regularly informed of where their cases are headed. Remember, a lawyer who does not communicate with clients may seem to have something to hide, even if she is simply overwhelmed by the pressures of work.

It’s also important to ensure that client expectations are reasonable.¹⁰ Many complaints to the Law Society are from clients who were allowed to hang on to the delusion that a hopeless litigation case was a “slam-dunk.” Be forthright and honest in dealing with unrealistic hopes and expectations. Don’t make promises you can’t keep and, of course, keep the promises you make.

A lot of complaints stem from conflicts of interest.¹¹ Some of these are present at the outset, but may not be detected because the firm lacks the appropriate conflict-checking systems and procedures. Other conflicts emerge when, for example, the lawyer’s business relationship with the client starts to crowd out the lawyer’s ability to offer independent, impartial legal advice.

Be mindful of conflicts of interest, both between yourself and your clients, or between two sets of clients (past or present). When a potential conflict arises, study the Law Society’s rules and analyze the nature of the apparent conflict and the most appropriate response to it. Seek legal advice if necessary. Remember, it is **your responsibility** to identify and address conflicts, in a manner that protects the client’s interest above all.

Because of time and workload pressures, the hypothetical lawyer in our example may have lost some control over his practice. As a result, he is having trouble keeping up with clients. He also needs to check his conflict policies, as does the firm as a whole.

3. Be civil and courteous.

It is sometimes said that the Golden Rule is the only rule, and everything else is really just commentary. This is certainly true in a professional context. No professional wants to deal with a fellow professional who is unreasonable, rude, inconsiderate or intemperate. No one wants to have a lawyer swear at them, or question their intelligence in correspondence, let alone in a public forum, such as a trial. No one wants to go up against a lawyer whose courtroom conduct is so egregious and disruptive that a judge criticizes it in the reasons for judgment. Yet the fact that no one wants to experience this treatment from another lawyer does not stop it from happening.

The rules are exhaustive on issues of civility, professionalism and courtesy, in a litigation context and elsewhere.¹² Most lawyers manage to remain civil to one another, even when in the midst of a hotly contested adversarial proceeding, and even when the clients are at each other's throats. Still, the Law Society sees an alarming number of cases in which experienced and otherwise ethical lawyers have clearly lost their composure. The lawyer in our example, above, is one such lawyer. He knows he should not have lost his temper with opposing counsel. He even feels he should have apologized for using inappropriate language.

Apart from apologizing, what else can a lawyer do to avoid complaints based on incivility or discourteous behaviour? Some basic do's and don'ts are as follows:

- Don't resort to sarcasm to make your point. What might seem like witty repartee to you could be insulting to the recipient. This is true of lawyers and laypeople alike. Don't assume that others share your "sense of humour."
- Don't ever make sexist, racist or homophobic comments. Such comments are never acceptable, in any context.
- Don't use profanity. It is never professional, and many people find it offensive.
- Don't put things in writing that you might regret later. If you have any reason to doubt yourself, chances are you should reconsider your approach. Give yourself time to cool down.
- Do apply the 24-hour rule. That is, if you feel angered or provoked by something you receive from another lawyer or even from a client or other member of the public, don't respond immediately. Wait a day. Your response will be more measured.
- Do treat everyone – clients, opponents, and members of the judiciary - with the same level of respect, professionalism and courtesy you would expect for yourself.

It is, after all, mostly common sense.

1. The lawyer described in this example is, of course, fictitious – a composite of several lawyers who have become the subject of complaints to the Law Society of Upper Canada. It is also worth stressing that the lawyer could be a sole practitioner, or he (or she) could just as easily be a member of a small, medium-sized or even larger law firm.
2. The *Law Society Act* was amended by the *Access to Justice Act*, S.O. 2006, c.21, Sched. C, ss.1-98. Lawyers (as well as paralegals, who will now be regulated by the Society) are referred to in the amended *Act* as licensees. Hence section 35 – the discipline penalty section – refers to the revocation of licences rather than disbarment.
3. This is underscored by Rule 5.01(2) of the Law Society’s *Rules of Professional Conduct*, which explicitly require the lawyer to “assume complete professional responsibility for all business entrusted to him or her.” Direct and proper supervision is mandatory.
4. In 2006, according to its Annual Report, the Law Society of Upper Canada received 6,821 complaints. Of these, 2,553 were either outside the Society’s mandate (for example, fee disputes, or negligence issues) or were closed at a very stage, soon after receipt. A further 2,120 complaints were closed or resolved by the Professional Regulation Division’s Intake Department. Of the remaining complaints, 1,701 were assigned to the Complaints Resolution Department, which typically deals with less serious regulatory matters. Apart from 19 matters that went to other departments in the Law Society, the balance – 749 complaints – were assigned to the Investigations Department, which deals with the most serious allegations of misconduct and conduct unbecoming. *Source: Law Society of Upper Canada, 2006 Annual Report – Performance Highlights.*
5. Law Society of Upper Canada, *Rules of Professional Conduct*, Rule 6.02
6. *Law Society Act*, R.S.O. 1990,c.L.8, as am., ss.49.3, 49.8. The latter section permits the Society’s investigators to insist that the lawyer produce even confidential and privileged information and/or documents.
7. The duty to cooperate is discussed at some length in a number of recent discipline decisions. See, for example, *Law Society of Upper Canada v. Joseph Dannial Ernest Stewart Baker*, 2006 ONLSHP 0021, in which the duty was described as being “of paramount importance”.
8. The summary hearing process was approved by Convocation, the Law Society’s governing body, in 2005, and is incorporated in the Society’s *Rules of Practice and Procedure*.
9. See especially By-Law 9, “Financial Transactions and Records”, enacted by Convocation on May 1, 2007. This replaces former by-laws 19 and 20. The Law Society also posts a bookkeeping guide, to assist with proper record keeping, on its website, www.lsuc.on.ca.
10. There is a positive duty to be both honest and candid. See Rule 2.02(1) of the *Rules of Professional Conduct*.
11. Rule 2.04 defines a conflict of interest, in general terms, as “an interest that would be likely to affect adversely a lawyer’s judgment on behalf of, or loyalty to, a client or prospective client, or ... that a lawyer might be prompted to refer to the interests of a client or prospective client.” Rule 2.04 also describes various situations in which conflicts might arise, and stipulates how these are to be handled. In addition, Rule 2.05 talks about conflicts that result when lawyers switch firms, and Rule 2.06 imposes limits on a lawyer’s ability to do business with his or her client.
12. See, especially, Rule 4.01, which includes, in subsection (6), a duty to be “courteous, civil and act in good faith to the tribunal and with all persons with whom the lawyer has dealings in the course of litigation.” This requirement aimed at litigators is repeated, essentially verbatim, for all lawyers in Rule 6.03. There are also prohibitions against sharp practice, improper communications, etc.

September 2010

Guide to Opening Your Practice

Take the necessary steps to succeed in your business.



The Law Society of
Upper Canada | Barreau
du Haut-Canada

Legal information and support designed for you.

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INTRODUCTION TO THE GUIDE

The Law Society of Upper Canada created the Guide to Opening Your Practice to inform lawyers of the steps involved in opening a law practice and to assist them to prepare a business plan.¹ Intended for lawyers interested in operating as either sole practitioners or in a small firm, the Guide will be helpful if you are considering or have decided to open your own practice.

Because of the wealth of information available, researching how to open your professional business can be overwhelming. If you have already begun your research, the Guide will help you to complete a business plan for the law practice you wish to create. If reading the Guide is your first step, it will inform you about the major issues you should consider when opening a law practice and will direct you to other materials in each area you should review. Once you have completed your review, you may return to the Guide and use it as a roadmap to assist you to complete your business plan.

Where possible, sample documents,² references, links and/or contact information have been included. The information and resources contained in the Guide may not be applicable to other professional businesses and references to relevant government Ministries are accurate at the time of printing.

Owning a law practice means both practising law and operating a business. It is exciting and challenging. If you take the time to determine for yourself why opening your own professional business is attractive to you and to write a business plan that creates the professional business you desire, your chance for success will be greatly increased.

¹ The information contained in this guide is not a substitute for the lawyer's own research, analysis and judgment. The Law Society of Upper Canada does not provide substantive legal advice or opinions.

² Documents reprinted with the permission of David Epperson, Mitchel L. Winick, Veronica Bell Gilbert, and Jonathan E. Smaby, *Opening and Managing a Law Practice*, 3rd edition, published by the Texas Center for Legal Ethics and Professionalism.

SHOULD I OPEN MY OWN PRACTICE?

Opening and operating your own law practice makes you the owner of a business as well as a lawyer. The concerns of a self-employed business owner are different than those of an employee so the decision to open a practice should be well-informed. Before opening your own law practice, you should first evaluate whether you have or need to develop the necessary skills and attitudes to do so.

Tools exist to test your suitability to open and operate your own business, some of which have been included in the **Resources** section of this Guide. These self-assessment tools can provide you with a snapshot analysis of your strengths and weaknesses, as compared with those of successful business owners. Use the test results to determine what skills you lack to either augment those skills or to tailor your business and business plan accordingly. You will always be the most important part of your law practice.

✓ *Checklist*

PERSONALITY AND ATTITUDE

- Consider whether you are
 - a “self-starter”
 - a leader
 - competitive
 - organized
 - energetic
 - healthy
 - a “risk taker”
- Assess your problem-solving style.
- Evaluate your planning and organizational skills.
- Assess whether you have the management and interpersonal skills to be an effective leader and to manage others.
- Consider whether you have the necessary health, energy and drive to open and maintain a law practice.
- Evaluate whether you have the “people skills” necessary to establish and maintain business relationships, both internal and external.

- ❑ Assess whether you can make decisions easily, either autonomously or with outside input.
- ❑ Consider whether you are flexible and can adapt to changing conditions, financial or otherwise, as your practice evolves.
- ❑ Consider whether you are able to handle stress well and how you deal with crises.

OTHER CONSIDERATIONS

- ❑ Assess the time needed to focus on your practice and whether you have competing commitments (e.g. family).
- ❑ Evaluate whether and how others will be affected if you open your own practice (e.g. long hours, after-hour demands, financial stress).
- ❑ Consider how you will separate your business and personal lives, considering health benefits, insurance, vacation and retirement planning. See the **Insuring You and Your Practice** section of this Guide for more information.
- ❑ Determine what skills or knowledge you will not be able to develop that can be provided by a third party (e.g. marketing, accounting, bookkeeping, technology services, etc.).

DEFINING YOUR PRACTICE

To open a law practice you will need to know in which area of law and in what city or region of Ontario you would like to provide legal services. However, to prepare an adequate business plan, you may need to further define your practice. This includes identifying your target clients, the services you will provide and in what location you would like to provide them.

Initially you may need to offer a wider range of services to a broader-based clientele than you would for the long term. To ensure that you are successful in the long term, you will require a strategy that defines your practice area and target market at the beginning and during the evolution of your law practice.

✓*Checklist*

TARGET CLIENT(S)

- ❑ Determine your target client.
- ❑ Ascertain what services your target client wants and values.
- ❑ Evaluate how your target client would like to receive those services (e.g. use of e-mail, offering home visits or evening appointments).

PRACTICE AREA(S) AND SCOPE OF SERVICE(S)

- ❑ Determine in what area(s) of law you will practise and provide legal services.
- ❑ Consider compatible practice areas (e.g. you may start your estate litigation practice as a general litigation practice, or may also do wills and estate planning, before restricting your activities to estate litigation).
- ❑ Ensure that you are competent to practise in your chosen area(s) of law, and take appropriate steps to build and maintain your competence, in accordance with the *Rules of Professional Conduct* [Rule 2.01].
- ❑ Consider whether you will provide other ancillary non-legal services (e.g. commissioning or notarization of documents) in addition to legal work. Review the *Commissioners for Taking Affidavits Act* and the *Notaries Act*, as the ability to commission affidavits or notarize documents is not regulated by the Law Society. Contact Official Document Services, Ministry of Government Services at 416-325-8416 or 1-800-268-1142 for further information.
- ❑ Consider doing contract work for other lawyers or becoming a practice locum. See the Law Society's **Contract Lawyers' Registry** (<http://rc.lsuc.on.ca/jsp/locum/index.jsp>).

- ❑ Consider doing work for Legal Aid Ontario, as a panel lawyer or as duty counsel. Note that you must first receive a solicitor number from Legal Aid Ontario before you may do certificate work. Visit the Legal Aid Ontario website at www.legalaid.on.ca or contact them directly at 416-979-1446 or 1-800-668-8258.
- ❑ Consider becoming the protégé for a lawyer who is developing his or her succession plan (i.e. to sell or transfer his or her practice upon retirement).
- ❑ Ensure that you understand your obligations under the *Rules of Professional Conduct* [Rule 6.04] if you choose to engage in activities outside the practice of law to supplement your income while developing your practice.

LOCATION

- ❑ Determine where you would like to open your law practice.
- ❑ Consider whether you are limited or are flexible in your choice of location (e.g. by finances or by other commitments).
- ❑ Evaluate whether there is a market for the legal and non-legal services you wish to provide in the location(s) you are considering (i.e. the location is home to enough of your target clients to support your business).
- ❑ If there are other legal service providers in the geographical area, consider whether the market will support your business initially and as your practice evolves.
- ❑ Consider population, demographics and future growth areas of the community where you would like to open your professional business.
- ❑ Research available demographic and market statistics by province or metropolitan area.

OFFICE SPACE

Choosing office space for your practice involves a number of considerations. Issues such as cost, attracting and servicing your target client market, type of practice and personal convenience may all play a role in deciding where to open your practice. You should also consider whether the office space you seek is for the short or long term. You should ensure that the space you choose will meet your needs for the time period you have in mind and should factor in the cost of moving if the space you select is for the short term only.

✓ **Checklist**

HOME OFFICE

- ❑ Before committing to a home office, consider how your office may be perceived and whether a home office will attract your target client.
- ❑ Consider the issues relevant to operating a home office, such as whether
 - operating a law practice from your home is limited by law (e.g. municipal zoning or condominium by-law)
 - a home office would limit your practice by inconveniencing clients (e.g. your home is in a remote location or has no available client parking)
 - your home has the physical space required for a dedicated home office (e.g. privacy, secure storage for financial records and client files, funds and property)
 - your home can support the business systems required for your practice (e.g. power or service for a phone system, facsimile, Internet access, computer system, etc.)
 - your home office can accommodate the support staff you need
 - physical changes are needed to accommodate a home office (e.g. wiring, servicing, renovations, changes to décor, client parking, etc.), and the cost of those changes
 - you can work effectively while dealing with disruptions, both professional and personal (e.g. accepting service of documents or dealing with client inquiries)
 - clients having knowledge of your home address may pose a risk to personal safety, both to you and anyone who resides with you
 - there may be any tax implications for setting up or operating a home office
- ❑ Ensure that a home office allows you to meet your obligations under the *Rules of Professional Conduct* and the by-laws to the *Law Society Act*, including
 - maintaining client confidentiality [Rule 2.03]
 - preservation of client property (e.g. original will or valuable property) [Rule 2.07]
 - proper delegation to and supervision of support staff [Rule 5.01 and By-Law 7.1]

- procuring adequate professional liability insurance coverage [By-Law 6]
- Where your home office offers limited space, consider using a business centre for “boardroom tenancy” of temporary or occasional use of
 - private office space
 - meeting rooms
 - mail processing
 - telephone and facsimile service
 - administrative support
- Devise a contingency plan to address all issues associated with relocating your law practice (e.g. cost, equipment, staff, supplies, etc.) in the event you need to vacate your home office unexpectedly. See the **Contingency Planning for Your Practice** section for more information.

RENTING OR LEASING OFFICE SPACE

- When looking for office space, consider
 - location
 - cost of space
 - square footage required
 - onsite storage
 - security of premises
 - room for growth or expansion
 - facilities and services included (e.g. client parking)
- Compare rental rates in your area by reviewing information available from
 - commercial real estate websites
 - municipal development agencies
 - business improvement agencies
 - local chambers of commerce
- When entering into an arrangement to rent or lease office space, ensure that you review
 - the type of lease (i.e. gross or net)
 - the terms of the lease
 - improvements or betterments and how these will be paid for
 - whether rent-free periods can be negotiated to allow for improvements
 - if the total rental cost is reasonable in comparison to market rates in the area

- ❑ Ensure that the proper party or parties are listed as tenant(s) in the agreement to rent or lease if operating as a sole practitioner, through a professional corporation or partnership.
- ❑ Consider whether you are interested in providing the landlord a personal guarantee in the event the corporate structure will be listed as the tenant in the agreement to rent or lease.
- ❑ Consider hiring a lawyer and commercial real estate agent if you are unfamiliar with the issues involved with commercial leases.

SHARING OFFICE SPACE

- ❑ Evaluate if there is any cost or other benefit to sharing office space with one or more other professionals, legal or otherwise.
- ❑ Before entering into an office sharing arrangement, consider how the arrangement may be perceived and whether shared premises will attract your target client.
- ❑ Where you have decided to enter into an office sharing arrangement, ensure that you discuss relevant issues and terms with the prospective party or parties, such as
 - who will sign the lease as the tenant (i.e. one, some or all of the individuals or corporate entities sharing office premises)
 - whether there will be shared staff, who will employ them and who must fulfill any employment related responsibilities (e.g. salary, standard deductions, benefits, etc.)
 - whether there will be shared equipment and who will be responsible (e.g. for the purchase or lease, maintenance and repairs, etc.)
 - whether there will be shared office supplies (e.g. standard printer or photocopier paper), whether some supplies must be restricted (e.g. lawyer's letterhead), and who will be responsible for purchasing
 - how joint expenses will be allocated among the parties to the arrangement (e.g. phone service, Internet access, utilities, etc.)
 - what will happen if there is a dispute or one or all of the parties involved choose to end the space sharing arrangement
- ❑ Ensure that the office sharing arrangement allows you to meet your obligations under the *Rules of Professional Conduct* and the by-laws to the *Law Society Act*, including the requirements to
 - operate your trust account(s) appropriately [section 7(1) of By-Law 9]
 - maintain client confidentiality [Rule 2.03]
 - properly preserve client property [Rule 2.07]
 - avoid or manage conflicts of interest [Rules 2.04 to 2.06]
 - properly delegate to and supervise support staff [Rule 5.01 and By-Law 7.1]

- refrain from fee splitting with or paying referral fees to non-licensees [Rule 2.08(8)]
 - split fees or exchange referral fees with licensees properly [Rules 2.08(6) and (7)]
 - market services in a way that does not or is not likely to mislead, confuse or deceive anyone about the arrangement (e.g. letterhead, signage, website, etc.) [Rule 3.02]
 - carry adequate professional liability insurance coverage [By-Law 6]
- Consider putting the terms of the office sharing arrangement in writing. Doing so will clearly outline responsibilities and reduce the possibility of misunderstanding.
 - You should recognize that non-licensees may not have the same standards of conduct required of you by the Law Society. Where the office sharing arrangement is with a non-licensee, consider informing him or her of the importance of your professional obligations and including terms for compliance in your office sharing agreement.
 - Devise a contingency plan to address all issues associated with relocating your law practice (e.g. cost, equipment, staff, supplies, etc.) in the event you need to vacate the shared premises on short notice. See the **Contingency Planning for Your Practice** section for more information.

PURCHASING OFFICE SPACE

- If you are in the rare position of being able to purchase a commercial property to house your practice, ensure that you consult with the appropriate professionals for advice and guidance in the transaction, which may include
 - a commercial real estate agent
 - a lawyer with experience in commercial purchases and leases, if there are multiple units in the building you wish to purchase
 - a banker with lending experience in this area
 - a tax accountant to discuss any relevant tax issues

COMPUTER SYSTEMS FOR YOUR PRACTICE

To determine what computer systems are best for your practice you should assess the different tasks performed during any matter, from the initial contact by a prospective client to the closing of the file. Ensure that your choice of computer system meets your obligations under the *Rules of Professional Conduct* and consider consulting with an information technology (IT) or information systems (IS) consultant to ensure that your decisions are well informed.

✓ **Checklist**

SOFTWARE

- ❑ Determine your software needs first to ensure that your hardware selections will effectively support them.
- ❑ Consider whether the various software applications available are compatible or can be integrated to work in conjunction with each other.
- ❑ Consider applications specific to a law practice and for use in any business and whether these programs can be integrated.
- ❑ When selecting programs specifically for use in a law practice, consider
 - programs mandatory for the area of law you practice (e.g. Teraview software for electronic registration of documents in real estate)
 - programs commonly used for the area of law you practise (e.g. for assembly and management of documents in family or civil matters)
 - programs for use in any law practice (e.g. for time docketing, fees and billings, trust accounting or checking for conflicts)
- ❑ When selecting business-specific programs, consider the need for
 - word processing, spreadsheets, document viewers and software suites
 - research (e.g. Internet access and browsers)
 - communication (e.g. e-mail, electronic facsimile, Internet video conferencing)
 - financial management (e.g. financial books and records, trust accounting)
 - time management (e.g. calendars, to-do lists, reminders)
 - security (e.g. back-up, virus protection, encryption, spyware)

HARDWARE

- ❑ Ensure that your hardware options can support your selected software.

- Review available hardware options considering
 - desktop and laptop modes, personal digital assistants (PDAs)
 - available and expandable memory (i.e. RAM vs. hard drive)
 - portable memory storage (e.g. memory stick, USB flash or thumb drive)
 - peripherals (e.g. monitor, mouse, printer, scanner, CD-DVD drive, webcam, microphone, speakers, external modem or router)
 - necessary or useful accessories (e.g. monitor or tower stands, cables, wires, batteries, chargers, power bars, surge protectors)
 - access ports required
 - networking capabilities, by wire or wireless
 - available warranties

OTHER CONSIDERATIONS

- Determine your computer system needs by considering
 - system users (e.g. single user or multiple users through a network)
 - system access (e.g. remotely or from multiple locations)
 - system security (e.g. passwords, limited access, theft potential)
 - system back-up (e.g. off-site data storage and backup servers)

- If using the expertise of a consultant
 - consider whether the advice you require is initial or ongoing
 - determine whether he or she can advise on software, hardware or both
 - ensure that he or she understands your obligations under the *Rules of Professional Conduct* (e.g. your duty to maintain client confidentiality)

- Factor your computer system costs into your budget, including
 - purchase, delivery, installation and warranties
 - user fees or service charges (e.g. monthly, yearly or per use)
 - necessary or optional upgrades
 - support and maintenance (e.g. via service contract or per problem)
 - training required for you and your staff
 - consultant expertise

- Review consumer reports or surveys to determine most commonly used software and hardware in business and in a law practice. See the Law Society's article **Legal**

Software and Other Online Resources for Your Practice at
<http://rc.lsuc.on.ca/pdf/kt/legalSoftware.pdf>.

- ❑ Speak to colleagues in similar practice environments to discuss the pros and cons of various software, hardware and system options.
- ❑ Contact vendors to arrange demonstrations or obtain samples to test the options available and to evaluate their suitability for use in a law office.
- ❑ Ensure third party service providers (e.g. consultants, technicians) agree (in writing) not to disclose any confidential information they may view.
- ❑ Consider preparing a chart or something similar to compare the suitability of different software and hardware options available to you.
- ❑ Ensure that the technology you choose for your practice is used in a way that complies with the *Rules of Professional Conduct*. See the **Practice Management** section of this Guide for more information.

SETTING UP YOUR OFFICE

To launch your law practice you will need to choose furniture and equipment, in addition to your computer system, that will fit the needs of you and your staff in your chosen office space. You will also need to design an appropriate layout for these and will need to procure other office supplies to support your practice.

✓ Checklist

OFFICE SUPPLIES

- ❑ Determine your supply needs, considering basic (e.g. those for filing, mailing, and other paper supplies) and legal supplies (e.g. legal seals, litigation tab dividers).
- ❑ Investigate and compare different office supply companies, considering
 - specialized legal office suppliers
 - account and payment options
 - referrals from colleagues
 - convenience and reliability

EQUIPMENT

- ❑ Determine your equipment needs, considering
 - facsimile machine
 - photocopier
 - scanner
 - shredder
 - dictation system
 - telephone system
 - debit/credit imprint or point-of-sale machine
 - single-purpose machines that have a specific function (e.g. printer)
 - multi-purpose machines that meet multiple needs (e.g. “all-in-one” printer, photocopier, scanner and facsimile machine)
- ❑ When evaluating your telephone system needs, consider
 - the number of lines required for staff
 - dedicated lines for facsimile machine(s) or Internet connection(s)
 - handsets, headsets and cordless models

- answering machines or voicemail capability
- conference calling and call forwarding capabilities
- intercom and paging capabilities
- automated system routing, attendant and holding options

FURNITURE

- Determine your furniture needs, considering
 - private offices
 - staff work stations
 - filing and storage
 - reception or waiting area
 - meeting or conference room(s)
 - lunch room
- Consider basic office furniture (e.g. desks, tables, seating, filing, shelving, and storage) and office accessories (e.g. coat racks, décor, small appliances).
- Consider specific law office furniture (e.g. lockable filing cabinets and other storage, fireproof safe).

OTHER CONSIDERATIONS

- Consider both your current and future needs when selecting equipment and furniture for your office. Ensure that your office space can accommodate these selections.
- Plan the layout of your selected office equipment and furniture to ensure efficient use of the space, including proximity to electrical outlets, light sources and telephone jacks.
- Ensure your office layout will allow you to meet your obligations under the *Rules of Professional Conduct* concerning confidentiality [Rule 2.03] (e.g. clients in the reception area must not be able to overhear conversations with other clients or see the computer screens used by you or your staff).
- Consider different payment options for procuring your selected office equipment and furniture, as well as any tax ramifications, including the purchase or lease of new or used equipment or “rent-to-own” options.
- Factor your office equipment and furniture costs into your budget, including
 - purchase, delivery, installation and warranties
 - user fees or service charges (e.g. monthly or yearly)
 - support and maintenance (e.g. via service contract or per problem)

BUSINESS STRUCTURE OR PRACTICE ARRANGEMENT

Under the *Law Society Act* and its By-Laws, you are permitted to set up your practice as a sole proprietorship, general partnership, limited liability partnership or a professional corporation. The Law Society also recognizes two practice arrangements that involve non-licensees: multi-discipline practices and affiliations.

A sole proprietor or sole practitioner owns and operates his or her professional business alone. This is the simplest structure for a law practice and may be the least costly as there are few formal business registrations required. This structure may be appropriate for you if you plan to practise law alone or to employ lawyers to practise law under your name or your trade name, as employees of your practice.

A general partnership consists of two or more individuals carrying on business. A limited liability partnership (LLP) is a specific type of partnership that protects the personal assets of the individual partners for purposes of professional liability. Your choice of partnership structure will determine the business registration and regulatory requirements that you must meet. A partnership, either general or LLP, may be appropriate for you if you wish to practise law with another lawyer or lawyers and are not in a employee-employer relationship.

A professional corporation is a type of corporation whose business is limited to providing professional services. When a law practice is incorporated, the resulting professional corporation is a separate legal entity. The shareholder(s) of this entity must also be its director(s), and must be licensed by the Law Society of Upper Canada. Practising law through a professional corporation does not limit your professional liability but this business structure may offer tax deferral benefits. However, these benefits may only be realized after the business has generated income for which the tax may be deferred. There are also specific requirements that apply to professional corporations that do not apply to other business corporations. These include restrictions regarding shareholders, directors, corporate name and the services provided through the professional corporation.

There is no specific legal definition of an "association." Lawyers who choose to practise in association with other lawyers usually operate their separate practices from the same location, with an agreement to share the overhead costs. Because the term "association" can mean various arrangements, lawyers choosing to practise in association are obliged to clearly identify the nature of the relationship between the associated parties to clients and the public at large.

A multi-discipline practice (MDP) is an association or partnership (that is not a corporation) between a lawyer and an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practise of law (e.g. an accountant, tax consultant, trademark and patent agent, etc.). If the lawyer and non-licensee have entered into a partnership agreement, it may also be referred to as a multi-discipline partnership.

An affiliation can be defined as "a lawyer or a group of lawyers who has or have an affiliation with a non-legal entity (e.g. an accounting firm) which regularly joins the lawyer(s) for the promotion and delivery of their respective services to the public." The definition of an affiliation is

very broad and captures arrangements that range from the informal to the structured and comprehensive arrangements of a law firm with a non-legal professional services firm.

To determine the most appropriate structure or arrangement for your practice, you should consider a variety of factors, including

- ownership and control of the business and its assets
- liabilities and potential for negligence claims
- professional liability insurance for the business structure or practice arrangement
- set-up and operational costs for the business, and
- tax, transferability and estate planning issues

Consider consulting with an accountant, tax lawyer or corporate lawyer to discuss potential benefits or drawbacks of each business structure or practice arrangement to ensure that you select the best structure or arrangement for you.

✓ **Checklist**

CONSIDERATIONS WHEN COMPARING PRACTICE STRUCTURE OR BUSINESS ARRANGEMENT

- ❑ Whether the terms of the business structure or practice arrangement must be contained in a written agreement to be recognized (i.e. an LLP) or whether it would just be prudent to document the terms of the arrangement.
- ❑ Any legislation that may govern the business structure (e.g. the *Partnerships Act* if a general partnership or LLP, *Business Corporations Act* (Ontario) if a professional corporation, the *Business Names Act* if operating under a trade name, as a general partnership or LLP).
- ❑ Whether the relevant party (i.e. the sole practitioner, the partnership or LLP and its partners, or the professional corporation and its shareholder/directors) is subject to the laws that apply to those contractual relationships (e.g. the *Employment Standards Act* if employing staff or other lawyers, the *Personal Property and Security Act* if leasing equipment, etc.).
- ❑ Who has the ability to enter into and will be responsible for contractual relationships with third parties, on behalf of the business entity.
- ❑ Who owns and controls the assets of the business entity and in what proportion.
- ❑ Who is responsible for the non-professional liabilities of the business entity (e.g. general liability may be limited for shareholder/directors of a professional corporation).
- ❑ Who is responsible for the professional liabilities of the business entity (e.g. professional liability may be limited for the partners of a LLP).

- ❑ If the assets of the business entity are insufficient to meet the non-professional liabilities of the business entity, whether personal assets will be at risk.
- ❑ If the assets of the business entity are insufficient to meet the professional liabilities of the business entity, whether personal assets will be at risk.
- ❑ Whether the business structure allows the lawyer(s) or others to enter into an employment relationship with the business entity (i.e. to receive a paycheque that has the typical source deductions for income tax, Employment Insurance, and the Canada Pension Plan).
- ❑ When is the financial year-end. Business income is reported to the Canada Revenue Agency based on the calendar year. The financial year-end for the business entity will be December 31st unless the sole practitioner, partnership or professional corporation applies for permission to do otherwise.
- ❑ Who is the taxpayer of the business entity and how taxes are paid. Whether the business structure will require the lawyer(s) involved to file a tax return for the business in addition to a personal tax return that reports income from all sources, including the business entity. Different methods of payment to the lawyer(s) involved (e.g. salary, shareholder dividends, management bonus) will be taxed differently.
- ❑ Whether, how and to whom the business entity, or interests or shares in the entity, may be transferred or sold by the lawyer(s) involved (e.g. the ability to transfer ownership interests in a partnership or shares in a professional corporation may be restricted by the partnership agreement or the articles of incorporation).
- ❑ What happens to the business entity, or interests or shares in the entity, upon the involved lawyer(s)'s death or insolvency (e.g. a general partnership may dissolve upon the death of one of the partners, while the existence of a professional corporation is unaffected by the death of any of its shareholder/directors).
- ❑ Whether there are specific Law Society requirements for the business structure, practice arrangement or the individual lawyers practicing within the specific structure or arrangement [By-Law 7 under the *Law Society Act*]. These may include
 - requirements related to non-licensees
 - notification requirements and methods
 - applications for certificates, renewals or surrendering of certificates
 - applicable fees
- ❑ Whether the Law Society imposes any ongoing administrative, filing or reporting requirements for the business structure or practice arrangement. For assistance, contact the Law Society's Administrative Compliance department via the Resource Centre at 416-947-3315 or toll-free at 1-800-668-7380 extension 3315.

- ❑ Whether there are other registration or filing requirements for the business structure or practice arrangement, which are discussed in the **Business Registrations** section of this Guide.
- ❑ Whether the business structure or practice arrangement will allow you to continue to meet your professional conduct obligations, as outlined in the *Rules of Professional Conduct* [Rule 2.03 Confidentiality, Rules 2.04 to 2.06 Conflicts of Interest, Rule 2.08 Referral Fees and Division of Fees, Rule 6.01 Responsibility to the Profession].
- ❑ The professional liability insurance coverage required for each business structure or practice arrangement. Consult By-Law 7 and contact LAWPRO® to discuss this.

ADDED CONSIDERATIONS WHEN ENTERING INTO AN “ASSOCIATION”

- ❑ Determine the responsibilities of each party in the association and clearly define them. Consider preparing a written association agreement.
- ❑ Whether your association could be perceived as a partnership. Courts have used various tests to differentiate a true association from an apparent partnership, such as whether the parties share premises and resources, the use of a single firm name on pleadings and sharing of bank accounts. You should clearly state the association relationship on your letterhead, business cards, signage and advertising and should consider confirming this for clients in your retainer agreement.
- ❑ Lawyers practising in association may not share trust accounts. If holding client money you must deposit it into a trust account that is in your name, or in the name of the law firm of which you are an employee or a partner [By-Law 9 under the *Law Society Act*].

ADDED CONSIDERATIONS WHEN ENTERING INTO AN ARRANGEMENT WITH NON-LICENSEES

- ❑ Whether there are requirements to be met by the non-licensee before the lawyer may enter into a practice arrangement, including
 - the non-licensee’s “good character” (i.e. in an MDP)
 - effective control of the non-licensee’s practice of his or her profession, trade or occupation
 - the non-licensee’s provision of services to clients of the practice arrangement
 - the non-licensee’s provision of services to clients outside the practice arrangement
 - the non-licensee’s compliance with the *Law Society Act*, its By-Laws and the *Rules of Professional Conduct*
 - confirmation of compliance with these requirements, in writing
- ❑ Whether the lawyer is required to carry additional professional liability insurance for the non-licensee(s) in the practice arrangement. Consult By-Law 7 and contact LAWPRO® to discuss this.

- The professional liability insurance coverage required for each business structure or practice arrangement. Consult By-Law 7 and contact LAWPRO® to discuss this.
- Lawyers in a multi-discipline practice or an affiliation must not allow the non-licensees signing authority on any trust accounts. If holding client money you must deposit it into a trust account that is in your name, or in the name of the law firm of which you are an employee or a partner [By-Law 9 under the *Law Society Act*].

BUSINESS REGISTRATIONS

You should consider the necessary steps to ensure that your practice complies with the laws and regulations applicable to your selected business structure. You should also confirm the cost associated with any required application, registration or renewal.

✓ Checklist

FEDERAL – BUSINESS NUMBER

- ❑ Determine whether you require a Business Number (BN). If you do not have any employees or do not have taxable services (i.e. professional fees) of more than the amount set out by the Canada Revenue Agency (CRA), then you will not require a BN. See the CRA website at www.cra-arc.gc.ca to ascertain whether you will need to apply.
- ❑ A BN is required to open a payroll account. If you have employees, you must apply for and obtain a payroll account from the CRA to file any source deduction remittances (e.g. income tax, Employment Insurance, Canada Pension Plan) on behalf of your employees.
- ❑ A BN is required to collect and remit the Harmonized Sales Tax (HST) to the CRA. If you practise law in Ontario and have professional fees exceeding the amount prescribed by the CRA, you must collect and remit HST.
- ❑ If required to collect and remit the HST, consider the cost of filing the HST return yearly, monthly or quarterly. Also consider opening a separate bank account to accumulate the HST to be remitted, to avoid using the funds for other purposes. Note that once you have billed a client for services that are subject to the HST, regardless of whether the client has paid for those services, HST must be remitted per the CRA's schedule.
- ❑ Ensure that you apply for your BN after you have committed to opening your own practice but before rendering any accounts or hiring any employees.

FEDERAL – INCOME TAX NUMBER

- ❑ Determine whether you require an income tax number. A BN is required to apply for one. Sole proprietors and both general and limited liability partnerships do not require an income tax number. A professional corporation, as a separate taxpayer, must obtain an income tax number. See the CRA website at www.cra-arc.gc.ca to ascertain whether you will need to apply.

PROVINCIAL – BUSINESS NAME

- ❑ Business name searches, registrations and renewals are administered by the Ministry of Government Services. For more information about these, see the Ministry's website at www.mgs.gov.on.ca.

- ❑ Determine whether you are required to register your business name under the *Business Names Act*. Individuals or professional corporations who identify their practice to the public or carry on business using a name other than their own name (e.g. “John Doe, Barrister & Solicitor”) or a corporate name (e.g. “John Doe, Professional Corporation”), such as a trade name, must register that name with the Ministry. General and limited liability partnership (LLP) names must also be registered.
- ❑ If you register a business name, ensure that you receive your Provincial Business Identification Number (BIN) from the Ministry. You require this number to renew the business name you have registered with the Ministry.
- ❑ Ensure that your selected firm name complies with the *Rules of Professional Conduct* that apply to marketing [Rules 3.01, 3.02 and 3.03]. See the Law Society’s **Law Firm Name Guidelines**, available through the online Resource Centre at <http://rc.lsuc.on.ca>.
- ❑ The application to register for a business name also includes sections for a Retail Sales Tax (RST) number, Workplace Safety and Insurance Board (WSIB) number, and an Employer Health Tax (EHT) number. Though it is unlikely you will need to do so, contact the Ministry to determine whether you must apply for any of these registrations.

PROVINCIAL – PROFESSIONAL CORPORATION

- ❑ Determine whether you would like to practise law through a professional corporation. If you incorporate, you must comply with the *Business Corporations Act* (Ontario), the *Law Society Act* and By-Law 7.
- ❑ Before you apply for incorporation through the Ministry of Government Services, consider completing the voluntary application to the Law Society for a Corporate Name Certificate to ensure that the firm name you have selected complies with the *Rules of Professional Conduct* that apply to marketing [Rules 3.01, 3.02 and 3.03]. See the Law Society’s **Law Firm Name Guidelines**, available through the online Resource Centre at <http://rc.lsuc.on.ca>.
- ❑ Once incorporated, ensure that you apply for and obtain a Certificate of Authorization from the Law Society to practise law through your new professional corporation. This certificate must be renewed annually.
- ❑ Once incorporated, ensure that you also comply with the requirements of the *Corporations Information Act* (e.g. initial reporting, annual reporting and providing notice to the Ministry of changes made to the professional corporation).

MUNICIPAL – LICENSING

- ❑ Confirm whether the municipality in which you will practise requires you to obtain a licence to carry on business.

BANK ACCOUNTS, ACCOUNTING AND OTHER FINANCIAL ISSUES

You cannot operate a law practice without the assistance of a financial institution. Your financial institution is part of the network you should build to help your business succeed and your financial advisor can be a source of information, networking contacts and advice. Because the relationship with your financial institution will likely be long-term and is vital to the success of your practice, you should spend some time considering which institution you will use for both your bank accounts and financing needs.

✓ Checklist

TRUST AND GENERAL ACCOUNTS

- Determine how many bank accounts you will require for your practice, including
 - general account(s) (i.e. operating or business accounts)
 - mixed trust account(s)
 - separate interest bearing trust account(s)
 - separate estate or power of attorney account(s)
 - separate electronic registration bank account (ERBA) for payment of land transfer tax and registration fees
 - foreign fund account(s) (e.g. a US dollar account)

- For each mixed trust account you open,
 - the account must be clearly designated as a lawyer's trust account
 - the account must be in your name or the name of your firm, partnership, professional corporation or trade name
 - the account must bear interest at a rate approved by the trustees of the Law Foundation of Ontario, per section 57.1 of the *Law Society Act*
 - you must report to the Law Foundation of Ontario that you have opened the account (see **Law Foundation Report on Opening a Mixed Trust Account**)
 - you must direct the financial institution to remit the interest earned on the account to the Law Foundation of Ontario (see **Letter of Direction Regarding Interest on Mixed Trust Account**)
 - you must ensure the financial institution provides the appropriate source documents for the account, per By-Law 9 (e.g. cancelled trust cheques or electronic images of cancelled trust cheques)
 - you must ensure the financial institution does not withdraw funds from the account without your authorization (e.g. service fees must be paid from the general account)

ACCOUNTING, BOOKS AND RECORDS

- ❑ Review the books and records requirements in By-Law 9 or see the Law Society's **Bookkeeping Guide for Lawyers** at <http://rc.lsuc.on.ca/pdf/practiceGuides/bookkeepingGuide.pdf>.
- ❑ Implement an accounting system that allows you, your staff or an independent bookkeeper to track and record the financial transactions of your law practice, such as
 - manual ledgers
 - "one-write" systems
 - spreadsheet software
 - general accounting software
 - legal accounting software

FINANCING AND CREDIT

- ❑ Estimate the amount of start-up financing you will require, considering one-time costs (e.g. initial purchases of computer systems or equipment) and ongoing needs (e.g. rent, utilities, annual fees and professional liability insurance).
- ❑ Consider the financing options available to you for all or part of the capital you may require to open your law practice, including
 - personal investment (e.g. from savings, retirement or other plans)
 - money invested by friends or family
 - peer lending or investment
 - private investment loans
 - institutional loans
- ❑ Evaluate the type of financing products that are available (e.g. line of credit, term loan, credit cards, private mortgage or institutional loans).
- ❑ Consider assembling a competent team to advise you on financial issues outside your area of knowledge, before committing to any particular option(s) for financing (e.g. accountant, tax advisor, bookkeeper, etc.).
- ❑ Consider using a mortgage broker or financial consultant to help you determine the financing product that is right for you and to locate a lender.
- ❑ Determine what collateral (personal or business) will be required by the financial institution or lender to secure a loan.
- ❑ Determine whether the financial institution or lender will require a personal guarantee from you (i.e. if operating through a professional corporation), or from a spouse or relative.

- ❑ Determine whether the financial institution or lender will require a general security agreement on the assets of the professional business (i.e. on accounts receivable and equipment owned by the business) or on any personal assets (e.g. your house, savings or investments).
- ❑ Consider that your financing needs may change as your law practice becomes established and it evolves.
- ❑ Educate yourself as to what criteria the financial institution will use to evaluate your suitability for financing or credit
- ❑ Consider tailoring your business plan to meet the financial institution or lender's criteria, to better secure the financing you require to start your law practice and to help it grow.

FINANCIAL INSTITUTIONS

- ❑ Determine the financial institutions available in your area, such as
 - chartered banks
 - provincial savings offices
 - credit unions
 - registered trust corporations
- ❑ Assess whether a financial institution offers other services that you may want, such as
 - convenient location(s)
 - inter-branch services
 - extended hours of operation
 - specialized department or staff contact person(s)
 - credit or debit imprint or point-of-sale machines
 - certified cheques, bank drafts, money orders
 - wire transfer or electronic funds transfer
 - electronic or Internet banking services
 - payroll and other merchant services
 - personal or business financing and credit
 - financial advice or access to financial planning advisors
- ❑ Confirm that the financial institution will allow you to operate your general and/or trust accounts in compliance with the requirements of By-Law 9 and the *Law Society Act* (e.g. you are provided with the necessary source documents, the interest earned on a mixed trust account is at the prescribed rate).

- ❑ Where the financial institution you select for your trust account(s) requires from you confirmation that you are lawyer who is licensed by the Law Society and is eligible to practise law in Ontario, this may be provided by way of a photo identification card or a status letter issued by the Law Society. For more information visit the online Resource Centre at <http://rc.lsuc.on.ca>.
- ❑ Consider whether one financial institution can meet your banking needs or whether you will require multiple service providers.
- ❑ Consider whether the financial institution has a specialized department or staff to deal with small business owners or other professionals, for your convenience. If not, evaluate if you can build a direct relationship with the branch or account manager who may be able to provide personalized service and assistance.
- ❑ Assess the cost of doing business with the financial institution (e.g. account service fees, cost of special services, parking costs when visiting, whether discounts may be offered if you use the institution for multiple accounts or services, etc.) and whether it fits within your budget.

INSURING YOU AND YOUR PRACTICE

In addition to obtaining and maintaining the required level of professional liability insurance, discussed in **Administrative Requirements** section of this Guide, selecting the appropriate additional insurance to protect you and your law practice is essential. The insurance products that best suit your needs will depend on many factors and may change as your law practice evolves. Available products include

- business or commercial insurance, to protect you from losses that will affect the financial health of your business
- life insurance, to provide funds in the event of your death
- health or disability insurance, to provide funds in the event of your loss of income due to disability or critical illness
- extended health care insurance, to pay hospital, medical or dental expenses

Consider getting advice from a qualified and independent insurance professional before you choose or change your insurance product(s) and provider(s).

✓ Checklist

BUSINESS OR COMMERCIAL INSURANCE

- Determine what your policy should cover, considering
 - property (e.g. office space, equipment and work product)
 - crime (e.g. fraud, theft, vandalism or malicious damage)
 - practice interruptions (e.g. natural disaster, office disaster)
 - comprehensive or commercial liability (i.e. for claims unrelated to professional services)
 - commercial automobile (i.e. if used primarily for business or is owned by the business)

- Advise potential insurers of any special coverage requirements, such as
 - client property (e.g. original wills or power of attorney documents, valuable items)
 - electronic data (e.g. work product, precedents, accounting data)

- Discuss whether any special endorsements or amendments to the standard policy are required for special coverage and any resulting cost.

- Consider the deductible, the policy limit and whether premiums can be paid monthly or annually.

- ❑ Consider whom you will designate as a beneficiary (e.g. the business entity, lawyer(s) involved in the business entity, or an outside individual).
- ❑ If leasing or renting office space, ensure that your chosen policy meets any obligations contained in your commercial lease.
- ❑ If using a home office, ensure that you still obtain appropriate business insurance. Failure to do so may jeopardize your home insurance policy.

LIFE INSURANCE

- ❑ When evaluating the need for life insurance, consider your
 - estate needs (e.g. to provide income for a dependent or to satisfy any liabilities upon your death)
 - practice needs (e.g. to provide funds to transfer, sell or close a small firm left without the main practitioner, or to provide security to the firm's lenders)
 - buy/sell needs (e.g. to provide funds to implement and buy/sell provisions contained in a partnership agreement)
- ❑ Determine what type of policy will work for you, including
 - term insurance, which provides funds if the insured dies during the term of the coverage
 - permanent insurance, which provides funds when the insured dies
- ❑ Consider whom you will designate as a beneficiary (e.g. the business entity, lawyer(s) involved in the business entity, or an outside individual).
- ❑ Assess whether the policy can serve as an investment vehicle that is sheltered from taxes or from creditors or for retirement planning purposes.

HEALTH OR DISABILITY INSURANCE

- ❑ Assess your individual disability and critical illness needs, considering the needs of any dependents not covered by another plan and your practice needs.
- ❑ Consider whom you will designate as a beneficiary (e.g. the business entity, lawyer(s) involved in the business entity, or an outside individual).
- ❑ When evaluating disability or critical illness policies, consider
 - the definition of "disability" (e.g. does it refer to the occupation of the insured or is it based on a percentage of lost income)
 - the definition of "critical illness" (e.g. the conditions or disease included)
 - under what circumstances the disability or critical illness benefits will be payable (e.g. how long after disability or diagnosis)

- whether benefits will be paid via lump sum or multiple payments
- whether partial payments are available for partial disability
- Determine whether you may change the policy's coverage or premiums at a later date and whether premiums can be paid monthly or annually.

EXTENDED HEALTH CARE INSURANCE

- Assess your individual medical and dental coverage needs, considering the needs of any dependents not covered by another plan.
- Evaluate whether you can afford to set up and offer a private health services plan to your employees.
- Consider joining an existing group benefit plan with your employees. These may be available through local business associations or your Chamber of Commerce.
- Determine whether premiums can be paid monthly or annually.

BUILDING YOUR SUPPORT TEAM

At the start of your practice you may be able to do every task yourself, both legal and administrative. However, you should plan to hire support staff as your law practice is established, to allow you to make more efficient use of your own time. Paying for the services of non-lawyer support staff may be one of the highest costs you will incur when operating your law practice. Therefore, preparing a plan to find, hire and effectively use support staff is very important.

✓ Checklist

RECRUITMENT AND HIRING

- If you are unable to hire full-time or part-time staff but still require assistance, consider alternatives such as
 - independent contractors (e.g. accountant, bookkeeper)
 - temporary services or agencies
 - college co-op programs
 - virtual assistants (i.e. an independent contractor who provides service from his or her office using technological modes of communication and data delivery)

- Consider whether you can afford to hire staff. In addition to salary, costs may include
 - required employer contributions (e.g. Canada Pension Plan and Employment Insurance)
 - annual vacation pay
 - statutory holiday pay
 - overtime pay
 - paid leave (e.g. for illness, compassion or bereavement, religious observances)
 - payroll administration costs
 - benefits (e.g. health or dental plans, gifts/bonuses, parking, etc.)
 - employee training and development costs
 - staff replacement during vacation or unplanned absences

- When you are ready to hire support staff, you should
 - write a job description for the position that outlines the skills, education and designations required
 - determine what salary you are prepared to pay, reviewing the range of pay for similar positions (e.g. similar job postings, information from colleagues, etc.)

- determine how you will find candidates (e.g. advertising in publications or online, professional referrals or an employee search company)
 - prepare for your interview(s) by developing questions that may be used for all candidates so that you can easily compare responses; ensure that your questions are appropriate and meet the requirements of the *Rules of Professional Conduct* regarding discrimination [Rule 5.04]
 - consider scheduling initial telephone interviews before personal interviews
 - ask for and check references of the candidates who have made your short list
 - communicate with your candidates throughout the process
 - remember that you are also being evaluated as a potential employer
- Prepare a letter offering employment to your selected candidate that sets out the terms of employment (e.g. salary, holidays, sick time, etc.), and includes a probationary period that will allow you to terminate the employee without notice or cause. Consider including a provision to ensure that the employee is legally bound to maintain confidentiality as outlined by the *Rules of Professional Conduct* [Rule 2.03].
 - Consider whether you will prepare a full employment contract in place of a letter of offer of employment.
 - Ensure you retain a signed copy of the letter of offer or employment contract and provide a copy to the employee.
 - Ensure that you understand your obligations as an employer as set out by the *Employment Standards Act* (Ontario).

TRAINING

- Consider initial and ongoing training requirements, as well as cross-training between employees in the event of illness or unexpected departure. As firm processes change and new technologies emerge you and your staff may require additional training.
- Consider internal training for processes specific to your practice (e.g. your file opening, organization and storage procedures) and external training or development initiatives for more generalized skills (e.g. how to use certain software or bookkeeping principles).
- Educate your staff on your professional responsibility requirements under the *Rules of Professional Conduct*, the *Law Society Act*, and the By-Laws that must also be upheld by your employees (e.g. maintaining client confidentiality, preserving client property, books and record keeping requirements, etc).
- Consider preparing an office manual or employee handbook as a training tool and reference for your employee(s), and to protect for you from any claims. See the **Office Manual** section of this Guide.

DELEGATION AND SUPERVISION

- ❑ Consider that proper delegation to capable staff will allow you to devote more time to the tasks that must be completed by you and may also result in cost savings to the client.
- ❑ Delegate tasks to staff who have been adequately trained and are competent to complete those tasks. Recognize that not all staff may be competent or suited to all tasks within your practice.
- ❑ Understand the limits to the work that you may delegate to your support staff, including tasks that you must not delegate (e.g. providing legal advice to the client) and tasks that you may delegate, upon your prior express instruction and authorization (e.g. to take instructions from the client).
- ❑ Consider that proper supervision requirements may differ among staff and may change as employee(s) become more competent or as you change the services you offer. At a minimum, you should ensure that you review the work done by staff during and after its completion. You are ultimately responsible for any work done by support staff.
- ❑ Ensure that you understand your delegation, supervisory and operational obligations under Rule 5.01 of the *Rules of Professional Conduct* and By-Law 7.1. The commentary to the rule provides examples of appropriate delegation and supervision of tasks as they relate to real estate matters (including electronic registration and title insurance), corporate and commercial matters, and wills, trusts and estates.

COMMUNICATION

- ❑ Recognize that proper training, delegation and supervision is not possible without clear and open communication between you and your staff.
- ❑ Manage staff expectations by providing clear and advance instructions for particular tasks (e.g. when you can be interrupted, how you would like mail or telephone messages brought to your attention, how to handle “urgent” issues, etc.).
- ❑ Schedule regular meetings or otherwise allow for you and your employee(s) to exchange feedback, to ask and answer questions, and to determine if additional training or changes to the delegation and supervision of work is required.

MARKETING YOUR PRACTICE

Marketing is a means to publicize your legal services practice, to attract and obtain the clients you want so that you may provide them the services you offer. You should complete market research to assess the viability of your business in the market you have chosen to serve. This information is especially important if you will be applying for financing to start your practice. You will also need to devise a budget to implement your marketing plan.

To develop an effective marketing plan you should first identify your target client, and the services you wish to offer, discussed further in the **Defining Your Practice** section of this Guide. Your marketing plan should be tailored to your practice and should allow you to gain exposure to your target market at the start and throughout the evolution of your business. You should monitor your activities with respect to meeting the goals and budget of the marketing plan to determine what methods have worked well, and those that should be changed or replaced.

✓ **Checklist**

- ❑ Recognize that Rule 3.02 of the *Rules of Professional Conduct* defines “marketing” to include advertisements and other similar communications in various media, such as
 - firm name, including trade names
 - signage, business cards and logos
 - letterhead (both paper and electronic versions)
 - pamphlets and announcement cards (both paper and electronic versions)
 - website and other Internet advertisements

- ❑ Consider designing and obtaining business cards as a first step, which can be used while you devise your marketing plan.

- ❑ Consider the available means to market your practice to your target client, including
 - enrollment in a lawyer or legal services referral service
 - advertising in a directory, in print or electronic form
 - direct marketing via pamphlets, leaflets, mail, facsimile or e-mail
 - networking by participation in civic or community events, local business or trade fairs or speaking engagements (see the **Networking** section of this Guide for details)

- ❑ Ensure that the marketing means you select to offer and market your services comply with the requirements of Rules 3.02 and 3.03 (e.g. the marketing is demonstrably true, accurate and identifiable, etc.) and the limits of Rule 3.01 (e.g. the marketing does not amount to coercion, duress or harassment, etc.) of the *Rules of Professional Conduct*.

- ❑ Where you use technology to market your services, ensure it is used in a manner that meets your professional obligations under the *Rules of Professional Conduct*. See more information on managing technology in the **Practice Management** section of this Guide.
- ❑ Evaluate the goals you would like to achieve with your marketing strategy both at the start of your practice and as it evolves (e.g. an initial goal may be to build your client base to a certain level, with subsequent goals to increase that client base or narrow it).
- ❑ Of the services you offer, determine which you would like to market or advertise.
- ❑ Consider the suitability of marketing methods available to your practice and services and whether they will reach and attract your target market (e.g. advertising in print, television or radio, website, e-mail, etc.).
- ❑ Consider your comfort level when evaluating what marketing methods will work best for you and your practice (e.g. whether or not to include your photograph in your marketing).
- ❑ Consider outsourcing parts or all of your marketing efforts if you do not have the skill or knowledge to implement them yourself (e.g. designing a website may be beyond your own capabilities).
- ❑ Prepare a budget for the cost of using various marketing methods.
- ❑ Determine what benchmarks you will use to measure whether your marketing plan is succeeding (e.g. number of clients, income generated, referrals generated, recognition of your practice, etc.).
- ❑ Include a timeframe to measure progress against those benchmarks.
- ❑ Prepare a marketing plan that includes a description of
 - the type of client who is likely to use your services
 - the potential size of the target market in your geographical area
 - your direct and indirect competition, if any
 - the major trends presently affecting your marketplace
 - what makes your services unique (i.e. reasons why clients would choose your services over those of your competition)
 - your pricing strategy (e.g. type of fees you will charge, methods of payment you will accept, discounts you may offer for volume or certain clients, value billings, accepting Legal Aid Ontario certificates)
 - how you will offer your services
 - how you will communicate and promote your services to your target market (e.g. brochures, websites, advertising, etc.)

NETWORKING

Not to be confused with marketing, networking refers to building relationships with others. Networking may lead to increased business for your law practice and can help you avoid isolating yourself to the detriment of your health and your business. Networking can also provide broader benefits, which may include the opportunity to connect with

- mentors, to assist or to guide you in your practice
- mentees, to share the benefits of your own experience
- other professionals, to exchange services or referrals
- prospective employees, to help support your practice
- prospective employers or clients, to engage your services
- your community, to build friendships and support

Though the benefits of any particular networking relationship may not be immediate, any lawyer opening a law practice should consider networking to increase his or her visibility both professionally and personally.

✓ **Checklist**

- ❑ Consider prospective contacts for your network, including
 - continuing legal education or professional development initiatives, as a speaker or participant
 - friends, family and neighbours
 - volunteer, association and religious affiliations
 - former professors and classmates
 - sports team and health club members
 - colleagues of personal and other contacts
 - former and existing clients
- ❑ Consider using the goods and services offered by those in your network and referring others to do the same.
- ❑ Re-evaluate your methods as you become more comfortable with networking.
- ❑ Schedule time to develop and maintain your network.
- ❑ Recognize that there are concerns that relate to the personal and professional use of social media sites. Review LAWPRO[®]'s article **Social Media: Pitfalls to Avoid** at www.practicepro.ca.

MENTORING

Mentoring is an integral part of the legal profession. A mentor can provide you with the necessary support, guidance and insight that your family, friends and staff may not be able to offer while you open and build your law practice. Whether for a short or long-term relationship, a mentor may offer you advice on

- specific or complex legal procedures
- strategy or tactics
- ethics and professional responsibilities
- business or practice management issues
- career and professional development
- health and wellness issues

The right mentor can assist you with the practice of law and may also help to reduce potential claims or complaints. The benefits of a relationship with a mentor can be immediate and enduring, and any lawyer opening a law practice should consider connecting with a mentor.

✓ Checklist

- ❑ Determine what assistance you would like from a mentor.
- ❑ Consider that multiple needs may require more than one mentor.
- ❑ Consider sources of prospective mentors, including
 - former law professors or articling principal(s)
 - previous and current colleagues or peers
 - organized mentoring programs or initiatives
- ❑ Consider mentoring programs or initiatives offered by
 - Law Society of Upper Canada
 - Legal Aid Ontario
 - Ontario Lawyers' Assistance Program
 - local, provincial and national law associations
 - community or volunteer associations (e.g. Pro Bono Law Ontario)
 - associations based on area of law (e.g. Advocates' Society)
 - associations based on demographics (e.g. Women's Law Association of Ontario)

- ❑ More information about the Law Society's mentoring initiatives is available online at <http://rc.lsuc.on.ca/jsp/mentorship/index.jsp>.
- ❑ Evaluate what type of mentor relationship will best suit your need(s), considering formal and informal arrangements that may span a particular
 - substantive or procedural inquiry
 - matter or file
 - area of law
- ❑ Consider initially meeting with a prospective mentor in person to ensure that your respective personalities and mentoring styles are compatible.
- ❑ When establishing a mentor relationship, set boundaries by discussing
 - the scope of the relationship
 - the goals or expectations of the relationship
 - how to deal with confidential information
 - how to avoid conflicts of interest
 - methods of interaction and communication
 - the time available for the relationship
 - how to deal with obstacles or problems
 - when to evaluate the relationship
 - how to provide feedback about the relationship
 - when and how the relationship will end
- ❑ When participating in a mentor relationship ensure that
 - you independently verify any advice, suggestions or recommendations offered to you
 - your mentor does not communicate with your clients in any way that might form a lawyer-client relationship
- ❑ Recognize that a mentor relationship may evolve or become obsolete.
- ❑ Consider outlining the terms of your mentoring relationship in a written agreement. Formalizing your relationship may reduce your mentor's professional liability concerns.

ADMINISTRATIVE REQUIREMENTS

When opening your own law practice you are still required to meet the Law Society's administrative requirements to maintain your licence to practise law. Each year, you must

- detail any changes to your status or contact information [By-Law 8]
- pay an annual fee, due January 1st each year [By-Law 5]
- submit the Annual Report, due March 31st each year [By-Law 8]
- maintain appropriate professional liability insurance [By-Law 6] (individual policy or exemption status will dictate due dates)
- meet other requirements related to business structure [By-Law 7], bankruptcy or insolvency, and offences [By-Law 8]

✓ Checklist

LAW SOCIETY ANNUAL FEE

- ❑ Advise the Law Society of your current status to ensure that your Annual Fee Invoice will be accurate. Where there are multiple changes to report or there are other lawyers affected by the change (e.g. you have formed a partnership), consider documenting these in a letter to the Law Society. See the **Notice of Change of Information** and **Letter to Law Society of Upper Canada**.
- ❑ Advise of any changes in status (e.g. not practising for at least one calendar month) so that your annual fee may be adjusted, as necessary. Note that practising law part-time does not affect your annual fee to the Law Society.
- ❑ Ensure the Law Society has your current contact information so that you will receive your Annual Fee Invoice. The Annual Fee Invoice is usually sent in early December each year.
- ❑ Ensure that you meet the payment deadline of January 1st, as you risk suspension of your licence to practice law if payment is not received within 120 days of that date.
- ❑ Budget for the cost of your annual fee and ensure that you can make payment by an accepted method (i.e. cheque, money order, bank draft, credit card, debit card, internet or telephone banking, payment via the Law Society's e-commerce website).
- ❑ Consider enrolling in the Law Society's Pre-Authorized Payment Plan to spread the payment of your annual fee over the calendar year. Note that there is an additional administrative fee to use this payment option.

LAW SOCIETY ANNUAL REPORT

- ❑ Ensure the Law Society has your current contact information to ensure that your Lawyer Annual Report will be received. The Lawyer Annual Report is usually sent in early December each year.
- ❑ Ensure that you meet the filing deadline of March 31st, as you risk suspension of your license to practice law if your report is not received within 120 days of that date.
- ❑ Whether you are completing all sections of the report or you have the input of others (i.e. accountant or bookkeeper), ensure that the information you provide on the Lawyer Annual Report is complete, true and accurate. Filing a false or misleading report to the Law Society is professional misconduct.

LAWPRO[®] PROFESSIONAL LIABILITY INSURANCE

- ❑ Determine the type of errors and omissions insurance coverage you require (e.g. standard, innocent party, excess, run-off, real estate). This will depend on your chosen business structure, your areas of practice and whether you practise law part-time.
- ❑ Ensure that you review the deductible options and amounts before selecting an option and policy.
- ❑ Determine the premium amount under your selected policy. This will depend on the deductible option selected.
- ❑ Determine if you must pay real estate or civil litigation transaction levy surcharges and file appropriate transaction forms quarterly. If not, you must file the annual exemption form by the prescribed deadline.
- ❑ Contact LAWPRO[®] customer service to review and discuss insurance coverage, options, premiums, filings and relevant deadlines.

OTHER REQUIREMENTS

- ❑ Ensure that you comply with additional yearly filing requirements if you practise law through a professional corporation, a multi-discipline practice or if you choose to affiliate with non-licensees.
- ❑ Ensure that you meet additional reporting requirements in the event that you become bankrupt or insolvent, or are charged with and/or convicted of an offence.

PRACTICE MANAGEMENT

Though this Guide was designed to assist lawyers to open a law practice, lawyers should also recognize what is required to operate that practice successfully on an ongoing basis. Statistics show that, consistently, the highest proportion of complaints received by the Law Society of Upper Canada relate to service issues.³ Proper practice management can help you fulfill your service obligations and responsibilities, and assist you to avoid future complaints and claims.

To open and operate a successful practice you should set up systems to effectively manage

- client service, relationships, expectations and communications
- client files, including checking for conflicts, organization and storage of files
- financial obligations, cash flow, bookkeeping and financial reporting
- your time, including time planning, docketing and reminder systems
- the use of technology in your practice

The Law Society's **Practice Management Guidelines** were developed to provide guidance on the areas of ongoing practice management outlined above. The Guidelines, which have been summarized below, can be accessed through the online Resource Centre at <http://rc.lsuc.on.ca>.

✓ **Checklist**

MANAGING CLIENT SERVICE AND COMMUNICATION

- Implement systems that allow you to manage the client relationship and client expectations at all stages, including
 - initial screening or consultation
 - engagement, limited engagement or non-engagement
 - implementation (i.e. where you complete the services and tasks of the retainer)
 - disengagement (e.g. upon the completion of the retainer, termination or withdrawal)
- Consider creating procedures, checklists and drafting documents to confirm
 - proper screening of prospective clients (i.e. to determine who the client is, any third or instructing parties, to check for conflicts of interest and to identify and/or verify identity in accordance with Part III of By-Law 7.1)
 - your engagement, limited engagement or non-engagement (e.g. via engagement letter or retainer agreement, limited engagement letter or retainer agreement, or non-engagement letter)

³ See the February 25, 2010, Report to Convocation prepared by the Law Society of Upper Canada's Professional Regulation Committee at www.lsuc.on.ca/media/convfeb10_prc.pdf.

- the terms of any engagement, including the tasks to be completed, the client's responsibilities, fees and disbursements, billing, payment and consequences of non-payment, potential withdrawal or termination, and file transfer
 - your client communication policy, including manner and frequency of communications, who will and the time required to respond, with special considerations for the client's age, education, health, sophistication and capabilities, and contingencies for dealing with difficult clients
 - when and why the retainer ended and by whom, whether before the completion of the matter or when the retainer has been completed (e.g. disengagement or termination letter, or a reporting letter to the client)
- For details, review the **Client Service and Communication Guideline**, with associated resources and sample documents, at <http://rc.lsuc.on.ca/jsp/pmg/clientService.jsp>.

FILE MANAGEMENT

- Implement file management systems to
 - store and retrieve key information regarding clients and related and opposing parties
 - check for conflicts of interest
 - determine applicable limitation periods and other deadlines
 - fulfill all undertakings and other obligations
 - manage experts or other third party service providers
 - manage the documents and precedents used in your practice
 - open and maintain active client files for individual matters
 - close, retain or dispose of closed file contents

- Consider creating or drafting a
 - file opening procedure that dictates when to open a new file, assigns a distinct file name and a new open file reference code
 - file management system (electronic or otherwise) to identify, organize, store and track information, documents, evidence and property relating to each file
 - file notation system to confirm in writing the content of every communication from the client and other parties, by way of dated note or memorandum to file
 - file organization protocol that sorts file contents according to class or type of document (e.g. communications, substantive memoranda and investigations, original documents, retainer letter, etc.)
 - file closing procedure that dictates, upon a review of the file, when to close an active file and assigns to each file a new closed file reference code
 - file content protocol that outlines which file contents will be returned to the client, copied, retained, or destroyed upon file closure

- file retention and destruction protocol that outlines how long closed files will be retained, when the closed file will be subsequently reviewed and ultimately destroyed, in a manner that maintains client confidentiality in accordance with Rule 2.03 of the *Rules of Professional Conduct*
- file storage system that separates active files from closed files, both for electronic and paper files, in a secure manner
- For details, review the **File Management Guideline**, with associated resources and sample documents, at <http://rc.lsuc.on.ca/jsp/pmg/fileManagement.jsp>.
- More information on managing closed client files can be found in the **Guide to Retention and Destruction of Closed Client Files** at <http://rc.lsuc.on.ca/pdf/guideRetentionDestruction/guideRetentionDestruction.pdf>.

FINANCIAL MANAGEMENT

- Implement financial management systems to assist you to
 - manage financial obligations, those incurred on behalf of clients and your own
 - manage the cash flow of your practice (e.g. via your fees and billing practices)
 - comply with the financial transactions and record keeping requirements of By-Law 9
 - satisfy other reporting and compliance requirements that relate to the above
- To fulfill financial obligations, consider using procedures that allow you to
 - record and fulfill the financial obligations you have undertaken on behalf of clients (e.g. procuring a medical-legal report or the services of a third party)
 - confirm, in writing, when you will not be responsible for payment of financial obligations incurred on behalf of the client
 - determine how you may assist to make satisfactory arrangements for payment of the client's outstanding financial obligations, where the client has failed to fulfill them
 - disclose to any successor lawyer or paralegal the details of any outstanding financial obligations relating to the client
 - record and fulfill the financial obligations related to your practice (e.g. annual fees, professional liability and other insurance premiums, costs or expenses related to your office or your employees, etc.)
- To manage cash flow, consider creating fee and billing procedures that outline
 - the type of fees you may charge (e.g. hourly rate; a block, fixed or flat fee; fees by stages; a contingency fee)
 - potential disbursements and how they will be paid (e.g. will advance funds be provided by the client or will the lawyer front the cost)
 - how and when estimates of fees and disbursements will be provided to the client and how changes to estimates will be communicated

- whether a money retainer is required and any future need for replenishment
 - the preparation and delivery of interim and final statements of account, including details to be included, billing frequency and delivery method
 - payment options and the consequences of late or non-payment by the client, including a collection protocol and interest on overdue accounts
 - limited or restricted practices concerning fees (e.g. when a contingency fee may be used, referral fees or fee splitting among licensees, and fees hidden from the client)
 - that fees and disbursements, and the above details, will be disclosed to clients in a timely fashion in accordance with Rule 2.08(1) of the *Rules of Professional Conduct*, and should be confirmed in writing (e.g. via engagement letter or retainer agreement)
- You must use systems and procedures that allow you to comply with the financial transactions and record keeping requirements of By-Law 9, which include
 - proper handling of and record keeping for client money and other property
 - restrictions on and additional records required when handling cash
 - proper use and record keeping for general account(s)
 - proper use and record keeping for trust account(s), including monthly trust reconciliations and comparisons
 - proper appropriation and other withdrawal or transfer of funds from trust
 - restrictions on sharing trust account(s) and those authorized to withdraw from trust
 - restrictions on financial institutions that may be used for trust account(s)
- You should create other financial transaction and record keeping policies that outline
 - methods for depositing funds to trust, including limitations on credit cards and automated banking machines (ABMs)
 - proper clearance periods for funds received in trust prior to disbursement
 - proper handling of unclaimed trust funds or funds that are in dispute
 - methods for detecting and correcting errors in your general account(s) and trust account(s), and in your books and records
 - internal controls for you to supervise and review the application of your financial transactions and record keeping processes, to reduce the risk of errors or fraud
- You must use systems and procedures that allow you to satisfy other reporting and compliance requirements related to proper financial management, which include reporting to the
 - Law Society of Upper Canada (via the Annual Report) details regarding the operation of and records maintained for your trust and general accounts, among other information

- Law Foundation of Ontario (via Form 1: Annual Report) details regarding mixed trust accounts and interest accrued on the client funds they contain
- Canada Revenue Agency (CRA) any income (personally or through a professional corporation) and remitting to them any income tax payable and any Harmonized Sales Tax (HST) collected on your fees and disbursements on behalf of the CRA
- For details, review the **Financial Management Guideline**, with associated resources and sample documents, at <http://rc.lsuc.on.ca/jsp/pmg/financialManagement.jsp>.
- More information on books and records requirements can be found in the **Bookkeeping Guide for Lawyers** at <http://rc.lsuc.on.ca/pdf/practiceGuides/bookkeepingGuide.pdf>.

TIME MANAGEMENT

- Implement time management systems, including a
 - time planning system to allocate blocks of time to specific tasks for each day, week, month and year and to record your plans using “To Do” lists, diaries and calendars
 - centralized reminder or “tickler” system to flag limitation periods or other deadlines, to alert you to review them and to remind you of upcoming steps in any client file
 - time recording or docketing system to record the services and tasks completed for each file, the time spent for those, to produce interim and final statements of account and to produce time data to help you manage time spent on your practice
- For details, review the **Time Management Guideline**, with associated resources and sample documents, at <http://rc.lsuc.on.ca/jsp/pmg/timeManagement.jsp>.

MANAGING TECHNOLOGY

- Implement policies and procedures regarding the use of technology in your practice, which may include tools used to
 - network with colleagues and other professionals
 - make available, market and provide legal services (e.g. websites)
 - research the law and legal procedure
 - manage or organize information (e.g. database or conflict-checking systems)
 - serve and communicate with clients (e.g. e-mail or Voice Over Internet Protocol)
 - organize or manage your time (e.g. calendaring or scheduling tools)
 - manage finances and financial records (e.g. time docketing or accounting systems)
 - manage your files (e.g. document and case management tools)
- You should create additional policies that
 - ensure technology is used in a manner that complies with the *Rules of Professional Conduct* (e.g. competence, confidentiality or avoidance of conflicts of interest)

- prevent misuse, inappropriate or illegal use of any technology (e.g. spamming or software piracy)
 - outline the required training needed to use any particular technology
 - describe security measures to be taken when using any technology (e.g. passwords, encryption, firewalls, virus protection and surge protection)
 - summarize back-up and disaster recovery plans to prevent or deal with the loss, theft or destruction of electronic data related to any technology
 - provide for the regular review of any technology used in your practice, to ensure efficiency and avoid obsolescence
 - outline internal controls for you to supervise and review the use of any technology in your practice, to reduce the risk of data loss and other errors
- For details, review the **Technology Guideline**, with associated resources and sample documents, at <http://rc.lsuc.on.ca/jsp/pmg/technology.jsp>.
 - See the sample **Online Activity and Social Media Policy** at http://rc.lsuc.on.ca/pdf/kt/67_6370_OnlineActivitySocialMediaPolicy2010.pdf.

OTHER CONSIDERATIONS

- When implementing systems for your practice, consider how they will interact and whether one system can integrate multiple practice management needs (e.g. calendaring, task tracking, time docketing and billing).
- Consider scheduling regular reviews of your practice management systems, policies and procedures to ensure their continued usefulness to your practice (e.g. to assess whether a policy or system is still appropriate, to make changes, to replace, or to discard if no longer required).
- Consider creating contingency plans to address planned and unplanned absences from practice and other practice interruptions (see the **Contingency Planning For Your Practice** section of this Guide).
- Consider documenting the policies, processes and procedures of your law practice in an office manual (see the **Office Manual** section of this Guide).

CONTINGENCY PLANNING FOR YOUR PRACTICE

Your duty of competent representation includes the obligation to take appropriate steps to safeguard your clients' interests in all circumstances. Failure to properly plan or prepare for both anticipated and unexpected absences from your practice or other practice interruptions may expose your clients to significant legal consequences or prejudice, and may subject colleagues or family members to financial and emotional stresses associated with preserving, transferring or closing your practice.

Ideally, you should have in place contingency plans to help you manage your practice during unforeseen business interruptions, planned and unplanned absences. Such plans should enable you to protect your client's interests by ensuring continuity during a business interruption or your absence. You should also have plans that allow for others to oversee the sale, transfer or closure of your practice, in the event you are unable to return to the practice of law.

Your contingency plans should be put in place as soon as possible after opening your practice, and should be reviewed regularly to ensure their continued utility. For guidance on how to properly assess your practice vulnerabilities and to anticipate and plan for events that may disrupt your practice, review LAWPRO®'s **Managing Practice Interruptions** resources at http://www.practicepro.ca/practice/Practice_Interruptions.asp. An introduction to the information contained in these resources has been provided below.

✓ **Checklist**

PRACTICE INTERRUPTIONS

- ❑ Consider drafting plans that outline how your practice will be managed if disrupted by
 - natural disaster (e.g. ice storm, snow storm, or regional flood)
 - office disaster (e.g. office fire or flood, building collapse)
 - civil action or unrest (e.g. strike or protest)
 - construction or renovation (e.g. office, building or surrounding area)
 - power or communications failure (e.g. prolonged blackout or phone system outage)
 - technology failure (e.g. by physical damage or viral contamination)
 - theft, vandalism or malicious damage (e.g. of equipment, premises or data)
 - fraud (e.g. theft of your identity or client funds)
 - departure of key employee(s)
 - law office search or seizure

- ❑ Plans that deal with practice interruptions may include information about
 - your emergency response team, evacuation plans, drills and first aid training

- temporary or alternate office space
- alternate communications channels
- replacing inventory or equipment, on a temporary or permanent basis (see **Law Office Inventory Checklist**)
- contact lists for clients, opposing legal representatives and courts
- contact lists for employees, landlord or property manager, financial institution(s), accountant or bookkeeper, insurers, third party suppliers, etc. (see **Law Office List of Contacts**)
- data backups, “restores” and off-site storage of duplicate electronic data
- off-site storage of copies of practice-related documents (e.g. partnership agreement or minute book, power of attorney, lease, business insurance policy, inventory list, blank general and trust cheques, etc.)
- proper storage of client property, client documents and client files (e.g. in a fireproof safe or fireproof cabinet)
- remote or backup access to your calendar and reminder system
- remote or backup access to your financial records for general and trust account(s)
- availability of additional funds, credit or cash flow to continue running your practice (e.g. via business insurance policy or a line of credit)

PLANNED ABSENCES

- Consider creating plans to assist you to manage your practice during any planned absence, including
 - vacation
 - parental leave
 - medical leave
 - other leave of absence

- Consider drafting a limited power of attorney for your practice that grants another named lawyer the authority to act on your behalf and to access your general and trust account(s) to continue with your practice during your planned absence.

- Consider whether the power of attorney document should include specific terms that clearly outline the attorney’s authority and responsibility regarding your practice.

- Confirm with your financial institution(s) whether a power of attorney for your general and trust accounts must be in any particular form, or if additional or different documentation is required.

- Consider including in your retainer agreement or engagement letter a clause that confirms arrangements have been made for another lawyer to assist during a planned

absence from your practice, and that the client's signature is deemed to be consent to permit the assisting lawyer to access, accept or transfer the client's file.

- Where you do not have arrangements for another lawyer to assist you during an unexpected absence, consider contracting a practice locum through the Law Society's **Contract Lawyers' Registry** (<http://rc.lsuc.on.ca/jsp/locum/index.jsp>).

UNPLANNED ABSENCES

- Consider creating plans to assist you to manage your practice during an unplanned absence or departure from your practice, including your
 - personal difficulties
 - illness
 - incapacity
 - disability
 - death
- Where you are experiencing personal difficulties (e.g. stress or depression, mental health and wellness, addiction), consider contacting the **Ontario Lawyers' Assistance Program** at 905-238-1740 or 1-877-576-6227 (www.olap.ca).
- Consider drafting a power of attorney for your practice that grants another named lawyer the authority to act on your behalf and to access your general and trust account(s) to continue with your practice during in the event of your illness, incapacity or disability, with terms that allow that lawyer to arrange for and oversee the sale, transfer or closure of your practice in the event you are unable to return to the practice of law.
- Consider whether the power of attorney document should include specific terms that clearly outline the attorney's authority and responsibility regarding your practice.
- Confirm with your financial institution(s) whether a power of attorney for your general and trust accounts must be in any particular form, or if additional or different documentation is required.
- Consider including in your will a clause that addresses how your practice should be sold, transferred or closed in the event of your death. Consider appointing a lawyer as the estate trustee or a co-estate trustee to oversee the conclusion of your practice.
- Consider including in your retainer agreement or engagement letter a clause that confirms arrangements have been made for another lawyer to assist during an unplanned absence from your practice, and that the client's signature is deemed to be consent to permit the assisting lawyer to access, accept or transfer the client's file.
- Where you do not have arrangements for another lawyer to assist you during an unexpected absence, consider contracting a practice locum through the Law Society's **Contract Lawyers' Registry** (<http://rc.lsuc.on.ca/jsp/locum/index.jsp>).

ARRANGEMENTS WITH ASSISTING LAWYER(S)

- ❑ Consider entering into a reciprocal or “buddy system” arrangement with another lawyer or lawyers, wherein you will act as each other’s attorney, estate trustee or co-estate trustee, for purposes of continuing or concluding the law practice.
- ❑ To find an assisting or “buddy” lawyer for your contingency plans, consider
 - current and former employers, partners or associates
 - current and former mentors, colleagues or peers
 - lawyers with whom you practise(d) in “association”
 - lawyers with whom you share(d) office space
- ❑ The assisting or “buddy” lawyer
 - should be informed and familiar with your practice, staff and management systems
 - must be entitled to practice law (e.g. his or her licence is not suspended or in abeyance at the time he or she is needed to assist you)
 - must carry appropriate professional liability insurance (e.g. standard or specific coverage, such as for real estate, at the time he or she is needed to assist you)
 - must be competent to take on matters in your area(s) of practice
 - must check for conflicts of interest prior to taking on matters from your practice
- ❑ To ensure that assisting or “buddy” lawyer has all the necessary resources to take your place, you should ensure that
 - your employees, family, and other relevant persons know of your arrangement with the assisting or “buddy” lawyer
 - your practice is organized at all times
 - contact information is readily accessible
 - client files, funds and property are secure and accessible
 - client files are organized and contain a summary of tasks completed and next steps
 - calendaring, reminder and docketing records are current and accessible
 - billing and financial records are current and accessible
 - additional finances are available to continue, transfer or close your practice
- ❑ Consider confirming the arrangement(s) with any assisting or “buddy” lawyer(s) by way of a detailed letter of understanding signed by the participating lawyers.

IMPACT ON ANNUAL FEE AND PROFESSIONAL LIABILITY INSURANCE

- ❑ Where your absence from practice is for longer than one calendar month, you may be eligible for a pro-rated reduction in your annual fee to the Law Society for that (or those)

month(s), and a refund of any overpayment. For information, contact the Law Society's Resource Centre at 416-947-3315 or toll-free at 1-800-668-7380 extension 3315.

- ❑ Where your absence from practice is due to maternity, parental or adoption leave, you may be eligible for financial benefits through the Law Society's **Parental Leave Assistance Program**. For information, contact the Law Society's Resource Centre at 416-947-3315 or toll-free at 1-800-668-7380 extension 3315, or visit the program web page at <http://rc.lsuc.on.ca/jsp/equity/PLAP.jsp>.
- ❑ Where your absence from practice is due to medical reasons, you may be eligible to apply for an exemption from the requirement to pay the annual fee to the Law Society during your absence. For assistance, contact the Law Society's Administrative Compliance department via the Resource Centre at 416-947-3315 or toll-free at 1-800-668-7380 extension 3315.
- ❑ Your absence from practice may also impact your professional liability insurance coverage needs. Contact LAWPRO® at 416-598-5899 or toll-free at 1-800-410-1013 to determine if a change is required and you are eligible for a pro-rated refund of any overpayment of premiums.

OTHER CONSIDERATIONS

- ❑ When devising your contingency plans, consider whether one comprehensive plan can integrate multiple needs (e.g. one evacuation plan for natural and office disasters).
- ❑ Consider scheduling regular reviews of your contingency plans and any related documents (i.e. insurance policies, power of attorney or will) to ensure their continued usefulness to your practice (e.g. to assess whether it is still appropriate, should be changed, replaced, or discarded if no longer required). Reviews should also be completed when there is a change in circumstance that affects you or your practice, such as a change to your
 - practice structure (e.g. an "association" with another lawyer becomes a partnership)
 - relationship with any assisting or "buddy" lawyer(s) or their ability to assist (e.g. his or her incapacity or death)
 - staff, their job descriptions or responsibilities
 - practice area(s) or the legal services you provide
 - practice management systems (e.g. calendaring and reminder system or document management system)
 - office technology (e.g. hardware, firm website, communication systems)
 - office space
- ❑ Consider documenting the contingency plans for your law practice in or as an appendix to your office manual (see the **Office Manual** section of this Guide). Where appropriate, store a backup copy of your contingency plans off-site.

- To plan in advance for the eventual sale or transfer of your practice, consider reviewing the **Succession Planning Toolkit**, available through the Practice Resources section of the online Resource Centre at <http://rc.lsuc.on.ca>.
- To prepare for the eventual closure of your practice, consider reviewing the **Guide to Closing your Practice** <http://rc.lsuc.on.ca/pdf/practiceGuides/closingYourPracticeGuide.pdf>.

OFFICE MANUAL

Ideally, the policies, processes and procedures of your practice should be documented in an office manual as soon as possible after opening your practice. An office manual may be used to train new employees and support staff, may help ensure consistency in your processes and may assist another lawyer to manage your practice during both expected and unexpected absences. You should do a regular review of your systems and office manual to ensure their continued usefulness, as your practice changes or grows. Though the detail and depth of your office manual will reflect the nature and size of your law practice, an overview of the information you should consider including in your office manual has been provided below.

✓ *Checklist*

INTRODUCTION

- Include an introduction to the office manual that explains
 - the purpose of the manual
 - proper use of the manual (e.g. who should use it, and how)
 - feedback on the manual (e.g. how to provide, and to whom)
 - reviews, amendments and updates to the manual
 - forms, templates and appendices included in the manual

GENERAL

- Provide general information about you and your practice, such as
 - brief information about you
 - a short history and profile of the practice
 - a statement of purpose or a “mission statement” for the practice
 - practice area(s) and the legal services you offer
 - the business goals for the practice (e.g. referring to any business plan, annual budget or marketing plan for the practice)
 - the practice structure, including satellite offices or “associations” with others
 - management and supervisory structure, if applicable

STAFFING AND EMPLOYMENT

- Outline policies and procedures for staffing and employment issues related to lawyer and non-lawyer staff, including
 - brief job descriptions

- recruitment policies (e.g. advertising, interviewing and hiring)
 - employment contracts
 - probationary status and probation periods
 - training and development, both internal and external
 - performance and salary reviews
- Include other employment related information, such as policies for
 - overtime or earned time
 - statutory holidays and religious observances
 - annual and unpaid sick leave
 - annual vacation and unpaid leave
 - paid and unpaid compassion or bereavement leave
 - employment benefits (e.g. medical or dental)
 - travel and other expenses
 - payroll

OFFICE ADMINISTRATION

- Outline office administration policies for
 - office hours, lunch and break periods
 - access to and security of office premises
 - occupational health and safety
 - sexual harassment and discrimination
 - use of meeting or conference rooms
 - office inventory and supplies
 - office equipment use
 - service providers and contractors
 - recycling and conservation
 - office dress code
 - petty cash
- Include office administration procedures that relate to
 - acceptance or admission of service
 - incoming e-mail, mail, facsimiles and couriers

- outgoing e-mail, mail, facsimiles and couriers (e.g. including use of digital signature, confidentiality disclaimer, firm letterhead, facsimile cover sheets, etc.)
- incoming telephone calls, messages, voice mail and return calls
- collect or long distance telephone calls
- telephone system and directory
- practice website and office intranet

PRACTICE MANAGEMENT

- Review the **Practice Management** section of this Guide for more information on the policies, processes and procedures to implement and include in an office manual.
- Outline your policies for communicating with clients, as well as
 - the public
 - opposing or involved parties
 - other lawyers or legal representatives
 - representatives of the courts or tribunals
 - business contacts, service providers and contractors
 - the Law Society of Upper Canada
 - LAWPRO®
- Include filing systems policies and procedures for opening, closing, organizing, storing, destroying or retaining files and file contents.
- Describe financial management policies and procedures, including those for
 - financial obligations, yours or those undertaken on behalf of the client
 - recording disbursements and fees incurred on client matters
 - preparation and delivery of client bills or statements of account, interim and final
 - payment options, interest on and collection of overdue accounts
 - financial transactions and record keeping for both general and trust account(s)
 - reporting to the Law Society of Upper Canada, the Law Foundation of Ontario and the Canada Revenue Agency (CRA)
 - internal controls
- Outline policies and procedures that relate to time management, such as the proper use of time calendaring, reminder and recording systems.

- ❑ Describe policies and procedures for the proper and prohibited use of technology in your practice, including e-mail and Internet policies, security, backup and disaster recovery, and internal controls.

CONTINGENCY PLANS

- ❑ Consider documenting the contingency plans for your law practice in or as an appendix to your office manual.

PROFESSIONAL RESPONSIBILITIES

- ❑ Consider including policies that relate to your professional responsibilities outlined in the *Rules of Professional Conduct* and the By-Laws, such as
 - client identification and verification of identity [By-Law 7.1]
 - maintaining client confidentiality [Rule 2.03]
 - proper handling of client property and funds [By-Law 9]
 - managing conflicts of interest [Rules 2.04 to 2.06]
 - preventing unauthorized practice of law or provision of legal services [Rule 6.07]
 - proper supervision and delegation [Rule 5.01 and By-Law 7.1]
 - managing articling and law students [Rule 5.02]
 - abstaining from sexual harassment [Rule 5.03]
 - avoiding discrimination [Rule 5.04]
 - dealing with client claims and complaints [Rules 6.09 and 6.01]
 - acting with courtesy and civility [Rule 6.03]
- ❑ Consider including procedures that relate to your administrative responsibilities to the Law Society and others, including your requirement to pay the annual fee, submit annual filings and maintain adequate professional liability insurance through LAWPRO®.

OTHER CONSIDERATIONS

- ❑ Consider whether your manual will be maintained in electronic or paper form, or both.
- ❑ When creating your office manual consider whether you
 - are capable and have the time to draft the manual yourself
 - have staff to whom you can delegate the creation of the manual
 - can procure an office manual template
 - should hire a consultant to draft the manual for you
- ❑ Ensure that the content of any office manual or handbook is consistent with the *Employment Standards Act* and the *Rules of Professional Conduct* [Rule 5.04]

Discrimination]. See the Law Society's **Equity Model Policies, Publications and Reports**, available through the online Resource Centre at <http://rc.lsuc.on.ca>.

PREPARING A BUSINESS PLAN

A business plan is a document that contains a formal statement of business goals and the plan for reaching those goals. It may also contain background information about the organization or the team attempting to reach those goals. There is no fixed content for a business plan.

The business plan for your law practice should be tailored for your intended audience. If the plan is for your purposes only it will contain less detailed information than if it is to be used by a bank for purposes of financing, or by another party for some other purpose. Where possible, your business plan should include a budget and estimated costs for starting your practice, and for maintaining your practice into the future.

When you are implementing your completed business plan, you should regularly review it to determine if you have met the goals outlined in your plan. If you are not meeting your goals, you may need to update the plan and amend your original strategies. The process of reviewing and updating your plan as your goals are met or change is one that will continue as long as you operate your own practice. The level of formality involved in the review and update process will be determined by the needs of your audience. See the **Developing a Law Firm Business Plan** sample document included in this Guide.

✓ Checklist

- ❑ When preparing a business plan for third parties, such as a financial institution, ascertain whether they have a preferred format or template available.
- ❑ Use plain language and concise ideas to ensure that your business plan is easy to read.
- ❑ Use appendices if you include tables, charts, graphs, illustrations, financial statements, résumés, etc.
- ❑ Create a professional document that is properly printed, indexed and bound.
- ❑ Prepare a *Cover Page*, outlining
 - title
 - name of law practice
 - address of the law practice
 - key contact people and contact information
- ❑ Create a *Table of Contents*, for your audience's ease of reference.

- Draft an Executive Summary that briefly outlines the most important points of your business plan. Consider drafting this after the remainder of your plan is complete, and include
 - a description of your law practice
 - the goals and strategies for your practice
 - partners, associates and other key staff
 - practice areas and areas of specialization (if applicable)
 - the unique characteristics of your practice
 - the types of clients your practice will serve
 - practice economics and profitability
 - financing requirements

- Outline the *Market for Legal Services*, describing in detail the
 - need for legal services in the local economy
 - marketing plan for your practice
 - practice areas, specialties and ancillary services offered
 - start-up and growth strategies for your practice

- Include a section for *Market Research and Analysis*, that details
 - current and potential clients of your practice
 - market size and trends
 - competition with other law firms or legal service providers
 - future practice areas

- Create a *Marketing Plan*, describing in detail the
 - overall marketing strategy for the practice
 - billing rates and alternate billing policies
 - client service initiatives
 - advertising and solicitation plan

- Include a section for *Firm Economics* that describes
 - start-up expenses
 - billing summaries
 - expense summaries
 - total expenses

- Include a section on *Business Environment and Firm Personnel*, outlining
 - backgrounds, responsibilities, qualifications and résumés of the lawyers involved in managing the practice
 - ownership structure (e.g. sole proprietorship, partnership, etc.)
 - information on the team of professionals you have gathered to advise you (e.g. accountant, corporate lawyer, IT specialist, etc.)
 - human resource and staffing needs

- Formulate a *Financial Plan*, outlining
 - projected financial performance, including a *pro forma* income statement, *pro forma* balance sheet and cash flow statement (see **Fee Projections Worksheet**, **Cash Flow Worksheet** and **Profit and Loss Statement**)
 - financing requirements (if any) and repayment proposal, including personal wealth statements of the business owner(s)

- Include a *Conclusion* that restates your aims and objectives and, if your audience is a financial institution, explain why you are an excellent candidate for financing.

APPENDICES

LETTER OF DIRECTION REGARDING INTEREST ON MIXED TRUST ACCOUNT

To: The Bank Manager

Name of Bank: _____

(chartered bank, provincial savings office, registered trust company, credit union or caisse populaire)

Branch: _____

Address: _____

Re: The Law Foundation of Ontario and my Account Number _____

The above account is _____ in my name

_____ in the name of the firm with which I am associated

In accordance with Section 57 of the *Law Society Act*, I direct you, until further notice, to compute the amount earned by applying to the balance in the above account the rate of interest approved from time to time by the Trustees of The Law Foundation of Ontario (LFO). Please pay into an account held in your main office in Ontario in the name of The Law Foundation of Ontario amounts so calculated and, when each such payment is made, give written notice to me at my address listed for the above account and to The Law Foundation of Ontario at 20 Queen Street West, Suite 3002, Box #19, Toronto ON, M5H 3R3. The notice provided by you should show, as applicable to the terms of the interest agreement between the LFO and your financial institution, the amount of the payment, the amounts of the daily/monthly balances, and the rates of interest used in calculating the payment.

Dated: The day of ____, _____, 20__.

(Signed)

Firm Name: _____

Address: _____

LETTER TO LAW SOCIETY OF UPPER CANADA

Re: [lawyer name, Law Society number]

Please be advised that effective [date], I will be opening a law practice [with names of lawyer(s) or others, if applicable], which is a [sole proprietorship, business structure, practice arrangement]. The firm name is [firm name]. Enclosed with this letter is a completed Change of Information Form that outlines my resulting change in status and contact information.

If you require further information contact me at my office address, as provided.

Sincerely,

[lawyer, law firm]

LAW OFFICE INVENTORY CHECKLIST

ITEM	OWNERSHIP	DISPOSITION
Communication Systems		
1. desktop phones		
2. cellular phones or smart phones, pagers		
3. handsets, headsets or earpieces		
4. call routing or voice mail systems		
5. answering machines		
6. fax machines		
7. website and e-mail		
8. accessories (e.g. batteries, chargers, etc.)		
9. other		
Computer Systems		
1. desktop computers		
2. laptop computers		
3. personal digital assistants (PDAs)		
4. servers and drives (e.g. backup, portable)		
5. printers and scanners		
6. peripherals (e.g. keyboards, routers, speakers)		
7. portable memory storage (e.g. flash drive)		
8. accessories (e.g. cables, surge protectors, etc)		
9. other		

ITEM	OWNERSHIP	DISPOSITION
Equipment		
1. photocopiers		
2. shredders		
3. dictation equipment		
4. debit/credit machines		
5. other		
Furniture		
1. office desks, computer desks, tables		
2. office and other seating		
3. filing, shelving and storage		
4. other		
Books		
<i>(itemize as necessary)</i>		
Office Supplies		
<i>(itemize as necessary)</i>		
Off-site Storage		
<i>(itemize as necessary)</i>		

LAW OFFICE LIST OF CONTACTS

LAWYER'S PERSONAL INFORMATION

Name: _____

Date of birth: _____

Social Insurance Number: _____

Office Address: _____

Phone: _____

Fax: _____

E-mail: _____

Home Address: _____

Phone: _____

E-mail: _____

LAWYER'S SPOUSE OR FAMILY CONTACT

Name: _____

Home Address: _____

Phone: _____

E-mail: _____

LAW OFFICE MANAGER

Name: _____

Home Address: _____

Phone: _____

E-mail: _____

OFFICE PASSWORDS (PERSON WITH ACCESS TO COMPUTERS, E-MAIL, VOICE MAIL, ETC.)

Name: _____

Home Address: _____

Phone: _____

E-mail: _____

Name: _____

Home Address: _____

Phone: _____

E-mail: _____

OFFICE LANDLORD OR PROPERTY MANAGER

Name: _____

Address: _____

Phone: _____

E-mail: _____

BOOKKEEPER

Name: _____

Address: _____

Phone: _____

E-mail: _____

ACCOUNTANT

Name: _____

Address: _____

Phone: _____

E-mail: _____

LAWYERS OR OTHERS WHO SHARE OFFICE SPACE

Name: _____

Address: _____

Phone: _____

E-mail: _____

LAWYER OR OTHER LEGAL REPRESENTATIVE

Name: _____

Address: _____

Phone: _____

E-mail: _____

PERSONAL REPRESENTATIVE(S)

Location of Will: _____

Estate Trustee: _____

Address: _____

Phone: _____

E-mail: _____

Location of
Power of Attorney: _____

Attorney: _____

Address: _____

Phone: _____

E-mail: _____

LAWYERS TO ASSIST WITH PRACTICE CLOSURE OR TRANSFER

Name: _____

Address: _____

Phone: _____

E-mail: _____

Name: _____

Address: _____

Phone: _____

E-mail: _____

MIXED TRUST ACCOUNT(S)

Institution: _____

Account Number: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

E-mail: _____

Institution: _____

Account Number: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

E-mail: _____

SEPARATE TRUST ACCOUNT(S)

Institution: _____

Account Number: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

E-mail: _____

Institution: _____

Account Number: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

E-mail: _____

ESTATE ACCOUNT(S)

Client/File Number: _____

Institution: _____

Account Number: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

E-mail: _____

Client/File Number: _____

Institution: _____

Account Number: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

E-mail: _____

GENERAL ACCOUNT(S)

Institution: _____

Account Number: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

E-mail: _____

Institution: _____

Account Number: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

E-mail: _____

BUSINESS CREDIT CARDS AND LINES OF CREDIT

Institution: _____

Account Number: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

E-mail: _____

Institution: _____

Account Number: _____

Address: _____

Phone: _____

Other Signatory: _____

Address: _____

Phone: _____

E-mail: _____

PROCESS SERVICE COMPANY

Provider: _____

Address: _____

Phone: _____

E-mail: _____

SECURE DOCUMENT EXCHANGE SERVICE

Provider: _____

Box Number: _____

Address: _____

Phone: _____

E-mail: _____

POST OFFICE OR OTHER MAIL SERVICE BOX

Provider: _____

Box Number: _____

Address: _____

Phone: _____

E-mail: _____

Key Holder/Signatory: _____

Address: _____

Phone: _____

E-mail: _____

Other Key Holder/
Signatory:

Address:

Phone:

E-mail:

SAFETY DEPOSIT BOXES

Institution:

Box Number:

Address:

Phone:

Key Holder/Signatory:

Address:

Phone:

E-mail:

Other Key Holder/
Signatory:

Address:

Phone:

E-mail:

Items Stored:

OFF-SITE STORAGE

Provider: _____

Locker Number: _____

Address: _____

Phone: _____

E-mail: _____

Key Holder: _____

Address: _____

Phone: _____

E-mail: _____

Other Key Holder: _____

Address: _____

Phone: _____

E-mail: _____

Items Stored: _____

LEASES AND MAINTENANCE CONTRACTS

Item: _____

Lessor/Vendor: _____

Address: _____

Phone: _____

E-mail: _____

Lease/ Contract
Expiry Date: _____

Item: _____

Lessor/Vendor: _____

Address: _____

Phone: _____

E-mail: _____

Lease/ Contract
Expiry Date: _____

Item: _____

Lessor/Vendor: _____

Address: _____

Phone: _____

E-mail: _____

Lease/ Contract
Expiry Date: _____

SERVICE PROVIDERS AND SUPPLIERS

Provider/Supplier: _____

Address: _____

Phone: _____

E-mail: _____

Website: _____

Provider/Supplier: _____

Address: _____

Phone: _____

E-mail: _____

Website: _____

Provider/Supplier: _____

Contact Person: _____

Address: _____

Phone: _____

E-mail: _____

Website: _____

PROFESSIONAL LIABILITY INSURANCE – PRIMARY COVERAGE

Insurer: **LAWPRO®**
Lawyers' Professional Indemnity Company

Policy number: _____

Address: 250 Yonge Street, Suite 3101
P.O. Box 3
Toronto, ON M5B 2L7

Phone: 416-598-5899 or 1-800-410-1013

E-mail: service@lawpro.ca

Website: www.lawpro.ca

EXCESS COVERAGE

Insurer: _____

Policy number: _____

Address: _____

Phone: _____

E-mail: _____

Website: _____

BUSINESS OR COMMERCIAL INSURANCE

Insurer: _____

Policy number: _____

Address: _____

Phone: _____

E-mail: _____

Website: _____

LIFE INSURANCE

Insurer: _____

Policy number: _____

Address: _____

Phone: _____

E-mail: _____

Website: _____

HEALTH OR DISABILITY INSURANCE

Insurer: _____

Policy number: _____

Address: _____

Phone: _____

E-mail: _____

Website: _____

EXTENDED HEALTH CARE INSURANCE

Insurer: _____

Policy number: _____

Address: _____

Phone: _____

E-mail: _____

Website: _____

ADMITTED TO PRACTICE IN OTHER JURISDICTIONS

Jurisdiction: _____

Member/Licence number: _____

Address: _____

Phone: _____

E-mail: _____

Website: _____

Jurisdiction: _____

Member/Licence number: _____

Address: _____

Phone: _____

E-mail: _____

Website: _____

Jurisdiction: _____

Member/Licence number: _____

Address: _____

Phone: _____

E-mail: _____

Website: _____

OTHER PROFESSIONAL MEMBERSHIPS

Association/
Organization: _____

Member/
Licence Number: _____

Address: _____

Phone: _____

E-mail: _____

Website: _____

Association/
Organization: _____

Member/
Licence Number: _____

Address: _____

Phone: _____

E-mail: _____

Website: _____

Association/
Organization: _____

Member/
Licence Number: _____

Address: _____

Phone: _____

E-mail: _____

Website: _____

OTHER IMPORTANT CONTACTS

Name: _____

Address: _____

Phone: _____

E-mail: _____

Reason for Contact: _____

Name: _____

Address: _____

Phone: _____

E-mail: _____

Reason for Contact: _____

Name: _____

Address: _____

Phone: _____

E-mail: _____

Reason for Contact: _____

DEVELOPING A LAW FIRM BUSINESS PLAN

The following worksheet leads you through each of the categories of a basic law practice business plan. Although the practice of law is a profession. . . law practice is a business. Careful planning increases the opportunity for a successful practice without the unanticipated surprises that cause practices to fail.

1. EXECUTIVE SUMMARY

A. Description of the Law Firm

[brief summary paragraph]

B. Firm Goals and Strategy

[brief statement]

C. Partners and Key Staff

[brief statement]

D. Practice Areas and Specialties

[brief statement]

E. Unique Characteristics of the Firm

[brief statement]

F. Types of Clients to be Served

[brief statement]

Mitchel L. Winick, J.D., Texas Center for Legal Ethics and Professionalism, Austin, Texas, 1-800-204-2222 ext. 2161, mwinick@airmail.net

G. Firm Economics and Profitability

[brief statement] _____

H. Financing Requirements

[brief statement] _____

2. THE MARKET FOR LEGAL SERVICES

A. The Local Economy and the Need for Legal Services

[detailed analysis - may be additional pages] _____

B. The Firm’s Marketing Plan

[detailed analysis - may be additional pages] _____

C. The Firm’s Practice Areas

[detailed analysis - may be additional pages] _____

D. The Firm’s Start-Up and Growth Strategy

[detailed analysis - may be additional pages] _____

3. MARKET RESEARCH AND ANALYSIS

A. Current and Potential Clients

[detailed analysis - may be additional pages] _____

B. Market Size and Trends
 [detailed analysis - may be additional pages]

C. Competition - Other law firms
 [detailed analysis - may be additional pages]

D. Future Practice Areas
 [detailed analysis - may be additional pages]

4. FIRM ECONOMICS

A. Start-up Expenses
 [detailed analysis - insert chart or spreadsheet]

Expense Items	Estimated Cost	Cash or Credit	Source of Cash or Credit
Total Start-Up Expenses			

B. Billing Summaries
 [detailed analysis - insert chart or spreadsheet]

Projected Revenue	Per Month	Per Year
Hourly Fees	\$	\$
Contingency Fees	\$	\$
Flat Fees	\$	\$
Retainer Fees	\$	\$
Other Fees	\$	\$
Other Revenue	\$	\$
Total Revenue	\$	\$

C. Expense Summaries

	<u>Monthly</u>	<u>Annual</u>	
Payroll:			
Partners	\$.....	\$.....	
Associates	\$.....	\$.....	
Paralegals	\$.....	\$.....	
Law Clerks	\$.....	\$.....	
Assistants	\$.....	\$.....	
Other Staff	\$.....	\$.....	
Sub-total Payroll Expenses	\$.....		\$.....
Taxes and Benefits:			
Payroll Taxes	\$.....	\$.....	
Insurance	\$.....	\$.....	
Parking	\$.....	\$.....	
Other	\$.....	\$.....	
Sub-total Taxes & Benefits	\$.....		\$.....
Office Expenses:			
Advertising	\$.....	\$.....	
Bank Charges	\$.....	\$.....	
Books	\$.....	\$.....	
Other Library Expenses	\$.....	\$.....	
Client Development	\$.....	\$.....	
Equipment Rental	\$.....	\$.....	
Insurance-Gen. Liability	\$.....	\$.....	
Insurance-Excess	\$.....	\$.....	
Maintenance/Repair	\$.....	\$.....	
Office Supplies	\$.....	\$.....	
Periodicals	\$.....	\$.....	
Professional Fees/Dues	\$.....	\$.....	
Rent	\$.....	\$.....	
Taxes	\$.....	\$.....	
Telephone	\$.....	\$.....	
Travel Expenses	\$.....	\$.....	
Utilities	\$.....	\$.....	
Sub-total Office Expenses	\$.....		\$.....
	=====		=====
Total Expenses	\$.....		\$.....

D. Revenue/Net Income per Partner

Partner Name	Gross Revenue (total fees)	Net Income (fees-expenses)	Partner Compensation
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$

5. MARKETING PLAN

A. Overall Marketing Strategy

[detailed analysis - may be additional pages]

B. Billing Rates and Alternative Billing Policies

[detailed analysis - may be additional pages]

C. Client Service Initiatives

[detailed analysis - may be additional pages]

D. Advertising and Solicitation Plan

[detailed analysis - may be additional pages]

6. FIRM PERSONNEL

	<u>Name</u>	<u>Brief Biography</u>
A. Partners	<hr/> <hr/>	<hr/> <hr/>
B. Associates	<hr/> <hr/>	<hr/> <hr/>
C. Key Staff	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>

7. THE FINANCIAL PLAN

A. Income Statements and Balance Sheets

[detailed analysis - insert chart or spreadsheet]

B. Pro Forma Income Statements

[detailed analysis - insert chart or spreadsheet]

C. Pro Forma Balance Sheet

[detailed analysis - insert chart or spreadsheet]

D. Pro Forma Cash Flow Analysis

[detailed analysis - insert chart or spreadsheet]

FEE PROJECTIONS WORKSHEET

Use this format to make fee projections. Multiply your estimated monthly billable hours times your average billing rate to derive your projected billable fees. Multiply that by the percentage of fees actually billed to clients and by the percentage of billed fees you expect to collect from clients. The result is projected fees received.

	Jan	Feb	Mar	Apr	Mar	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Billable Hours Worked													
Average Billing Rate													
Projected Billable Fees													
% Billed (Invoiced)													
Projected Billed Fees													
% Collected													
Projected Fees Received													

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CASH FLOW WORKSHEET

The process of developing and tracking a monthly cash budget forces you to identify how much it costs to operate and manage your law practice. The budget process is one of the most essential management tools for maintaining the financial health of your practice.

On a monthly basis you should compare your actual vs. budgeted cash flow. By creating and reviewing a monthly cash flow report, you can make decisions on certain expense items based on the availability of cash. The careful monitoring of a cash flow budget can make the difference between success and financial failure of a law practice.

	<u>Budget</u>	<u>Actual</u>
Sources of Cash:		
Fee Income:		
Hourly Fee Income	\$.....	\$.....
Flat Fee Income	\$.....	\$.....
Contingency Fee Income	\$.....	\$.....
Retainer Fee Income	\$.....	\$.....
Other Income	\$.....	\$.....
	_____	_____
 Total Cash Available	 \$.....	 \$.....
 Uses of Cash:		
Payroll:		
Partners	\$.....	\$.....
Associates	\$.....	\$.....
Paralegals	\$.....	\$.....
Law Clerks	\$.....	\$.....
Assistants	\$.....	\$.....
Other Staff	\$.....	\$.....
 Total Payroll Expenses	 \$.....	 \$.....
 Taxes and Benefits:		
Payroll Taxes	\$.....	\$.....
Insurance	\$.....	\$.....
Parking	\$.....	\$.....
Other	\$.....	\$.....
 Total Taxes & Benefits	 \$.....	 \$.....

Office Expenses:

Advertising	\$.....	\$.....
Bank Charges	\$.....	\$.....
Books	\$.....	\$.....
Other Library Expenses	\$.....	\$.....
Client Development	\$.....	\$.....
Equipment Rental	\$.....	\$.....
Insurance-Gen.Liability	\$.....	\$.....
Insurance-Excess	\$.....	\$.....
Maintenance/Repair	\$.....	\$.....
Office Supplies	\$.....	\$.....
Periodicals	\$.....	\$.....
Professional Fees/Dues	\$.....	\$.....
Rent	\$.....	\$.....
Taxes	\$.....	\$.....
Telephone	\$.....	\$.....
Travel Expenses	\$.....	\$.....
Utilities	\$.....	\$.....

Total Office Expenses	\$.....	\$.....
-----------------------	---------	---------

Client Related Expenses:

Filing Fees	\$.....	\$.....
Court Reporters	\$.....	\$.....
Expert Witnesses	\$.....	\$.....
Travel	\$.....	\$.....
Parking	\$.....	\$.....
Other	\$.....	\$.....
Delivery Services	\$.....	\$.....

Total Client Related Expenses	\$.....	\$.....
-------------------------------	---------	---------

Total Cash Uses	(\$.....)	(\$.....)
------------------------	-----------	-----------

Total Cash Sources	\$.....	\$.....
--------------------	---------	---------

Cash Balance	\$.....	\$.....
---------------------	---------	---------

PROFIT AND LOSS STATEMENT

INCOME	CURRENT PERIOD	YEAR-TO-DATE
Fee Income	\$ _____	\$ _____
Client Expense Income	\$ _____	\$ _____
Sublease Rental Income	\$ _____	\$ _____
Fee Income	\$ _____	\$ _____
Interest Income	\$ _____	\$ _____
TOTAL INCOME	\$ _____	\$ _____
EXPENSES		
Shareholder Compensation	\$ _____	\$ _____
Advertising	\$ _____	\$ _____
Postage	\$ _____	\$ _____
Telephone	\$ _____	\$ _____
Fax	\$ _____	\$ _____
Total Communications Expenses	\$ _____	\$ _____
Associate Expenses	\$ _____	\$ _____
Staff Salaries	\$ _____	\$ _____
Employer's Taxes	\$ _____	\$ _____
Group Benefits	\$ _____	\$ _____
Contract Services	\$ _____	\$ _____
Parking/Office	\$ _____	\$ _____
Total Employee Expenses	\$ _____	\$ _____
WSIB Premiums	\$ _____	\$ _____
Multi Peril, Etc.	\$ _____	\$ _____
Key Man	\$ _____	\$ _____
Professional Services/Others	\$ _____	\$ _____
Referral Fees	\$ _____	\$ _____
Penalties	\$ _____	\$ _____
Total Insurance, Tax & Fee Expenses	\$ _____	\$ _____
Rent – Office/Basement	\$ _____	\$ _____
Utilities	\$ _____	\$ _____
Total Occupancy Expenses	\$ _____	\$ _____
Client Expenses	\$ _____	\$ _____
Accounting	\$ _____	\$ _____
Auto Expense	\$ _____	\$ _____
Bank Charges	\$ _____	\$ _____
Delivery Expense	\$ _____	\$ _____
Firm Business Meals	\$ _____	\$ _____
Filing Fees/Firm Expense	\$ _____	\$ _____
Internet Fees	\$ _____	\$ _____
Lease Equipment	\$ _____	\$ _____
Library	\$ _____	\$ _____
Maintenance – Equipment	\$ _____	\$ _____
Parking	\$ _____	\$ _____
Reproduction – Equipment	\$ _____	\$ _____
Subscriptions	\$ _____	\$ _____
Supplies	\$ _____	\$ _____
Total Office Expenses	\$ _____	\$ _____
Annual Functions	\$ _____	\$ _____
Continuing Legal Education (CLE)	\$ _____	\$ _____
Client Development	\$ _____	\$ _____
Professional Fees/Dues	\$ _____	\$ _____
Entertainment	\$ _____	\$ _____
Gifts	\$ _____	\$ _____
Total Professional Activities Expenses	\$ _____	\$ _____
Contributions	\$ _____	\$ _____
Interest	\$ _____	\$ _____
Total Miscellaneous Expenses	\$ _____	\$ _____
TOTAL EXPENSES	\$ _____	\$ _____
OPERATING INCOME	\$ _____	\$ _____

LIST OF RESOURCES

GENERAL GUIDES AND RESOURCES

Law Society of Upper Canada

Bookkeeping Guide for Lawyers <http://rc.lsuc.on.ca/jsp/bookkeepingGuide/index.jsp>
Client Identification and Verification Resources <http://rc.lsuc.on.ca/pdf/kt/clientIDLawyers.pdf>
Equity Model Policies <http://rc.lsuc.on.ca/jsp/equity/policies-publications-reports.jsp>
FAQs – The Knowledge Tree <http://rc.lsuc.on.ca/jsp/kt/loadKnowledgeTreePage.do>
How-To Briefs <http://rc.lsuc.on.ca/jsp/ht/index.jsp>
Legal Research Guides http://rc.lsuc.on.ca/library/research_guides.htm
Opening Your Law Practice 2010, under Continuing Legal Education <http://ecom.lsuc.on.ca/cle>
Practice Management Guidelines at <http://rc.lsuc.on.ca/jsp/pmg/executiveSummary.jsp>
 Client Service and Communication Guideline
 File Management Guideline
 Financial Management Guideline
 Time Management Guideline
 Technology Guideline
Resource Centre <http://rc.lsuc.on.ca>
Succession Planning Toolkit <http://ecom.lsuc.on.ca/cle/product.jsp?id=CLE09-0040901>

LAWPRO®

E&O Insurance <http://www.lawpro.ca/Insurance/default.asp>
Lending Library <http://www.practicepro.ca/practice/library.asp>
Managing Finances of Your Practice <http://www.practicepro.ca/practice/PracticeFinances.asp> †
Managing Practice Interruptions http://www.practicepro.ca/practice/Practice_Interruptions.asp

Other

Business Development Bank of Canada, Start a Business <http://www.bdc.ca/en/home.htm> †‡
Canada Business, Starting a Business <http://www.canadabusiness.ca/eng/125> ‡
Canadian Bar Association, Resources for Solo & Small Firm Lawyers
<http://www.cba.org/CBA/practicelink/solosmall%5Fmain>
Ministry of Economic Development and Trade, Your Guide to Small Business
http://www.ontariocanada.com/ontcan/1medt/smallbiz/sb_downloads/yrguide_sb_en.pdf †
Ministry of Economic Development and Trade, Business Guides
http://www.ontario.ca/en/communities/business/ONT03_020820
My Shingle, Online Guide <http://www.myshingle.com/2008/01/resources/online-guide> †

† Contains entrepreneurial self-assessment tools or resources.

‡ Contains a business plan outline or template.

TECHNOLOGY RESOURCES

American Bar Association, Legal Technology Resource Center
http://www.abanet.org/tech/ltrc/?gnav=global_memberresources_techresources

Canadian Lawyer Magazine, 2009 Legal Software Survey
<http://www.canadianlawyermag.com/surveys>

Law Society of Upper Canada, Sample Online Activity and Social Media Policy
http://rc.lsuc.on.ca/pdf/kt/67_6370_OnlineActivitySocialMediaPolicy2010.pdf

Law Society of Upper Canada, Legal Software and Other Online Resources for Your Practice
<http://rc.lsuc.on.ca/pdf/kt/legalSoftware.pdf>

LAWPRO[®], Managing Privacy and Security of Electronic Data
<http://www.practicepro.ca/practice/ElectronicDataSecurity.asp>

LAW.COM, Law Technology News <http://www.law.com/jsp/lawtechnologynews/index.jsp>

BUSINESS STRUCTURE, ARRANGEMENTS AND REGISTRATIONS RESOURCES

Canada Revenue Agency, Information for Business
<http://www.cra-arc.gc.ca/tx/bsnss/menu-eng.html>

Law Society of Upper Canada, Structuring Your Legal Practice: Partnerships, Professional Corporations, Multi-Disciplinary Practices and More 2008, under Continuing Legal Education
<http://ecom.lsuc.on.ca/cle>

LAWPRO[®] Magazine, Managing Risk Through Firm Structure
http://www.practicepro.ca/LAWPROMag/firm_structure.pdf

Ontario Bar Association, Taxation: Professional Corporations - the Pros and Cons 2006 and Update 2008, under Publications <http://www.softconference.com/oba>

Service Ontario (Ministry of Government Services), Search, Register, Renew a Business
http://www.ontario.ca/en/services_for_business/STEL02_039990

INSURANCE RESOURCES

Canadian Bar Insurance Association www.barinsurance.com

Insurance Bureau of Canada www.ibc.ca

Insurance Canada www.insurance-canada.ca

Insurance Information Institute www.iii.org

MARKETING AND NETWORKING RESOURCES

American Bar Association, Networking Workshop
<http://www.abanet.org/careercounsel/networking>

Canadian Bar Association, Guidelines for Ethical Marketing Practices Using New Information Technologies <http://www.cba.org/CBA/activities/pdf/ethicsguidelines-eng.pdf>

Canadian Bar Association, National Magazine Online Supplement: Marketing
<http://www.cba.org/CBA/PracticeLink/national/marketing2.aspx>

Canadian Bar Association, National Magazine Online Supplement: Networking
<http://www.cba.org/CBA/PracticeLink/national/networking.aspx>

LAWPRO[®], Technology Articles and Tips
<http://www.practicepro.ca/Technology/default.asp>

LAWPRO[®] Magazine, Social Media: Pitfalls to Avoid
<http://www.practicepro.ca/LAWPROMag/SocialMediaPitfalls.pdf>

MENTORING RESOURCES

Advocates' Society, Mentoring Series <http://www.advocates.ca/Young-Advocates.html>

Law Society of Upper Canada, Mentoring Initiatives <http://rc.lsuc.on.ca/jsp/mentorship/index.jsp>

LAWPRO[®], Managing a Mentor Relationship <http://www.practicepro.ca/practice/Mentoring.asp>

Legal Aid Ontario, Mentoring <http://www.legalaid.on.ca/en/info/mentoring.asp>

Ontario Lawyers' Assistance Program www.olap.ca

Women's Law Association of Ontario, Mentoring Program
http://www.wlao.on.ca/pages/03_membership/03_03_MentoringProgram/03_03.htm

WEBSITES

Canada Revenue Agency www.cra-arc.gc.ca

Law Society of Upper Canada www.lsuc.on.ca

LAWPRO[®] www.lawpro.ca

Legal Aid Ontario www.legalaid.on.ca

Ministry of Government Services www.mgs.gov.on.ca

Ontario Lawyers' Assistance Program www.olap.ca

TELEPHONE NUMBERS

Canada Revenue Agency 1-800-959-5525 (for business-related inquiries)
Law Society of Upper Canada Resource Centre 1-800-668-7380 ext. 3315 or 416-947-3315
LAWPRO® 1-800-410-1013 or 416-598-5899
Legal Aid Ontario 1-800-668-8258 or 416-979-1446
Ministry of Government Services, Official Document Services 1-800-268-1142 or 416-325-8416
Ontario Lawyers Assistance Program 1-877-576-6227 or 905-238-1740

RULES, REGULATIONS AND STATUTES

Law Society Act, Rules of Professional Conduct and by-laws pursuant to the Act

- By-Law 5: Annual Fee
- By-Law 6: Professional Liability Insurance
- By-Law 7: Business Entities
- By-Law 7.1: Operational Obligations and Responsibilities
- By-Law 8: Reporting and Filing Requirements
- By-Law 9: Financial Transactions and Records

Business Corporations Act (Ontario)

Business Names Act

Corporations Information Act

Employment Standards Act

Partnerships Act

Personal Property and Security Act

NOTES:

NOTES:



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Visit the Resource Centre at
www.lsuc.on.ca or phone 416-947-3315 or
1-800-668-7380 ext 3315.

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NON-ENGAGEMENT LETTER - CHECKLIST

Date of Interview

- set out the date of the interview

Reason for Declining or Non-Engagement

- explain why you cannot or will not represent the individual
- professional conduct issues: e.g., conflict of interest (do not to disclose confidential information regarding other client)
- fees issues: e.g., individual's failure to pay money retainer

Confirm Not Retained

- clearly state that you are not acting for the individual

Statute of Limitation

- refer to any applicable Statutes of Limitation
- if a specific statute of limitation poses an immediate problem, refer to the statute and specifically to the need for the individual to take urgent action

Recommend Legal Representation

- recommend that the individual seek other representation

No Legal Opinion

- take care not to express an opinion on the merits of any claim or matter unless you have conducted careful research to support the position

Return Property to Individual

- if you received property or documents from the individual during a consultation, return to the individual and confirm their return in the letter

Conflict of Interest Issues

- in instances where representation declined because of a conflict of interest, if applicable, confirm that
 - you have recommend that the individual to seek independent legal, and
 - if you received any confidential information regarding the individual's interests in the matter

Retain Copy, Input Conflicts Checking System

- keep copy of letter in client file or file containing non-engagement confirmations
- ensure information entered into conflicts checking system



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NON-ENGAGEMENT LETTER – SAMPLE

To: [Client name]

File Name: [file name]

File Number: [file number]

Date: [date of memo]

This letter is further to our initial meeting on _____(date of interview).

As indicated to you at that time, unless we received a money retainer of \$ _____ by _____ (date retainer funds due), we would not commence or undertake any legal services on your behalf.

To date we have not received any funds. Accordingly, please treat this letter as confirmation that

(a) we are not acting for you , and

(b) we will not be taking any steps on your behalf in respect of this matter.

Note that although the time for commencing your claim will not expire for some time, _____ (date of limitation), it is important that you retain a legal representative as soon as possible to ensure your matter is dealt with appropriately and in a timely fashion. We recommend that you immediately take steps to obtain legal representation.

We confirm that we do not have any documents belonging to you. All documents were returned to you at the end of the initial meeting.



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TIME DOCKETING AND BLOCK FEES

By Sylvia Loyens
Law Society of Upper Canada

“Why should I spend additional time docketing my time, when I bill most of my files by block fees?” A good question! There are several advantages to keeping track of all your time invested in your practice, including those matters that are billed on the basis of a block fee.

First, tracking billable time is useful in defending and pursuing costs assessments. Time docketing allows a lawyer to substantiate the time spent for purposes of enforcing payment of an account, when appearing before the assessment officer, or in speaking with a client who is dissatisfied with their account.

Second, documenting your time will enhance client communication. If a client complains about lack of communication, time docketing can indicate what attempts were made to contact the client or confirm contact that was made. It will also substantiate to the client any increase in fees that were appropriate in the circumstances (i.e., changing complexity of the transaction).

Third, tracking time provides a basis for assessing the firm’s financial health. By docketing all of your time, a lawyer can assess the appropriateness of their block fees by comparing their “effective billing rate” (block fee charged/number of hours for that matter) to their expected hourly rate. The results may prompt a review of hourly rates or block fees. Extrapolating their revenues for the year based on the current effective billing rate will permit the lawyer to assess whether there will be sufficient revenue streams to cover firm expenses, and then plan to prevent any potential budget shortfalls. As such, tracking all time invested in the practice allows lawyers to better assess the overall profitability of their practice, even to the detailed level of specific practice areas.

Fourth, tracking all of your time can enhance operational efficiencies. Identifying and tracking non-billable time on such activities as office administration, and then comparing it to your billable time, could identify areas where efficiencies can be improved; for example, hiring additional staff or using technologies to free up your time and increase your billable hours and profitability.

Technological advances have made time tracking, analysis and reporting more effective and user friendly. Any lawyer not tracking their time should consider introducing this into their practice.



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