



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

From: Succession Planning Working Group

Date: August 3, 2017

Subject: FINAL REPORT

Date – August 3, 2017 September 8, 2017	Executive Committee	Reviewed
Date –	Council	

Executive Summary:

The Succession Planning Working Group is of the view that the Society should commit to three distinct initiatives to address the risks associated with end of career issues. Firstly, the Society should, as part of Legal Services Support, develop, maintain and promote resources to assist lawyers and law firms in preparing for succession or wind-up of practices at the end of a career. Secondly, Council should consider enacting a regulation that requires all law firms delivering legal services to the public to have a succession plan and to advise the Executive Director of its location. Thirdly, the Society should consider enacting clear standards, through regulation or otherwise, that make it clear when law firms may destroy files and what types of files would not be subject to these provisions or have a particular retention period beyond what may be a usual retention period.

ANALYSIS

Introduction

Council created the Succession Planning Working Group because it has recognized that one of the major challenges for Nova Scotia lawyers and one of the significant regulatory risks for the Society relate to succession planning (or the lack thereof).

An Aging Demographic

The Society's ongoing analysis of the aging demographics in the profession indicates that this will become a greater issue. In its regular reporting on the Annual Lawyer Report to Council the Director of Finance and Administration has tracked the aging demographic and the concentration of those lawyers in the oldest segment of the bar. In 2017 the information given to Council is shown in Table 1. It shows that over 43% of sole practitioners are in the oldest segment of the Bar and as Table 2 shows, there is an overall aging of the profession as a whole.

Sole Practitioners

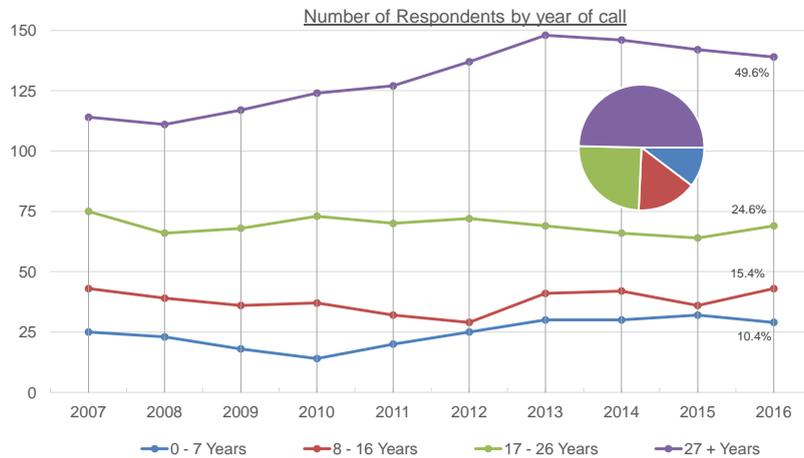


Table 1

“Aging Membership”

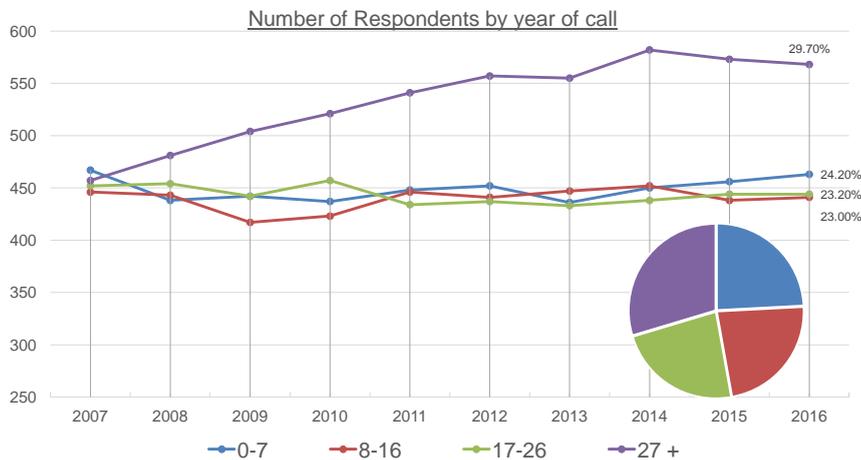


Table 2

The Working Group is of the view that with an aging profession and a concentration of the older lawyers in sole practice there is a risk that needs to be addressed before it becomes more serious.

Increased Costs to Assist at the End of Practice

The Society has also experienced the cost implications of dealing with lawyers at the end of their careers who have not made adequate plans for the transition of their practices when they are no

longer capable of dealing with them because of disability, incapacity or death. In his 2016 Report to Council on the state of the membership the Director reported:

The number of lawyers requiring assistance “winding-up” practices has continued to increase and has increased costs to the Society.

Since 2014 the Society has expended in excess of \$241,000 to look after the practices of eight lawyers at the end of their careers either through a receivership, custodianship or voluntary wind-up with Society assistance. The average of just over \$30,000 per practice is borne out by the actual costs which for the eight cost from a low of \$7000 for a very small practice to \$67000 for a practice which could only be described as ‘a mess’. Given the numbers above relating to the aging profession, the Working Group agrees with the conclusion of Society Staff that if this situation is left unaddressed it will get worse. For that reason we believe Council must now consider taking serious action to mitigate the risks that we think are inevitable.

Lack of Succession Planning

Lawyers tell the Society, especially when they plan for retirement, that there are few, if any, options for another practitioner to assume responsibility for their files. This includes their foundation documents which are required to be preserved under the *Land Registration Act*.

For several years the Society has asked lawyers, as part of the Annual Lawyer Report, whether they have a succession plan in place. This data was the basis for Council determining that this ought to be a priority for the Society. Table 1 captures the responses to the succession plan question from Annual Lawyer Reports.

Question: I have a documented succession plan to deal with my inability to practice, which includes:

	2016			2015		
	Responses	# of No's	% of No's	Responses	# of No's	% of No's
Dealing with Current Active Clients	567	122	21.5%	545	126	23.1%
Arrangements for Inactive Files	567	124	21.9%	545	126	23.1%
Long- Term Storage of Files	567	114	20.1%	545	112	20.6%
Addressing Current Staff	567	147	25.9%	545	149	27.3%
Dealing with Financial Demands	567	124	21.9%	545	132	24.2%
Plan Known by Others *	567	69	12.2%	545	116	21.3%

Table 1 – Report to Council on the ALR, September 2016

These numbers, in the Working Group’s opinion, present a significant risk to the public and to the profession and thus, to the Society. In keeping with the Society’s Regulatory Objectives and, in particular, the need for regulating in a Triple P way that is focused on identified risks, the Working Group strongly believes that the Society should take steps to address these risks in a manner that reflects the realities of practice and the circumstances of lawyers.

In undertaking its task, the Working Group focused on three major issues:

1. Should the Society mandate that all lawyers in private practice have a succession plan and if so, what is the nature of the support the Society should offer to assist in making the planning process effective?
2. Given that file storage is a significant concern to lawyers can the Society, by rule, enable the destruction of files by lawyers/law firms and create effective guidance for them to aid their decision-making and to minimize risk?
3. Are there financial arrangements that could be put in place to protect the Society in the event that a lawyer dies without an effective succession plan and to enable the Society to respond to appoint a custodian to windup the practice and deal with file storage and destruction?

Members of the Task Force

The members of the Working Group are:

- Heidi Foshay-Kimball, Chair
- Bob Carter
- Gerald Green
- Loretta Manning QC

Primary staff support was provided by Darrel Pink, but several staff involved in the development of the Society’s new approach to Legal Services Support attended meetings and assisted the Working Group in developing its thinking.

Those who assisted were:

- Jackie Mullenger
- Lawrence Rubin
- Elaine Cumming
- Stacey Gerrard
- Jennifer Pink

Terms of Reference

The key aspects of the Working Group’s Terms of reference are as follows:

Mandate	<ul style="list-style-type: none">• To advise Council and make recommendations on all issues relating to implementation of succession planning for lawyers, including how the Society minimises the risks associated with the end of lawyers’ careers.
Responsibilities	<ul style="list-style-type: none">• To review information and resources from the Society and other jurisdictions on succession planning for lawyers• Bringing a Triple P perspective, provide information and options to Council on the form succession planning and any necessary requirements for effective planning should take for lawyers in all areas of practice• To consider how incentives might assist lawyers in the implementation of succession planning• To enhance the resources available for lawyers, review and make recommendations on appropriate resources to be made available to lawyers

Meetings

Between January 2017 and July 2017, the Working Group met five times. For each meeting it was assisted by significant background information that showed how this issue has been dealt with in other jurisdictions as well as some of the research and thinking that some Nova Scotia lawyers have brought to bear on this matter through the development of file retention and destruction policies. Among legal regulators there appear to be two distinct approaches – one that mandates a succession plan be in place and one that provides resources and support to law firms and encourages them to address the matter internally. These approaches will be discussed in more detail later in this report.

Working Group make-up and Staff Support

PROCESS

The Working Group was influenced in its thinking by several things:

- Lawyers and law firms consistently report that file retention and destruction presents significant challenges and they seek clear guidance or rules from the Society about what files they can destroy and when
- Two jurisdictions (Maine and Saskatchewan) have created clear obligations to requiring lawyers to have succession plans
- A number of firms have created clear policies on records management and file destruction
- Amendments to the *Limitation of Actions Act* created a fifteen-year ultimate limitation period in s. 8(1)¹ and law firms ought to be able to take advantage of it
- A minute percentage of claims against lawyers are made more than fifteen years after the work was completed
- If files are destroyed pursuant to rules created by the Society, there should not be a negative impact on a claim against the lawyer if the file no longer exists
- The greatest challenge for lawyers in creating effective succession plans is the existence of a large number of dead files
- Lawyers and firms ought to be encouraged to purge files on closure and store them electronically on a medium that can be updated as technology evolves
- Information from the Law Society of Alberta has demonstrated the kind of guidance the Society can give for effective succession planning

1. Support for Succession Planning

The Society has the benefit of a recent publication from the Law Society of Alberta entitled “When bad things happen to good lawyers.”² This publication provides significant information and guidance for lawyers in the preparation and administration of succession plans. The Law Society of Alberta does not make succession planning mandatory but has determined that this practice assistance approach is an important step in helping lawyers adopt a culture of effective succession planning.

¹ Limitation of Actions Act, SNS 2014, c 35, 8 (1) Unless otherwise provided in this Act, a claim may not be brought after the earlier of

(a) two years from the day on which the claim is discovered; and

(b) fifteen years from the day on which the act or omission on which the claim is based occurred.

² <https://dvbat5idxh7ib.cloudfront.net/wp-content/uploads/2017/01/22203930/When-Bad-Things-Happen-to-Good-Lawyers.pdf>

The Working Group spent considerable time reviewing the Alberta material and modifying it for use in Nova Scotia. Attached as Appendices are some examples of material that could be used in Nova Scotia if Council either makes succession planning mandatory (as is advocated for by the Working Group) or chooses instead to take an approach that assisting lawyers in succession planning is the appropriate way to go.

This is in keeping with the Society's evolving approach to regulation which first and foremost requires that the Society be proactive in how it addresses regulatory risks. Therefore, as part of its legal services support work the Society would publish, promote and educate lawyers with regard to succession planning. This should include material that will assist law firms in developing effective file retention and destruction policies (see below for how the Working Group addresses an approach to permitting file destruction) and deal with the preservation of file material that is digitally preserved, such as emails, draft documents, financial and trust account records, etc.

As noted above, the Society has benefited significantly from Alberta's work. Though the legal services support team will finalize the nature and content of any publications in this area, because the Working Group spent time reviewing the Alberta materials and their applicability in Nova Scotia, we have attached some examples of the nature and content we believe must be a central feature to the Society's approach.

The Working Group has identified this issue but does not believe this is a genuine policy question for Council. Given that our conclusions regarding risk are supported by staff, there is no question that as part of Legal Services Support, the Society will create resources and tools for the profession regardless of what other regulatory response Council adopts.

Possible Regulatory Responses

The Working Group spent considerable time considering whether a regulatory response in addition to one that provides resources to lawyers and law firms is required. The conclusion was that a proportionate regulatory response is appropriate. Only then can the Society truly meet its requirement of promoting the public interest and public protection by ensuring that client matters are being addressed as lawyers plan for end of career. If that occurs unexpectedly, then the requirements for effective succession planning and implementation are even more important

2. A requirement for succession planning

Should the Society mandate that all lawyers in private practice have a succession plan and if so, what is the nature of the support the Society can offer to assist in making the planning process effective?

The Working Group considered whether there ought to be a requirement that all lawyers in private practice have an up-to-date succession plan.³ In canvassing other jurisdictions we found only two with such a requirement — Maine in the United States and Saskatchewan. Their rules are attached as Appendix 2.

The Working Group considered the current Saskatchewan rule and believes it has the correct elements of a possible regulation. However, some modifications are suggested. The Working Group suggests the following elements ought to be included in a regulation:

- It should apply to law firms engaged in the delivery of legal services to the public;

³ In focusing on lawyers in private practice, the Working Group, consistent with Triple P approaches to regulation, recognizes that the Society should only regulate areas where there is a real risk.

- Law firms ought to be able to satisfy the requirements on behalf of all lawyers in the firm⁴;
- The requirements of the regulation can be met by a firm on behalf of all lawyers in the firm;
- Succession plans must be current and subject to annual review by the lawyer or firm;
- Lawyers and firms must advise the Executive Director of the physical or digital location of the succession plan;
- Succession plans must contemplate arrangements required in the event of:
 - Cessation of practice
 - Temporary disability
 - Long term disability
 - Death;
- A succession plan must contain adequate information and arrangements to allow for handling of clients and managing the lawyer's practice with regard to:
 - Open and closed files
 - Wills indices
 - Foundation documents (LRA)
 - Trust accounts, trust funds and trust property
 - Other accounts of the practice
 - Passwords and means to access computers, emails, accounts and other electronic information
 - Any other arrangements necessary to carry on and wind up the practice;
- The Executive Director will provide a recommended form for recording the content of a succession plan;
- Reporting on the succession plan should be done through the Annual Firm Report.

A regulation would provide an objective standard against which all firms could be measured. It would allow the Society to better focus its educational efforts because there would be an objective determination that a lawyer/law firm had turned their mind to and could demonstrate that a plan is in place. Most importantly, mandatory succession planning will ensure that clients are protected because their lawyer will have to either take active steps to return their files to them when closed or there will be someone who has been identified as being responsible for the file if the lawyer is unable to continue to address the client's interests.

Reasons for not making the requirement mandatory include the fact that this is not yet a common requirement across Canada; it could cause some hardship for lawyers especially in rural areas where it is difficult to find another person to assume responsibility for files let alone a practice; and it may be more prescriptive if it requires a particular approach to succession planning in order to comply with the rules.

On balance, the Working Group concluded that a requirement, similar to Saskatchewan's, would be appropriate for Nova Scotia. It is also of the view that the best approach would be to enact the regulation and then postpone its enforcement for two years to give lawyers an opportunity to prepare for it and the Society time to enhance its educational materials and approaches. However in the meantime the Society, as part of the new approach to Legal Services Support, should actively develop, adapt and promote resources that will assist both sole practitioner law firms and larger firms to develop a culture that looks to the future and plans for things need to be considered.

⁴ So a law firm of 2 or more lawyers could have a succession plan for all lawyers in the firm which would likely make the firm responsible for the files of individuals.

The proposed regulations would be:

A law firm⁵ providing legal services to the public⁶ must

- (i) maintain a current succession plan for the practice including all lawyers in the firm ;*
- (ii) annually review the succession plan; and*
- (iii) provide the Executive Director, as part of the Annual Firm Report, particulars of the location of the succession plan.*

A succession plan must contemplate the unique arrangements that will be necessary in the event of any of the following events:

- (i) cessation of the practice⁷; and*
- (ii) if the law firm consists of a sole practitioner*
 - (a) temporary disability or incapacity,*
 - (b) long term disability or incapacity, and*
 - (c) death of the lawyer*

At a minimum, a succession plan must include information and adequate arrangements to allow for the handling of clients and managing the practice with regard to the following, where applicable:

- (i) open and closed files,*
- (ii) wills and wills indices,*
- (iii) titles and other important documents and records,*
- (iv) other valuables,*
- (v) passwords and the means to access computers, email, accounting and other electronic records,*
- (vi) trust accounts and trust funds, and*
- (vii) other accounts related to the member's practice; and any other arrangements necessary to carry on or wind up the member's unique practice.*

Issue #1

Does Council agree that a mandatory requirement for succession planning ought to apply to all law firms delivering legal services to the public? If so, does it believe that the nature of the proposed requirements is correct? If so, does Council agree with the Working Group's proposal that implementation of the regulation be delayed for two years (or some other time period as Council may deem prudent but not, in the Working Group's opinion, to exceed two years) to enable the profession to develop their policies?

3. File retention/destruction

Given that file storage is a significant concern to lawyers, can the Society, by rule, permit (thus authorize) the destruction of files by lawyers/law firms and if so, create effective guidance to aid in lawyers' decision-making to minimize risk?

The Working Group had the benefit of significant information about current practices utilized by some large firms with regard to file retention and destruction. It reviewed a number of policies currently in use by large and regional firms that outline a principled and legally sound approach for making decisions with regard to file destruction. Most are premised on the provisions regarding the ultimate limitation period in the *Limitation of Actions Act*.

The Working Group had the benefit of staff participation by Stacey Gerrard, Risk and Practice Manager for LIANS and Jennifer Pink, Manager of Legal Services Support, who is leading the implementation of that work. Both Ms. Gerrard and Ms. Pink provided significant insight into the

⁵ This covers all sole practitioners and law firms

⁶ Thus only firms in private practice are covered by the requirement.

⁷ For larger firms this requires consideration of a break up or dissolution of the firm. Though not a common occurrence there is recent experience in Canada that now makes this something that can be anticipated.

concerns of lawyers relating to when files can be safely destroyed on their discussions and regular interaction with lawyers. Further input was provided by Jacqueline Mullenger, Director of Education & Credentials who deals with all lawyers who change their categories from practising to non-practising or retired. All staff indicated that a significant burden to lawyers in being able to retire is the problem of maintaining ancient files. Lawyers significantly report that in the absence of clear language from the Society which permits file destruction they simply do not feel that destroying old files is an option.⁸

The Working Group is of the view that an effective role for the Society, as part of proactive regulation, is the development of clear policies and procedures to assist lawyers/firms in making effective decisions with regard to both file retention and destruction.

The Working Group is aware that the dominant view on file destruction is that in the event a lawyer is sued, it is better to have the file so the insurer can mount a defense. This view has assumed “mythic proportions” even if it is not founded on sound principles.

Lawrence Rubin, Director of LIANS, also participated in the Working Group’s deliberations. His perspective, which is now shared by the Working Group is:

- A very small, perhaps insignificant, percentage of claims are made more than fifteen years after legal services were provided
- The ultimate limitation period of fifteen years contained in the *Limitation of Actions Act* must be given some meaning and lawyers should be able to, and LIANS does, rely on it as a time limit for claims
- If files are destroyed in accordance with a procedure or protocol endorsed by the Society, it is very unlikely that any adverse inference could be drawn against a lawyer who does not have documentary evidence to support work done or advice given on an old file
- There are some types of files, such as will preparation files when death has not occurred, that should be kept longer than fifteen years, out of an abundance of caution.

Based on information received by the Working Group, their view is that an analysis of reasonable risk should allow lawyers to develop destruction policies that would permit files to be destroyed after fifteen years. The specific form of authorization may need further consideration for it may be a regulation or a professional standard specifically authorized by regulation. The Working Group has not come to a conclusion on this and awaits Council’s consideration of the policy before doing so.

Though any such permission should be broad based, there are definitely exceptions that would need to be clearly articulated. For example, the limitation clock for certain matters may have a delayed start date such as the settlement involving an injury to a minor in which case the file should not be destroyed until that person reached the age of majority (and perhaps for some time after that). Or, a file for the preparation of a will or power of attorney should not be destroyed if the client/former client is still alive. There are other examples and a comprehensive list will need to be developed.

Any rules in this regard will have to deal specifically with electronically stored data.

⁸ It was noted that this “conservative” approach seems to be more prevalent among sole practitioners and small firms in opposition to the policies developed by large firms that have had the benefit of research and consideration in developing their own policies.

Issue #2

Because the Working Group is of the view that this is a sound policy, it believes Council should consider whether, as part of its regulations dealing with succession planning, the Society should create a regulation or a standard that allows for files to be destroyed after fifteen years from the cessation of the provision of legal services on a file with certain specified exceptions. Is this a policy that Council supports?

4. Financial Arrangements/Insurance

The Working Group considered whether there might be some form of financial arrangements or insurance that could be put in place to address the consequences of a law firm that does not have an effective succession plan and, because of death or disability, the Society is required to appoint a receiver or custodian to wind-up the practice. It wondered whether there might be a form of insurance policy or bond that could be purchased to protect the Society from the unplanned expenditures, which can be more than \$20,000, depending on the size of the firm and practice.

On the Working Group's behalf, Lawrence Rubin, Director of LIANS, made several inquiries of insurance brokers to determine if such a product exists or if it might be designed. Though a detailed analysis was not undertaken, initial responses suggested that the complexity and costs associated with such a product would not make it cost effective and it would unlikely be something that firms would purchase or the Society could easily mandate. Therefore, the Working Group determined not to pursue this possibility any further though Mr. Rubin still has an outstanding inquiry.

Issue #3

The Working Group has concluded that, although it seems like a logical idea, there are not easily identifiable financial mechanisms that can be developed to ameliorate the expenses for the Society associate with a law firm's failure to adequately plan for succession.

CONCLUSION AND OPTIONS FOR CONSIDERATION

Appendix 1 – Sample materials to be included in Legal Services Support Resources for Succession Planning

Planning Lawyer Checklist

When planning for times when you are unable to practice consider these steps to prepare your practice. This will protect your clients' interests and assist any new counsel who may be covering for you.

1. Make arrangements for another lawyer (the "Replacement Lawyer") to cover in your absence. This will preserve your practice for your eventual return as well as protect and give comfort to your clients, family and staff. Put it in writing. ○

2. Consider the big picture to ensure a smooth transition.
 - a. What role will the Replacement Lawyer play (e.g. Manage your files for a time? Wind up the practice? Sell it for maximum value?). ○
 - b. How long must your absence continue before they step in? ○
 - c. How will they be paid? ○
 - d. How much and when will they be paid? ○
 - e. The steps you have taken or will take to facilitate their work. ○
 - f. Desired arrangements to support your family. ○

3. What information will they need to get up to speed as quickly as possible? Things to have ready or to give them in advance include:
 - a. General Information concerning the practice, its organization and staff. ○
 - b. A full set of keys to the office premises. Keys (or combinations) to file cabinets and safes. Contact information for landlord/property manager. ○
 - c. Access information for open and closed files, if files are located at a satellite office or off-site storage facility. ○
 - d. Passwords to your email, voicemail, computer system, online accounts and the lawyer portion the NSBS web site. Leave the passwords in a sealed envelope with your assistant and let your replacement know where they can be found. Provide the location of all backup drives, disks, memory sticks, hard drives. ○

Contact information for your spouse/domestic partner, next of kin. D

Tell your family and the executor or personal representative of your estate about the Replacement Lawyer and how to contact them.

- a. Employee roster with contact information. D
 - b. Names, contract information and account information of your accountant, bookkeeper, insurance agent, payroll service, health plan administrator, IT consultant, other service providers, bank (checking, trust account, other), credit cards. D
 - c. Location of wills. D
 - d. Equipment (telephone, photocopy, furniture, computer, etc.) leases including copy of lease agreements, account numbers and contact information of equipment lessors. D
 - e. Current accounts payable and accounts receivable statements. O
- 4 As soon as you have arranged who will cover for you, secure NSBS approval of the Replacement Lawyer as a signatory on your bank accounts and alternate Responsible Lawyer. D
- 5 Use retainer agreements that explain that you have arranged for the Replacement Lawyer to manage or close your practice in the event of your death, incapacity, or unexpected absence. D
- 6 Note the names of all parties on the outside of client files to prevent disclosure of confidential information in the event the Replacement Lawyer has a conflict of interest O
7. Build an office procedure manual. This will help the Replacement Lawyer as well as any new staff you hire in the meantime. Consider including:
- a. Conflicts: How to check for conflicts of interest. D
 - b. Diarization/Appointments: How to use your calendaring system. Who is responsible for inputting and retrieving dates and ensuring that deadlines are met? D
 - c. Active File List: How to generate a list of active client files, including client names, addresses, and phone numbers. (1
 - d. Accounting: How to access your accounting software and the location of client ledgers if using a manual system. How to generate a list of current accounts receivable. 11

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- e. File Organization: How open/active files are organized and assigned numbers. D
 - f. Closed Files: How and when are files closed, stored and destroyed? D
 - g. Original Client Documents: Whether your firm keeps clients' wills and other original documents and where are they located. D
 - h. Banking: Your bank name, branch address, account signers, and account numbers for all accounts (trust and general). Where the safety deposit box is located and where the key is. The location of all bank statements and other account records. D
 - i. Mail: Where the post office or other mail service box is located and how to access it. D
 - j. Deliveries/Faxes: How to deal with deliveries and faxes (incoming and outgoing)? What Couriers do you deal with? Account numbers for Couriers. D
 - k. Email: How do you organize/file your email? D
 - l. Office Hours: What are your office hours? D
 - m. Office Security: Where to obtain information and who to contact about office security systems (e.g. alarm system). D
 - n. Service of Documents: How do you accept or admit service? D
 - 8. Make sure all your file deadlines (including follow-up deadlines) are calendared. D
 - 9. Document your files so the Replacement Lawyer reviewing them will know what has happened to date and the next steps. O
 - 10. Keep your accounting and time and billing records up to date. D
 - 11. Ensure that you have sufficient funds available to the Replacement Lawyer to cover office overhead and expenses for a period of time.* D
 - 12. Be sure to tell your bank in advance that the Replacement Lawyer will have signing authority on your accounts and when that triggered. Choose your authorized signer wisely. He or she will have access to your clients' funds. D

* A line of credit issued to a lawyer may not advance funds after the lawyer's death or disability.

Introduce your Replacement Lawyer to your office staff. Make certain

- Ensure they know how to contact the Replacement Lawyer if an emergency occurs before or after office hours. D

- 13. Consider your insurance, including: professional liability insurance coverage, property insurance (if you own your building) and tenant's insurance (if you do not); contents insurance, including extra riders for computers or other equipment of significant value; commercial general liability for third-party bodily injury or property damage; business interruption insurance; crimes coverage; and disability, life, or other appropriate personal coverage. O

- 14. Review your written agreement with your Replacement Lawyer annually,

Notice of Replacement Lawyer

[This is a sample only - modify as appropriate]

I, _____ have authorized the following lawyers to assist with [the closure of my practice] /[managing my practice while I am unable to do so]:

REPLACEMENT LAWYER:

Name: _____ NSBS Member No. _____

Address: _____

Telephone: _____ Cell Phone: _____

E-mail address: _____

SUBSTITUTE:

Name: _____ NSBS Member No. _____

Address: _____

Telephone: _____ Cell Phone: _____

E-mail address: _____

Executed in the City of _____ in the Province of _____.

Signature: _____ Date: _____

**Consent to Release Information to the
Nova Scotia Barristers Society and LIANS**

[This is a sample only - modify as appropriate]

I _____ authorize the Nova Scotia Barristers Society and LIANS to disclose information regarding my membership and insurance status, and that of my professional corporation, to my Replacement Lawyer and Substitute, and to accept direction from him/her regarding changes or renewal of either.

Replacement Lawyer's Name: _____

Address: _____

Phone number: _____ Email: _____

Substitute Lawyer's Name: _____

Address: _____

Phone number: _____ Email: _____

I have authority to sign this document and authorize the use or disclosure of protected information to my Replacement Lawyer and Substitute. There are no claims or orders pending or in effect that would prohibit, limit or otherwise restrict my ability to authorize the use or disclosure of this information.

Executed in the City of _____ in the Province of _____.

Signature: _____ Date: _____

Letter from Planning Lawyer Advising Clients that He/She Closing Down Practice*

[This is a sample only – modify as appropriate]

Dear [Client]: Re:

[Matter]

I will be [retiring from the practice of law/closing my law practice] on [date] and will no longer be able to act as your lawyer after that time.

A review of my records indicates that you have the following file(s) or documents at this office:

1. [file name] [Relevant details, e.g., open file, wills, trust funds, corporate records, etc.]

You have several choices about how to proceed now that I will no longer be able to assist you:

- I have made arrangements with [insert law firm name/Replacement Lawyer's name] to take over your files provided you agree that he/she has no conflict in representing you.
- You can chose a different lawyer to take over your files. I would be happy to provide you with a list of other local lawyers who practice in the area of law relevant to your legal needs.
- You can choose to proceed without any lawyer representing you.

I am sending you two copies of this letter. Please let me know what you would like to do by indicating your choice below and returning a signed and dated copy of this letter to me. The other copy is for you to keep for your records.

Since there may be important time deadlines that can affect whether legal cases will succeed, it is imperative that you let me know your decision about a new lawyer as soon as possible so that your case is protected and there is no interruption in the handling of your files.

Once you have decided, would you also contact me as soon as possible to make arrangements to obtain your [file/files] or to provide me with instructions to forward [it/them]

* This letter has been adapted from a sample letter prepared by Ian Doddington and Dave Bilinsky of the Law Society of British Columbia

to new counsel, including any balance of funds remaining in trust.

Within the next [fill in number] weeks, I will be providing you with a final invoice for the work I have done on your behalf and a full accounting of the money I am holding for you in my trust account.

For many legal files, notifications of the change in solicitor must be given promptly to avoid any legal steps being taken against you. Your new lawyer can do this for you or I would be pleased to assist you in this regard before [date]. Unclaimed trust funds will be sent to the Public Trustee. Other documents that are unclaimed may eventually be destroyed.

[For corporate records clients:] I note that my office serves as a registered and records office for [name of company]. I cannot continue to provide this service after [date]. Please let me know where your new records office must be filed with the government. Your new lawyer can do this or I will be pleased to assist you in this regard before [date]. Failure to notify the government can result in the company being struck off the rolls of incorporated companies. All assets of the company would then revert to the crown.

I look forward to hearing from you as soon as possible.

If you or your new lawyer need a copy of a closed file, please do not hesitate to contact me to make the necessary arrangements.

I have appreciated the opportunity of serving as your lawyer. Please do not hesitate to give me a call if you have any questions or concerns.

Sincerely,

<p>Instructions:</p> <p><input type="checkbox"/> I would like my file to be transferred to [name of new lawyer/law firm]</p> <hr/> <p><input type="checkbox"/> I will be retaining new counsel but I am still making the necessary arrangements. I will have them contact you once they have been retained.</p> <p><input type="checkbox"/> I will be proceeding without a lawyer representing me.</p> <p>_____</p> <p>_____</p> <p style="text-align: right;">_____</p> <p style="text-align: right;">Date</p>

Letter from Replacement Lawyer Advising Clients that Lawyer Unable to Practice*

[This is a sample only – modify as appropriate]

Dear [Client]: Re:

[Matter]

I am writing you let you know that due to ill health/his/her recent passing, [Lawyer] is no longer able to serve as your lawyer.

He/she has made arrangements for me to assist with his practice however and to help his/her client's transition to new lawyers.

A review of [Lawyer's] records indicates that you have the following file(s) or documents at this office:

1. [File name] [Relevant details, e.g., open file, wills, trust funds, corporate records, etc.]

You have several choices about how to proceed with your case now that [Lawyer] will no longer be able to assist you:

- You can retain me to take over.
- You can choose a different lawyer to take over.
- You can proceed without any lawyer representing you.

I am sending you two copies of this letter. Please let me know what you would like to do by indicating your choice below and returning a signed and dated copy of this letter to me. The other copy is for you to keep for your records.

If you would like to meet and discuss this, please do not hesitate to contact me at [telephone number or by email at [email address] to arrange a meeting.

Please note that until we meet and have signed a new retainer agreement, I do not consider that you have hired either me or my firm and we will not be taking any steps on your file. [If there are urgent steps needed to protect the client's interests, confirm that you will do so for that reason but that you will not be taking any other actions until retained.]

* This letter has been adapted from a sample letter prepared by Ian Doddington and Dave Bilinsky of the Law Society of British Columbia

Since there may be important time deadlines that can affect whether your case will succeed, it is important that you let me know immediately what you would like to do. So that there is no interruption in the handling of your files, I look forward to hearing from you as soon as possible.

You will soon be receiving a final account relation to the work [Lawyer] did for you, which will include any outstanding balance you owe [him/her] and an accounting of any funds [he/she] was holding for you in [his/her] trust account.

Please feel free to contact me with any questions you might have. Yours

truly,

[Replacement Lawyer]

Instructions:

- I would like my file to be transferred to [name of new lawyer/law firm]

- I will be retaining new counsel but I am still making the necessary arrangements. I will have them contact you once they have been retained.
- I will be proceeding without a lawyer representing me.

Date

Appendix 2 – Succession regulatory requirements in Maine and Saskatchewan

Maine State Bar Proxy Designation

Rule 1(g) Roster of Lawyers. The Board shall maintain current information relating to all lawyers admitted to the Maine Bar including, but not limited to, the following:

- (1) full name and all names under which the lawyer has been admitted or practiced;
- (2) date of birth;
- (3) current office address, telephone number, and email address;
- (4) current residence address, telephone number, and email address;
- (5) date of admission to the Maine Bar;
- (6) registration status and the date of any transfer to or from a status;
- (7) social security or federal identification number;
- (8) other jurisdictions in which the lawyer is admitted and date of admission;
- (9) location and account numbers in which clients' funds are held by the lawyer;
- (10) nature, date, and place of any discipline imposed and any reinstatements in any other jurisdiction;
- (11) whether the lawyer, if engaged in the private practice of law, maintains professional liability insurance (see Rule 4(b)(4));
- (12) if engaged in the private practice of law in Maine, the name of an active status attorney who has consented to serve as a proxy on behalf of the attorney (see Rule 32); and
- (13) the bar number assigned to every admitted lawyer.

The information submitted pursuant to this rule shall be made available to the public with the exception of information deemed confidential by the Board.

What is a Proxy? A proxy is an attorney who will act to protect the interests of clients to manage or conclude the law practice of an attorney who is incapacitated, suspended, disbarred, disappears, or dies. Active Maine attorneys who indicate they are in private practice must designate a proxy when completing the annual registration process.

Who can serve as a proxy? Any active Maine attorney who has given his/her consent may be designated as a proxy. A proxy does not have to engage in the same fields of law as the requesting attorney. A proxy performs functions similar to a triage nurse: Determining the needs of the clients and sending the clients in the right direction.

Does the proxy requirement apply to partners or associates of a law firm? Yes. There is no exclusion for partners or associates of law firms. Much like the IOLTA registration statement, each active status attorney engaged in private practice must complete the designation.

Does the proxy requirement apply to non-resident attorneys? Yes. There is no exclusion for attorneys who do not reside in Maine. If a non-resident attorney engages in the practice of law in Maine, a proxy must be designated.

Why is this necessary? It is a matter of diligence. Any of us could be injured in an accident, or could suddenly suffer a debilitating illness. An inability to work on client files results in ethical issues. "A lawyer shall act with reasonable diligence and promptness in representing a client." M. R. Prof. Conduct 1.3. "To fulfill the obligation to protect client files and property, a lawyer should prepare a future plan providing for the maintenance and protection of client interests...Such a plan should, at a minimum, include the designation of another lawyer who would have the authority to review client files and make determinations as to which files need immediate attention..." Formal Op. 92-369, ABA Standing Committee on Ethics and Professional Responsibility, Dec. 7, 1992. See also M. R. Prof. Conduct Rule 1.3 Cmt. [5].

Why is consent necessary? Professional courtesy is a factor. Commitment is another. The designating attorney and proxy must realize there will be work involved. If the designating attorney's practice is reasonably well organized, the proxy's work will be performed more efficiently. At a minimum, the proxy should be satisfied the designating attorney can provide requisite information for the proxy to make decisions. A list of pertinent information is {link to list #1}. The proxy needs to know what she/he is agreeing to undertake, and assess whether it will be difficult it will be to perform the required tasks.

Can the client hire the proxy? Conflict of interest rules must be followed. The client must understand the proxy has not been appointed to represent the client. The client should also understand that the client is under no obligation to have the proxy represent the client, and the client is free to select any Maine attorney. If there is no conflict of interest, and if the client knows what choices are available, the client can hire the proxy as her/his attorney.

What will the proxy be expected to do? The proxy may be called upon to close the practice of an attorney who can no longer practice. Alternatively, the proxy will oversee the operation of the practice until the attorney can resume work. Closing the practice will involve such activities as transferring files out of the attorney's office. The files may go to the client or to an attorney designated by the client. Office services will be terminated. Employees will be discharged. Bills will be generated for work in progress. A secure system for accessing closed client files will be established, including a process for destruction of those files when requisite time has passed. {See checklist, #2 attached. (For a possible checklist, see...)} Alternatively, if the attorney is expected to return to practice, the proxy will oversee the operation of the office. Clients would be notified of the attorney's temporary absence. Depending on the circumstances, clients may have to be advised to secure the assistance of alternative counsel. It is highly recommended that the attorney and the proxy have a clear understanding regarding the intent of the attorney, the financial implications of continuing to operate the practice without a primary income producer, and related issues.

Is a proxy exposed to claims or disciplinary action? A proxy must follow the Rules of Professional Conduct. Confidential information must be protected. Conflict checking and screening is mandatory. If the proxy is appointed as a Receiver under (Revised) Maine Bar Rule 32, the proxy/Receiver will be immune from liability for professional services rendered. Consultation with Bar Counsel is necessary.

http://www.mebaroverseers.org/attorney_services/registration/proxy_designation.html

Law Society Saskatchewan

Succession Plan 1801.

(1) A member who practices with a firm shall maintain a succession plan for the member's law practice.

(2) A member's succession plan shall contemplate the unique arrangements that will be necessary in the event of each of the following:

- (a) temporary disability;
- (b) long term disability; and
- (c) death of the member.

(3) At a minimum, a member's succession plan shall include adequate arrangements for clients, including management of the following where applicable:

- (a) open and closed files;
- (b) wills and wills indices;
- (c) titles and other important documents and records;
- (d) other valuables; (e) trust accounts and trust funds; and
- (f) other accounts related to the member's practice; and any other arrangements necessary to carry on or wind up the member's unique practice.

[Rule 1801 Succession Plan added May 2, 2014, effective July 1, 2014]