



NOVA SCOTIA  
BARRISTERS' SOCIETY

## MEMORANDUM TO COUNCIL

**From:** Bob Carter QC, Chair, Law Office Management Standards Committee

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**Date:** April 24, 2020

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**Subject:** Professional Standards – Law Office Management - #9 Succession Planning

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**For:**      **Approval**       **Introduction** **X**      **Information**

DATE April 24, 2020	Council	Introduction
	Council	Approval

### Recommendation/Motion:

This is the introduction to Council of a new proposed Law Office Management Standard #9 – Succession Planning – by the Law Office Management Professional Standards Committee. Following introduction, the Committee will circulate the proposed standard to the membership for review and consultation. The Committee will review any comments received and then present the final form, amended if necessary, to Council for approval.

### Executive Summary:

In 2017, Council appointed a working group to consider the implications for the Society and the profession if lawyers do not have effective plans in place to deal with any unplanned interruption in a practice. The Succession Planning Working Group found that the lack of support and preparation for lawyers to wind-up practices at the end of their careers is a significant challenge for the profession and a major regulatory risk for the Society.

In late 2017, Council directed the Society to seek input from the profession on the three initiatives recommended by the Working Group that addressed the risks associated with end of career issues:

1. That the Society develop, maintain and promote resources that will assist lawyers in preparation for succession/wind-up at the end of a career;

2. That the Society enact regulation requiring law firms that provide legal services to the public to have succession plans and to advise the Society's Executive Director of its location;
3. That the Society enact clear standards that clarify when and what files may be destroyed by a law firm.

In a workshop on February 2018, meeting, Council considered the consultation feedback and concluded that the Society should require all lawyers to have written succession plans. It asked the Committee to review the tools, processes and standards that lawyers may use to assist them in exercising their professional judgment in determining when to destroy files. In addition, it asked the Committee to look at the resources that deal with succession planning and determine if additional resources or guidance is needed.

In March 2018, Council determined that the Regulations made pursuant to the *Legal Profession Act* be amended to include a requirement for lawyers and law firms to develop and maintain succession plans for all lawyers associated with the firm. (Council adopted a regulatory amendment requiring lawyers and law firms to maintain written succession plans at its May 2018 meeting – see subregulations 4.6.1 (law firms) and 4.6.2 (sole practitioners), and subregulations 4.6.4 through 4.6.6 providing a framework for the development of a succession plan. (These amendments were approved in May 2018.)

The Executive Director reported to Council in March 2018 that research would be undertaken and a legal opinion sought on the outstanding question of whether the Society has the authority to direct lawyers as to when they can destroy their files.

A legal opinion was sought from Burchell MacDougall on whether the Society has the authority, via regulation, to mandate or permit lawyers to destroy their files after a certain period of time has elapsed (e.g. 15 years), subject to various noted exceptions. The April 2018 opinion concluded “there is no authority under the Act of Regulations to implement either mandatory or permissive regulatory direction to lawyers on destruction of non-exempted client files after a set period of time.”

Further to this opinion, Council directed Society staff to:

- a. pursue a legislative amendment to create the legal authority to establish a permissive regulation regarding file destruction guidelines; and
- b. enhance the Society's / LIANS' current succession planning and file destruction practice resources, with a view to offering clearer guidance and tools for firms in developing appropriate file destruction policies.

As priority, the Committee focused on reviewing existing resources and if necessary, developing new tools and resources that law firms and sole practitioners could benefit from in fulfilling their regulatory requirements around maintaining a written succession plan (in accordance with subregulations 4.6.4 through 4.6.6).

We presented the results of this work - the [Succession Planning Toolkit](#) – to Council at its January 2020 meeting.

Further, at its May 2019 meeting the Law Office Management Standards Committee determined that in addition to developing tools and guidance to direct lawyers, it would recommend to Council that a new succession planning standard be developed. This recommendation reflects the Committee's responsibility to identify for Council "**existing professional standards** of law office management which may require the development of professional standards that fulfill the Society's obligations to regulate in the public interest."

The proposed Standard, attached, reflects the requirements set out in Regulation for a succession plan and provides clear guidance below the line to assist lawyers and firms in fulfilling their obligations, including directing members to the SP Toolkit.

As mentioned at Council's January 2020 meeting, the Committee and Society staff are still working on Council's request to consider that the Society enact clear standards that clarify for the membership when and what files may be destroyed and is considering how changes in privacy law, and other considerations, might impact the guidance provided to lawyers. The Committee will bring its recommendation forward to Council in the coming months.

**Exhibit:**

Proposed Standard #9 – Succession Planning.