



NOVA SCOTIA
BARRISTERS' SOCIETY

When a Lawyer Leaves a Firm

Legal Services Support

NOVA SCOTIA BARRISTERS' SOCIETY | NOVEMBER 2023

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Leave & Let Go – what happens when a lawyer and a firm part ways

The Society is often asked for guidance concerning the departure of a lawyer from a firm. The circumstances vary widely, but the ethical considerations are the same. Our role is to keep a focus on, and help you with, your obligations to your clients under the *Code of Professional Conduct* and your compliance obligations under the *Legal Profession Act* and *Regulations*.

Many issues arising from a departure are governed by contract and employment law. This guide is not meant to cover those issues. How much money might be payable for whatever reason is a common example. The Society views that as a civil matter. Our concern is protection of the public by keeping the focus on the clients' interests. We encourage the lawyer and firm to maintain a productive and civil dialog so they can make sure the clients' interests are served. As an added benefit, **when the focus is on the clients the departure often goes more smoothly for the lawyer and the firm.**

Fees

We sometimes get asked about prepaid practising fees. Fundamentally, this is a question of contract and employment law. The Society does not refund prepaid fees. If a lawyer joins another firm there might be an adjustment between firms. Sometimes the new firm pays the fees for the same period a second time directly to the Society, in which case the old firm will get a refund.

What happens with open files and trust monies?

That is up to each client. It is their file. The client has *three* choices for each open file: stay with the lawyer, stay with the firm, or go to another lawyer (which can be accomplished by transferring the file to the new lawyer or giving the client their file). Of course, a lawyer or firm may opt not to be a candidate for that choice for whatever reason, which may include prior agreement, but the clients still, as always, gets to decide whether to move their work to a different lawyer.

Where both would like to represent the client, we encourage the lawyer and firm to jointly send one letter/email to each client that presents the choice in a fair, neutral manner and gives them an easy way to communicate their choice (see sample below). With email, this can be a fast process that does not disrupt imminent transactions or proceedings. The choice should also address, where appropriate, what happens to any trust money left after any billing which might take place as part of the departure.

If the departing lawyer has been working on the file of client which the firm feels is a client of the firm, the client nevertheless gets the choice:

- (a) For each such open file upon which the lawyer has been working (ie, not closed files or other files of that client); and

- (b) If the departing lawyer has “conduct or substantial involvement” for the file (see *Code 3.7-7A*, inc. *Commentary 10*, attached).

The departing lawyer may choose to NOT be an available choice for any such file, subject to any other professional obligations governing their withdrawal. (see s. 3.7 in general).

Particularly where the relationship is frayed and both wish to retain the clients, please don’t even imply the circumstances of departure unless it’s something both firm and lawyer can agreed upon. It is generally in nobody’s interest to expose a dispute to a client, if there is one: nobody looks good and it can erode confidence.

If, however, you have concerns of a serious ethical breach by one of the parties, you can contact the Society’s PR Counsel for advice before approaching clients.

What if neither the lawyer nor the firm can take the client?

The lawyer (or the lawyer of record if different) has an obligation to comply with all applicable rules governing withdrawal and provide all appropriate notices to the client, court, and opposite party.

Notifications to Third Parties

Whether the lawyer or the firm continues with the file, there might be notifications required to third parties, sometimes on prescribed forms: courts, other parties, and Registry of Joint Stock Companies are common examples.

Legal Aid Certificates

Nova Scotia Legal Aid typically issues certificates in the name of the lawyer and firm. When a lawyer leaves, submit an interim bill. Payment goes to the firm to be dealt with however the parties agree(d). The certificate can follow the lawyer or stay at the firm. All of that said, NSLA might exercise some discretion in a situation where the lawyers in the firm work in association to one-another. Either way, it is always the client’s choice – a choice you should put to clients while obtaining their consent. See the draft consent below.

Foundation Documents for real estate transactions

The obligation to maintain foundation documents (defined at *Reg. 1.1.1 ml*) where the firm (including lawyer on behalf of the firm) gave an opinion on title rests on the firm even if the lawyer leaves, unless that obligation is properly transferred under Part 8 of the *Regulation*. (see 8.2.1 – 8.2.5) That said, it is the lawyer who certified, bears the responsibility, and who might have to answer for what happened. If property files with foundation documents in them, or foundation documents separate from files, are to move with the lawyer, the firm and the lawyer advise the Society of that move by following *Reg. 8.2.4*. Because foundation documents must

be kept indefinitely, if you haven't been storing them electronically this is a time to consider scanning.

Closed Files

The file is important for the client in case an issue arises, as well as for any lawyer who worked on it in the event of a liability claim or complaint. The Society and LIANS have an interest in closed files being available to deal such matters. Contract might determine the issue, as can employment law although if dealing with anyone other than an associate who is a salaried employee it could be hard to determine easily. With electronic files, it is feasible for the firm and lawyer to each keep a copy. Regardless of who has physical custody of a file, any lawyer who worked on the file might legitimately require access. The file, like any file, should only be destroyed in accordance with a proper destruction policy (see our Succession Planning Toolkit materials, including a template policy) with a record kept of the destruction. It must *not* be destroyed for an inappropriate reason, such as who the client or lawyer is and you don't work with them anymore.

Original Wills and Will Instructions

Original wills impose an indefinite obligation that could easily outlast your practice by several decades. They complicate succession planning. We recommend that lawyers NOT hold original wills and that you return them all to the clients, unless you can maintain indefinite safe keeping, ie maybe for 100+ years. So if there are original wills involved in a departure scenario, it is a good time to return them. Will instructions should be kept indefinitely; whoever keeps them should consider scanning them to facilitate storage and the inevitability of your own succession needs.

What additional steps must the firm take?

Remove the lawyer's name from your letterhead, website, etc. Make required changes, if any, with third parties such as the Registry of Joint Stock Companies. It's up to the lawyer to inform the Society of their change, but we appreciate a head's up if you think that might not happen in a timely way, in which case we can remove their name from your roster and contact them.

If the departing lawyer was a trust account signatory, advise the Society's Trust Assurance team.

If the departure of one of more lawyers changes the partnership, management, name, nature of practice or other major factors, please call Legal Services Support. It is *possible* that such a change could result in the remaining firm being a "new" firm, which must register. We'll help you make it fast and easy.

We recognize that you might have questions. Please call and ask for Legal Services Support.

What additional steps must the lawyer take?

You must notify the Society of your change of circumstances and contact information, whether it is to another firm, creating a new firm, or to an 'in between jobs' state. We often offer Legal Services Support to assist you, because a change in situation can be a challenge to navigate.

We do not take sides in, or mediate, any dispute between lawyer and former firm.

If you are joining an existing firm, send the Society an email advising of the change, your new email, and new cell, and the date of the change.

If you are or will be working on your own or with others in an entity which might be a new firm, contact Legal Services Support. Someone may need to [file this form](#). Sometimes, one or more lawyers joining an existing practice can create a "new" firm, even if in an existing location with a similar name. Looking at the completed form and asking a few questions helps us make that determination. Even if a "new firm" is created, the process for registering it is easy and fast.

Sometimes lawyers are 'between firms' for a short period and must take steps on some of their files. If you are doing *any* practice of law on your own, you must register as a new firm, even if only for a matter of days. It need not be an onerous process. Contact Legal Services Support and [file this form](#).

If you want to open a trust account, or are joining a firm and wish to become a signatory on one and have not been a signatory in the previous three years, contact our Trust Assurance team for help. There are required steps, which we can help get through as quickly as possible, but it

Sudden Dissolutions

Occasionally a firm will endure an event (eg a substantial disagreement) which leads to the firm breaking apart. For the clients, this will be worrisome. You must protect their interests from being compromised. For the lawyers, it can be traumatic. In such circumstance, Legal Services Support may contact every member of the firm to provide information and support so you can work through relevant issues in a more orderly and certain fashion. We cannot mediate disputes, but we can help everyone get into their next practice as smoothly as possible and in compliance with obligations.

Appendix A *Code of Professional Conduct*

Withdrawal from Representation

Leaving a Law Firm

3.7-7A When a lawyer leaves a law firm, the lawyer and the law firm must:

- (a) ensure that clients who have current matters for which the departing lawyer has conduct or substantial involvement are given reasonable notice that the lawyer is departing and are advised of their options for retaining counsel; and
- (b) take reasonable steps to obtain the instructions of each affected client as to who they will retain. Amended July 20, 2018

Commentary

[1] When a lawyer leaves a firm to practise elsewhere, it may result in the termination of the lawyer-client relationship between that lawyer and a client.

[2] The client's interests are paramount. Clients must be free to decide whom to retain as counsel without undue influence or pressure by the lawyer or the firm. The client should be provided with sufficient information to make an informed decision about whether to continue with the departing lawyer, remain with the firm where that is possible, or retain new counsel.

[3] The lawyer and the law firm should cooperate to ensure that the client receives the necessary information on the available options. While it is preferable to prepare a joint notification setting forth such information, factors to consider in determining who should provide it to the client include the extent of the lawyer's work for the client, the client's relationship with other lawyers in the law firm and access to client contact information. In the absence of agreement, both the departing lawyer and the law firm should provide the notification.

[4] If a client contacts a law firm to request a departed lawyer's contact information, the law firm should provide the professional contact information where reasonably possible.

[5] Where a client chooses to remain with the departing lawyer, the instructions referred to in the rule should include written authorizations for the transfer of files and client property. In all cases, the situation should be managed in a way that minimizes expense and avoids prejudice to the client.

[6] In advance of providing notice to clients of their intended departure the lawyer should provide such notice to the firm as is reasonable in the circumstances.

[7] When a client chooses to remain with the firm, the firm should consider whether it is reasonable in the circumstances to charge the client for time expended by another firm member to become familiar with the file.

[8] The principles outlined in this rule and commentary will apply to the dissolution of a law firm. When a law firm is dissolved the lawyer-client relationship may end with one or more of the lawyers involved in the retainer. The client should be notified of the dissolution and provided with sufficient information to decide who to retain as counsel. The lawyers who are no longer retained by the client should try to minimize expense and avoid prejudice to the client.

[9] See also rules 3.7-8 to 3.7-10 and related commentary regarding enforcement of a solicitor's lien and the duties of former and successor counsel.

[10] Whether a departing lawyer has been substantially involved in a matter will require assessment of the particular circumstances. Generally, substantial involvement would include having a critical role in the advice to and representation of the client in the matter, and typically would include a significant and direct personal involvement in dealings with the client. Significant involvement encompasses more than the amount of time spent in working on a matter.

Appendix B

Announcement and Consent Forms

Version 1 – client has money in trust

(not on letterhead, may be emailed)

Joint Announcement by (Law Firm) and (Lawyer)

(name of lawyer) will be leaving (name of firm) effective (date). We are working together to assure that your matter(s) is/are properly looked after.

You as the client have the right to decide who your lawyer will be, and thus where your open file(s) and any applicable trust money will be. Either *(the firm)* or *(the lawyer/name of new firm)* would be pleased to continue to serve your needs, and you also have the option to choose a different lawyer and firm.

Please give your instruction. Here are two ways to do so:

- A. Check your chosen option, below, then sign and return this form by email or otherwise at your earliest convenience; or,
- B. You might find it easier to send an email in which you simply copy & paste your chosen option from the list below.

Options:

- ☐ 1 I would like my file and any trust money to be transferred to *(Lawyer name and new firm name, if known)*
- ☐ 2 I would like my file and any trust money to remain at *(Firm name)*
- ☐ 3 I would like my file and any trust money to be transferred to a different lawyer (please specify)

- ☐ 4 Please return file and trust money to me, the client, and I will find my new lawyer.

Client Name:

Signature:

Date:

If you have any questions, we invite you to contact _____ at (*the firm*) _____ at _____ and/or (*the lawyer*) _____ at _____.

(*name/new firm of departing lawyer*)

(*name of lawyer, for the firm*)

Version 2 – no money in trust

(not on letterhead, may be emailed)

Joint Announcement by (Law Firm) and (Lawyer)

(name of lawyer) will be leaving (name of firm) effective (date). We are working together to assure that your matter(s) is/are properly looked after.

You as the client have the right to decide who your lawyer will be, and thus where your open file(s) will be. Either (the firm) or (the lawyer/name of new firm) would be pleased to continue to serve your needs, and you also have the option to choose a different lawyer and firm.

Please give your instruction. Here are two ways to do so:

- C. Check your chosen option, below, then sign and return this form by email or otherwise at your earliest convenience; or,
- D. You might find it easier to send an email in which you simply copy & paste your chosen option from the list below.

Options:

- ☐ 1 I would like my file to be transferred to (Lawyer name and new firm name, if known)
- ☐ 2 I would like my file to remain at (Firm name)
- ☐ 3 I would like my file to be transferred to a different lawyer (please specify)

- ☐ 4 Please return file to me, the client, and I will find my new lawyer.

Client Name:

Signature:

Date:

If you have any questions, we invite you to contact _____ at (the firm) at _____ and/or (the lawyer) _____ at _____.

(name/new firm of departing lawyer)

(name of lawyer, for the firm)